Development Consultant Services Contract

BC Housing Development Strategies
August 2019

www.bchousing.org
BC Housing Standard Development Consultant Services Agreement (2019) between Client and Development Consultant

Agreement

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PART A – Contract Form

A1 This agreement is made on:  

[Date]

A2 between the **Client:**  

[Name]  

[Address]  

[E-Mail]  

[Fax No.]

A3 and the **Development Consultant:**  

[Name]  

[Address]  

[E-Mail]  

[Fax No.]

A4 for the following **Project**  

(insert number of housing units and description of project and project name)

A5 At the following **Place of Work:**  

(insert address)

A6 The **Development Consultant** shall provide the **Services** described in SCHEDULE A – SERVICES MATRIX and which is further described as

(optional) (insert description of services reference)

which is attached to this contract.  

Note: Additions outside the SCHEDULE A – SERVICES MATRIX is permissible provided they are clearly articulated, priced according to scope and/or time. This addendum to the described services will not replace SCHEDULE A – SERVICES MATRIX and the Services assigned to the Development Consultant.

A7 The **Client** shall provide the **Services** described in SCHEDULE A – SERVICES MATRIX and which is further described as

(optional) (insert description of services reference)

which is attached to this contract.  

Note: Additions outside the SCHEDULE A – SERVICES MATRIX is permissible provided they are clearly articulated, priced according to scope and/or time. This addendum to the described services will not replace SCHEDULE A – SERVICES MATRIX and the Services assigned to the Client.
The following Consultants have been or will be engaged on the Project.

.1 by the Development Consultant

.2 by the Client

The fee for Services, excluding any Value Added Taxes, shall be comprised of a fixed fee for service as further indicated by A7 of this Agreement. A fixed fee of $__________________________

Payment of the fee in A9 shall be apportioned to the phase or section of the Services as follows:

.1 Project Administration & Coordination – all phases $__________%  
.2 Pre-design / Pre-development phase $__________%  
.3 Schematic design phase $__________%  
.4 Design Development phase $__________%  
.5 Working Drawings phase $__________%  
.6 Construction phase $__________%  
.7 Post Construction phase $__________%  
Total $____________________ 100%

Reimbursable Expenses shall be payable on the basis started in SCHEDULE C – REIMBURSABLE EXPENSES.

Whereas:

A12 The Development Consultant has experience in the development of similar projects and has the ability to perform the necessary Services to assist the Client in the development of the Project and the more specifically the Services further selected and ascribed in SCHEDULE A – SERVICES MATRIX; and

A13 The Client has requested the Development Consultant to assist it with the development of the Project and the Development Consultant has agreed to do so and will provide services to the Client in connection with the Project upon the terms and conditions hereinafter set forth.

A14 The final development plan for the Project is unknown at the outset of this contract and therefore the exploration, feasibility analysis and background study to support alternative solutions and the ability to adapt to changing circumstances are essential components of the relationship between the Client and the Development Consultant. This contract anticipates necessary adjustments throughout the life cycle of a project including design development and construction.
A15 The Client and the Development Consultant acknowledge that the success of the Project is reliant on the relationship of mutual respect, support, openness, and good faith with each other and the Contractor.

NOW THEREFORE the Client and the Development Consultant agree as follows:

PART B – Development Consultant Services

B1 The Development Consultant represents and warrants to the Client that it has and will continue to have the facilities, personnel and expertise to provide the Client with the Services the Development Consultant agrees to provide as set out in this Agreement in a competent and efficient manner. Any changes to key personnel will be presented to the Client in written request for acceptance of the change. The Client may accept or reject the proposal for personnel change, however, approval of the change will not be unreasonably withheld.

B2 In reliance on the foregoing representation and warranty, the Client appoints the Development Consultant, as an independent contractor, to assist the Client in developing the Project by providing the following:

.1 Services related to the Project as selected, ascribed and assigned to the Development Consultant in SCHEDULE A –SERVICES MATRIX;

.2 consulting with the Client and obtaining the Client's direction in connection therewith; and

.3 all other services incidental to the Services related to the Project as selected, ascribed and assigned to the Development Consultant in SCHEDULE A –SERVICES MATRIX, which are necessary to assist the Client in the co-ordination of the development, construction and completion of the Project on the terms and conditions and for the remuneration provided in this Agreement.

