

**\*\*\*CONFIDENTIAL DRAFT\*\*\***

**BCIB-CONTRACTOR AGREEMENT**

**BC INFRASTRUCTURE BENEFITS INC.**

**AND**

**[CONTRACTOR]**

**[INSERT DATE]**

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## BCIB-CONTRACTOR AGREEMENT

THIS BCIB-CONTRACTOR AGREEMENT is made effective as of the <\*> day of <\*>, 201<\*>

### BETWEEN:

BC INFRASTRUCTURE BENEFITS INC., a company incorporated under the laws of British Columbia having its head office at <\*> (“BCIB”)

### AND:

<\*> (the “Contractor”)

### WHEREAS:

- A. BCIB has entered into a Community Benefits Agreement dated the 17<sup>th</sup> day of July, 2018, as may be amended, supplemented or restated from time to time (the “**Community Benefits Agreement**”) with the Allied Infrastructure and Related Construction Council of British Columbia (the “**Council**”) which governs the terms and conditions of employment for Employees in respect of the Project;
- B. BCIB has entered into an agreement with the Owner made and dated for reference as of the <\*> day of <\*>, 201<\*> whereby BCIB has, subject to the Community Benefits Agreement, the sole and exclusive right to provide Employees to contractors who will perform work or provide services at the Site in respect of the Project;
- C. The Owner and the Contractor have entered into the Construction Contract;
- D. The Construction Contract requires the Contractor to enter into this Agreement with BCIB;
- E. The Contractor requires Employees in order to discharge its obligations under the Construction Contract; and
- F. The parties wish to enter into a formal contract for the provision of Employees to the Contractor by BCIB.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the sum of One Hundred Dollars (\$100.00) now paid by each of the Contractor and BCIB to the other (the receipt of which sum by the Contractor and by BCIB is hereby irrevocably acknowledged) and of the mutual promises and agreements contained in this Agreement, the parties agree as follows:

## **1.0 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, except as otherwise expressly provided or unless the context otherwise requires, capitalized terms have the meanings set out in Schedule 1.

## **2.0 REPRESENTATIVES**

2.1 Within two Business Days after the Effective Date, and thereafter from time to time as BCIB deems necessary, BCIB will designate one person (“**BCIB’s Representative**”) to be BCIB’s single point of contact for the Contractor with respect to this Agreement. BCIB will, upon designating such person, advise the Contractor in writing of the name, address, telephone number and email address of BCIB’s Representative.

2.2 Within two Business Days after the Effective Date, and thereafter from time to time as the Contractor deems necessary, the Contractor will designate one person (the “**Contractor’s Representative**”) to be the Contractor’s single point of contact for BCIB with respect to this Agreement. The Contractor will, upon designating such person, advise BCIB in writing of the name, address, telephone number and email address of the Contractor’s Representative. If, at any time, BCIB’s Representative, acting reasonably, objects to the Contractor’s Representative, then the Contractor will replace the Contractor’s Representative with a person acceptable to BCIB’s Representative.

2.3 As soon as practicable after the Effective Date, and thereafter from time to time as may be necessary, BCIB’s Representative will advise the Contractor’s Representative of the name, address, telephone number and email address of the Council’s Representative.

## **3.0 OBLIGATION TO OBTAIN EMPLOYEES**

3.1 The Contractor will obtain from BCIB all Employees required by the Contractor to fulfill its obligations under the Construction Contract.

3.2 Notwithstanding the powers expressly delegated by this Agreement to the Contractor by BCIB, all Employees provided to the Contractor by BCIB will be employed by BCIB, and BCIB will retain, with respect to all such Employees, the exclusive rights as employer in all aspects of labour relations and in all aspects of the employment relationship. The Contractor will not in any way derogate or attempt to derogate from the rights and authority of BCIB as employer.

## **4.0 OBTAINING EMPLOYEES**

4.1 The Contractor will participate in any pre-job conference(s) arranged by BCIB, and will present, after collaboration with BCIB and the Council, details of the Work, including schedule, work type and anticipated numbers and Job Classifications of Employees.

4.2 The Contractor will provide the following forecasts and requests:

- (a) *Six Month Forecast.* The Contractor will, no later than five Business Days after the Effective Date, provide to BCIB's Representative:
  - (i) the Contractor's best estimate of the anticipated Employees that will be required by the Contractor and all of the Applicable Subcontractors for the first six months of the Work, giving estimates of the numbers and Job Classifications of Employees that will be required on a month-by-month basis; and
  - (ii) the Contractor's then current overall Work schedule that includes manpower resource loading that the Contractor anticipates will be utilized by the Contractor and all of the then known Applicable Subcontractors for the performance of the Work.
  
- (b) *Three Month Forecast.* The Contractor will, on the first Business Day of each month starting with the second month after the Effective Date, provide to BCIB's Representative:
  - (i) the Contractor's best estimate of the anticipated Employees that will be required by the Contractor and all of the Applicable Subcontractors for the next following three months of the Work, giving details of the numbers and Job Classifications of Employees required on a month-by-month basis; and
  - (ii) the Contractor's then current overall Work schedule that includes manpower resource loading that the Contractor anticipates will be utilized by the Contractor and all of the then known Applicable Subcontractors for the performance of the Work.
  
- (c) *Employee Request.* The Contractor will, from time to time during the term of this Agreement, provide to BCIB's Representative a request for Employees (each, an "**Employee Request**") in the form and format required by BCIB, and setting out the following information:
  - (i) the number and Job Classifications of Employees required by the Contractor;
  - (ii) the 'name hires' requested by the Contractor;
  - (iii) the names of prospective Employees the Contractor wishes to name request from the information provided pursuant to Section 4.5;
  - (iv) the number and type of apprentices requested by the Contractor;
  - (v) the date upon which each such Employee will be required to commence working under the direction of the Contractor;

- (vi) the Contractor's best estimate of the time period each such Employee will be required by the Contractor;
- (vii) the details of any special experience or technical or other qualifications required in respect of any particular Employee;
- (viii) the intended work assignments in compliance with Article 6 of the Community Benefits Agreement; and
- (ix) such other information with respect to potential Employees as BCIB's Representative may request, or that the Contractor may consider beneficial, in order to enable BCIB to provide the Employees required by the Contractor.

4.3 BCIB will, in accordance with the dispatch provisions of the Community Benefits Agreement, including Articles 8.200, 8.600 and 9.100 of the Community Benefits Agreement, and subject to the minimum time period described in Section 4.4, use reasonable efforts to provide the Contractor with Employees to perform the Work in the numbers and Job Classifications set out in the Employee Request submitted pursuant to Section 4.2(c) to the extent that BCIB is itself able to obtain Employees in such numbers and Job Classifications.

4.4 The Contractor acknowledges that BCIB requires a minimum of three Business Days prior written notice of the date upon which the Contractor requires an Employee or Employees to commence performance of the Work in order to be able to provide the requested Employee(s).

4.5 BCIB will provide to the Contractor's Representative information that BCIB receives from the Affiliated Unions with respect to prospective Employees that may be available to work on the Project for the purpose of the Contractor name requesting prospective Employees from the Affiliated Unions.

4.6 The Contractor will, if and when requested by BCIB's Representative from time to time:

- (a) if BCIB is unable to fulfill an Employee Request, assist BCIB in locating Employees suitable for performing the Work; and
- (b) provide one representative of the Contractor to assist in the interviewing of persons who are proposed to be hired by BCIB for subsequent assignment to the Contractor.

## **5.0 EMPLOYEE RELATIONS**

5.1 To the extent necessary to enable the Contractor to perform its obligations under this Agreement, BCIB does hereby delegate, consistent with the provisions of Article 7.400 of the Community Benefits Agreement, BCIB's right to operate, direct and supervise on a day-to-day basis the Employees provided to the Contractor by BCIB.

