

From: paulkennedy@nlh.nl.ca
To: lanceclarke@nlh.nl.ca
Subject: Copies of Contracts
Date: Wednesday, September 24, 2008 3:46:16 PM
Attachments: [.png](#)
[.png](#)
[.png](#)
[.png](#)
[15011 - Project Solutions Inc - JK.pdf](#)
[15012 - Commercial Project Services - LC.pdf](#)
[15025 - Erimus Consulting Limited - PH.pdf](#)
[CONSULTANCY AGREEMENT - ECNL \(draftRev1\).doc](#)

Lance,

Attached below are PDF copies of yours, Jason's and Paul's contracts. Note all three contracts were issued on our older template and were issued with NLH as the Client/Owner. All three contracts were assigned to ECNL on January 1, 2008 via our Assignment and Novation Agreement.



15011 - Project Solutions Inc - JK.pdf



15012 - Commercial Project Services - LC.pdf



15025 - Erimus Consulting Limited - PH.pdf

Plus I'm also attaching our current standard template for Professional Services contracts which has ECNL as the Client/Owner and our t & c's are more robust.



CONSULTANCY AGREEMENT - ECNL (draftRev1).doc

Note - per Peter Hickman "The formal name of OILCO is Oil and Gas Corporation of Newfoundland and Labrador Inc." - we would need to replace the ECNL language through-out the new template above.

ps - If the Oil and Gas division needs a part time resource to issue any new Contracts, my services via AMP Consulting is available.

Thanks,

Paul Kennedy
Contract Co-ordinator
Lower Churchill Project
Newfoundland & Labrador Hydro
Direct Phone: 709-737-1839
Fax: 709-737-1985
Email: paulkennedy@nlh.nl.ca

**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 1 April 2007.

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

AND: ERIMUS CONSULTING LIMITED. (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 \$1,500 (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 \$166.66 (Cdn \$) plus HST to a maximum of the daily rate of \$1,500 (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 Hydro 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 1 April 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 \$200,000 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 \$200,000 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 one million (\$1,000,000) 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:
Client and Consultant shall give 30 days written notice of termination

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

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:

Mr. Paul Harrington

Erimus Consulting Ltd.

[REDACTED]

St John's NL [REDACTED]

Canada

Phone: (709) [REDACTED]

Fax: Not applicable

E-mail: [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

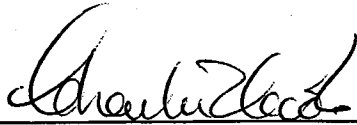
Nothing in this Agreement constitutes the Consultant as an employee or agent of the Client and it shall be an independent contractor.

20. Language of Agreement

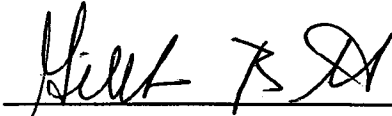
Documentation, required submittals and all other communications, whether verbal or written, shall be in English.

IN WITNESS WHEREOF these present were executed by the duly authorized signing officers of

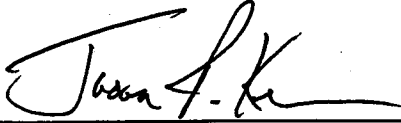
the parties at the time and place first above written.



Witness



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



Witness



Mr. Paul Harrington
Erimus Consulting Ltd.

SCHEDULE 1
STATEMENT OF WORK

Project Implementation Manager**Role Description**

The Project Implementation Manager, reporting to the VP Lower Churchill Project, providing management, guidance and leadership to the project implementation team, and leader of the Business Services Leadership Team, has the following functional responsibility areas:

- Management of a team responsible for the development and implementation of processes, systems and procedures dealing with:
 - Prequalification of contractors and suppliers to develop an approved contract/supplier register
 - Manage commercial/business aspects of Impact Benefits Agreement made with Innu Nation
 - Commercial point of contact for Innu Business Register and matters arising
 - Document Control
 - Site/camp and preliminaries management
 - Reservoir clearing commercial management
 - Offices and administration
 - Warehousing, transportation and logistics
 - Labour supply/demand
 - Benefits management and reporting
 - Contract management and coordination
 - Contract claims and claims avoidance
 - Contract/PO change control
 - RFP, contract review and award
 - Contract/PO negotiations
 - Insurance
 - Labour Relations
 - Contract strategy implementation (Contract strategy accountability to be at VP level)
 - 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