The Development Consultant hereby accepts such appointment and agrees to perform such Services in a competent and efficient manner with reasonable skill, care and diligence. The Development Consultant will at all times act with the utmost good faith toward and on behalf of the Client.

B3 The Development Consultant will perform the Services set out in paragraph B2 so as to enable the Project to be completed in accordance with the most recent plans and specifications, budget and time schedules approved by the Client.

B4 The Development Consultant will not enter into any contract with respect to the Project, or approve any final plans or designs for the Project, all of which will be done by the Client.
B5 The Development Consultant will monitor the progress of the work on the Project and in that regard will keep the Client informed of the development and progress of such work and will consult with the design Consultants and contractor and keep the Client informed as to the design Consultants’ advice regarding the conformance of the quality and quantity of the work to the Client’s requirements.

The Development Consultant will be responsible for advising the Client when the design Consultants and contractor are, in the opinion of the Development Consultant, in default but the Development Consultant will not be responsible for the failure of the design Development Consultant to ensure proper completion of the construction or the failure of the contractor to properly complete construction of the work in accordance with plans, specifications and other contract documents.

The Development Consultant will be responsible for advising the Client when the project budget is affected. It is the duty of the Development Consultant to work on behalf of the Client in the best interests of the quality of the Project and objectives of the Client to advise the Client about budget vulnerabilities throughout the project life cycle, and seek out reduction or controls through efficiencies, innovation and good project management oversight along with the design Consultants and contractor or construction Consultants.

B7 The Development Consultant shall comply with the insurance provisions as outlined in (choose one) SCHEDULE D – SUPPLEMENTARY GENERAL CONDITIONS CONSULTING (BC HOUSING OWNED INTELLECTUAL PROPERTY) or SCHEDULE D – SUPPLEMENTARY GENERAL CONDITIONS CONSULTING (SUPPLIER OWNED INTELLECTUAL PROPERTY) which is intended for use by non-profit housing providers or partners.

PART C – Client Responsibilities

C1 The Client will authorize in writing a person to act as its representative with respect to the Project and will include the scope of authority of that person in such authorization.

C2 The Client will make all necessary decisions in connection with the Project, including this Agreement, and any other contract, agreement or plan negotiated or made for the development of the Project, after receiving all relevant information and advice from the Development Consultant.

C3 The Client will advise the Development Consultant of every decision it makes in connection with the Project, including this Agreement, and any other contract, agreement or plan negotiated or made for the development of the Project so far as such decisions are pertinent to the services to be provided by the Development Consultant.
C4 The *Client* will not act upon or implement any decision or make any capital expenditures in connection with this *Agreement* or any other contract, agreement or plan negotiated or made for the development of the Project unless the *Development Consultant* has first been advised of the same in writing.

C5 The *Client* will provide to the *Development Consultant* the minutes of any board, committee or general membership meeting so far as such minutes pertain to the *Services* provided by the *Development Consultant* and or the direction of the Project within 15 days of such meeting.

C6 The *Client* will advise the *Development Consultant* within 7 calendar days of the *Client* becoming aware of any changes in approved plans, specifications, budget or timing for completion of the Project.

C7 The *Development Consultant* and its directors, officers, agents, employees and authorized representatives will not be liable for any loss, delays in the progress of the Project, or damage suffered by the *Client* as a result of any decision made or taken by the *Client* unless such loss, delay or damage was the result of an act improperly carried out or an omission or a delay in carrying out an act on the part of the *Development Consultant*, its directors, officers, agents, employees or authorized representatives.

**PART D - Reporting**

D1 The *Client* will provide to the *Development Consultant* copies of all records showing all monies received and disbursements made by the *Client* in connection with the Project.

D2 The *Development Consultant* will:

.1 maintain all books of account on behalf of the *Client* as it relates to the Project, including but not limited to administrative and financial records;

.2 make such books of account available at all times for inspection by an authorized representative of the *Client* during normal business hours at the office of the *Development Consultant*;

.3 provide monthly financial statements to the *Client* with respect to such books of account;

.4 maintain such books of account and prepare such monthly financial statements in accordance with Canadian generally accepted accounting principles consistently applied and in keeping with the standards of the industry for similar projects; and
allow the authorized representatives of the Client to make copies and take extracts of such books of accounts and statements.

