

From: pharrington@nlh.nl.ca
Sent: Tuesday, February 6, 2007 4:40 PM
To: ccook@nlh.nl.ca
Subject: [REDACTED] Jason Kean
Attachments: JK 24 Feb 2007 rev 4.doc; [REDACTED] Feb 2007 rev 1.doc

Charles

Here is a draft of a renewal contract for [REDACTED] pls check it over and process get the necessary approvals and have [REDACTED] sign on.

I also attach a contract that Jason Kean was presented and has signed - I will have Wayne and Gilbert sign off and send to you

Regards Paul



JK 24 Feb 2007 rev 4.doc



[REDACTED] Feb 2007 rev 1.doc

**AGREEMENT FOR CONSULTING SERVICES RELATING TO
THE PROPOSED LOWER CHURCHILL HYDROELECTRIC PROJECT**

THIS AGREEMENT is made at St. John's in the Province of Newfoundland and Labrador effective 2nd February 2007.

BETWEEN: NEWFOUNDLAND AND LABRADOR HYDRO, (herein called the "Client") of the one part,

AND: PROJECT SOLUTIONS INC. (herein called the "Consultant") of the other part.

WHEREAS:

- (1) The Client is assessing development options and opportunities for the proposed Lower Churchill hydroelectric development in Labrador and requires the services of an experienced manager in the field of project services specifically more particularly described in Schedule 1 - Statement of Work.
- (2) The Client understands and accepts that Consultant is qualified to perform the Work required under this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in this Agreement, the parties agree as follows:

1. Definitions

- 1.1 "Government" means the Government of Newfoundland and Labrador.
- 1.2 "Eligible Expenditures" means expenditures, as approved by the Client, made by the Consultant in respect of and for the sole purpose of completing the Work.
- 1.3 "Intellectual Property" means all data, designs, plans, drawings, specifications, research, reports, notes, estimates, summaries, calculations, surveys, papers, completed work, and work in progress and such other information and materials or parts thereof as are compiled, drawn and produced by the Consultant in performing this Work, including computer printouts and computer models and all copyrights thereto and all patents, trademarks and industrial designs arising there from.
- 1.4 "Work" means the provision of consulting services, preparation of reports, and presentation of analysis, findings, and conclusions and more particularly described in Article 2 and Schedule 1 – Statement of Work.

2. Consultant's Obligations

- 2.1 The Consultant shall perform the Work as described in Schedule 1 - Statement of Work attached hereto.

3. Client's Obligations

- 3.1 The Client shall pay the Consultant an all-inclusive rate of [REDACTED] (Cdn. \$) per 9 hour day plus HST for performance of the Work as outlined in Schedule 1 – Statement of Work. Any partial days or hourly work will be paid at the hourly rate of [REDACTED] (Cdn \$) plus HST to a maximum of the daily rate of [REDACTED] (Cdn \$) plus HST.
- 3.2 Eligible Expenditures will be reimbursed at cost. Consultant shall follow Client's travel and expense policies and procedures and such Eligible Expenditures shall be submitted monthly for reimbursement.
- 3.3 Upon presentation of itemized invoices to Newfoundland and Labrador accounts payable, including the separate identification of the Consultant's HST registration number, with supporting documentation acceptable to Client, the Client shall pay the Consultant in consideration for Work performed and Eligible Expenses incurred under this Agreement for performance of the Work pursuant to Schedule 1.
- 3.4 Payment shall be made in accordance with Clause 3.3 within 30 days after receipt of an acceptable invoice.

4. Term

- 4.1 The term shall be twelve (12) months commencing 12 March 2007 and may be extended upon written agreement by both parties.

5. Liaison Between the Parties

- 5.1 The Client shall promptly provide such decisions, instructions, acceptances and information as reasonably required by the Consultant in the performance of the Work.

6. Entire Agreement

- 6.1 This Agreement constitutes the entire Agreement between the parties and supersedes all previous agreements or arrangements, written or oral, relating to the Work.

7. Confidentiality

- 7.1 The Consultant shall enter into a Confidentiality Agreement (attached), to follow through on Consultant's obligations to retain the confidentiality of information. The

Consultant shall enter into a similar Confidentiality Agreement with each of its sub-consultants.

