



Commission of Inquiry Respecting the Muskrat Falls Project

May 10, 2018

Professor Bent Flyvbjerg
Chairman
Oxford Global Projects, Ltd.
PO Box 156
Ground Floor, Dorey Court
Admiral Park
St Peter Port, Guernsey GY1 4EU
United Kingdom

By Email: flyvbjerg@ [REDACTED]

Dear Professor Flyvbjerg:

Re: Commission of Inquiry Respecting the Muskrat Falls Project ("the Inquiry")

Further to our recent correspondence, this is to confirm your retention as an expert to the Inquiry on the following basis:

1. *Conflict of Interest*

You confirm that you are not now, nor have you been at any time, subject to any other mandate which would be in conflict with the acceptance of this retainer.

2. *Scope of Retainer*

Your mandate is to provide services to the Inquiry as set out in **Schedule A** (hereinafter referred to as "Services").

3. *Professional Fees*

You shall be remunerated for the Services as set out in **Schedule B**.

4. *Disbursements*

Travel and related disbursements expended in performing the Services will be reimbursed, without markup, at actual cost.

5. Payment

The deduction and remittance of eligible taxes (income tax, social benefits, worker's compensation) and/or other similar taxes, fees, charges or amounts are your sole responsibility.

In the event that this agreement is canceled prior to its scheduled completion, the Inquiry will be responsible only for payment to you for actual work performed to the date of any such cancellation. The agreement may only be cancelled or terminated by the Inquiry.

6. Confidentiality

You confirm that this retainer is confidential and that you will not divulge the existence or purpose of this retainer unless it becomes a matter of public disclosure. You further confirm that you will sign the attached Confidentiality Undertaking (**Schedule C**), which forms part of this agreement.

7. Relationship of Parties

It is understood and agreed that the relationship between you and the Inquiry is that of an independent contractor. You shall not be and shall not hold itself out as being an employee, partner, servant, affiliate or agent of the Inquiry for any purpose whatsoever. For greater certainty, you agree that the relationship between you and the Inquiry in no way entitles any potential plaintiff against your work to claim vicarious liability against the Inquiry.

8. Applicable Laws

This agreement will be governed by and interpreted according to the laws in force in Newfoundland and Labrador.

9. Publicity

You agree not to submit, publish, broadcast, disseminate or distribute in any manner any article, or disseminate or distribute in any manner any marketing or promotional material that contains any information relating to the business being conducted with the Inquiry without receiving prior written consent from the Inquiry.

10. Regulations

You will fully comply with all appropriate federal, provincial and/or state laws and regulations, as the case may be.

You shall meet (at your own expense) all municipal, local, provincial and/or state, and federal requirements applicable to the services performed by you, including but not limited to, all required licenses and permits.

11. Insurance

Contractor shall maintain all statutory workers compensation insurance in the Province in which it is registered, if required by law. Contractor may be required to provide a certificate evidencing such insurance or evidencing any exemption from requiring such insurance prior to performing any services hereunder and shall provide a copy of any such certification upon request.

12. Waivers

Any waiver by any party, whether express or implied, of any breach of any term, covenant or condition of this agreement shall not constitute a waiver as to any subsequent breach of the same or of any other term, covenant or condition thereof. Failure of a party to declare any breach upon the occurrence thereof, or any delay by any party in taking action with respect to any breach, shall not waive any such breach.

13. Notice

Any notice required to be given under this agreement shall be served:

on the Inquiry at the following address:

Commission of Inquiry Respecting the Muskrat Falls Project
Suite 502, Beothuck Building
20 Crosbie Place
St. John's, Newfoundland and Labrador A1B 3Y8
Attention: Chief Administrative Officer
Email: gerryberesford@muskatfallsinquiry.ca

and on the Contractor at the following address:

Oxford Global Projects, Ltd.
PO Box 156
Ground Floor, Dorey Court
Admiral Park
St Peter Port, Guernsey GY1 4EU
United Kingdom
Attention: Bent Flyvbjerg
Email: flyvbjerg@ [REDACTED]

14. Entire Agreement

This letter of retention (including the attached Schedules) constitutes the entire agreement with respect to your engagement. Any modification to this agreement must be in writing, signed by you and the Counsel to the Commission.