5.2 The Contractor will, with respect to the Employees provided to the Contractor by BCIB:

- (a) be solely responsible for the operation, direction, supervision and performance of the Work by the Employees pursuant to the delegation of such responsibility in accordance with Section 5.1;
- (b) promptly advise BCIB's Representative in writing of any requested changes in the status of any Employee, including any changes which may be necessitated by changes in work assignment, completion of work, lack of work or absence of the Employee from the Work for whatever reason;
- (c) permit BCIB in its unfettered discretion to withdraw or reassign any Employee at any time upon giving five days written notice to the Contractor's Representative, provided that BCIB provides to the Contractor, as at the effective time of such withdrawal or reassignment, a replacement Employee in the same Job Classification as and with comparable qualifications, certifications, if any, and experience to the Employee being replaced;
- (d) promptly upon receipt of a written request from BCIB's Representative, provide BCIB's Representative with such information and documents relating to the Employees who are under the direction of the Contractor as BCIB may from time to time require;
- (e) comply with any instruction which may be given by BCIB or BCIB's Representative with respect to the Job Classifications of any Employee to be used with respect to any type of Work;
- (f) not use or seek to use any full-time Employee for anything other than performing the Work;
- (g) not do anything which could precipitate, promote or cause a strike or lockout which in any way involves the Employees;
- (h) recognize the Council's Representative and any Affiliated Union's representative and, provided reasonable written notice has been provided to the Contractor's Representative, provide such representatives access to all parts of the Site as may be necessary for the administration and application of the Community Benefits Agreement. All such representatives will be required to comply with the health and safety protocols for attendance on the Site as required by the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia);
- (i) to the extent necessary to reflect Work-specific and Site-specific matters, provide orientation to Employees that is required by the Community Benefits Agreement and applicable law on the following topics:
  - (i) general matters, including, at a minimum, Site orientation and a discussion of housekeeping, environmental stewardship and cultural awareness; and

- (ii) occupational health and safety matters, including health and safety training and health and safety-related skills training; and
- (j) to the extent necessary, comply with and give effect to the results of negotiations and any rulings, interpretations, orders and decisions made in labour relations matters of which BCIB notifies the Contractor's Representative and that relate to the Employees.

5.3 BCIB will:

- (a) notify the Contractor in writing of any change under the Community Benefits Agreement, including changes to:
  - (i) initiation fees or dues, or of assessments by the Affiliated Unions;
  - (ii) steward appointments;
  - (iii) hourly wage rates and trade provisions; and
  - (iv) new or revised Job Classifications and associated wage rates and trade provisions;
- (b) act in good faith in all labour relations matters which are relevant to the Contractor, including in collective bargaining negotiations and in grievance, arbitration and jurisdictional proceedings, it being acknowledged that it is in the mutual best interest of BCIB and the Contractor to prevent strikes, lockouts, slowdowns or other interruptions in the orderly performance of the Work; and
- (c) keep the Contractor's Representative informed of the results of any negotiations and any rulings, interpretations, orders and decisions made in labour relations matters which are relevant to the Contractor so that the Contractor may, to the extent necessary, comply with and give effect to any such results and rulings, interpretations, orders and decisions.

**6.0 COMMUNITY BENEFITS AGREEMENT**

- 6.1 A true copy of the Community Benefits Agreement has been made available to the Contractor. The Contractor represents and warrants it has full knowledge of and understands the provisions of the Community Benefits Agreement.
- 6.2 The Contractor acknowledges that for all purposes of this Agreement any reference to the Community Benefits Agreement will include all amendments to, supplements to or restatements of the Community Benefits Agreement.
- 6.3 Unless otherwise expressly modified by the terms of this Agreement, the Contractor, in performing its obligations under this Agreement and to fulfill its obligations under the Construction Contract, will give effect to, and will observe, comply with and perform all terms and conditions of the Community Benefits Agreement that are specified to apply to

the Contractor as a “Contractor” (as that term is used in the Community Benefits Agreement), as well as all consequent functions, obligations and responsibilities that are associated with such terms and conditions.

- 6.4 The Contractor, on behalf of BCIB, will give effect to, and will observe, comply with and perform all of BCIB’s functions, obligations and responsibilities described in the provisions of the Community Benefits Agreement set out in Schedule 2, as well as all consequent functions, obligations and responsibilities that are associated with such terms and conditions.
- 6.5 The Contractor will not act in any way which may obstruct, interfere with or impede BCIB’s ability to observe, comply with and perform each and every provision of the Community Benefits Agreement.
- 6.6 The Contractor will perform such acts and do such things, including attending meetings, whether or not with the Council, as BCIB may from time to time reasonably require in order to permit BCIB to perform its obligations under and to comply with the Community Benefits Agreement.
- 6.7 The Contractor acknowledges BCIB’s authority to act on behalf of the Contractor in all matters related to the interpretation, application, administration or alleged violation of the Community Benefits Agreement, including BCIB’s sole responsibility for discussing, resolving or arbitrating any grievance that may arise under the Community Benefits Agreement.

## **7.0 PAYROLL**

- 7.1 Whenever required by BCIB, the Contractor will provide to BCIB payroll administration support by providing information requested by BCIB in the form and format required by BCIB. Such information will include recruitment information, hours of work schedules, timesheets, change of status requests and termination information, and any other information deemed necessary by BCIB. If requested by BCIB’s Representative, the Contractor will review and approve the timesheets prior to submitting them to BCIB.
- 7.2 BCIB will prepare and deliver an invoice (each, a “**Payroll Invoice**”) to the Contractor for each pay period. The Payroll Invoice will set out the amount owing by the Contractor to BCIB (the “**Payroll Amount**”) in respect of:
  - (a) all amounts required by the Community Benefits Agreement (to the extent each is applicable to the Project):
    - (i) to be paid to Employees provided to the Contractor by BCIB during the applicable pay period; and
    - (ii) to be paid to third parties other than the Employees provided to the Contractor by BCIB based on the number of hours worked by the Employees provided to the Contractor by BCIB, such as the Funds described in Article 13.200 of the Community Benefits Agreement;

- (b) all applicable payroll taxes and assessments, including Employment Insurance, Canada Pension Plan, and Employer Health Tax; and
- (c) all other applicable taxes.

Promptly upon receipt of a Payroll Invoice, the Contractor will review the Payroll Invoice against the Contractor's records and advise BCIB's Representative of any necessary changes. If any changes to a Payroll Invoice are necessary, BCIB will endeavour to revise and reissue the Payroll Invoice in sufficient time to allow the Contractor to comply with Section 7.3. If there is not sufficient time, BCIB will capture the necessary changes on the next issued Payroll Invoice.

- 7.3 The Contractor will pay to the account specified in the Payroll Invoice the Payroll Amount no later than five Business Days after receipt of each initial Payroll Invoice.
- 7.4 If BCIB delivers Employee payroll cheques or payslips, or both, to the Contractor's Representative, the Contractor will promptly distribute such documents to the applicable Employees.
- 7.5 In the event that an Employee or other person or authority on behalf of such Employee was overpaid by BCIB, BCIB and the Contractor will cooperate to obtain repayment of such overpaid amount from such Employee or other person or authority who received such overpayment.
- 7.6 The Contractor will remit to WorkSafeBC the WorkSafeBC assessments calculated by the Contractor on each payroll, at the rate or rates which are applicable to the Contractor according to the classification and rates determined by WorkSafeBC. The rate or rates will be applied to the applicable gross amounts earned in accordance with the *Workers Compensation Act* (British Columbia).

## **8.0 DISCIPLINE, DISMISSAL, REINSTATEMENT AND TERMINATION OF EMPLOYMENT**

- 8.1 The Contractor acknowledges the provisions of Article 10 of the Community Benefits Agreement and agrees to give effect to, and to observe, comply with and perform the terms and conditions set out in that Article.
- 8.2 Notwithstanding anything to the contrary contained in this Agreement, the Contractor will be permitted to issue warnings to the Employees provided to the Contractor by BCIB. As soon as practicable after issuing a warning, the Contractor's Representative will notify BCIB's Representative in writing providing details of the warning.
- 8.3 If and whenever:
  - (a) BCIB has knowledge of any conduct of an Employee who is under the direction of the Contractor which would justify discipline, dismissal or the taking of other corrective or rehabilitative action in respect of such Employee, whether it be for incompetence, insubordination, unreliability or otherwise; or

- (b) the Contractor's Representative recommends to BCIB that an Employee be disciplined or dismissed or that other corrective or rehabilitative action be taken in respect of an Employee, whether it be for incompetence, insubordination, unreliability or otherwise,

BCIB will, in its sole and absolute discretion:

- (c) take no action; or
- (d) discipline or take such other corrective or rehabilitative action in respect of such Employee as the situation requires; or
- (e)
  - (i) promptly, but subject to the provisions of Section 8.4, remove such Employee from the direction of the Contractor; and
  - (ii) terminate such Employee's employment with BCIB in accordance with the provisions of the Community Benefits Agreement and applicable law.

