



SERVICE CONTRACT/ WORK ORDER TERMS AND CONDITIONS

THE CONTRACTOR/CONSULTANT

1. The Contractor/Consultant shall:
 - a) Notwithstanding the date of execution of this agreement provide the Services (the “Services”), for the Term (the “Term”) at the location described and set out in Schedule “A”;
 - b) Undertake all work and supply all materials necessary to perform the Services;
 - c) Upon request of BC Housing , fully inform BC Housing of the work done by the Contractor/Consultant in connection with the provision of the Services and permit BC Housing at all reasonable times to inspect, review and copy all accounting records, findings, data, specifications, drawings, working papers, reports, documents and material, whether complete or otherwise, that have been produced, received or acquired by the Contractor/Consultant as a result of this agreement, and provide reasonable facilities for such access;
 - d) Comply with all applicable municipal, provincial and federal legislation and regulations;
 - e) Obtain all permits and licenses, including building permits, necessary for the performance of the Services;
 - f) Promptly pay all persons employed by it;
 - g) Not assign this agreement, nor subcontract any of its obligations under this agreement, to any person, firm or corporation without the prior written consent of BC Housing or as approved in Schedule “B” (subcontractors);
 - h) At all times exercise the standard of care, skill and diligence normally exercised and observed by persons engaged in the performance of services similar to the Services;
 - i) At all times treat as confidential all information or material supplied to or obtained by the Contractor/Consultant or subcontractor as a result of this agreement and shall not permit the publication, release or disclosure of the same without the prior written consent of BC Housing;
 - j) Not perform any services for any other person, firm or corporation which, in the reasonable opinion of BC Housing, may give rise to a conflict of interest;
 - k) Be an independent Contractor/Consultant and not the servant, employee or agent of BC Housing;
 - l) Ensure that all persons employed by it to perform the Services are competent to perform them, adequately trained, fully instructed and supervised;
 - m) Accept instructions from BC Housing, provided that the Contractor/Consultant shall not be subject to the control of BC Housing in respect of the manner in which such instructions are carried out;
 - n) Ensure that all personnel hired by the Contractor/Consultant to perform the Services will be the employees of the Contractor/Consultant and not of BC Housing, with the Contractor/Consultant being solely responsible for the arrangement of reliefs and substitutions, pay, supervision, discipline, unemployment insurance, worker’s compensation, leave, and all other matters arising out of the relationship of employer and employee;
 - o) Not in any manner whatsoever commit or purport to commit BC Housing to the payment of any money;
 - p) Establish and maintain time records and books of account, invoices, receipts and vouchers of all expenses incurred;

- q) Indemnify and save harmless BC Housing, its agents, employees and any other person designated by BC Housing from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that BC Housing may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this agreement, where the same or any of them are based upon, arise out of or occur by reason of any act or omission of the Contractor/Consultant or of any servant, employee, officer, director, shareholder or subcontractor of the Contractor/Consultant;
- r) During the Term, provide, maintain and pay for insurance in such form and amounts, with such deductibles, and according to the Terms and Conditions outlined in Schedule "D", as amended from time to time pursuant to Section 25 of this agreement, and deliver a signed copy of BC Housing's Certificate of Insurance Form;
- s) Be responsible for and ensure the safety not only of the workers, Trade Subcontractors, Suppliers and their plant and equipment, but also of all other persons who enter the Place of the Project, whether during working hours or not, and for that purpose shall install such hoardings and signs subject to owner specifications and incorporate such safety and security measures as may be necessary to ensure the safety of such persons;
- t) Is responsible for all site safety and shall be deemed to be the Employer/Prime Contractor for the purpose of all occupational health and safety regulations; and
- u) Is responsible for taking the required precautions against any hazards that are identified in "Appendix B – Hazard Summary for Prime Contractors".

THE CONTRACTOR/CONSULTANT PRICE

- 2. In no event will the fees and expenses payable to the Contractor/Consultant exceed in total the amount listed in Schedule "C" as the "Price"
- 3. Fees will be based on the rate set out in Schedule "C" as the "Rate".
- 4. Within 30 days after receipt by BC Housing of a written statement of account, or completion of the Services to the satisfaction of BC Housing, the Contract Price will be paid by BC Housing, subject to the terms of this agreement.
- 5. Total payment of the Contract Price will only be made for 100% completion of the Services and will be payable to the Contractor/Consultant for that portion of the Services completed to the satisfaction of BC Housing (said proportion to be determined solely by BC Housing).