15. Severability

If any term, provision, covenant or condition of this agreement is declared invalid, illegal, unenforceable, ineffective or inoperative for any reason, such declaration shall not have the effect of invalidating or voiding the remainder of this agreement, and the parties agree that the part or parts of this agreement so held to be invalid, illegal, unenforceable, ineffective or inoperative will be deemed to have been stricken and the remainder will have the same force and effectiveness as if such part or parts had never been included.

16. Modifications of Agreement

This Agreement and any attachments or schedules hereto constitutes the entire agreement of the parties and supersedes all prior agreements and understandings, both written and oral, with respect to the subject matter and may be modified and amended only in writing, signed by both parties, unless otherwise specified within this Agreement.

17. Assignment

You shall not assign this agreement without the express prior written consent of the Inquiry.

Please confirm your acceptance of this mandate on the foregoing terms by signing and returning this letter it to my attention. We will countersign and return it to you.

If you have any questions or require further information, please feel free to contact me.

Yours very truly,



Kate O'Brien
Commission Counsel


Bent Flyvbjerg

14 May, 2018

Date

**Commission of Inquiry Respecting the Muskrat Falls Project
Overview of Megaproject Developments Internationally
Scope of Work and Term**

Scope of Work

Oxford Global Projects ("Consultant") will produce a report regarding the development of megaprojects internationally and specifically covering the following:

1. History of hydro-electric dams projects, including updated statistics on cost and schedule overruns of hydro-electric and other capital investment projects;
2. Causes of why cost and schedule escalate, e.g. unforeseen events, unknown geology;
3. Root causes of why cost and schedule escalate, e.g. Optimism Bias; and
4. Recommendations regarding how cost and schedule escalation on hydro-electric and other capital investment projects can be avoided in the future, with specific focus on:
 - Viability and risk assessment;
 - Oversight;
 - Accountability;
 - Transparency, and
 - Other recommendations.

The Consultant will also provide testimony related to its report at the public hearings of the Inquiry scheduled to be held on September 17, 2018 in Happy Valley-Goose Bay, Newfoundland and Labrador.

Extra Provision

The Consultant shall be responsible for ensuring that it has authority to use all material included in the paper for the purposes contemplated by this agreement.

The Consultant shall disclose any conflicts of interest or potential conflicts of interest to the Inquiry as soon as possible after it becomes aware of them.

As with all independent consultants retained by the Inquiry, the Consultant will sign a confidentiality undertaking with the Inquiry.

Commission Co-counsel will work with the Consultant to prepare for testimony at the Inquiry's public hearing. The Consultant's testimony will consist of a review of the highlights of its paper. Legal counsel for parties with standing may choose to cross examine the Consultant.

**Commission of Inquiry Respecting the Muskrat Falls Project
Overview of Megaproject Developments Internationally
Remuneration**

Remuneration

In conducting the Work for the Inquiry, the Consultant will be remunerated as follows:

- Professional Fees – The Consultant will be compensated [REDACTED] to complete the Work. This includes all taxes.
- Witness expenses – The Consultant is scheduled to present a summary of its paper at a public hearing of the Inquiry in Happy Valley-Goose Bay in the Fall of 2018. This will involve air travel to/from the United Kingdom to Happy Valley-Goose Bay, hotel accommodations in Happy Valley-Goose Bay and per diem rate for meals plus incidentals. Airfare, hotel and car rental will be reimbursed at cost.

**Commission of Inquiry Respecting the Muskrat Falls Project
Overview of Megaproject Developments Internationally
Confidentiality Undertaking**

I undertake to the Commission of Inquiry Respecting the Muskrat Falls Project (the Inquiry) to keep confidential any and all of the Inquiry's documents or information that are not in the public domain and to which I may become privy during the course of my assignment with the Inquiry. I understand that keeping documents or information confidential means that I cannot disclose any such documents or information to anyone other than the Commissioner, other Inquiry staff, or third parties to whom the Commissioner or Commission Counsel has explicitly instructed me to disclose.

I will not use these documents or information for any purpose other than my work for the Inquiry. I understand that confidential information includes both written material as well as that conveyed through discussion in the course of the Commission's daily business.

At the end of my assignment with the Inquiry, I will not make copies of, and will return, any and all documents that are subject to this undertaking.

Name: Bent Flyvbjerg

Signature:  _____

Date: 14 May, 2018

Witness: Alexander Budzier

Signature:  _____

Date: 14 May, 2018