

## Schedule "F"

### Mandatory Construction Contract Terms

All Construction Contracts shall contain the following provisions, which may be altered only as required to suit the structure and terminology of a particular Construction Contract provided that the intent and effect of the provisions are fully preserved.

#### Compliance with Applicable Laws

The Contractor warrants and guarantees that the work under this Construction Contract (the "**Work**") will be completed in a good and workmanlike manner, using only new materials and supplies, and that the Contractor and the Work will strictly comply with the requirements of all applicable laws, ordinances, rules, regulations, codes, and standards in its performance of, which for clarity includes but is not limited to all requirements under the *Builders Lien Act*, S.B.C. 1997, c. 45, the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, and the *Occupational Health and Safety Regulation*, B.C. Regulation 296/97, each as may be amended and any successor legislation thereto. If «Borrower\_Name» has reason to believe the Contractor is not in strict compliance with this section, «Borrower\_Name» may provide written notice to Contractor setting out its concerns and Contractor shall promptly respond to such concerns in writing and shall provide all supporting information reasonably necessary to satisfy «Borrower\_Name» that Contractor is in compliance with this section.

#### Approval of Subcontractors

The Contractor shall indicate in writing to «Borrower\_Name» the names of all subcontractors who the Contractor is prepared to subcontract for a portion of the Work prior to entering any subcontract. «Borrower\_Name» shall provide to Contractor its consent, objection or consent conditional on bonding to the proposed subcontractor(s) within thirty (30) days of receipt of the Contractor's written proposal of subcontractor(s), failing which the Contractor may proceed to subcontract the proposed subcontractor(s). Provided «Borrower\_Name» provides a response to the Contractor within thirty (30) days, «Borrower\_Name» reserves the right to reject any proposed subcontractor or to require bonding for any proposed subcontractor in its sole discretion and at no additional cost to «Borrower\_Name».

#### Applications for Payment

The Contractor shall submit «Borrower\_Name», at least 15 calendar days before the first application for payment and prior to the commencement of any Work:

- (i) a schedule of values for the different parts of the Work, aggregating the total amount of the Construction Contract price, so as to facilitate evaluation of applications for payment; and
- (ii) a current WorkSafe BC "clearance letter" confirming that the Contractor is in good standing.

The amount claimed in an application for payment shall be for the value proportionate to the price of the Construction Contract and of Work performed as of the last day of the payment period. Applications for payment for goods and equipment delivered to the Project site but not yet incorporated into the Project shall be supported by such evidence as «Borrower\_Name», BCHMC, its payment certifier or its quantity surveyor may require to establish the value and delivery of such goods and equipment.

All applications for payment will be supported by such documents and in such format as «Borrower\_Name», BCHMC, its payment certifier or its quantity surveyor may require to demonstrate and verify the correctness of the amount claimed and the Work provided to date, and must in any event include:

- (i) an updated Project schedule, including a construction project management schedule;
- (ii) a current WorkSafe BC "clearance letter" confirming that the Contractor is in good standing;
- (iii) a current CCDC 9A (Statutory Declaration of Progress Payment Distribution by Contractor) which shall be completed (including the seal), and sworn before a Notary Public or a Commissioner for Oaths for the Province of British Columbia; and
- (iv) all completed plans, permits, design and working drawing, surveys, studies, specifications, budgets, report, contracts and appraisals which have not yet been provided to «Borrower\_Name».

An application for payment shall be considered complete only after all required information including supporting documentation has been submitted to the satisfaction of «Borrower\_Name», which is a condition precedent to «Borrower\_Name»'s obligation to make payment to the Contractor. Incomplete or unsatisfactory payment applications shall be revised as directed by «Borrower\_Name» and re-submitted.

### **Hazardous Substances**

Contractor shall provide written notice to «Borrower\_Name» immediately upon Contractor becoming aware that the Project site is being or has been contaminated with any substance defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term, by any applicable federal, provincial or local statute, regulation or ordinance now or in the future in effect, or any substance or materials, the use or disposition of which is regulated by any such statute, regulation or ordinance (a "**Hazardous Substance**"). Contractor will not permit any activities on the Project site which directly or indirectly could result in the Project site or any other property being contaminated with any Hazardous Substance.