- 7.2 Client is subject to the Access to Information and Protection of Privacy Act, Statutes of Newfoundland and Labrador, 2002 Chapter A-1.1 (hereinafter referred to as the “ATIPP Act”), and consequently the possibility that the public has a right of access to Client’s records.
- 7.3 Although section 27 of the ATIPP Act provides an exception, which may sometimes be enforceable when access to information relating to a third party is requested, there may be instances when Client is required to provide a member of the public with access to such information. The Consultant should familiarize itself with the provisions of the ATIPP Act.

8. Conflict of Interest

- 8.1 The Consultant confirms that it or its employees are not currently subject to any mandate, which would be in conflict with the Client’s interest in the Lower Churchill hydro development. On an ongoing basis, the Consultant shall ensure that it will not accept a mandate, which would put it in conflict with the Client’s interests. In the event that any potential conflict of interest should be identified, it will be immediately communicated to the Client and a mutually satisfactory resolution determined.

9. Non-Waiver

- 9.1 The failure of the Client to insist upon or enforce in any instance, strict performance by the Consultant of any of the terms of this Agreement or to exercise any rights herein conferred, shall not be construed as a waiver or a relinquishment to any extent of the Client’s right to assert or rely upon any such terms or rights on any future occasion.

10. Liability

- 10.1 The Consultant shall be responsible for any errors or omissions in its performance of the Work, provided that such errors or omissions do not arise from inaccurate, incomplete or defective information furnished by the Client, its employees, agents or servants. The Consultant shall, at its own expense, re-perform the Work to the extent necessary to correct or remedy such acts or omissions in a timely manner and without additional compensation provided that the Client has provided the Consultant with written notice of such acts or omissions to the Consultant within a period of twelve (12) months from completion of Work.
- 10.2 The Consultant shall indemnify and hold harmless the Client from and against any liability that Client may incur arising from Consultant’s performance of the Work

under this Agreement except for liability for claims for damages or losses resulting from the acts or omissions of the Client's employees, agents and representatives in the exercise of their duties within the scope of their employment. Consultant's liability pursuant to this Agreement, excluding the value of all Work performed pursuant to Clause 10.1, shall not exceed [REDACTED] under this Agreement.

- 10.3 The Client shall indemnify and hold harmless the Consultant from and against any liability that Consultant may incur arising from claims for damages or losses resulting from the acts or omissions of the Client's employees, agents and representatives in the exercise of their duties within the scope of their employment. Client's liability pursuant to this Agreement shall not exceed [REDACTED] under this Agreement.
- 10.4 The Consultant, shall at all times, comply with all applicable laws, ordinances, statutes, rules, regulations and orders of governmental and municipal authorities, and shall give due regard to all business practices and local customs prevailing in the Province of Newfoundland and Labrador when performing the Work.

11. Insurance

- 11.1. Where Consultant intends to use an automobile in the performance of the Work the Consultant shall carry Automobile Liability Insurance with a limit of not less than [REDACTED] dollars combined for any one occurrence including personal injury, loss of life or property damage or loss.
- 11.2. Consultant shall provide Client with proof of the insurance coverage, which it is required to maintain in full force and effect during the performance of the Work.
- 11.3. All insurance policies shall provide that the insurance shall not be cancelled, terminated, or be allowed to lapse without at least thirty (30) calendar days written notice to Client, sent by prepaid, registered mail to the head office of Client. In the event of any such cancellation, termination, change, or lapse in any insurance, Consultant shall immediately replace such insurance.
- 11.4. Where an insurer fails or refuses to pay any claims under an insurance policy covering the activities of Consultant relating to or arising out of the Work or in performance of this Agreement, Consultant shall not be released from any liability arising pursuant to this Agreement.
- 11.5. Prior to commencing the performance of any part of the Work, the Consultant will also be required to produce to Client a Certificate of Good Standing with the Work Place Health, Safety and Compensation Commission of Newfoundland and Labrador and shall continue in good standing during the performance of the Work.
- 11.6. Prior to commencing the performance of any part of the Work, the Consultant shall have in place any other insurance, which is required by law.

12. Intellectual Property

12.1. All Intellectual Property discovered or produced pursuant to this Agreement shall be and become the sole and exclusive property of and for the unrestricted use of by the Client and shall be delivered to the Client upon completion of the Work or upon earlier termination of this Agreement. The Consultant may retain for its own internal purposes copies of Work reports and related data but the Consultant shall not divulge, release or publish same, or any part thereof without the prior written permission of the Client.

13. Accounts

13.1. The Consultant shall keep and maintain accurate accounts in respect of the Work, and when required by the Client, shall make such material available for inspection, audit and photocopying by the Client.