8.4 In the event that any Employee whose employment has been terminated pursuant to Section 8.3 initiates a grievance under the Community Benefits Agreement:

- (a) the Contractor and BCIB will permit such Employee to remain at the Site for the sole purpose of participating in, and until completion of, Stage I of the grievance procedure under the Community Benefits Agreement; and
- (b) if the Contractor's Representative requests in writing a replacement Employee, BCIB will, in accordance with the dispatch provisions of the Community Benefits Agreement, including Articles 8.200, 8.600 and 9.100 of the Community Benefits Agreement, and within three Business Days of such request, provide a replacement Employee to the Contractor, such replacement Employee to be in the same Job Classification as and with comparable qualifications, certifications, if any, and experience to the Employee being replaced.

8.5 The Contractor will provide such assistance as BCIB may reasonably request with respect to any grievance procedure.

8.6 The Contractor will comply with the terms of any grievance award, and any order, judgment, direction or interpretation made under the procedures set forth in the Community Benefits Agreement, or by any arbitrator or court having jurisdiction over the Employees which in any way relates to the Employees provided to the Contractor by BCIB, including awards of the Jurisdictional Assignment Plan Umpire of Work Assignment as described in Article 6.103 of the Community Benefits Agreement, and including any reinstatement order, judgement or direction, to the extent that the Contractor's compliance is necessary in order to enable BCIB to comply with any such award, order, judgment, direction or interpretation.

8.7 The Contractor will provide to BCIB, at a location designated by BCIB, any information required by BCIB in a form and format required by BCIB to enable BCIB to complete

end of employment documentation in respect of an Employee whose services have been terminated.

## **9.0 SUBCONTRACTING**

- 9.1 The Contractor will notify BCIB's Representative in writing of the names of all of the Contractor's subcontractors (of any and all tiers) (each, a "**Subcontractor**") engaged to perform a portion of the Work at the Site, whether or not such Subcontractor requires Employees. The Contractor will provide such notice a minimum of two weeks prior to the Subcontractor commencing work at the Site.
- 9.2 The Contractor will not permit any Subcontractor to perform any work at the Site unless and until that Subcontractor:
- (a) confirms in writing to BCIB that the Subcontractor will not require any Employees to be provided by BCIB, and BCIB agrees with such determination;
  - (b) is granted a permit pursuant to Article 8.400 of the Community Benefits Agreement; or
  - (c) executes a BCIB-Subcontractor Agreement pursuant to Section 9.3.
- 9.3 The Contractor will cause each Subcontractor (other than a Subcontractor described in Section 9.2(a) or Section 9.2(b)) (each, an "**Applicable Subcontractor**") to enter into an agreement with BCIB (each, a "**BCIB-Subcontractor Agreement**") to obtain from BCIB the Employees that the Applicable Subcontractor will require for the performance of its portion of the Work at the Site. Each BCIB-Subcontractor Agreement will be in the form attached to this Agreement at Schedule 4, subject only to variations in form required by BCIB, in its sole and absolute discretion, to suit the circumstances.
- 9.4 If, under any BCIB-Subcontractor Agreement, an Applicable Subcontractor becomes indebted to BCIB and delinquent in its payment to BCIB, then, upon written notice to the Contractor, the Contractor will pay the amount of any such indebtedness to BCIB no later than five Business Days after receipt of such notice.

## **10.0 PERMITTEES**

- 10.1 The Contractor may request that permits be granted to Subcontractors or employees (who would ordinarily be "Employees" for the purposes of the Community Benefits Agreement), or both, as described in Article 8.400 of the Community Benefits Agreement.
- 10.2 For any permit request, the Contractor will be responsible for completing a permit request form (in the form required by the Council), and will submit the completed permit request form along with the required fee made payable to the Council to BCIB's Representative for review. Provided the permit request form and associated fee comply with the provisions of Article 8.400 of the Community Benefits Agreement, BCIB will sign the permit request form and submit it and the fee to the Council. If BCIB refuses to sign the

permit request form, then BCIB's Representative will return the form and fee to the Contractor's Representative with reasons for BCIB's refusal to sign the form.

- 10.3 BCIB will, to the extent necessary, arrange meetings between the Contractor and the Council to resolve any issues with respect to the granting of permits, however, the Contractor remains fully responsible for satisfying the conditions required for the granting of a permit.
- 10.4 The Contractor acknowledges the provisions of Articles 8.403 and 8.409 of the Community Benefits Agreement and agrees to give effect to, and observe, comply with and perform the terms and conditions set out in those Articles.

## **11.0 BCIB COSTS**

- 11.1 In addition to paying the Payroll Amount, the Contractor will pay to BCIB all costs and expenses reasonably incurred by BCIB ("**BCIB Costs**") in respect of the Employees provided to the Contractor by BCIB, including, but without duplication of items included in the Payroll Amount:
- (a) the following costs described in the Community Benefits Agreement, to the extent each is applicable to the Project:
    - (i) Article 17.200 (for mileage or ferry costs);
    - (ii) Article 17.401 (weekend checkout);
    - (iii) Article 21.100 (transportation to Project on initial hire);
    - (iv) Article 21.201 (transportation from Project when on Employee on the job for 30 days or more);
    - (v) Article 21.700 (compassionate leave transportation); and
    - (vi) Article 22.100 (daily travel reimbursement);
  - (b) the reasonable fees and disbursements charged to BCIB by those lawyers, accountants, consultants, witnesses or other professionals or experts reasonably retained by BCIB, with respect to grievance, arbitration, court or other labour relations proceedings relating to any Employee;
  - (c) the amount of any damages, salary, severance pay, expenses, costs, penalties, fines or other monies which BCIB is ordered to pay by any arbitrator, court or other authority having jurisdiction, or which BCIB reasonably agrees to pay, in respect of any Employee;
  - (d) the amount paid to or on behalf of any Employee by BCIB in respect of transportation to or from the Site at the time of hire, upon termination of employment, or in order to facilitate such Employee undergoing tests or

examinations which may be required in connection with such Employee's employment and compensated by BCIB pursuant to the Community Benefits Agreement, or in connection with any special training provided for such Employee at the request of or with the approval of the Contractor;

- (e) the amount of any medical doctor's charges or other charges paid by BCIB in connection with the provision of food handling certificates, underground certificates, audio certificates or any other certificate relating to the fitness or qualifications of any Employee;
- (f) advances on salary and any special payments in respect of labour relations matters made by BCIB to or on behalf of any Employee which are required to be made by the Community Benefits Agreement;
- (g) the reasonable costs incurred by BCIB with respect to labour relations matters which relate to the Project, which costs will be apportioned in a reasonable manner by BCIB among all entities that have entered into a contract with BCIB for the provision of Employees for the Project;
- (h) the costs of any items or services required to be provided to or for any Employee by the provisions of the Community Benefits Agreement which are the responsibility of the Contractor to provide pursuant to the provisions of this Agreement, but which were not provided by the Contractor, including the costs of providing orientation, training, tools, safety equipment, clothing and transportation;
- (i) in the event that BCIB requests an amount from the Owner under the provisions of Section 12.0, the sum of \$1,000.00 for each such request as compensation to BCIB for its costs of administering such request to the Owner; and
- (j) the Contractor's *pro rata* share of any WorkSafeBC levies, assessments, reassessments, penalties or other amounts required to be paid by BCIB in respect of the Employees under the *Workers' Compensation Act* (British Columbia) and which are not payroll WorkSafeBC assessments as described in Section 7.6. Such levies, assessments, reassessments, penalties and other amounts will be shared amongst all entities having a contract with BCIB in respect of the Project and be calculated based on the total number of hours worked by the Employees provided to each such entity up to the date of such levy, assessment, reassessment, penalty or other amount.

11.2 BCIB will, from time to time, prepare and deliver an invoice (each, a "**Cost Invoice**") to the Contractor setting out the amount of BCIB Costs owing by the Contractor to BCIB for the relevant time period. The Contractor will pay to the account specified in the Cost Invoice the amount of such BCIB Costs plus all applicable taxes no later than five Business Days after receipt of the Cost Invoice. The Contractor will pay the full amount set out in the Cost Invoice without prejudice to the Contractor's rights of dispute under Section 23.0.

11.3 The Contractor or its authorized agent may, at the Contractor's discretion and expense, at any time and from time to time up to the date that is six months after this Agreement has been terminated, during normal business hours and with reasonable notice and without undue disturbance of BCIB's business operations, enter upon BCIB's premises and, subject to solicitor-client privilege, audit the records of BCIB which relate in any way to BCIB Costs. BCIB will make all such records available for examination and copying by the Contractor at BCIB's premises.

## **12.0 PAYMENT BY OWNER UPON A FAILURE TO PAY**

12.1 The Contractor acknowledges that if at any time the Contractor or any Applicable Subcontractor fails to pay any amount required to be paid to BCIB under this Agreement or under a BCIB-Subcontractor Agreement, as the case may be, BCIB may advise the Owner in writing and may request payment by the Owner of such amount.