HST

- 6. It is expected that the timing for delivery of Work under this Proposal will straddle the phase-out of the PST on June 30, 2010 and implementation of the HST in British Columbia on July 1, 2010. It is the Proponent's responsibility to determine which materials will be acquired to perform the Work after the PST is phased-out on June 30, 2010. As PST will no longer be payable by the Proponent on these materials, the reduced cost of the Proponent should be reflected in the Contract Price. If the delivery of Work is delayed for any reason, and materials that would otherwise be acquired on or before June 30, 2010 are acquired after that date, an Equitable Adjustment will be used to reduce the Contract Price based on the PST savings.
- 7. PST Savings - The Contractor/Consultant is required to incur and bear any PST that is eligible on materials consumed or installed under this Contract. The Contract Price only includes PST that is payable by the Contractor/Consultant on materials that are acquired before July 1, 2010. With the phase-out of the PST on June 30, 2010 and the introduction of HST on July 1, 2010 the Contractor/Consultant may experience PST savings resulting from a delay in taking delivery of materials until after June 2010 in order to complete the Work. The cause of a delay in taking delivery of materials is not a factor when determining if the Contractor/Consultant has experienced a PST saving. If the Contractor/Consultant has experienced a PST saving, the Contractor/Consultant shall report the total amount of PST

savings to BC Housing. The Contractor/Consultant and BC Housing agree that 80% of the PST savings shall be paid to BC Housing as a reimbursement.

BC HOUSING

8. BC Housing shall:

- a) Subject to sections 14 and 15 of this agreement and the provisions of the current Financial Administration Act, pay to the Contractor/Consultant in full payment and reimbursement for providing the Services and for the expenses incurred in connection therewith, the amounts, in the manner and at the times set out in Schedule "C" of this agreement (herein called the "Contract Price"), and the Contractor/Consultant shall accept the same as full payment and reimbursement as aforesaid;
- b) Notwithstanding subsection 8(a), not be under any obligation to advance to the Contractor/Consultant more than 90% of the Contract Price until the Services have been completed in accordance with Schedule "A" (Services), to the satisfaction of BC Housing, and interest shall not be payable on the 10% of the Contract Price held back by BC Housing;
- c) At its discretion, holdback from the Contract Price, in addition to the 10% holdback contemplated in subsection 8(b), sufficient monies to indemnify BC Housing completely against any lien, encumbrance, or security interest arising in connection with the provision of the Services;
- d) Give the Contractor/Consultant reasonable notice of anything BC Housing considers likely to affect materially the provision of the Services; and
- e) Examine all studies, reports, sketches, proposals and documents provided by the Contractor/Consultant under this agreement, and render decisions pertaining thereto within a reasonable time.

TERMINATION

9. In the event of a substantial failure of a party to perform in accordance with the Terms and Conditions of this agreement, it may be terminated by the other party on 5 days' written notice.
10. A material breach of this agreement by the Contractor/Consultant which includes, but is not limited to, the negligent performance by the Contractor/Consultant of all or part of the work, or the persistent failure of the Contractor/Consultant to perform the work.
11. A continued course of misconduct or actions or omissions by the Contractor/Consultant in the performance of the work.
12. The Contractors/Consultant's product, service, price change and/or delivery are deemed unsatisfactory by BC Housing.
13. BC Housing may, at its sole discretion, terminate this agreement on 10 days' written notice and the payment of funds required to be made pursuant to Sections 14 - 15 shall discharge BC Housing of all of its liability to the Contractor/Consultant under this agreement.
14. Where this agreement expires or is terminated before 100% completion of the Services, BC Housing shall pay to the Contractor/Consultant that portion of the Contract Price, which is equal to the portion of the Services completed to the satisfaction of BC Housing prior to expiration or termination.
15. Where the Contractor/Consultant fails to perform or comply with the provisions of this agreement, BC Housing may, in addition to terminating this agreement, pursue such remedies as it deems necessary.

