

LIMITED NOTICE TO PROCEED
LOWER CHURCHILL PROJECT: MUSKRAT FALLS
CH0007: CIVIL WORKS

This Limited Notice to Proceed Agreement is made as of the 24th day of September, 2013, by and between:

NALCOR ENERGY a body corporate constituted pursuant to the *Energy Corporation Act*, S.N. 2007, c. E-11.01 solely in its own right and not as agent of the Crown in right of the Province of Newfoundland and Labrador, and having its head office at the City of St. John's, Province of Newfoundland and Labrador (hereinafter referred to as "**Company**")

- and -

Astaldi Canada Inc.
 (the "**Contractor**")

WHEREAS the Company and the Contractor are in the process of finalizing an agreement for the construction of the intake and powerhouse, spillway and transition dams as described in contract package CH0007 in the form of the draft attached as part of Schedule 3 hereto (the "**Agreement**");

AND WHEREAS the Parties have agreed that the Initial Work for which the Contractor is to be paid in accordance with this LNTP and the Agreement, is comprised of the work (together with changes thereto as the Company may approve) as described in Schedule 1 hereto (the "**Initial Work**").

AND WHEREAS the Parties wish to enter into this agreement to record the basis upon which the Contractor is to proceed with, and be paid for, the Initial Work.

WITNESSETH that in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto covenant and agree each with the other as follows:

1. The recitals together with the terms and conditions and schedules referenced herein constitute the limited notice to proceed agreement ("LNTP"). All capitalized terms not defined herein shall have the same meanings as defined in the Agreement form attached as part of Schedule 3.
2. **Agreement.**
 - (a) Subject to Section 6(i), the Company and the Contractor intend to execute the Agreement, substantially in the form attached as part of Schedule 3 hereto, subject to only the resolution by the Parties of any issues identified by the Lenders and the Lenders' Independent Engineer, and known items to be addressed as identified in Schedule 3.

Subject to the conditions set forth in the Minutes of Meeting held on 14 September 2013 relevant to the applicability of the discount, the Contract Price, in Canadian dollars, on finalization of the Agreement shall be made up as follows

Target Cost of Labour:	\$ 507,598,341.00
Labour Profit:	\$ 35,531,884.00
Non Labour Component:	\$ 452,104,434.08

Travel Allowances (Est):	\$ 29,057,891.00
Total	\$ 1,024,292,550.08

However, if an AFC Drawing (refer to known items to be addressed as identified in Schedule 3, Item 5) contains a Change which impacts the Contract Price and/or impacts a Milestone Date or an Interface Date, a reasonable price adjustment to the Contract Price and/or adjustment to the Exhibit 9 – Interface and Milestone Schedule will be negotiated.

The Parties shall enter into good faith negotiations to resolve any such issues by making revisions to the Agreement, if necessary as a result of such resolution, subject to discretionary board approval of both Parties. The Company undertakes that it is negotiating exclusively with the Contractor for the Work during the term of this LNTP and the Parties expect to conclude these negotiations within a month of the date of this LNTP.

“Lender” means those entities that provide financing for the LCP.

“Lenders’ Independent Engineer” means the Person retained by the Lenders to provide advice on technical matters relating to the LCP.

“Initial Advance Payment” has the meaning ascribed thereto in Schedule 2 of this LNTP.

- (b) Provided the Parties have negotiated mutually acceptable wording for those known items to be addressed identified in Schedule 3 which are not yet agreed as of the date of this LNTP and received their respective board approvals then the Parties shall execute the Agreement substantially in the form set out in Schedule 3 with only those changes necessary to incorporate the mutually acceptable wording.
- (c) The Company is providing the Contractor with this binding LNTP so that Contractor can start its work on the Initial Work to preserve and maintain the Contract Price and schedule for the Agreement.