12.2 In the event that the Owner pays BCIB the amount requested by BCIB under the provisions of Section 12.1, and provided that the Contractor compensates BCIB for its administration costs as described in Section 11.1(i) in accordance with Section 11.2, then the Contractor will not be in default of its obligation to pay such amount under this Agreement. For clarity, the payment by the Owner of an amount requested by BCIB will be deemed to satisfy the Contractor's obligation to pay that same amount to BCIB.

## **13.0 OCCUPATIONAL HEALTH AND SAFETY**

13.1 The parties acknowledge that each has obligations under applicable law as an "employer" for the health and safety of the Employees provided to the Contractor by BCIB. For the purposes of clearly defining and establishing respective responsibilities without duplication of any overlapping responsibilities, and for the purposes of achieving a consistent, proactive and preventative health and safety culture, and implementing effective health and safety programs, the following will apply with respect to occupational health and safety:

- (a) The Contractor will comply with all applicable law relating to occupational health and safety, including:
  - (i) the *Workers Compensation Act* (British Columbia); and
  - (ii) the *Mines Act* (British Columbia).
- (b) The Contractor will be responsible for and will fulfill all of its obligations as an "employer" (as that term is used in Part 3 of the *Workers Compensation Act* (British Columbia)) pursuant to Part 3 of the *Workers Compensation Act* (British Columbia), including as such obligations relate to the Employees provided to the Contractor by BCIB.
- (c) The Contractor will, as an "employer" (as that term is used in Part 3 of the *Workers Compensation Act* (British Columbia)), ensure that any Employee provided to the Contractor by BCIB that is acting in the capacity of "supervisor"

(as that term is used in Part 3 of the *Workers Compensation Act* (British Columbia)) has the information, instruction, training and supervision necessary to effectively discharge their responsibilities.

- (d) The Contractor acknowledges receipt of the Health and Safety Policy and Program. The Contractor will, as part of and not in substitution for any health and safety obligations that the Contractor must meet under the Construction Contract and applicable law, including the *Workers Compensation Act* (British Columbia), implement the Health and Safety Policy and Program in order to achieve or exceed the objectives set out in the Health and Safety Policy and Program.
- (e) Each party acknowledges that the Health and Safety Policy and Program and the Contractor's health and safety program, policies and work procedures will in no way fetter the authority and responsibilities of the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia), and each of the parties will recognize the authority of such "prime contractor" and will comply with such "prime contractor's" health and safety program, policies, systems, processes and procedures.
- (f) The parties will, within ten Business Days after the Effective Date, establish a system for ongoing communication and liaison for the purpose of ensuring the timely exchange of information that the parties agree is required for the effective coordination and implementation of the Health and Safety Policy and Program and the Contractor's health and safety program, policies and work procedures, and the ongoing health and safety of all Employees provided to the Contractor by BCIB.
- (g) The Contractor will, in respect of the Employees provided to the Contractor by BCIB, fulfill all health and safety-related obligations required by the Community Benefits Agreement, and the Contractor will, for certainty:
  - (i) provide to all such Employees such safety equipment and clothing as required by the Community Benefits Agreement, the Health and Safety Policy and Program and applicable law, including the *Workers Compensation Act* (British Columbia) and the *Mines Act* (British Columbia); and
  - (ii) bear transportation costs not covered by WorkSafeBC for sick or injured Employees from the Site to the Point of Hire (as defined in the Community Benefits Agreement) as well as the transportation costs of such Employee's tools to the Point of Hire.

Where the Contractor fails to meet the requirements of this Section 13.1(g), the same may be provided by BCIB and the Contractor will reimburse BCIB in accordance with Section 11.1(h).

- (h) Where the Contractor fails to meet the requirements of Section 5.2(i) within a reasonable time after receipt of written notice from BCIB's Representative to

provide such orientation, the same may be provided by BCIB and the Contractor will reimburse BCIB in accordance with Section 11.1(h).

- (i) The Contractor will, provided reasonable written notice has been provided to the Contractor's Representative and to the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia), provide BCIB representatives full access to all parts of the Site and the activities of the Contractor on the Site. All BCIB representatives will be required to comply with the health and safety protocols for attendance on the Site as required by the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia).
- (j) The Contractor will fully cooperate with BCIB in any activity performed by BCIB to ensure the Contractor's fulfilment of the Contractor's health and safety obligations under this Agreement, including inspections, investigations, and attending and participating in initiatives such as Joint Health and Safety Committee meetings and tool box talks.
- (k) Prior to commencing performance of the Work at the Site, and at any time on BCIB's Representative's request, the Contractor will deliver to BCIB's Representative a statement from WorkSafeBC that the Contractor is registered and in good standing.
- (l) The Contractor will provide to BCIB's Representative:
  - (i) notice of any worker compensation claims that are made against the Contractor by the Employees provided to the Contractor by BCIB; and
  - (ii) copies of all correspondence and forms, including claim forms, papers and reports, received by or sent to governmental authorities concerning any such claims and any other health and safety matters on the Site.
- (m) The Contractor acknowledges and agrees that any claims made by Employees provided to the Contractor by BCIB under and pursuant to the *Workers Compensation Act* (British Columbia), although such claims will be reported to WorkSafeBC under BCIB's account with WorkSafeBC, will, by reason of a mechanism agreed to with WorkSafeBC and provided to the Contractor, be considered and reflected in and may therefore adversely affect, the experience rating (for purposes of assessments made under the *Workers Compensation Act* (British Columbia)) of the Contractor and not of BCIB, and BCIB will not be liable to the Contractor, and the Contractor will have no claim against BCIB, for any loss, cost, damage, assessments, reassessments, penalties or expense suffered or incurred by the Contractor by reason of any claim brought under the *Workers Compensation Act* (British Columbia) by any such Employee, including for any increase in the Contractor's experience rating under the *Workers Compensation Act* (British Columbia) arising as a result of any such claim.

- (n) The Contractor hereby gives and grants to BCIB authority to act on behalf of the Contractor in all matters related to WorkSafeBC claims management and in all adjudications of WorkSafeBC claims, as such relate to the Employees provided to the Contractor by BCIB. In the event of a WorkSafeBC claim being made by any Employee provided to the Contractor by BCIB, the Contractor will complete the relevant sections of WorkSafeBC's "Employer's Report of Injury or Industrial Disease" (Form 7) and forward such form to BCIB's Representative, who will then send the completed Form 7 to WorkSafeBC.

#### **14.0 GENERAL TRAINING AND APPRENTICESHIPS**

- 14.1 The Contractor will provide, at its sole cost and expense, any and all on-the-job skills development and specialized task-specific training beyond that provided under a general trade curriculum.
- 14.2 The Contractor acknowledges receipt of the Apprenticeship and Training Targets. The Contractor will, as part of and not in substitution for any apprenticeship and training obligations that the Contractor must meet under the Construction Contract, implement the Apprenticeship and Training Targets in order to achieve or exceed the objectives set out in the Apprenticeship and Training Targets.

#### **15.0 WORKPLACE DISCRIMINATION AND HARASSMENT POLICY AND PROCEDURES**

- 15.1 The Contractor acknowledges receipt of the Workplace Discrimination and Harassment Policy and Procedures. The Contractor will, as part of and not in substitution for any workplace discrimination and harassment obligations that the Contractor must meet under the Construction Contract and applicable law, including the *Workers Compensation Act* (British Columbia), implement the Workplace Discrimination and Harassment Policy and Procedures in order to achieve or exceed the objectives set out in the Workplace Discrimination and Harassment Policy and Procedures.

#### **16.0 WORKPLACE DRUG AND ALCOHOL POLICY AND PROCEDURES**

- 16.1 The Contractor acknowledges receipt of the Workplace Drug and Alcohol Policy and Procedures. The Contractor will, as part of and not in substitution for any workplace drug and alcohol obligations that the Contractor must meet under the Construction Contract and applicable law, including the *Workers Compensation Act* (British Columbia), implement the Workplace Drug and Alcohol Policy and Procedures in order to achieve or exceed the objectives set out in the Workplace Drug and Alcohol Policy and Procedures.

