

AMENDING AGREEMENT NO. 1

THIS AMENDING AGREEMENT is made as of February 21, 2018.

BETWEEN:

MUSKRAT FALLS CORPORATION, a body corporate constituted pursuant to the *Corporations Act*, RSNL 1990, c. C-36, as amended, and having its head office at the City of St. John's, Province of Newfoundland and Labrador, Canada (hereinafter referred to as "**Company**");

- and -

CAHILL-GANOTEC, A PARTNERSHIP, a partnership between G.J. Cahill & Company (1979) Limited and Ganotec Inc., formed pursuant to the laws of the Province of Newfoundland and Labrador, Canada (hereinafter referred to as "**Contractor**").

WHEREAS an Agreement Number CH0031-001 entitled "Supply and Install Mechanical and Electrical Auxiliaries (MF)" effectively dated June 16, 2017, (hereinafter called the "**Agreement**") was entered into between Company and Contractor;

WHEREAS the Parties have agreed that, in consideration of the Advance Payment Amount (as defined below) to be paid by Company to Contractor, Contractor will provide performance security to Company in accordance with the terms and conditions set forth in this Amending Agreement;

AND WHEREAS the Parties wish to amend the Agreement as hereinafter set forth in this Amending Agreement.

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES that, in consideration of the premises and mutual covenants and agreements hereinafter set forth and contained, the Parties agree that the Agreement be amended as follows:

1. The following new Article 7.2 is hereby added to the Agreement:

"7.2 In addition to the letter of credit identified in **Article 7.1**:

- (a) Contractor may deliver to Company one (1) or two (2) irrevocable standby letters of credit (the "**Irrevocable Standby Letter of Credit**") in the combined total amount of eleven million seven hundred and six thousand three hundred and forty nine Canadian Dollars (\$11,706,349 CDN) (the "**Initial LC Amount**"), issued by a bank listed in Schedule 1 to the *Bank Act*, S.C. 1991, c.46, in the form and with the content specified in Appendix A – Form of Irrevocable Standby Letter of Credit of Exhibit 14 – Performance Security, to secure the Advance Payment Amount until the total of the Advance Payment Deduction Amounts actually deducted by Company equals the Advance Payment Amount, pursuant to the process set out in this **Article 7.2**. If Contractor delivers two (2) Irrevocable Standby Letters of Credit, the date of issuance of such letters of credit shall be the same date.



- (b) Contractor shall submit to Company a draft of the Payment Certificate(s) including accompanying documentation, as identified in **Article 7.2(c)**, five (5) Business Days prior to Contractor's delivery to Company of the original issued Irrevocable Standby Letter(s) of Credit.
- (c) Immediately upon delivery of the original issued Irrevocable Standby Letter(s) of Credit by Contractor to Company, Contractor shall submit, and Company shall Approve within five (5) Business Days of receipt of, a (i) Payment Certificate for the amount of eleven million seven hundred and six thousand three hundred and forty nine Canadian Dollars (\$11,706,349 CDN) (the "**Advance Payment Amount**") accompanied by copy(ies) of such issued letter(s) of credit, and (ii) separate Payment Certificate for the cost of the first year of such letter(s) of credit consistent with the rate stated in Section 13.2 of Exhibit 2 – Compensation, provided that such Payment Certificates are all in accordance with **Article 7.2** and **Article 12**. Notwithstanding the foregoing, Contractor may submit one Payment Certificate for the Advance Payment Amount and such cost, provided that the Payment Certificate separately identifies such Advance Payment Amount and such cost, and is otherwise in accordance with this **Article 7.2** and **Article 12**.
- (d) Contractor shall deliver the aforementioned original issued Irrevocable Standby Letter(s) of Credit to the following address:
Muskrat Falls Corporation
350 Torbay Road Plaza, Suite No. 2
St. John's, NL
A1A 4E1
Attention: John Skinner, Project Controller
- (e) Upon Contractor's receipt of a Company Approved Payment Certificate, Contractor shall submit, and Company shall Approve within ten (10) Business Days of receipt of, an (i) invoice for the Advance Payment Amount accompanied by the Company Approved Payment Certificate and copy(ies) of the issued Irrevocable Standby Letter(s) of Credit, subject to and as otherwise in accordance with this **Article 7.2** and **Article 12**, and (ii) invoice for the cost of the first year of such letter(s) of credit consistent with the rate stated in Section 13.2 of Exhibit 2 – Compensation, subject to and in accordance with this **Article 7.2** and **Article 12**. Notwithstanding the foregoing, Contractor may submit one invoice for the Advance Payment Amount and such cost, provided that the invoice separately identifies such Advance Payment Amount and such cost, and is otherwise in accordance with **Article 12**.
- (f) Subject to Contractor's compliance with all of the requirements of **Articles 7.2(a) to (e)** inclusive, and in accordance with and subject to the terms of this **Article 7.2** and **Article 12**, Company will pay Contractor the Advance Payment Amount as an advance payment of a portion of the Contract Price.
- (g) For clarification purposes, the time periods stated in **Articles 7.2(b), (c)** and **(e)** apply only to the Payment Certificates and invoices pertaining to the Irrevocable Standby Letter(s) of Credit and the costs thereof, and shall not