14. Benefits

14.1. No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits to arise there from.

15. Termination

15.1. The following is agreed:

- I. For the first 12 months after 12th March 2007 – there is no provision for termination by Client or by Consultant unless by mutual agreement or by cause
- II. For any extension of the term of this Agreement, the notification period shall be 3 months prior written notice by either party unless a lesser period is mutually agreed

16. Assignment

16.1. The Consultant shall not assign this Agreement.

17. Notice

17.1. All notices, claims, payments, reports and other communications required under this Agreement shall be in writing. The addresses for services are as follows:

For the Client:

Mr. Gilbert Bennett, P.Eng.

Vice President, Lower Churchill Project Phone: (709) 737-1836

Newfoundland & Labrador Hydro
P. O. Box 12400
St. John's, NL A1B 4K7

Fax: (709) 737-1829
E-mail: gilbertbennett@nlh.nl.ca

For the Consultant:
Mr. Jason Kean, P.Eng
Project Solutions Inc.

Phone: (709) [REDACTED] 129
Fax: Not applicable
E-mail: jrkean@[REDACTED]

17.2. Notices, requests or documents shall be deemed to have been received by the addressee as of the date on which they are delivered where delivery is by messenger or special courier services, as of the date on which they are sent where delivery is by facsimile transmission, email or other means of telecommunication, and six (6) days after mailing where the postal services are used.

18. Governing Law and Forum

18.1. This Agreement shall be governed by and interpreted according to the laws of the Province of Newfoundland and Labrador, and all actions, suits, and proceedings arising out of this Agreement shall be determined in a court of competent jurisdiction in the Province of Newfoundland and Labrador, subject to any right of appeal.

19. Effect of Agreement

Nothing in this Agreement constitutes the Consultant as an employee or agent of the Client and it shall be an independent contractor.

20. Language of Agreement

Documentation, required submittals and all other communications, whether verbal or written, shall be in English.

IN WITNESS WHEREOF these present were executed by the duly authorized signing officers of the parties at the time and place first above written.

Witness

Mr. Gilbert Bennett, P. Eng.
Vice-President, Lower Churchill Project
Newfoundland & Labrador Hydro

Witness

Mr. Jason Kean, P. Eng
Project Solutions Inc

SCHEDULE 1
STATEMENT OF WORK

Project Services Manager**Work Description**

The Project Services Manager, reporting to the Project Implementation Manager directing the project services team and part of the Business Services Leadership Team has the following functional responsibility areas:

Project Cost Control – development and implementation of processes, systems and procedures dealing with:

Guidance and leadership to the project services team and support contractors

Cost and quantity estimating

Cost reporting, trending and cost reporting

Planning and scheduling – including Client schedules and the project integrated schedule

Monthly report

Risk register, risk mitigation and risk analysis

Project Management systems

Management of Change

Gateway and Readiness processes

Develop and deploy an Occupational Health and Safety Management System for the project

Develop and deploy a Quality Management System

Ad hoc Support to Business Development VP

Interface management and support to Financial VP and economic modeling

Special projects as assigned by Client Leadership

CONFIDENTIALITY AGREEMENT

2 February 2007

Dear Sirs;

RE: Assessment of Development Options of the Lower Churchill Hydroelectric Development in Labrador

Project Services Inc. ("Consultant") has agreed to provide to Newfoundland and Labrador Hydro ("Hydro") certain consultant services (the "**Services**") related to project management services for the Lower Churchill development in Labrador, all as more particularly set forth in an agreement between Consultant and Hydro dated 24 January 2007. In the course of providing the Services, Consultant may be furnished with information owned by Hydro or about Hydro, including, without limitation, (i) previous studies and estimates related to the Lower Churchill development, and (ii) the business, operations, assets, strategic initiatives, agreements and projects of Hydro.

In consideration of a portion of the compensation paid to Consultant in providing the Services, you agree to treat as strictly confidential all of such information, including without limitation, reports, data, analyses, studies, research, programs, computer data, applications, software, diskettes, intellectual property and other information which Hydro or any of its, affiliates, subsidiaries, directors, officers, employees, representatives, agents or advisors (collectively, "**Our Representatives**") furnish to Consultant (i) whether furnished before or after the date hereof, (ii) whether furnished orally or in writing or gathered by inspection and (iii) whether or not specifically identified as "confidential" (collectively, the "**Confidential Information**").