#### **17.0 INDEMNIFICATION**

- 17.1 The Contractor will indemnify and save harmless BCIB, the Owner, their respective officers, directors, servants (including BCIB's Representative), agents and shareholders (collectively, the "**Indemnified Parties**"), from and against any and all losses, liabilities, damages, fines, penalties, costs, expenses and claims of any and every kind whatsoever

which at any time or from time to time may be paid, incurred or asserted by or against any of them for, with respect to, or as a result of:

- (a) any act or omission of the Contractor, the Contractor's Representative, or any other person or entity not subject to or otherwise excluded from coverage of the Community Benefits Agreement but who is engaged by the Contractor to perform a portion of the Work;
- (b) any act or omission of an Employee which occurs while such Employee is under the direction of the Contractor whether or not such losses, liabilities, damages, fines, penalties, costs, expenses or claims arise by reason of the employment relationship existing between BCIB and such Employee;
- (c) any failure by the Contractor to perform its obligations under this Agreement, including any failure to give effect to, observe, comply with or perform the terms and conditions of the Community Benefits Agreement, or the functions, obligations or responsibilities of the Community Benefits Agreement, that have been expressly delegated or allocated to the Contractor by this Agreement; and
- (d) any failure by the Contractor to perform its obligations under applicable law.

For certainty, the obligations of the Contractor set forth in this Section 17.1 shall not apply to the extent that the losses, liabilities, damages, fines, penalties, costs, expenses and claims for which indemnity is being sought were caused by the negligence or willful misconduct of any of the Indemnified Parties.

17.2 The obligations of the Contractor set forth in Section 17.1 will survive termination of this Agreement and will continue in full force and effect.

## **18.0 CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**

18.1 The Contractor will keep confidential all matters respecting the Employees provided to the Contractor by BCIB and all commercial, financial and legal issues relating to or arising out of this Agreement and will not disclose such information, except as follows:

- (a) with the prior written consent of BCIB's Representative, which consent may be arbitrarily withheld;
- (b) in strict confidence to the Contractor's professional advisors; or
- (c) as otherwise required by applicable law.

18.2 The obligations of confidentiality described in Section 18.1 will not apply to:

- (a) information that is, or subsequently becomes, publicly available other than through a breach of this Agreement or through a breach of a confidentiality agreement which another entity has entered into concerning such confidential information;

- (b) information which the Contractor already possessed before commencing to participate in the Project;
- (c) information which is rightfully received from a third party without breach of any obligation of confidence by such third party; or
- (d) information which is independently developed without the use of such confidential Information.

18.3 Notwithstanding anything to the contrary contained in this Agreement, the Contractor acknowledges and agrees that BCIB may disclose any and all information created or obtained as a result of this Agreement or in respect of the Contractor performing its obligations under this Agreement, or both, including the existence and terms of this Agreement and any BCIB-Subcontractor Agreement, the nature and number of permits requested and issued as described in Section 10.0, the Contractor's fulfillment of its obligations pursuant to Sections 13.0, 14.0, 15.0 and 16.0, the Contractor's fulfillment and compliance with the functions, obligations and responsibilities set out in Schedule 2 and any other Records, to any provincial ministry, other Governmental Authority and educational institutions which requires or requests the information in relation to the Project or to permit BCIB to comply with applicable law.

## **19.0 FREEDOM OF INFORMATION AND PRIVACY PROTECTION**

19.1 The Contractor acknowledges that:

- (a) it is aware that FOIPPA applies to this Agreement and to all documents and records relating to this Agreement;
- (b) BCIB is required to fully comply with FOIPPA; and
- (c) no action taken or required to be taken by BCIB for the purpose of complying with FOIPPA shall be considered a breach of any obligation under this Agreement.

19.2 To the extent the Contractor has access to, whether direct, indirect or incidental, or the opportunity to access, any Personal Information, the Contractor will inform all of its personnel and Subcontractors having access to any Personal Information in the course of performing the Work of the confidential nature of the Personal Information and will ensure that its personnel and Subcontractors maintain the confidentiality of the Personal Information in accordance with the terms of Schedule 3. BCIB and the Contractor will have the respective rights and obligations applicable to each of them as provided in Schedule 3, and Section 18.0 will not apply in respect of such Personal Information.

## **20.0 CONTRACTOR'S RECORDS**

20.1 The Contractor will record and maintain within British Columbia during the term of this Agreement, and for so as long as required by applicable law, full, true, proper and

accurate records relating to the Employees provided to the Contractor by BCIB (collectively, the “**Records**”), including:

- (a) records of the time worked by Employees;
- (b) records relating to the Contractor’s fulfillment of its obligations pursuant to Sections 13.0, 14.0, 15.0 and 16.0; and
- (c) records relating to the Contractor’s fulfillment and compliance with the functions, obligations and responsibilities set out in Schedule 2,

utilizing such recording system and in such form as BCIB may from time to time require. Promptly upon the reasonable written request of BCIB’s Representative, the Contractor will deliver such Records to BCIB at BCIB’s expense.

- 20.2 The Contractor will advise BCIB’s Representative of the location of the Records upon the written request of BCIB.
- 20.3 Prior to disposing of any Records, the Contractor will notify BCIB in writing as to what the Contractor intends to do with such Records. BCIB may, within 40 days of receipt of such notice, require the Contractor to deliver to BCIB, at BCIB’s sole cost and expense, all such Records.
- 20.4 BCIB or its authorized agent may, at BCIB’s discretion and expense, at any time and from time to time during the time the Contractor is required to keep the Records under this Agreement, during normal business hours and with reasonable notice and without undue disturbance of the Contractor’s business operations, enter upon the Contractor’s premises and audit the Records and any other records of the Contractor which relate in any way to the Employees provided to the Contractor by BCIB. The Contractor will make all such records available for examination and copying by BCIB at the Contractor’s premises.

## **21.0 TERMINATION**

- 21.1 This Agreement will continue in effect for so long as the Contractor requires Employees to perform the Work at the Site.
- 21.2 The obligations of the Contractor to pay any amounts which are payable to BCIB under this Agreement will survive termination of this Agreement and will continue in full force and effect.

## **22.0 DISCLAIMERS**

- 22.1 BCIB does not warrant nor guarantee to the Contractor that BCIB will provide to the Contractor any particular quality of Employee or that BCIB will provide all or any of the Employees for which the Contractor may submit Employee Requests.

- 22.2 BCIB will not be responsible or liable (whether in contract, tort (including negligence), for breach of statutory duty, pursuant to equitable principles or under any other theory of law) to the Contractor, and the Contractor will have no claim against BCIB, for any loss, cost, damage or expense, including for economic loss, loss of anticipated revenue, overhead or profit, loss of production, business or contracts, loss by reason of shutdowns, slowdowns, non-operation or increased costs of construction, manufacturing or operation, or loss of business reputation or opportunities, and whether or not such losses, costs, damages or expenses were foreseeable even if BCIB was advised of the possibility of them, suffered or incurred by the Contractor by reason of or in respect of any act, omission or statement by BCIB or any of BCIB's officers, directors, servants (including BCIB's Representative), agents and shareholders, or by reason of or in respect of the Contractor being delayed in performing the Work or having to re-perform the Work, whether such delay or re-performance is caused by work stoppage, labour shortages, lack of appropriately qualified or skilled labour or otherwise. The Contractor acknowledges that its sole remedies, if any, in respect of any such foregoing matters lie against the Owner under the Construction Contract.
- 22.3 Except as specifically provided under the Construction Contract (and then solely with respect to the rights and obligations as between the Owner and the Contractor), nothing done as a result of this Agreement or omitted to be done will be cause for a justifiable delay by the Contractor under the Construction Contract or a justifiable increase in the Contractor's price under the Construction Contract, and the Contractor will not have any right to or claim for an extension of time under the Construction Contract nor any right to or claim for any payment or additional payment from BCIB or the Owner as a result of such matters.
- 22.4 BCIB will not be responsible for the operation, direction or supervision of Employees provided to the Contractor by BCIB nor for the performance of the Work by such Employees.
- 22.5 BCIB will not be responsible for paying any of the Contractor's costs of providing Employees with room or board or commissary facilities or commissary supplies whether or not such costs are recovered or are recoverable by the Contractor from Employees.
- 22.6 The Contractor will not be entitled to, nor will BCIB be liable to the Contractor for, any compensation or reimbursement of expenses in respect of the Contractor performing its obligations under this Agreement, such compensation and reimbursement will be deemed to be fully addressed pursuant to the Construction Contract.

### **23.0 DISPUTE RESOLUTION**

- 23.1 The parties agree that, both during and after the term of this Agreement, each of them will make *bona fide* efforts to resolve any disputes arising between them by amicable negotiations.
- 23.2 Either party may require the dispute be mediated by a skilled commercial mediator chosen jointly by the parties. If a mediator is appointed pursuant to this Section 23.2, the

mediated negotiations will be terminated ten Business Days after the appointment unless the parties agree otherwise.

