



## **BRAGG CREEK EXCAVATING Ltd.**

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PO Box 1346 Bragg Creek, AB T0L 0K0 | (403) 949-2756 | Cell: (587) 968-7720

### **STANDARD TERMS AND CONDITIONS**

These Terms and Conditions form part of the agreement between Bragg Creek Excavating (“BCX”) and the client and/or client’s representative (“Owner”) and govern all work performed by BCX unless expressly modified in writing and signed or approved by BCX.

These Terms and Conditions apply to all work performed by BCX, whether arising from a written contract, quotation, addendum, approved change order, verbal, email, text authorization, emergency, or site-driven work. These provisions apply notwithstanding project completion, suspension, or termination. Relevance of any provision shall be determined having regard to industry standards and the scope of work performed.

In the event of any conflict, the following order of precedence shall apply: (a) an executed written work agreement or approved change order; (b) these Standard Terms and Conditions. Website materials or marketing content shall not govern. If any provision of these Terms and Conditions is found unenforceable, the remaining provisions will continue in full force and effect. By signing, approving, or otherwise authorizing BCX to proceed with work – including by written agreement, signed quotation, email, text message, or by permitting work to commence – the Owner acknowledges and agrees that these Terms and Conditions apply to and govern the work performed by BCX.

Any notice required under these Terms and Conditions may be provided by email, text message, written letter, or other written communication sent to the contact information provided by the Owner. Notice shall be deemed received on the date sent unless the sender receives a delivery failure notification. The Owner is responsible for maintaining current contact information and monitoring communications during the project.

Any summaries, descriptions, or informational materials published on BCX’s website are provided for general transparency only and do not constitute a contract, quotation, or commitment. No reliance may be placed on website materials for pricing, scheduling, or representations regarding the scope or performance of work. In the event of any inconsistency, these Standard Terms and Conditions shall govern.



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### **1. Schedule and Weather**

- 1.1 Work schedules are dependent on weather and site conditions.
- 1.2 BCX reserves the right to postpone, delay, suspend or re-sequence work due to inclement or unfavourable weather or site conditions, including delays caused by groundwater, frozen ground, or other site-specific environmental conditions.
- 1.3 BCX shall not be liable for delays arising from weather or site conditions. No damages, penalties, extended overhead, standby, acceleration, or liquidated damages shall apply to such delays.

### **2. Force Majeure**

- 2.1 Bragg Creek Excavating shall not be liable for failure to perform under circumstances beyond its reasonable control, including but not limited to acts of God, natural disasters, war, labour disputes, pandemics, government restrictions, utility delays, permitting delays, supply chain disruptions, labour and fuel shortages, or other events beyond BCX's reasonable control. Time for performance shall be extended for the duration of the Force Majeure event.
- 2.2 BCX shall not be responsible for any costs, losses, or damages arising from a Force Majeure event.

### **3. Additional Work/Cost-Plus**

- 3.1 Any work outside the contract inclusions ("Extra Work") may be completed on a cost-plus (time and materials) basis unless otherwise agreed in writing.
- 3.2 Extra work may arise due to unforeseen site or subsurface conditions, utilities, regulatory requirements, safety considerations, Owner-requested changes, discrepancies between plans and actual site conditions, or other circumstances including but not limited to those reasonably encountered during site preparation, acreage development, excavation, grading, road building, servicing or other related earthworks and construction activities.
- 3.3 Requests for Extra Work from the Owner will be documented in writing and approved by a BCX manager or supervisor.
- 3.4 Administrative work beyond what can be reasonably expected through "good faith" shall be billed at the administrative hourly rate(s) unless otherwise agreed upon. This includes but is not limited to, modification of existing agreement(s), consulting, design, research, communications, and travel.



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3.5 Where BCX provides notice of *required* Extra Work, the Owner shall respond within twenty-four (24) hours.

3.5.1 If the Owner fails to respond within this time, BCX may, at its sole discretion:

3.5.1.1 Proceed without Owner consent where delay would affect safety, regulatory compliance, site conditions, the construction schedule, or the integrity of the work.

3.5.1.2 Suspend the affected work and apply standby, delay, or demobilization and remobilization charges in accordance with Section 14.

3.5.1.3 In extenuating circumstances, the twenty-four (24) hour response window may be waived at BCX's discretion if failure to perform required Extra Work will result in significant project loss.