D3 The Development Consultant will disclose to the Client any interest that it has or may have or that its directors, agents, authorized representatives or employees now have or may have in any aspect of the Project during the term of this Agreement including, without limiting the generality of the foregoing, any interest or contractual arrangement with the contractor, design Development Consultants, subcontractors or any other person, firm or corporation which supplies goods or services for the Project. The Development Consultant will abide by the Conflict of Interest Guidelines for Development Consultants (the "Guidelines") - attached as Schedule E, and will immediately provide to the Client and to the British Columbia Housing Management Commission ("BC Housing") a statutory declaration pursuant to the Guidelines should a conflict of interest as described in the Guidelines arise during the term of this Agreement or should the Client or BC Housing request such a statutory declaration.

D4 Except with the express written consent of BC Housing and the Client, the Development Consultant will not accept any fees, disbursements, bonuses, payments or other compensation in relation to the Project from any source in addition to the fees and disbursements payable by the Client pursuant to this Agreement.

PART E – Fees, Reimbursable Expenses, Invoicing & Additional Services

E1 The Client will pay the Development Consultant for the Services agreed to be provided herein and as specifically set out in as it pertains to this Project as set out in Article A9 to A10 of this Agreement by the Development Consultant for this Project.

E2 The Development Consultant shall issue monthly invoices for the Development Consultant’s fees and Reimbursable Expenses, plus Value Added Taxes, unless the Client and the Development Consultant agree otherwise.

E3 The Development Consultant shall invoice the Client for Services performed and Reimbursable Expenses incurred based on, as applicable:

.1 The apportionment of a fixed fee for each phase of the Services as stated in Article A6 of this Agreement and in the proportion to progress made within each phase of the Services in the manner prescribed in Article E4 below;

.2 Reimbursable Expenses as stated in Article A11 of this Agreement.

E4 The Development Consultant will submit monthly invoices illustrating progress billing which shall include: amount invoiced for current billing period, aggregate
invoiced amount to date, aggregate amount billed as a percentage of total fee and total amount remaining in contract.

E5 Invoices shall include detailed invoices or receipts for *Consultants* that may be engaged for the *Project* by the *Development Consultant* and *Reimbursable Expenses*.

E6 The *Development Consultant* will confirm in writing, along with their monthly invoice, that all previous invoices for *Consultants* that may be engaged for the *Project* by the *Development Consultant* have been paid.

E7 Any expenditure not defined in SCHEDULE C – REIMBURSABLE EXPENSES, which the *Development Consultant* intends to invoice as a *Reimbursable Expense* shall be approved by the *Client* in writing as a *Reimbursable Expense* prior to the expenditure being incurred.

E8 Subject to the provisions of this Section E, payment of a fee by the *Client* is due within 30 days of receipt by the *Client* of invoice satisfactory to the *Client*, which invoice must include a description identifying which of the services in SCHEDULE A – SERVICES MATRIX have been provided and must itemize all *Reimbursable Expenses* incurred on behalf of the *Client*.

E9 No deduction will be made from the monies payable to the *Development Consultant* hereunder because of refunds or rebates granted to the *Client*, a reduction in the budget for the *Project* or liquidated damages or other sums withheld from contractors or other persons engaged on the work unless such damages or other sums are the result of negligent advice or acts improperly carried out or omissions or delays in carrying out acts by the *Development Consultant* or its directors, officers, agents, authorized representatives or employees.

E10 Upon recognizing a need to perform *Additional Services*, either the *Development Consultant* or the *Client* shall promptly notify the other explaining the facts and circumstances.

E11 The *Development Consultant* and the *Client* acknowledge that the need for *Additional Services* may arise for reasons that include, but are not limited to:

.1 Changes to the *Client’s* requirements;
.2 Changes to the *Project* size, scope, quality or complexity;
.3 Changes to the schedule, regardless if such changes are a function of the *Client’s* request or the progress of the *Project*;
.4 Changes to the project delivery method;
.5 *Client* instructions that are inconsistent with instructions or written approvals previously provided by the *Client*;
.6 Information provided by the Client, Consultants, or other parties engaged by the Client that differs materially from original assumptions.

E12 The Development Consultant shall only perform Additional Services with the prior written agreement of the Client and the Development Consultant and with the agreement by both parties that the Project fund available can cover said Additional Services.