- 23.3 Any unresolved dispute arising out of or in connection with this Agreement or in respect of any defined legal relationship associated with it or derived from it, will be referred to and finally resolved by arbitration under the rules of the British Columbia International Commercial Arbitration Centre. Any arbitration will be conducted in Vancouver, British Columbia and heard by a single arbitrator chosen jointly by the parties, or in the absence of mutual agreement appointed by a court of competent jurisdiction.
- 23.4 If the parties agree, any unresolved disputes referred to arbitration under this Agreement may be:
- (a) held in abeyance until completion of the Work; and
  - (b) consolidated into a single arbitration.
- 23.5 Notwithstanding any dispute, the parties will continue to fulfill their obligations pursuant to this Agreement, without prejudice to either party's rights relating to the dispute.

#### **24.0 NOTICES**

- 24.1 Unless otherwise expressly required to be given to BCIB's Representative or the Contractor's Representative pursuant to this Agreement, any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given when delivered by hand or by email to the address or email address of the applicable party set out below:
- (a) if to BCIB:
    - [insert address]
    - Attn: [insert appropriate addressee, i.e. President]
    - Email: [insert appropriate email address];
  - (b) if to the Contractor:
    - [insert address]
    - Attn: [insert appropriate addressee, i.e. President]
    - Email: [insert appropriate email address]; or
  - (c) to such other address or email address as either party may, from time to time, designate in the manner set out above.

- 24.2 Any such notice or communication will be considered to have been received:
- (a) if delivered by hand or by a courier service during business hours on a Business Day, when delivered, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
  - (b) if sent by email during business hours on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day, provided that:
    - (i) the receiving party has, by email or by hand delivery, acknowledged to the notifying party in writing that it has received such notice; or
    - (ii) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

## **25.0 ASSIGNMENT RESTRICTED**

- 25.1 This Agreement and the rights, duties and obligations of the Contractor under this Agreement will not be assigned, transferred, encumbered or otherwise alienated in whole or in part by the Contractor without the prior written consent of BCIB, which consent may be arbitrarily withheld, and any attempt by the Contractor to assign, transfer, encumber or otherwise alienate its rights, duties or obligations under this Agreement without such consent will be of no effect. Notwithstanding the above, BCIB will provide its consent to any assignment, transfer, encumbrance or other alienation of this Agreement to the extent necessary to give effect to any permitted assignment, transfer, encumbrance or other alienation of the Construction Contract.

## **26.0 MISCELLANEOUS**

- 26.1 Schedules. The following Schedules are incorporated into this Agreement by reference and are deemed to be fully included as part of this Agreement and to be an integral part of this Agreement:
- (a) Schedule 1 – Definitions and Interpretation;
  - (b) Schedule 2 – Functions, Obligations and Responsibilities;
  - (c) Schedule 3 – Privacy Protection; and
  - (d) Schedule 4 – Form of BCIB-Subcontractor Agreement.
- 26.2 No Agency. The Contractor acknowledges and agrees that BCIB is entering into this Agreement for itself and on its own behalf as principal and that BCIB is not an agent of the Owner or the Government of British Columbia for purposes of this Agreement or for purposes of the Construction Contract or otherwise.

- 26.3 Third Party Beneficiary. The provisions of Section 22.3 are intended for the benefit of the Owner and will be enforceable by the Owner and are in addition to, and not in substitution for, any other rights that the Owner may have by contract or otherwise. For clarity, BCIB will also be able to enforce the provisions of Section 22.3.
- 26.4 Independent Contractor. The Contractor is an independent contractor in the performance of the Work and nothing in this Agreement will constitute the Contractor as an agent, partner, joint venture or employee of BCIB for any purpose.
- 26.5 Currency. All payments to be made pursuant to this Agreement will be made in lawful money of Canada.
- 26.6 Public Announcements. The Contractor will not make any public releases, announcements, other disclosure or issue advertising pertaining to this Agreement or the Community Benefits Agreement without the prior written approval of BCIB, approval of which may be arbitrarily withheld. The Contractor will refer any media enquiries to BCIB's Representative, but will not otherwise respond to media enquiries.
- 26.7 Further Assurances. Each of the parties hereby covenants and agrees to execute any further and other documents and instruments and to do any further and other things that may be necessary to implement and carry out the intent of this Agreement.
- 26.8 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia which will be deemed to be the proper law of this Agreement.
- 26.9 Survival. All rights, obligations and remedies of the parties which accrued prior to the termination of this Agreement, or which are by their nature continuing, or which by their express terms survive, and all other provisions necessary for the interpretation or enforcement of such rights, obligations and remedies, will survive termination of this Agreement.
- 26.10 Modification and Waiver. No amendment or waiver of this Agreement or any provision of this Agreement will be binding unless executed in writing by both the parties. No waiver of any provision of this Agreement will be deemed or will constitute a waiver of any other provision nor will any such waiver constitute a continuing waiver unless otherwise expressly provided in writing signed by each of the parties.
- 26.11 Enurement. This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, personal representatives, successors and permitted assigns.
- 26.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, expressing superseding all prior communications, understandings and agreements (both oral and written) between the parties with respect to all matters contained in this Agreement. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

26.13 Counterparts. This Agreement may be executed by counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery by email in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the Effective Date.

**BC INFRASTRUCTURE BENEFITS INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**[INSERT LEGAL NAME OF CONTRACTOR]**

Per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 1**  
**DEFINITIONS AND INTERPRETATION**

1. Definitions. In this Agreement, except as otherwise expressly provided or unless the context otherwise requires:
- (a) “**Affiliated Unions**” has the meaning set out in the Community Benefits Agreement;
  - (b) “**Agreement**” means this BCIB-Contractor Agreement as it may be amended, restated or supplemented from time to time;
  - (c) “**Applicable Subcontractor**” has the meaning set out in Section 9.3;
  - (d) “**Apprenticeship and Training Targets**” means the apprenticeship and training targets established by BCIB dated March 8, 2019;
  - (e) “**BCIB**” has the meaning set out on the first page of this Agreement;
  - (f) “**BCIB Costs**” has the meaning set out in Section 11.1;
  - (g) “**BCIB-Subcontractor Agreement**” has the meaning set out in Section 9.3;
  - (h) “**BCIB’s Representative**” has the meaning set out in Section 2.1;
  - (i) “**Business Day**” means a day other than a Saturday, Sunday or Recognized Holiday (as described in Article 16.100 of the Community Benefits Agreement) on the days observed in British Columbia;
  - (j) “**Community Benefits Agreement**” has the meaning set out in Recital A;
  - (k) “**Contractor**” has the meaning set out on the first page of this Agreement;
  - (l) “**Contractor’s Representative**” has the meaning set out in Section 2.2;
  - (m) “**Construction Contract**” means the agreement between the Owner and the Contractor dated on or about the date of this Agreement pursuant to which the Contractor will undertake the Work;
  - (n) “**Cost Invoice**” has the meaning set out in Section 11.2;
  - (o) “**Council**” has the meaning set out in Recital A;
  - (p) “**Council’s Representative**” means the person designated from time to time by the Council who will represent the Council in the administration and application of the Community Benefits Agreement;
  - (q) “**Effective Date**” means the effective date of this Agreement as set out on the first page of this Agreement;

- (r) “**Employees**” has the meaning set out in the Community Benefits Agreement, but for clarity, does not include employees of Subcontractors described in Section 9.2(a) or Section 9.2(b) or employees granted a permit pursuant to Article 8.400 of the Community Benefits Agreement;
- (s) “**Employee Request**” has the meaning set out in Section 4.2(c);
- (t) “**FOIPPA**” means the *Freedom of Information and Protection of Privacy Act* (British Columbia);
- (u) “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local authority, quasi-governmental authority, court, government, or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of the Construction Contract, this Agreement or the Project;
- (v) “**Health and Safety Policy and Program**” means the health and safety policy and program established by BCIB dated February 21, 2019;
- (w) “**Indemnified Parties**” has the meaning set out in Section 17.1;
- (x) “**Job Classifications**” means those job classifications set out in the applicable “Trade Sections” of the Community Benefits Agreement;
- (y) “**Owner**” means the British Columbia Ministry of Transportation and Infrastructure;
- (z) “**Payroll Amount**” has the meaning set out in Section 7.2;
- (aa) “**Payroll Invoice**” has the meaning set out in Section 7.2;
- (bb) “**Personal Information**” means recorded information about an identifiable individual, other than contact information (as defined in FOIPPA), collected, created or otherwise acquired by the Contractor as a result of this Agreement or any previous agreement between BCIB and the Contractor dealing with the same subject matter as this Agreement;
- (cc) “**Project**” means the Illecillewaet Four Laning and Brake Check Improvements project located approximately 42km east of the City of Revelstoke and includes the widening of 2km of the Trans-Canada Highway to four lanes, constructing a commercial vehicle brake check facility and providing on-highway vehicle storage during avalanche control closure events;
- (dd) “**Records**” has the meaning set out in Section 20.1;

- (ee) “**Site**” means “Site” as defined in the Construction Contract, and will be deemed to include the sites of all facilities purpose built for the Project;
- (ff) “**Subcontractor**” has the meaning set out in Section 9.1;
- (gg) “**Work**” means “Work” as defined in the Construction Contract;
- (hh) “**Workplace Discrimination and Harassment Policy and Procedures**” means the workplace discrimination and harassment policy and procedures established by BCIB dated February 21, 2019; and
- (ii) “**Workplace Drug and Alcohol Policy and Procedures**” means the workplace drug and alcohol policy and procedures established by BCIB dated February 21, 2019.