3.5.2 BCX will maintain detailed records, with rationale, of the work performed or suspended.

3.6 Where Extra Work is undertaken in accordance with Section 3, the Owner agrees that such work shall be payable in accordance with BCX's standard invoicing terms, regardless of project completion status.

3.7 Extra Work will be billed at BCX's then-current hourly labour and equipment rates, plus materials, subcontractors, and applicable mark-ups (if any), unless otherwise agreed.

#### **4. Utilities**

4.1 The Owner must accurately locate, mark, and disclose all private underground utilities prior to commencement of work.

4.2 BCX is not responsible for incorrectly located or undisclosed private utilities.

4.3 Costs to repair damage caused by incorrect utility information will be billed to the Owner on a cost-plus basis, including labour, materials, and equipment.

4.4 The Owner shall indemnify and hold harmless BCX from all claims, losses, fines, damages, or expenses arising from incorrect, incomplete, or undisclosed private utility information.

#### **5. Site Access**

5.1 The Owner is responsible for providing clear, safe, and unobstructed access suitable for the equipment planned for mobilization, for the duration of the project.

5.2 The Owner acknowledges that excavation and construction may result in disturbance to lawns, driveways, landscaping, and surrounding surfaces necessary



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to access or perform the work. Restoration, repair or replacement of such areas is not included unless expressly stated in the written scope of work, or caused by BCX's negligence. Delays due to access complications may result in standby charges or cost-plus billings.

- 5.3 BCX retains sole discretion to determine whether site access is adequate and safe for the specific equipment required for the work. BCX may suspend or refuse to commence work where access is inadequate or unsafe without liability for resulting delay(s).

### **6. Drainage**

- 6.1 BCX does not guarantee drainage performance unless drainage design and specific performance criteria are expressly included in the written scope of work. BCX does not guarantee positive drainage or water shedding on lands with an overall slope of less than two percent (2%). No implied warranty or representation is made regarding drainage performance outside the written scope of work.

### **7. Invoices and Payment**

- 7.1 BCX shall issue proper invoices every 31 calendar days in accordance with the Alberta's Prompt Payment and Construction Lien Act (PPCLA).
- 7.2 Payment is due within 28 days of receipt, without set-off or deduction, except as expressly permitted under the PPCLA.
- 7.3 Late payments accrue interest at a rate of three percent (3%) per month (36% per annum), calculated monthly and compounded monthly, until paid in full.
- 7.4 In the event of non-payment, the Owner shall provide written notice of non-payment in accordance with the PPCLA, including the disputed amount and detailed reasons for non-payment, within 14 days of issuance of a proper invoice. Failure to do so within the prescribed timeline constitutes acceptance of the invoice as payable.
- 7.5 In the event of non-payment when payment is due in accordance with the PPCLA, all warranties, guarantees, and remedial obligations of BCX are suspended until the account is paid in full.
- 7.5.1 The Owner expressly waives any right to claim warranty service, remedial work, or damages for any deterioration, damage, or defect arising or worsening during period of non-payment to the maximum extent permitted by law.
- 7.5.2 During any period of non-payment, BCX shall have no obligation to mitigate loss, prevent deterioration, or attend the site.



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- 7.5.3 Upon payment in full, warranty obligations shall resume only with respect to defects unrelated to the period of non-payment and shall not apply to conditions resulting from delayed maintenance, site exposure, third-party interference, normal wear and tear, or project delays caused by the Owner.
- 7.5.4 BCX shall not be responsible for costs, losses, or damages arising from enforcement or collection actions.
- 7.6 BCX reserves the right to require payment in advance for any warranty work or remedial site attendance where the Owner has previously been in material breach of payment terms.
- 7.7 If payment for an invoice is not rendered within 40 days of issuance of the proper invoice, a lien may be filed against the property and all costs associated with preparing and registering the lien may be charged to the Owner to the extent permitted by law.
- 7.8 BCX may suspend or stop work for nonpayment without penalty or liability for resulting delay.

### **8. Owner Responsibilities**

- 8.1 The Owner must request clarification on any unclear contract items before work begins. Failure to do so relieves BCX of responsibility for misunderstandings where the Owner did not request clarification and BCX performed the work in accordance with the awarded scope of work.
- 8.2 Costs to remedy discrepancies or Owner-requested changes will be billed to the Owner.
- 8.3 Any Owner concerns or claims must be submitted in writing as soon as reasonably discovered. Failure to comply with the notice and inspection requirements in this section constitutes a waiver of the Owner's claim to the extent permitted by law. BCX must be given a reasonable opportunity to inspect and, if applicable, remedy the issue before corrective work is undertaken by others. Verbal communications or informal site discussions do not constitute written notice.