PART F – Termination, Suspension or Abandonment

F1 If the Project is abandoned or the work thereon suspended, the Client will pay the Development Consultant upon such abandonment or suspension for all services rendered to the date of abandonment or suspension, payment to be made within 30 days of receipt by the Client of an invoice in compliance with Part E of this Agreement.

F2 Either the Client or the Development Consultant may terminate this Agreement by giving 30 days notice in writing to the other party, provided that upon any such termination, the Development Consultant will be entitled to be paid to the date of termination, payment to be made within 30 days of receipt by the Client of an invoice in compliance with Part E of this Agreement.

F3 Either the Client or the Development Consultant may terminate this Agreement at any time if the other party breaches a material term of this Agreement or fails to properly perform its obligations pursuant to this Agreement. No such termination will take place unless the party terminating has given the other party 5 working days' written notice of such default and such default has not been rectified within such 5 day period.

F4 If the Client, at any time during the term of this Agreement, becomes aware that the Development Consultant has a conflict of interest as described by the Guidelines, the Client may terminate this Agreement immediately upon written notice to the Development Consultant unless the Development Consultant immediately rectifies the conflict of interest to the satisfaction of the Client and BC Housing or the Client and BC Housing, pursuant to the Guidelines, mutually approve the continuation of the Agreement notwithstanding the conflict of interest, provided that upon any such termination, the Development Consultant will be entitled to be paid to the date of termination, payment to be made within 30 days of receipt by the Client of an invoice in compliance with Part E of this Agreement.

F5 Unless otherwise stated in this Agreement, the Development Consultant’s services terminate upon the later of:
.1 one year after the date of Substantial Performance of the work for the Project;
.2 certification of Total Performance of the work for the Project;
.3 one year after the interest adjustment date for the Mortgage for the Project; or
.4 upon acceptance of audited final costs for the Project by BC Housing.

F6 The obligation of the Development Consultant to indemnify the Client pursuant to paragraph H2 of this Agreement shall survive the termination of this Agreement.

PART G – Dispute Resolution

G1 Differences between the Development Consultant and the Client as to the interpretation, application or administration of this Agreement, or any failure to agree where agreement between the Development Consultant and the Client is called for, broadly described as disputes, will be remedied in accordance with this Part G of the Agreement.

G2 The Development Consultant and the Client shall make all reasonable efforts to resolve disputes by amicable negotiations and shall provide, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents, to facilitate these negotiations.

G3 If a dispute is not resolved by negotiation within 15 days of commencing negotiation, the Development Consultant and the Client will submit the dispute to a mediator whose expenses will be shared equally by the Client and the Development Consultant and who is acceptable to both parties or, if they cannot agree, a mediator appointed by the British Columbia International Arbitration Centre.

G4 If mediation pursuant to Part G3 does not result in a resolution of the dispute within 15 days of the commencement of mediation, the parties will submit the dispute within 15 days of the failure of the mediation to arbitration by a single arbitrator whose expenses will be shared equally by the Client and the Development Consultant and who is acceptable to both parties or, if they cannot agree, an arbitrator appointed by the British Columbia International Arbitration Centre. The determination of the arbitrator will be conclusive and binding on the parties. The Commercial Arbitration Act of British Columbia or successor legislation will apply to the arbitration.

PART H – Rights, Remedies & Indemnity
H1 The duties and obligations imposed by this Agreement and the rights and remedies available hereunder are in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

H2 The Development Consultant will indemnify and save harmless the Client and its directors, officers, agents, representatives and employees from and against all claims, demands, losses, costs, damages, actions, suits or proceedings by whomsoever made, brought or prosecuted in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the Development Consultant in performing services pursuant to this Agreement. For the purposes of this paragraph, "activities" includes an act improperly carried out, an omission to carry out an act and a delay in carrying out an act.

H3 The Development Consultant shall comply with the indemnification provisions as outlined in (choose one) SCHEDULE D – SUPPLEMENTARY GENERAL CONDITIONS CONSULTING (BC HOUSING OWNED INTELLECTUAL PROPERTY) or SCHEDULE D – SUPPLEMENTARY GENERAL CONDITIONS CONSULTING (SUPPLIER OWNED INTELLECTURAL PROPERTY) which is intended for use by non-profit housing providers or partners.