3. **Initial Work.** Company hereby directs Contractor to commence the Initial Work as follows:

- (a) The Initial Work is described in Schedule 1 and shall be performed by the Contractor in accordance with Schedule 1.
- (b) The Initial Work shall be carried out in accordance with and subject to the applicable terms and conditions of the Agreement form attached as Schedule 3, including the Articles of Agreement. For greater certainty, the terms of this LNTP shall take precedence over the terms in the Agreement attached as part of Schedule 3 in the event of any inconsistency.
- (c) Initial Work which has been completed by Contractor and Approved by Company shall be included in and form a part of the Work. Such completed and Approved Initial Work shall satisfy the obligation to perform that part of the Work to which the Initial Work relates upon execution of the Agreement.
- (d) If the Agreement is executed, the remuneration paid to the Contractor pursuant to this LNTP with respect to the Work shall be included in and form a part of the Contract Price pursuant to the Agreement for such Work and will not be an extra above and beyond the Contract Price. Such remuneration shall be credited against the Contract Price (against the initial milestone payments) following the execution of the Agreement. For greater certainty the sum of the Contractor’s compensation for performing the Initial Work under this LNTP and for performing the Work under the Agreement shall not exceed the Contract Price.
- (e) For greater certainty, the Parties acknowledge and agree that this LNTP constitutes the basis upon which the Contractor shall perform the Initial Work and that Contractor is not authorized to proceed with the balance of the Work until execution of the Agreement or this LNTP is amended by the Parties to permit a further part of the Work to proceed.

4. Payment.

- (a) Company shall pay the Contractor against progress for performance of the Initial Work those amounts set out in Schedule 2 (the sum of which shall be the "LNTP Price").
- (b) Company shall pay the LNTP Price by monthly progress payments for each price item in an amount not to exceed the amounts set out for each price item in Schedule 2 provided that:
 - (i) Contractor delivers to Company an invoice with such supporting documentation as Company may reasonably require; and
 - (ii) Contractor has completed and delivered to Company all the deliverables listed in Schedule 1 for the month invoiced.

5. Termination

- (a) Company may terminate this LNTP at its convenience upon written notice to Contractor to be effective not less than two (2) days from the date of the written notice.
- (b) Upon such termination in accordance with paragraph (a): (i) Contractor shall cease performance of the Initial Work subject to any direction by Company for completion of any part of the Initial Work; and (ii) Company shall compensate Contractor for all Initial Work performed up to the effective date of the termination of this LNTP and for any part of the Initial Work that Company directs the Contractor to complete, plus demobilization costs and liabilities associated therewith.

In no event will compensation payable to Contractor upon termination exceed the value of that part of the LNTP Price described in Schedule 2 corresponding to each part of the Initial Work completed as of the effective date of the termination, plus demobilization costs and liabilities associated therewith. For greater certainty, the compensation determined by this Section 5 shall be Contractor's sole and exclusive remedy for termination of this LNTP Agreement.

- (c) Subject to paragraphs (a) to (c) and (d) in this Section 5, if the Company and Contractor have not executed the Agreement by no later than **31 October 2013** or any other date agreed to between the Parties, this LNTP will be terminated as of such date and neither Party will be liable for any costs, damages or liabilities on account of such termination, except for the obligation of Contractor to complete the Initial Work and liabilities associated therewith and for the obligation of Company to pay the LNTP Price, demobilization costs, and liabilities associated therewith.
- (d) Upon termination of this LNTP Contractor shall reimburse Company the amount of the Initial Advance Payment as follows:
 - i. Company shall be entitled to set off any amount otherwise payable to Contractor pursuant to paragraphs (a), (b) and (c) in this Section 5 against the Initial Advance Payment, and
 - ii. Contractor shall reimburse Company the difference between the amount of the Initial Advance Payment and the amount payable pursuant to paragraphs (a), (b) and (c) in this Section 5 within 15 days of the effective date of the termination.

6. General Terms

- (a) This LNTP shall in all respects be governed by and construed and interpreted in accordance with the laws of Province of Newfoundland and Labrador, and the laws of Canada applicable therein and the Parties agree to attorn to the jurisdiction of the courts of the Province of

Newfoundland and Labrador.