### **9. Natural Materials**

- 9.1 Natural materials, including but not limited to gravel, soil, wood, and rock possess inherent variability. Variations in appearance, composition, or performance are not defects. BCX is not responsible for variations or differences inherent in these materials.

### **10. Workmanship, Safety & Compliance**



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- 10.1 BCX agrees to complete work in a workmanlike manner consistent with industry standards and in accordance with all applicable laws and regulations.
- 10.2 BCX agrees that all work will be completed in accordance with the BCX health and safety management system, and COR guidelines.
- 10.3 BCX does not provide engineering services unless expressly stated in writing.

### **11. Warranty**

- 11.1 Unless otherwise stated, the duration of warranty for completed services shall be one year from the date of substantial completion, excluding defects arising from normal wear and tear, environmental exposure, lack of maintenance, third-party interference, or Owner-caused delay. Warranty is limited to repair or correction of defective workmanship at BCX's discretion.
- 11.2 Applicability of a warranty claim shall be assessed by an authorized Bragg Creek Excavating representative acting reasonably.

### **12. Unsafe Conditions**

- 12.1 BCX is not responsible for failure to perform if unsafe work conditions exist or if work is requested under unsafe conditions by the Owner. The Owner indemnifies BCX for any damages, claims, or losses arising from such work except to the extent caused by BCX's negligence.

### **13. Cancellation by Owner**

- 13.1 The cancellation fees set out herein represent a genuine pre-estimate of BCX's losses and are non-refundable.
  - 13.1.1 Lump Sum Contracts: Owner pays for all work completed to date, plus 10% of the quoted contract value or \$2,500.00, whichever is greater.
  - 13.1.2 Time and Material Contracts: Owner pays for all work completed to date plus a non-refundable cancellation fee of 20% of the remaining estimated contract value or \$2,500.00, whichever is greater.

### **14. Owner Caused Delays/Standby Charges**

- 14.1 Delays caused by the Owner exceeding one (1) day may result in non-refundable standby charges.
  - 14.1.1 Lump Sum Contracts: 5% of the quoted contract value per day of delay.
  - 14.1.2 Time and Material Contracts: 10% of the sum of equipment hourly billings per day. One business day shall count as eight billable standby hours.



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### **15. Subsurface/Site Conditions**

- 15.1 BCX is not responsible for unforeseen subsurface conditions (e.g., rock, clay, groundwater) that differ materially from information provided by the Owner.
- 15.2 Costs to address these conditions are the Owner's responsibility.
- 15.3 Cancellation resulting from these findings will not incur standard cancellation fees. However, expenses incurred for demobilization resulting from cancellation will be the sole responsibility of the Owner.
- 15.4 BCX does not warrant subsurface conditions and relies on information provided by the Owner or available at the time of work.

### **16. Limitation of Liability**

- 16.1 BCX's total aggregate liability for all claims arising from the project is limited to the lesser of \$50,000 or the contract value, to the maximum extent permitted by law. Indirect, consequential, incidental, or punitive damages are excluded, regardless of the legal theory advanced.

### **17. Insurance**

- 17.1 BCX maintains commercial general liability insurance and workers' compensation coverage (WCB). Proof of insurance and/or WCB clearance is available upon request.
- 17.2 BCX maintains means of providing bid and project securities if requested or required by the Owner. All expenses incurred in procurement of project specific securities will be billed to the Owner.

### **18. Dispute Resolution**

- 18.1 The parties agree to attempt mediation prior to commencing court proceedings. This agreement shall be governed by the laws of the Province of Alberta.
- 18.2 In the event of a dispute, costs arising from mediation and/or arbitration, including administrative fees, shall be allocated as determined by the mediator or arbitrator, having regard to the conduct of the parties and the outcome of the dispute.
- 18.3 In the event an Owner bypasses the contractual dispute resolution process, all associated solicitor, court, filing, and administrative expenses incurred by BCX shall be the sole responsibility of the Owner.



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### **Acknowledgement**

By entering into an agreement with BCX, the Owner confirms they acknowledge and agree to be bound by all Terms and Conditions, and voluntarily agree to be bound by them. The Owner represents that they have full authority to enter into this agreement on behalf of themselves or their organization and that they are entering this agreement without duress, coercion, or undue influence.

For convenience, a **printable PDF version of the Terms and Conditions is available here.**