Contractor will promptly comply with means any law, statute, code, ordinance, order, award, judgment, decree, injunction, rule, regulation, authorization, consent, approval, order, permit, license, direction or requirement of any government authority relating to the use, collection, storage, treatment, control, removal or cleanup of any Hazardous Substance in, on, or under the

Project site as a result of construction, operations or other activities on the Project site, or incorporated in any improvements thereon. If Contractor fails to do so, BCHMC or «Borrower\_Name» may, but will not be obligated to, enter upon the Project site and take such actions and incur such costs and expenses to effect such compliance as they deem advisable and Contractor will reimburse BCHMC and/or «Borrower\_Name» on demand for the full amount of all costs and expenses incurred by BCHMC and/or «Borrower\_Name» in connection with such compliance activities.

### **Deficiencies at Substantial Performance**

Prior to and as condition precedent to achieving substantial performance of the Work, «Borrower\_Name» and Contractor shall undertake a joint inspection to identify and list any deficiencies (the "**Deficiency List**"). Contractor shall indicate in the Deficiency List the time required to rectify the deficiencies as well as the value thereof. The time for rectification of deficiencies must be reasonable and shall in no event exceed two (2) months following the issuance of the occupancy permit for the Project.

### **Final Payment**

When the Contractor considers that the Work is completed, and all deficiencies identified in the Deficiency List are remedied, the Contractor shall submit its application for final payment. BCHMC shall then have the option to attend at the Project site and conduct a visual inspection of the Work and walk-through of the Project at a time convenient to BCHMC. If any deficiencies are identified through BCHMC's inspection, Contractor shall correct such deficiencies to the satisfaction of BCHMC in its sole discretion and in no event shall the time to rectify such deficiencies exceed two (2) months following the issuance of the occupancy permit for the Project. Written confirmation by BCHMC that the identified deficiencies have been rectified to BCHMC's satisfaction is a condition precedent to Contractor's entitlement to receive final payment.

### **Builders' Liens**

If a claim or claims of builders' lien are registered against the Project site, the Project or asserted against the holdback funds by any person claiming under or through the Contractor, the Contractor shall remove or cause to be removed the said lien or liens within ten (10) working days immediately following the date it first becomes aware of the existence of such claim(s) or lien(s). The Contractor shall immediately provide written notice to «Borrower\_Name» when it becomes aware of the existence of such claim(s) or lien(s).

Until such lien(s) has or have been removed from all such titles, «Borrower\_Name» will withhold from payments otherwise due to the Contractor the amount that is sufficient to fully protect and indemnify «Borrower\_Name» from the successful enforcement of such lien(s) by the lien claimant(s) and may apply such withheld amounts to satisfy any judgment against the «Borrower\_Name» or BCHMC on account of such lien(s). If such liens are not removed and such default is not corrected within such ten (10) working days «Borrower\_Name», without prejudice to any other right or remedy they may have, may deduct the amount of any such claim from the next ensuing payment which may become due to the Contractor, and take such steps as are reasonably required to remove or to discharge such lien(s), including payment into court of the full

amount required to have such lien(s) removed or discharged and also deduct from any sums owing the Contractor all costs and expenses thereby incurred by «Borrower\_Name» including actual legal fees and disbursements incurred by «Borrower\_Name» in relation to the removal or discharge of such lien(s).

### **Delay**

If the Work is delayed for any reason, the Contractor shall provide written notice to «Borrower\_Name» no later than five (5) days after becoming aware that the Work is or is reasonably likely to be delayed. Such notice shall state the cause and projected impact of such delay on the Work as well as any relief sought, without prejudice to the Contractor's right to revise such information as further information becomes available. Failure to provide notice as required under this section shall extinguish the Contractor's right to any relief in relation to the delay in question. Failure of the Contractor to identify a delay where a reasonable contractor in the same position as the Contractor should have known that the Work was or was reasonably likely to be delayed shall extinguish the Contractor's right to any relief in relation to the delay in question.