(b) Notices

Any notice required or permitted to be given pursuant to this LNTP shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by registered letter, telefax or email (subject to confirmation of receipt in the Aconex system) to the address or telefax number or email address set forth below.

(A) To Company:

Name: Scott O'Brien

Position: Project Manager, Muskrat Falls Facilities and Infrastructure

Address: 350 Torbay Road, Suite 2
St. John's, NL A1A 4E1

Telephone: 709-737-4245

Facsimile: 709-737-1985

E-mail: Scott.O'Brien@nalcenergy.com

(B) To Contractor:

Astaldi Canada Inc.

Name: Guido Venturini

Position: Project Director

Address: 69 Elizabeth Ave
St John's, NL A1A 1W8

Telephone: (514) 933-5525

Facsimile: (514) 933-2550

E-mail: g.venturini@astaldi.com

(i) Each Party to this LNTP shall have the right to change the place to which notice shall be sent or delivered by similar notice sent in like manner to the other Party.

(ii) A notice issued pursuant to this LNTP shall be deemed to have been delivered as follows. Any communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the fifth (5th) Business Day following the deposit thereof in the mail and, if given by telecopier or email, on the day of transmittal thereof; provided that if any such notice or other communications so delivered or transmitted by telecopier or email after 3:00 p.m. EST on a Business Day (as hereinafter defined) or on a day other than a Business Day it shall be deemed received by the addressee on the next succeeding Business Day. In the event of the disruption of postal service, communication shall be given only by personal service or by transmittal by telecopier or email. For the purposes of this LNTP a Business Day means any day other than a Saturday, a Sunday, or a statutory or civic holiday in the Province of Newfoundland and Labrador.

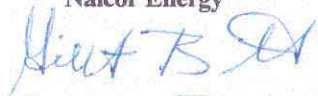
(c) The Parties shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to

effectively carry out or better evidence or perfect the full intent and meaning of this LNTP.

- (d) If any part of this LNTP or the application of such part to either Party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this LNTP, or the application of such remainder part to any other Party or circumstances, shall not be affected thereby and each provision of this LNTP shall be valid and enforceable to the fullest extent permitted by law.
- (e) No amendment to this LNTP shall be valid or binding unless set forth in writing and duly executed by the Parties to this LNTP. No waiver of any breach of any provision of this LNTP shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided in the written waiver, shall be limited to the specific breach waived.
- (f) This LNTP may be executed in counterparts and may be executed and delivered by facsimile and all the counterparts and facsimiles together constitute one and the same agreement.
- (g) This LNTP shall endure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns, provided that neither Party shall be entitled to assign this LNTP in whole or in part, to any other Party without the prior written consent of the other Party hereto.
- (h) Contractor shall not assign this LNTP without the prior written consent of Company. Company may assign this LNTP in accordance with the provisions of Article 35.1 in the Agreement form attached as Schedule 3.
- (i) Notwithstanding any other provisions, the aggregate liability of Contractor (including its affiliates) or Company (including its affiliates) for any claims of any kind, losses, damages or expenses arising out of or in connection with the Initial Work or this LNTP or from the performance or breach thereof shall not exceed the LNTP Price.
- (j) Notwithstanding any other provision, neither the Company nor Contractor will be liable to the other Party for: (i) loss of profit, loss of revenue or business opportunity, loss of production, costs of money, claims of customers, costs of replacement power, in each case whether foreseeable or not; or (ii) any incidental, indirect, special or consequential damages of any nature.


IN WITNESS WHEREOF the Parties hereto have executed this LNTP as of the date first written above.

Nalcor Energy

By: 
Name: GILBERT BENNETT, P.ENG.
Title: VICE PRESIDENT - LCP

Astaldi Canada Inc.

By: 
Name: GUIDO VENTURINI
Title: PROJECT DIRECTOR

By: 
Name: E. J. Martin
Title: President & CEO

By:

SCHEDULE 1**DESCRIPTION OF INITIAL WORK**

The objective of this LNTP is the performance of activities described below by the Contractor related to the Agreement. The list below sets out the deliverables to be provided by Contractor for delivery to Company under the LNTP.