PART I – Miscellaneous General Provisions

I1 Any notice required to be given pursuant to this Agreement will be addressed in writing to the respective Client or Development Consultant at stated in Articles A2 and A3 or such other address as may have been subsequently provided to the other party in writing and any notice so given will be deemed to have been received on the third day following mailing in a postage-paid cover mailed in a post office in Canada or if delivered by hand or by telecopier will be deemed to have been received on the day of delivery or telecopying if it is a business day and otherwise on the next succeeding business day.

I2 This Agreement will enure to the benefit of and be binding upon the parties hereto, their executors, administrators, representatives, successors and permitted assigns.

I3 Neither the Client nor the Development Consultant will assign this Agreement without the prior written consent of the other.

I4 Time will be of the essence of this Agreement. If either party expressly or impliedly waives the requirement that time will be of the essence, that party may reinstate that requirement by delivering notice to the other party. If a time is specified in this Agreement for observing or performing any obligation, such time will be then local Vancouver, British Columbia, time.
This Agreement will be governed by and construed and enforced in accordance with the laws of British Columbia.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and are not intended to govern, limit or aid in the construction of any provision. In all cases, the language in this Agreement will be construed simply, according to its fair meaning, and not strictly for or against any party.

The word "including", when following any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific items or matters set out immediately following such word or to similar items or matters whether or not non-limiting language such as "without limitation" or "but not limited to" or words of similar import is used with reference thereto, but rather such general statement, term or matter is to be construed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

If any provision contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement which will be construed as if such invalid, illegal or unenforceable provision had never been contained therein and such other provisions will be enforceable to the fullest extent permitted by law.

No consent nor waiver, expressed or implied, by a party of any default by the other party in observing or performing its obligations under this Agreement will be deemed or construed to be a consent or waiver of any other default. Failure on the part of a party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, will not constitute a waiver by such party of its rights under this Agreement or at law or at equity.

In this Agreement, the terms "Substantial Performance" and "Total Performance" will have the same meanings as are set out in the contract for construction of the Project.
SIGNATURES

IN WITNESS WHEREOF the duly authorized signatories of the parties hereto have executed this Agreement as of the day and year first above written.

Client

(Name of Client)

(Signature)

(PRINT – Name and title of person signing)

(Signature)

(PRINT – Name and title of person signing)

Witness - Client

(Signature)

(PRINT – Name and title of person signing)

Development Consultant

(Name of Client)

(Signature)

(PRINT – Name and title of person signing)

(Signature)

(PRINT – Name and title of person signing)

Witness – Development Consultant

(Signature)

(PRINT – Name and title of person signing)
SCHEDULE A - Services Matrix

Instructions:

Parties to the Development Consultant Services Agreement, using this Schedule A - Services Matrix as a scope guide are to indicate via a check mark (✔) in the applicable box for the Services provided by the Development Consultant, Services provided by Others, Services provided by the Client, or indicate that that Service is not applicable.

Consultants engaged by the Development Consultant for the Project
In the event that Development Consultants' Services are completed by a Consultant (i.e.: a sub-consultant) engaged by the Development Consultant for the Project, the Service should be indicated as the responsibility of the Development Consultant, and a check mark (✔) should be entered into the corresponding box under the "Development Consultant Services" column.

Consultant engaged by the Client for the Project
In the event that Services are completed by a Consultant engaged by the Client for the Project, the Service should be indicated as the responsibility of Others, and a check mark (✔) should be entered into the corresponding box under the "Provided by Others" column.
SCHEDULE B – Development Consultant Services Fee
SCHEDULE C – Reimbursable Expenses

Note: Refer to BC Housing Supply Chain Management document – P-GFP-2017 Reimbursable Expenses.
SCHEDULE D1 – Supplementary General Conditions – Consulting (BC Housing Owned Intellectual Property)

Note: Refer to BC Housing Supply Chain Management document – P-GFP-2030 Supplementary General Conditions – Consulting (BC Housing Owned Intellectual Property)
SCHEDULE D2 – Supplementary General Conditions – Consulting (Supplier Owned Intellectual Property)

Note: Refer to BC Housing Supply Chain Management document – P-GFP-2018 Supplementary General Conditions – Consulting (Supplier Owned Intellectual Property)
SCHEDULE E – DEVELOPMENT CONSULTANT SERVICES CONTRACT
Conflict of Interest Guidelines for Development Consultants