The term Confidential Information does not include information (i) which is, or becomes, generally available to the public other than as a result of an unauthorized disclosure thereof by Consultant, or (ii) which is, or becomes, available on a non-confidential basis from a source other than Hydro (provided that such source is not itself bound by a confidentiality agreement with Hydro).

You will disclose the Confidential Information only to those of your directors, officers, employees, representatives, agents, sub-consultants, sub-contractors or advisors (collectively, "**Your Representatives**") who have a need to know the Confidential Information for the purpose of providing the Services. You will, prior to disclosing Confidential Information to any of Your Representatives, issue appropriate instructions to such representatives to satisfy your obligations herein and obtain their written agreement to receive and use the Confidential Information on a confidential basis on the same conditions as contained in this letter agreement and to otherwise comply with the terms hereof. You agree (i) that you and Your Representatives will use the Confidential Information solely to assist Consultant in providing the Services and for no other purpose and, without limitation, not to use the Confidential Information for the benefit of any one other than Hydro, and (ii) that you and Your Representatives will keep the Confidential Information confidential except to the extent that Hydro gives its prior written consent to such disclosure.

You agree to take all steps necessary to prevent the prohibited or unauthorized disclosure or use of the Confidential Information and to destroy or return same (and all originals, copies, extracts or other reproductions thereof) to Hydro immediately after providing the Services or, if requested by Hydro, at any earlier time. Any verbal or visual Confidential Information will continue to be subject to the terms

of this letter agreement. This commitment shall apply to all Confidential Information in the possession or control of Your Representatives and any agents, sub-consultants and sub-contractors thereof. You will ensure that Your Representatives will obtain the same written agreement with respect to Confidential Information as set forth in this letter agreement prior to releasing any Confidential Information to any agents, sub-consultants or sub-contractors which may be performing any portion of the Services on behalf of Your Representatives. You agree to be responsible for any breach of this letter agreement by you or Your Representatives, or the agents, sub-consultants or sub-contractors of Your Representatives.

Nothing in this letter agreement shall prevent Consultant from making disclosure of any information of which it obtains knowledge in the course of providing the Services, if Consultant is required to do so by order of any court of competent jurisdiction or any competent regulatory authority, or under any applicable legal provision, provided that Consultant gives notice in writing to Hydro of any requirements to make such disclosure immediately upon becoming aware of such requirement and prior to disclosing any information whatsoever.

Nothing in this letter agreement shall confer upon Consultant any right, title or interest in or to the Confidential Information other than to use same to assist Consultant in providing the Services and Consultant shall have no right, title and interest in and to any intellectual property created in rendering the Services, such right, title and interest to be assigned to and held exclusively by Hydro. You expressly agree that Consultant are not authorized to use the Confidential Information to perform subsequent mandates for the benefit of other persons or companies.

The recourse of Hydro hereunder and at law is cumulative and non-exclusive. No failure or delay by Hydro to exercise any right or recourse arising from a breach of any term of this letter agreement shall operate as a waiver of such right or recourse. Nor shall any single or partial exercise thereof preclude any other or further exercise thereof.

You acknowledge that any breach of this letter agreement will cause serious and irreparable prejudice to Hydro, entitling it, without any notice or delay, to apply to a court for an injunction ordering Consultant to cease such breach and to require Consultant to pay all damages arising from such breach.

If any provision of this letter agreement should be unenforceable or invalid for any reason whatsoever, such unenforceability or invalidity shall not affect the enforceability or validity of the other provisions hereof. You acknowledge that you have had an opportunity to obtain independent legal advice in connection with the matters dealt with in this letter agreement. This letter agreement shall be governed by and construed in accordance of the laws of the Province of Newfoundland and Labrador and the laws of Canada applicable therein and may be amended only by written instrument.

This letter agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto, provided that this letter agreement may not be assigned by Consultant without the prior written consent of Hydro. This letter agreement may be executed in counterparts, each of which will be deemed an original and which together shall constitute one instrument. This letter agreement and the provisions hereof shall survive the termination of the Services.

Please confirm your agreement with the foregoing by signing and returning one copy of this letter to the undersigned whereupon this letter agreement shall become a binding agreement between Consultant and Hydro.

Yours truly,

NEWFOUNDLAND AND LABRADOR HYDRO

By: _____

Name:

Title:

Consultant, hereby agrees to the terms and conditions of the above letter agreement this 2nd day of February, 2007.

By: _____

Name:

Title:

I have authority to bind the Corporation.