Any words or phrases defined elsewhere in this Agreement will have the particular meaning assigned to such words or phrases.

2. Interpretation. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:
- (a) the provision of headings and the division of this Agreement into Sections, paragraphs and other subdivisions are for convenience only and will not define or limit the scope, extent or intent of this Agreement or affect the interpretation of this Agreement or any provision of this Agreement;
  - (b) any reference to a statute will include such statute and its corresponding regulations, together with all amendments made to such statute and regulations and in force from time to time, and any statute or regulation that may be passed which has the effect of amending, supplementing or superseding the statute referred to or such statute’s corresponding regulations;
  - (c) any reference to the *Mines Act* (British Columbia) will include the Health, Safety and Reclamation Code for Mines in British Columbia, together with all amendments made to such code and in force from time to time, and any instrument established pursuant to the *Mines Act* (British Columbia) which has the effect of amending, supplementing or superseding the Health, Safety and Reclamation Code for Mines in British Columbia;
  - (d) any reference to an entity will include and will be deemed to be a reference to any entity that is a successor to such entity;
  - (e) words in the singular include the plural, and vice-versa, wherever the context requires;
  - (f) references in this Agreement to a Recital, a Section, a paragraph, a Schedule or other subdivision are to the corresponding Recital, Section, paragraph, Schedule or other subdivision of this Agreement, unless otherwise indicated;

- (g) where a reference is made to a “day”, “week”, “month” or “year”, the reference is to the calendar period;
- (h) the word “including” is deemed to be followed by “without limitation”;
- (i) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (j) in the calculation of time, the first day will be excluded and the last day included; and
- (k) the parties confirm that they each have obtained independent legal advice, or elected not to obtain such advice, and accordingly agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of this Agreement.

**SCHEDULE 2  
FUNCTIONS, OBLIGATIONS AND RESPONSIBILITIES**

The following are the functions, obligations and responsibilities referred to in Section 6.4 of this Agreement:

1. General:

The Contractor will provide to Employees all food and beverages as required by the Community Benefits Agreement.

2. Master Section:

<b>CBA Article</b>	<b>Function, Obligation or Responsibility</b>
14.501	The Employer may establish a flex work week schedule which allows for a work week starting on a day other than Monday (for example: Tuesday to Saturday).
17.402 (if applicable to the Project)	Where the accommodation is a hotel/motel the Employee may be required to vacate the room and remove all belongings out of the room. If an Employee wishes to store belongings, a lockup shall be provided.
19.100	A suitable heated lockup must be provided by the Employer for workers using their own tools.
19.201	In case of fire or burglary the Employer shall protect the value of an Employee's work clothes up to a total of three hundred and fifty dollars (\$350.00), required tools up to the total value of the tools, (tool for tool, make for make).
23.100	On commercial and institutional projects, heated lunchroom and women's and men's change rooms shall be provided for Employees for drying clothes, and changing clothes. The lunch and change rooms shall have tables, and benches, and provision for drying clothes. Such lunch and change rooms shall have windows and venting with adequate lighting and provision for continuous heat twenty-four (24) hours a day. The lunch and change rooms will be cleaned on each working shift and kept cleared of working materials and other construction paraphernalia. Lunchrooms shall provide enough room for all the workers to be seated at a table for lunch.
23.301	The Contractor/Employer shall be responsible for the provision, maintenance and cleanliness of sanitary facilities on the Site and for keeping all areas free of hazards and debris.
23.302	Chemical or flush toilets shall be provided for both women and men from the commencement of work on all jobs. Toilet paper shall be provided and facilities shall be cleaned on each working shift.
23.304	Where clean-up facilities are not provided and in mechanical and trade shops,

<b>CBA Article</b>	<b>Function, Obligation or Responsibility</b>
	hand cleanser and paper towels shall be provided at no cost to the Employee.
23.401	When working in a Fabrication Shop, proper ventilation shall be provided. In the event of a dispute, WorkSafeBC Regulations shall prevail.
23.402	When working in confined spaces with fibreglass or toxic fumes or smoke, proper ventilation and/or proper respiratory equipment shall be provided.
23.700	Telephone service shall be made available to all Employees at all times for incoming or outgoing emergency purposes and incoming emergency messages shall be relayed immediately.

3. Interior Road Building Addendum, if applicable to the Project:

<b>CBA Article</b>	<b>Function, Obligation or Responsibility</b>
14.201(e)	During inclement weather, where practical, the Employer shall provide a warm, dry area, such as an assembly room, equipment cab, or crew vehicle in which Employees may take their meal breaks.
14.202(d)	During inclement weather, where practical, the Employer shall provide a warm, dry area, such as an assembly room, equipment cab, or crew vehicle in which Employees may take their rest breaks.
General re Trade Sections – 1(b)	Where the Employer requires a specific Employee to upgrade or renew a certification or license, or perform a private procedure skills test on Site, unless the applicable Trade Sections indicates another party will pay, the Employer will pay the applicable costs and provide the time necessary.

4. Lower Mainland Road Building Addendum, if applicable to the Project:

<b>CBA Article</b>	<b>Function, Obligation or Responsibility</b>
14.201(e)	During inclement weather, where practical, the Employer shall provide a warm, dry area, such as an assembly room, equipment cab, or crew vehicle in which Employees may take their meal breaks.
14.202(d)	During inclement weather, where practical, the Employer shall provide a warm, dry area, such as an assembly room, equipment cab, or crew vehicle in which Employees may take their rest breaks.
General re Trade Sections – 1(b)	Where the Employer requires a specific Employee to upgrade or renew a certification or license, or perform a private procedure skills test on Site, unless the applicable Trade Sections indicates another party will pay, the Employer will pay the applicable costs and provide the time necessary.

5. Appendices:

If applicable to the Project, all references to a BCIB function, obligation and responsibility in the Camp Standards Appendix will be read as a function, obligation and responsibility of the Contractor.

6. Trade Sections:

<b>CBA Article</b>	<b>Function, Obligation or Responsibility</b>	<b>Additional Contractor Obligation</b>
BM.203	When six (6) or more welders are employed, one (1) welder with the qualifications shall be "Welder foreperson" and will receive Foreperson rate. The Welder Foreperson shall work on the tools if required by the Employer.	
BM.204	A Boilermaker General Foreperson may be utilized by the Employer whenever the Employer has established this level of supervision of the work on a job or when this level is appropriate to the size and nature of the job as determined by the Employer.	
BM.414	<u>Handicapped Workers</u> The Employer agrees, subject to prior consultation with the Affiliated Union, to employ any member on work which suits their physical ability and which is acceptable to the member (this shall include but not be limited to tool crib). Those who have suffered injury or disability in the trade should be employed when their capabilities are considered suitable, provided workers have the approval of the Workers' Compensation Board.	The Contractor will support and cooperate with BCIB to encourage the use of Handicapped Workers.
BM.420	<u>Tools</u> When it is deemed necessary to maintain a special tool crib for the Boilermakers, such shall be under the jurisdiction of the Boilermakers' Union. It being understood the necessity of a tool crib and/or an attendant shall be determined by the Employer.	

