

**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 01 October 2005.

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

**AND:** FABCON CANADA LTD, representing:  
PAUL HARRINGTON, (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. In this regard, the Client requires expert advice and in-depth knowledge of contracting options, project execution, project organizational development and pre qualification assistance for selection of potential project management companies.
- (2) The Client understands and accepts that Paul Harrington is qualified to deliver 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 all as may be set out in article 2.

2. Consultant's Obligations

- 2.1 The Consultant shall undertake provision of the Work as described in Schedule - Statement of Work1 attached hereto.

3. Client's Obligations

- 3.1 The Client shall pay the Consultant [REDACTED] (Cdn. \$) per 9-hour day plus HST for 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 \$) to a maximum of the daily rate of [REDACTED], plus HST.
- 3.2 Eligible Expenditures will be reimbursed at cost plus a markup of 5%. Consultant shall follow Client's travel and expense procedures and such Eligible Expenditures shall be submitted monthly for reimbursement.
- 3.3 Upon presentation of itemized invoices with supporting documentation acceptable to Client, the Client shall pay the Consultant in consideration for services rendered 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 This Agreement is in effect until March 31, 2006 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 his Work under this Agreement.

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 not divulge, or authorize anyone else to divulge, either during the currency or after the completion or termination of this Agreement, any information to which the Consultant becomes privy as a consequence of the

performance of its obligations under this Agreement.

- 7.2 The Consultant shall treat all such information as confidential and the foregoing shall not apply to information that:
- was in the Consultant's possession or was previously known by the Consultant prior to the commencement of the Work;
  - becomes known or published through some agency other than the Consultant from third parties not connected with the project or with the performance of the Work; or
  - becomes part of the public domain through no fault of the Consultant.
- 7.3 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 public has a right of access to Client's records.
- 7.4 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 himself with the provisions of the ATIPP Act.

8. Conflict of Interest

- 8.1 The Consultant confirms that he is 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 faults or errors in the Work, provided that such faults or errors do not arise from inaccurate or defective information furnished by the Client, its agents, employees or servants. The Consultant shall, at his own expense, re-perform the Work to the extent necessary to remedy such faults in an

expeditious manner provided that the Client shall have given written notice of those faults 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 arising from the performance, part performance or non-performance under this Agreement except claims for damages or losses resulting from the negligence of an employee, agent or representative of the Client in the exercise of the duties within the scope of their employment. In no case shall the Consultant's liability exceed the value of the remuneration paid under this Agreement.

10.3 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. Intellectual Property

11.1 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 his 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.

#### 12. Accounts

12.1 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.

#### 13. Benefits

13.1 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.

#### 14. Termination

14.1 This Agreement may be terminated by either the Client or the Consultant by giving twenty-four (24) hours notice in writing to the other party. All outstanding statements of account for work done to date of termination shall be paid in accordance with Article 3.

15. Assignment

15.1 The Consultant shall not assign this Agreement.

16. Notice

16.1 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:

Gilbert Bennett

Vice President, Labrador Hydro Project

Newfoundland & Labrador Hydro

P. O. Box 12400

St. John's, NL A1B 4K7

Phone: (709) 737-1836

Fax: (709) 737-1829

E-mail: gilbertbennett@nlh.nl.ca

For the Consultant:

Mike Critch

Managing Director

Fabcon Canada Ltd

P.O. Box 69

Atlantic Place

St. John's, NL A1A 6C9

Phone: (709) 754-2145

Fax: (709) 754-2412

E-mail: mike.critch@fabcon.nf.ca

16.2 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 delivery where the postal services are used.

17. Governing Law and Forum

17.1 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.

18. Effect of Agreement

Nothing in this Agreement constitutes the Consultant as a servant or agent of the Client.

19. 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.

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Witness

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Mr. Gilbert Bennett, PEng.  
Vice-President, Labrador Hydro Project  
Newfoundland & Labrador Hydro

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Witness

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Mr. Mike Critch, PEng.  
Managing Director  
Fabcon Canada Ltd

**SCHEDULE 1**  
**STATEMENT OF WORK**

Paul Harrington, as approved by Client, will be available to undertake specific work in relation to development of the proposed Lower Churchill Hydro development.

Upon written instructions from the Client, the Consultant may be requested to undertake any, or all, of the following work:

1. Evaluate the Contracting Options that this Project presents in terms of advantages/disadvantages.
2. Conduct an analysis to determine the most appropriate Contracting Options.
3. Develop a Project Execution Plan based on the analysis of the Contracting Options, including an early Contracting Strategy process, which will evolve as the Project matures.
4. Develop Project Organizations for the most likely options and select key personnel, systems and procedures for the Client.
5. Start the process to pre qualify potential Project Management Companies for the execution phase of the project development as support to the integrated team or as the Owner's representative.
6. Additional work-tasks related to the Lower Churchill Hydroelectric development as may be advised and authorized by the Client in writing.