The Contractor is required to commence the Initial Work as part of the Work under the Agreement. Since the performance of the Initial Work should allow the Contractor to comply with the Interface and Milestone Schedule, the Initial Work shall include not only preliminary works and mobilization activities, but also the activities in relation with design, procurement (plant, equipment, material and subcontract) and any other activities necessary in the expectation of executing the Agreement.

Based on the above, the estimated Initial Work shall include the following activities:

1) - Design and Permits

Detailed design of the Integrated cover system (App.A2.1 item 5)

Detailed design of the Site Installations (App.A2.1 item 2)

Detailed design of the electrical, drainage and industrial water system (App.A2.1 item 2)

Detailed design of the dewatering system (App.A2.1 item 26)

Executive quality plan (for approval) (App.A2.1 item 12)

Executive HSE plan (for approval) (App.A2.1 item 10)

Permits (Task Force)

Construction Schedule

2) - Procurement

2.1 - Selection, approval contract agreement and mobilization of subcontractors for:

Fine and coarse aggregate supply for concrete (App.A2.1 item 2)

Concrete production (App.A2.1 item 2)

Power generation and Industrial Water production (App.A2.1 item 2)

Power House Integrated Cover System (App.A2.1 item 5)

2.2 - Materials for Site Installations (shelters, containers, other facilities) (App.A2.1 item 2)

2.3 - Equipment for Site Installation works (App.A2.1 item 2)

2.4 - Contract finalization of strategic suppliers (Task Force)

Formworks.

Cement

Steel reinforcement

3) - Construction

Site inspection to define availability of the assigned areas to allow all temporary construction activities that can be realized outside the spillways and powerhouse (Task Force)

Access road construction (App.A2.1 item 4)

Preliminary activities for Gd 11 borrow pit stripping and excavation (App.A2.1 item 4)

Preparation and construction of laydown area (App.A2.1 item 4)

Site installation and facilities (App.A2.1 item 2)

Equipment mobilization (App.A2.1 item 1 and 3)

Workshop construction (App.A2.1 item 2)

Note: The references to items in “App.A2.1” are references to the Schedule of Price Breakdown in Appendix 2 of Exhibit 2 – Compensation in the Agreement.

SCHEDULE 2**ESTIMATED MONTHLY PROGRESS PAYMENT OF ACTIVITIES DURING LNTP PERIOD**

Price Item	Description	Currency	Sept.2013	Oct.2013
1	Mobilization	CAD	\$370,058	\$768,582
2	Site Installation	CAD	536,211	2,267,515
3	Contractor Equipment for Indirects	CAD	60,126	124,878
4	Temporary Works	CAD	540,699	1,161,453
5	Winter Protection	CAD	246,406	511,767
6	Management and Staff	CAD	173,943	361,266
6A	Design and technical assistance	CAD	11,226	23,323
7	Attendant labour	CAD	55,963	116,262
8	Services	CAD	17,659	36,610
10	Health and Safety Requirements	CAD	41,093	85,347
11	Environmental Requirements	CAD	2,462	5,116
12	Quality Assur/Quality Control	CAD	49,746	103,320
26	Dewatering of Structure Areas	CAD		
	TOTAL	CAD	\$2,105,592	\$5,565,439

In order to initially cover the above listed activities and to start-up the following Subcontractors and suppliers an initial amount equal to CAD \$ 15,000,000 as part of the total advance payment payable pursuant to the Agreement, shall be paid to Contractor immediately upon signature of this LNTP Agreement (the "Initial Advance Payment"): covering system fabrication, aggregates and concrete plants, power generation and industrial water production, temporary facilities, formworks, cement and reinforcing steel. Contractor shall provide a letter of credit in the form in the Agreement from a bank listed in Schedule 1 of the Bank Act to secure Contractor's reimbursement obligations under this LNTP, which letter of credit shall be in the amount of the Initial Advance Payment and shall be valid and enforceable until the earlier of the execution of the Agreement or 60 days following the termination of this LNTP, following which such letter of credit shall immediately be released by Company to Contractor.