CBA Article	Function, Obligation or Responsibility	Additional Contractor Obligation
CE.204	<p><u>General Foreperson</u>            Where more than nineteen (19) Cement Masons or four (4) Forepersons are employed, the Employer shall appoint a General Foreperson at sixteen percent (16%) over the basic Industrial Hourly Rate plus one-half hour at straight time per shift (at Overtime rates on Overtime shifts).</p> <p>General Forepersons shall not be required to work with the tools unless the General Foreperson considers it necessary.</p> <p>Appointment of any Foreperson(s) is subject to the Master Section and Addenda “predominant trade” and “composite crew provisions”, and any Employees under the Foreperson’s supervision shall take instructions from that Foreperson.</p>	
DR.205	<p>All Forepersons and Leadhands shall be selected and assigned at the option of the Employer.</p>	
EL.416	<p>Where requested by the Employer to use explosive activated tools, time spent to obtain certificate shall be during working hours and considered as time worked. (High explosive activated tools shall not be used).</p>	
FL.420	<p><u>Older Workers</u>            An Employee incapacitated by age or accident may be permitted to be employed at less than the regular scale of wages at a rate of pay mutually agreed upon by the Employee, the Employer, and the Affiliated Union. The conditions of employment shall be amended so as to enable such Employees to continue with their employment.</p>	<p>The Contractor will cooperate with BCIB in determining the reduced scale of wages and conditions of employment.</p>
OPR.412	<p>All Mechanics, Welders, Servicepersons, Drill Doctors, Steel Sharpeners, Vehicle Body Painters, and Mechanics and Welder Apprentices who request coveralls shall have these supplied and cleaned by the Employer. There shall be one change a week available in the Employee's proper size.</p> <p>Employees are expected to take reasonable care of coveralls supplied. In the event that an Employee does not return the coveralls supplied by the Employer, the Employer shall charge the cost of same to the Employee and deduct this cost from any monies owing to the Employee.</p>	<p>If such items are not returned, the Contractor will advise BCIB and BCIB will deduct the applicable amount of the next Payroll Invoice.</p> <p>The Contractor will provide input</p>

<b>CBA Article</b>	<b>Function, Obligation or Responsibility</b>	<b>Additional Contractor Obligation</b>
	<p>When requested, coveralls shall be supplied on a temporary basis to Employees who assist on work as described above, or where the Employer and the Union mutually agree that coveralls are required.</p> <p>Employees entitled to receive coveralls as provided herein may obtain an additional change of coveralls in any one week providing the condition of the coveralls requires a change. The shop Foreperson shall use discretion in authorizing the additional change.</p>	<p>to BCIB to assist in the determination of whether coveralls are required.</p>
TER.203	<p>When the Employer works six (6) or more Employees on any one (1) shift on any one job (number shall include owner operated and/or rented equipment) under the jurisdiction of Teamsters Local Union No. 213, a Non-Operating Foreperson should be appointed and shall receive a premium of ten percent (10%) per hour over the hourly rate of the highest Teamster classification supervised</p>	

## **SCHEDULE 3 PRIVACY PROTECTION**

### **1 DEFINITIONS AND INTERPRETATION**

#### 1.1 Definitions

In this Schedule 3, in addition to the definitions set out in Schedule 1:

“**access**” means disclosure by the provision of access.

#### 1.2 Interpretation

- (a) Any reference to “the Contractor” in this Schedule 3 includes any “associate” as defined in FOIPPA and the Contractor must ensure that all such persons comply with this Schedule 3.
- (b) The obligations of the Contractor in this Schedule 3 will survive the termination of this Agreement.
- (c) If a provision of this Agreement (including any authorization or direction given by BCIB under this Schedule 3) conflicts with a requirement of FOIPPA or an applicable order of the Information and Privacy Commissioner under FOIPPA, the conflicting provision of this Agreement (or authorization or direction) will be inoperative to the extent of the conflict.
- (d) The Contractor will comply with this Schedule 3 notwithstanding any conflicting provisions of this Agreement or the law of any jurisdiction outside Canada.

### **2 PURPOSE**

#### 2.1 Purpose

The purpose of this Schedule 3 is to:

- (a) enable BCIB to comply with its statutory obligations under FOIPPA with respect to Personal Information that is within BCIB’s control and in the Contractor’s custody; and
- (b) assist the Contractor, as a service provider to BCIB, to comply with its statutory obligations under FOIPPA.

### **3 COLLECTION OF PERSONAL INFORMATION**

#### **3.1 Collection**

Unless this Agreement otherwise specifies or BCIB otherwise authorizes or directs in writing:

- (a) the Contractor may only collect or create Personal Information that is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under this Agreement;
- (b) the Contractor must collect Personal Information directly from the individual the information is about or from another source other than that individual with the written consent of the individual, or the individual's lawful representative; and
- (c) the Contractor must advise an individual from whom the Contractor collects Personal Information:
  - (i) the purpose for collecting it;
  - (ii) the legal authority for collecting it; and
  - (iii) the title, business address and business telephone number of the person designated by BCIB to answer questions concerning the Contractor's collection of Personal Information.

#### **3.2 Accuracy of Personal Information**

The Contractor must make every reasonable effort to ensure the accuracy and completeness of any Personal Information to be used by the Contractor or BCIB to make a decision that directly affects an individual the information is about.

#### **3.3 Requests for Access to Personal Information**

If the Contractor receives a request, from a person other than BCIB, for access to Personal Information, the Contractor must promptly advise the person to make the request to BCIB unless this Agreement expressly requires the Contractor to provide such access, and, if BCIB has advised the Contractor of the name or title and contact information of an official of BCIB to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

#### **3.4 Correction of Personal Information**

- (a) Within five Business Days of receiving a written direction from BCIB to correct or annotate any Personal Information, the Contractor must correct or annotate the information in accordance with the direction.
- (b) When issuing a written direction under Section 3.4(a) of this Schedule 3 BCIB must advise the Contractor of the date the correction request to which the direction relates was

received by BCIB in order that the Contractor may comply with Section 3.4(c) of this Schedule 3.

- (c) Within five Business Days of correcting or annotating any Personal Information under Section 3.4(a) of this Schedule 3, the Contractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to BCIB, the Contractor disclosed the information being corrected or annotated.
- (d) If the Contractor receives a request for correction of Personal Information from a person other than BCIB, the individual whose Personal Information has been requested, or that individual's lawful representative, the Contractor must promptly advise the person to make the request to BCIB and, if BCIB has advised the Contractor of the name or title and contact information of an official of BCIB to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

### 3.5 Protection of Personal Information

The Contractor must protect Personal Information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in this Agreement.

### 3.6 Storage and Access to Personal Information

Unless BCIB otherwise authorizes or directs in writing, the Contractor must not store Personal Information outside Canada or permit access to Personal Information from outside Canada.

### 3.7 Retention of Personal Information

Unless this Agreement otherwise specifies, the Contractor must retain Personal Information until authorized or directed by BCIB in writing to dispose of it or deliver it as specified in the authorization or direction.

### 3.8 Use of Personal Information

Unless BCIB otherwise authorizes or directs in writing, the Contractor may only use Personal Information if that use is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under this Agreement, and for clarity in accordance with Section 3.6 of this Schedule 3.

### 3.9 Disclosure of Personal Information

The Contractor must not disclose Personal Information inside or outside Canada to any person other than BCIB unless the disclosure is to an entity that can legitimately compel disclosure under the laws of British Columbia or the disclosure is directed or authorized by BCIB or the disclosure is requested or authorized by the individual whose Personal Information is at issue or

that individual's lawful representative. BCIB will not unreasonably withhold its authorization under this Section 3.9.

### 3.10 Inspection of Personal Information

In addition to any other rights of inspection BCIB may have under this Agreement or under statute, BCIB may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect any Personal Information in the possession of the Contractor or any of the Contractor's information management policies or practices relevant to its management of Personal Information or its compliance with this Schedule 3 and the Contractor must permit, and provide reasonable assistance in respect to, any such inspection.

## **4 COMPLIANCE WITH FOIPPA AND AUTHORIZATIONS**

### 4.1 Service Provider

- (a) The Contractor understands and acknowledges that it is a service provider of a public body as defined in FOIPPA.
- (b) The Contractor acknowledges that it is familiar with the requirements of FOIPPA governing Personal Information that are applicable to it as a service provider.
- (c) The Contractor must in relation to Personal Information comply with:
  - (i) the requirements of FOIPPA applicable to the Contractor as a service provider, including any applicable order of the Information and Privacy Commissioner under FOIPPA; and
  - (ii) any direction given by BCIB under this Schedule 3.

### 4.2 Notice of Non-Compliance

If for any reason the Contractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule 3 in any respect, the Contractor must promptly notify BCIB of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

**SCHEDULE 4  
FORM OF BCIB-SUBCONTRACTOR AGREEMENT**

**(see attached)**

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