GENERAL

16. All claims, disputes, and other matters arising out of this agreement or relating to a breach thereof may, upon the agreement of both parties, be referred to a single arbitrator under the current Arbitration Act, and if so referred, the decision of the arbitrator shall be final, conclusive and binding upon the parties.
17. This agreement shall be governed by and construed in accordance with the laws of The Province of BC.
18. Time shall be of the essence of this agreement.
19. Any notice required or permitted to be given under this Agreement will be in writing and will be considered to have been given if delivered by registered mail or courier, with either form of delivery requiring a signature upon receipt of delivery, within five business days.
20. This agreement shall be binding upon the parties and their respective successors, heirs and permitted assigns.
21. A waiver of any provision or breach by the Contractor/Consultant of this agreement shall be effective only if it is in writing and signed by BC Housing.
22. A waiver under Section 21 shall not be deemed to be a waiver of any subsequent breach of the same or any other provision of this agreement.
23. Everything produced, received or acquired by the Contractor/Consultant or subcontractor as a result of this agreement and any property provided by BC Housing to the Contractor/Consultant or subcontractor (the "Material"), will:
 - a) Be the exclusive property of BC Housing; and
 - b) Be delivered by the Contractor/Consultant to BC Housing immediately upon BC Housing giving notice of such request to the Contractor/Consultant.
24. The copyright in the Material belongs to BC Housing.
25. BC Housing may, at its discretion, notify the Contractor/Consultant that the terms, amounts or types of insurance obtained by the Contractor/Consultant be changed.
26. Where the Contractor/Consultant is a corporation, the Contractor/Consultant does hereby covenant that the signatory has been duly authorized by the Contractor/Consultant to enter into and execute this agreement without seal on behalf of said corporation.
27. The British Columbia Housing Management Commission enters into this agreement on its own behalf and also as agent for the Provincial Rental Housing Corporation. All terms and conditions of this agreement are for the benefit of both the British Columbia Housing Management Commission and the Provincial Rental Housing Corporation and may be enforced against the other party(ies) to this agreement in the name of the British Columbia Housing Management Commission or the Provincial Rental Housing Corporation or both.

Schedule D - Insurance

- 1) The Contractor/Consultant must, without limiting its obligation or liabilities and at its own expense, purchase and maintain throughout the term of this agreement the following insurances with insurers licensed in Canada in forms and amounts acceptable to BC Housing:
 - a) Commercial General liability in an amount not less than \$2,000,000.00 inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this Agreement and this insurance must:
 - i) be endorsed to provide BC Housing with 30 days advance written notice of cancellation or material change; and
 - ii) include a cross liability clause; and
 - iii) commercial general liability insurance must be on BC Housing's Certificate of Insurance Form.
 - b) Professional Errors and Omissions Liability Insurance protecting the Contractor/Consultant, his insurable Sub-Contractors and their respective servant(s), agent(s) or employee(s) against any loss or damage arising out of the professional services rendered by the Contractor/Consultant, his Sub-Contractors and their respective servant(s), agent(s) or employee(s) under this Agreement. Such insurance shall be for an adequate amount acceptable to BC Housing and shall in any event be not less than:
 - i) Contract valued at \$0.00 to \$2.5 million: \$250,000.00 per occurrence and \$250,000.00 aggregate per term;
 - ii) Contract valued at \$2.5 million to \$7.5 million: \$500,000.00 per occurrence and \$500,000.00 aggregate per term;
 - iii) Contract valued at \$7.5 million to \$15.0 million: \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate per term; or
 - iv) Contract valued over \$ 15.0 million negotiated; but not less than \$ 1,000,000.00 per occurrence and \$1,000,000.00 aggregate per term.
 - c) Structural, Mechanical, Electrical and Civil Sub-Consultants Professional Errors and Omissions Liability Insurance coverage to be based on the value of their scope of work. All other specialty Consultants to carry a minimum of \$250,000.00 Errors and Omissions Insurance despite the value of their scope of work.
- 2) All insurance described in paragraph 1 of this Schedule must:
 - a) be primary; and
 - b) not require the sharing of any loss by any insurer of BC Housing.
- 3) The Contractor/Consultant must provide BC Housing with evidence of all required insurance:
 - a) Within 10 working days of commencement of the Services, the Contractor/Consultant must provide to BC Housing evidence of all required insurance in the form of a completed BC Housing Certificate of Insurance
 - b) If the insurance policies expire before the end of the term of this agreement the Contractor/Consultant must provide within 10 working days of expiration evidence of new or renewal policies of all expired insurance in the form of a completed BC Housing Certificate of Insurance
 - c) Notwithstanding paragraph 3(a) or (b) above, if requested by BC Housing at any time, the Contractor/Consultant must provide to BC Housing certified copies of the required insurance policies.
- 4) The Contractor/Consultant shall provide, maintain, and pay for any additional insurance which it is required by law to carry, or which it considers necessary to cover risks not otherwise covered by insurance specified in this schedule in its sole discretion.
- 5) The Recipient shall require and ensure that each third party with whom it contracts in respect of the Project maintains insurances comparable to those required above.