### **Unremedied «Borrower\_Name» Default**

If «Borrower\_Name» is in default under the Construction Contract, the Contractor shall immediately deliver to BCHMC a copy of any default notice it delivers to «Borrower\_Name». «Borrower\_Name» shall have fourteen (14) days to cure any default set out in a default notice (the "**Cure Period**"). Such default notice shall include reasonable details of the Borrower's alleged default as well as details in relation to the action that the Contractor considers appropriate to remedy the default and/or the amount necessary to compensate the Contractor for the default. If a default remains unremedied by «Borrower\_Name» upon the expiry of the Cure Period (an "**Unremedied Borrower Default**"), the Contractor shall deliver a notice of intent to terminate to both «Borrower\_Name» and BCHMC. The Construction Contract shall not be deemed terminated unless and until the occurrence of the later of:

- (i) receipt by the Contractor (with copy to «Borrower\_Name») of written notice from BCHMC that it has elected not to exercise its Step-In Rights as provided herein; and
- (ii) sixty (60) days after BCHMC's receipt of the Contractor's notice of intent to terminate.

Upon receipt of a notice of intent to terminate from the Contractor, BCHMC may, at its sole discretion, engage with the Contractor and the Borrower in good faith discussions an attempt to resolve the matter. During the occurrence and continuance of such good faith discussions, the Contractor agrees that it will not exercise any termination rights or remedies available to it pursuant to the Construction Contract until the earlier of sixty (60) days following the delivery of the notice of intent to terminate or such date that BCHMC provides written confirmation that it does not intend to exercise its Step-In Rights.

### **Remedial Rights of «Borrower\_Name»**

If at any time:

- (i) «Borrower\_Name» reasonably believes that there is an emergency, including but not limited to:
  - (1) a material risk to public health, public security, workers on the Project, the property of third parties or to the environment; or
  - (2) an undischarged statutory duty or other legal duty or obligation of the Contractor;

and upon receipt of written notice from «Borrower\_Name» the Contractor has not immediately taken steps satisfactory to «Borrower\_Name» to address such emergency; or

- (ii) the Contractor is in default under this Construction Contract and has not remedied or diligently pursued a cure of that default within the time period specified in *[NTD: Insert cross-reference to termination for default provision]*, or where such default is incurable and the Contractor is not diligently pursuing a course of action that will mitigate the consequences of the incurable default to the satisfaction of «Borrower\_Name»;

(each of the above circumstances constituting an "Unremedied Contractor Default")

«Borrower\_Name» shall provide written notice to the Contractor (with copy to BCHMC) of the occurrence of an Unremedied Contractor Default and shall take or cause to be taken all such steps and actions «Borrower\_Name» reasonably considers to be required in the circumstances to mitigate, rectify, protect against or remedy such Unremedied Contractor Default. Any steps and actions taken by «Borrower\_Name» under this Section shall be at the sole expense of the Contractor, and the cost of such steps and actions may be set-off or deducted from amounts owing from «Borrower\_Name» to the Contractor or otherwise charged to the Contractor. The rights of «Borrower\_Name» under this Section shall be without limitation and in addition to any other rights of «Borrower\_Name» at law and under this Construction Contract, including the right to terminate this Construction Contract for default. «Borrower\_Name» acknowledges and agrees that it must obtain the prior written consent of BCHMC, in its sole discretion, prior to terminating the Construction Contract.

### **Step-In Rights of BCHMC**

Upon the occurrence of any of the following:

- (i) an Unremedied Borrower Default;
- (ii) an Unremedied Contractor Default which is not remedied or mitigated by «Borrower\_Name» to the satisfaction of BCHMC (in its sole discretion); or

(iii) a default by «Borrower\_Name» under any agreement between «Borrower\_Name» and BCHMC (a "**Loan Default**"); *[NTD: circumstances constituting a default may need to be disclosed to Contractors]*

(each a "**Step-In Trigger**")

BCHMC may, but is not obligated to, elect in its sole discretion and for its sole benefit :

- (i) upon written notice (a "**Step-In Notice**") from BCHMC to the Contractors and to «Borrower\_Name»; to step in and assume some or all of the rights, benefits and obligations of the «Borrower\_Name» under the ♦«**Construction Contract**» as and from the date of the delivery of the Step-In Notice and take or cause to be taken all such steps and actions as BCHMC reasonably considers required in the circumstances to mitigate, rectify, protect against or remedy the Step-In Trigger (a "**BCHMC Remedial Action**") and otherwise advance the Project as if it was «Borrower\_Name» and had originally been a party to the Construction Contract; and
- (ii) by written direction from BCHMC to the Contractor with a copy to «Borrower\_Name» (a "**Step-In Direction**"), require the Contractor to take such Remedial Action as specified therein and the Contractors shall use all reasonable efforts to comply with the Step-In Direction as soon as reasonably practicable

(collectively, the "**Step-In Rights**").