The above monthly progress payments shall be subject to a 10% holdback by Company pursuant to the Newfoundland and Labrador *Mechanics' Lien Act*. The holdback will be released to Contractor following execution of the final Agreement upon receipt by Company of a holdback release bond in the form in the Agreement covering the amount to be released or, if no Agreement is executed, the later of 45 days after termination of this LNTP or 45 days after the last work is performed under this LNTP.

If during the term of the LNTP, the Contractor is required to enter into any agreement with third parties and/or to perform any activity in order to comply with the Interface and Milestone Schedule, the Contractor shall obtain Company's Approval to enter into such agreements. Company shall reimburse Contractor for any amounts paid by Contractor to third parties under any such Approved agreements.

SCHEDULE 3 AGREEMENT FORM

[Attached]

Including:

	Agreement Document		Rev
Articles	Civil Works Agreement	Dated 8 th September Bidder-Astaldi	
Exhibit 1	Scope of Work Specification	505573-3331-41EW-0001	09
Exhibit 1	Technical Document List	505573-CH0007-40AL-I-0001	08
Exhibit 1	Technical Specification (With 13 Sections updated and remainder unchanged since Addendum No. 14)	505573-3331-41EF-0001	01
Exhibit 1	Drawings per Document List		
Exhibit 2	Compensation (Including Appendices A to G)	505573-0007-51AF-I-2135 Dated 27 August)	0T4
Exhibit 2	Attachment 1 Measurement and Payment	505573 – CH0007	08
Exhibit 3	Coordination Procedures	505573-CH0007-51AF-I-2136	02
Exhibit 4	Supplier Document Requirements List	505573-3331-41EL-0002	01
Exhibit 5	Health and Safety Requirements	505573-0000-51AF-I-2138	01
Exhibit 6	Environmental and Regulatory Compliance Req.	505573-0000-51AF-I-2139	03
Exhibit 7	Quality Requirements	505573-CH0007-51AF-I-2140	00
Exhibit 8	Subcontractors, Manufacturers and Material Sources (Including Appendix A16.2, Rev 2)	505573-0000-51AF-I-2141	00
Exhibit 9	Interface and Milestone Schedule	505573-CH0007-51AF-I-2142	07
Exhibit 10	Declaration of Residency (including Appendix A2.6)	505573-0000-51AF-I-2143	00
Exhibit 11	Company Supplied Documents	505573-CH0007-51AF-I-2144	03
Exhibit 12	Site Conditions	505573-CH0007-51AF-I-2145	06
Exhibit 13	Provincial Benefits (including Appendix A11)	505573-0000-51-AF-I-2146	00
Exhibit 14	Performance Security	505573-0007-51AF-I-2147	02
Exhibit 15	Supplementary Data		
Exhibit 16	Dispute Resolution Procedures		
	Minutes of Meeting held on 14 th September 2013		
	Pre-Award Record of Site Inspection, and Status of Site Conditions		

KNOWN ITEMS TO BE ADDRESSED

- 1) Incorporate any revisions made through the Bid Clarification Master, which have not already been incorporated.
- 2) Incorporate any clarifications or revisions confirmed in the Commercial Proposal Clarification Forms (Nos. 1 to 20);also agree any outstanding items in the Forms, if any;
- 3) Update the Supplier Document Requirement List;
- 4) Incorporate “good housekeeping” revisions;
- 5) Review and take account of the set of Approved For Construction Drawings that will be available in the next two weeks;
- 6) Survival clause of Agreement to be reviewed and updated.
- 7) Finalization of Appendix A2.1: to be submitted with the text of the original A2.1 Form from the RFP document; to include for the discount of forty million Canadian dollars consented as part of the Minutes of Meeting of September 14th, and to include the price adjustments made for the additional 50 million in the Letter of Credit for performance and the additional Performance Bond of 150 million.
- 8) Submission of detailed sheets as referenced in the Minutes of Meeting of September 14th;
- 9) Finalization of all Appendices of Exhibit 2, in complete alignment with one another, Exhibit 2 and the Articles.