BCHMC shall prosecute and complete any BCHMC Remedial Action in a manner that is compliant with all applicable laws and permits and, provided such BCHMC Remedial Action is not related to an Unremedied Contractor Default, shall make reasonable effort to minimize interference with the Contractors' performance of its obligations under this Construction Contract. BCHMC shall be otherwise entitled to execute any BCHMC Remedial Action as it sees fit and shall be entitled to cease any BCHMC Remedial Action at any time.

In respect of any BCHMC Remedial Action, «Borrower\_Name» shall have no further rights under the Construction Contract whatsoever and the Contractor shall only accept as valid notices, instructions, orders and demands given or made by BCHMC under and in connection with such Remedial Action and all related work under the Construction Contract required to advance the Project.

If BCHMC provides a Step-In Direction and the Contractor either:

- (i) does not confirm, within the time period specified by BCHMC (or, if no such time period is specified, within two Business Days), that it is willing to take such steps as are referred to or required in such direction or present an alternative plan to BCHMC to mitigate, rectify, protect against or remedy the Step-In Trigger that BCHMC may accept or reject, in its sole discretion; or

- (ii) fails to take the steps as are referred to or required in the Step-In Direction or alternative plan acceptable to BCHMC in its sole discretion within such time as set out in such Step-In Direction or accepted alternative plan or within such time as BCHMC, in its sole discretion, shall stipulate,

then BCHMC may, without further notice to the Contractor, issue a Step-In Notice.

No action taken by BCHMC under this Section ♦ shall be deemed to be a termination of this Construction Contract or relieve the Contractors from any of their obligations hereunder, except only to the extent any such obligation is fully performed by BCHMC or cannot reasonably be performed due to a BCHMC Remedial Action.

### **Compensation for Step-In Rights**

Except to the extent that the Step-In Trigger is caused by an Unremedied Contractor Default or is otherwise caused by the wrongful acts or omissions of the Contractor, where and to the extent BCHMC's exercise of the Step-In Rights result in a change to the Work, the Contractor shall receive a corresponding adjustment to its compensation and time for the performance of the Work in accordance with *[NTD: This clause should link to a Change Order provision that addresses valuation and process for issuing changes]*.

Where and to the extent a Step-In Trigger is caused by an Unremedied Contractor Default or is otherwise caused by the wrongful acts or omissions of the Contractor, the Contractor shall pay to BCHMC on demand all costs and expenses incurred by BCHMC in exercising its Step-In Rights, together with an administration fee equal to ten percent (10%) of such costs and expenses, without prejudice to any other rights of BCHMC.

### **Limitation of Liability for Step-In Rights**

Except only where payment is due in accordance with *[NTD: insert cross-references to Compensation and Availability of Assets subsections]*, BCHMC shall have no liability to the Contractor of whatsoever nature arising from or in relation to any exercise or non-exercise of its Step-In Rights, except only to the extent of any failure by BCHMC or any third party contractor engaged by BCHMC to comply with all applicable laws and permits in the course of exercising the Step-In Rights. For greater certainty, and notwithstanding that «Borrower\_Name» may have limited or no further rights under the Construction Contract, «Borrower\_Name» shall remain liable for all amounts payable to the Contractor under, arising out of and in relation to the Construction Contract, including without limitation such amounts payable after a Step-In Notice or Step-In Direction has been issued by BCHMC.

### **Assignment**

The Contractor consents to the assignment of this Construction Contract by «Borrower\_Name» to BCHMC, and the Contractor agrees to execute such documents in favour of BCHMC as they may require, including acknowledgements of and consents to assignment prepared by them.