- apply to any other existing or future matter. Such other matters are subject to the time periods stated in **Article 12**.
- (h) Notwithstanding the payment and invoicing requirements stated elsewhere in this Agreement, and immediately upon Company's receipt of the issued Irrevocable Standby Letter(s) of Credit, Company will permanently deduct and retain from each and every payment of a properly due and owing invoice comprising wholly or partly of the Non Labour Component (as defined in Exhibit 2 – Compensation) an amount equal to ten percent (10%) of the Non Labour Component of such invoice (the "**Advance Payment Deduction Amount**"). Notwithstanding the previous sentence, Company will deduct the Advance Payment Deduction Amount from each and every such invoice until the total of the Advance Payment Deduction Amounts actually deducted by Company equals the Advance Payment Amount. The Advance Payment Deduction Amount shall be in addition to any other withholding and/or deductions to which Company is entitled under this Agreement, including the holdback identified in **Article 12.16**.
- (i) The Irrevocable Standby Letter(s) of Credit will renew/extend automatically on an annual basis, subject to its/their terms and conditions as set out in Appendix A – Form of Irrevocable Standby Letter of Credit to Exhibit 14 – Performance Security. Within thirty (30) days after the first (1st) anniversary of the date of issuance of the Irrevocable Standby Letter(s) of Credit, Contractor shall deliver to Company an original amendment document(s) reducing the Initial LC Amount by an amount equal to the total of the Advance Payment Deduction Amounts actually deducted by Company during the twelve (12) months prior to such first (1st) anniversary date.
- (j) Thereafter, within thirty (30) days after the first (1st) anniversary of the date of issuance of the amendment document(s) identified in **Article 7.2(f)**, and the first (1st) anniversary of the date of issuance of each successive amendment document(s), Contractor shall deliver to Company an original amendment document(s) reducing the amount of the Irrevocable Standby Letter of Credit by an amount equal to the total of the Advance Payment Deduction Amounts actually deducted by Company during the twelve (12) months prior to each anniversary of the date of issuance of the Irrevocable Standby Letter of Credit, until such time that the total of the Advance Payment Deduction Amounts actually deducted by Company equals the Advance Payment Amount, after which Company shall promptly return to Contractor such original letter(s) of credit and amendment document(s).
- (k) Each of the Parties shall, from time to time, execute or cause to be executed all such further documents which are necessary to give effect to the provisions of **Article 7.2(j)**.
- (l) Upon or after each delivery of the original issued amendment document(s) identified in **Articles 7.2(i)** and **(j)**, Contractor shall submit a Payment Certificate for the cost of such amendment document(s) based on the reduced value of the Irrevocable Standby Letter of Credit for the first year to which such amendment document(s) apply, and consistent with the rate stated in

Section 13.2 of Exhibit 2 – Compensation, and all in accordance with **Article 12**. Thereafter, in accordance with **Article 12**, Contractor shall submit an invoice for the cost of such amendment document(s), based on the reduced value of the Irrevocable Standby Letter of Credit for the first year to which such amendment document(s) apply, and consistent with the rate stated in Section 13.2 of Exhibit 2 – Compensation.


- (m) In the event Contractor fails to maintain any Irrevocable Standby Letter of Credit after its issuance, Company shall be entitled to deduct and retain from future payments sufficient funds to equal the Advance Payment Amount less the total of the Advance Payment Deduction Amounts actually deducted by Company immediately prior to such failure, without prejudice to any other right or remedy that Company may have against Contractor under the Agreement or at law.”
2. The original Article 7.2 of the Agreement is hereby deleted and replaced with the following as Article 7.3:
- “7.3 All costs and expenses incurred in relation to the establishment and maintenance of the letters of credit described in this **Article 7** shall be included in the Contract Price in accordance with the rates identified or referenced in Section 13 of Exhibit 2 - Compensation.”
3. The original Article 7.3 of the Agreement is hereby deleted and replaced with the following as Article 7.4:
- “7.4 Company may claim and have recourse to the letters of credit described in this **Article 7.1** if Contractor has not performed its obligations in accordance with the Agreement or if Company otherwise has a Claim against Contractor.”
4. Article 30.5(b) of the Agreement is hereby deleted and replaced with the following:
- “(b) the letters of credit described in **Article 7.1** shall remain in place, remain effective and available to Company in the event the Affiliate fails to fulfill Contractor’s obligation under this Agreement; and”
5. Article 32.1(f) of the Agreement is hereby deleted and replaced with the following:
- “(f) Contractor fails to procure or maintain the letters of credit described in **Article 7** in accordance with **Article 7**; or”
6. If the Irrevocable Standby Letter(s) of Credit for the Advance Payment Amount is provided by Contractor to Company, a Change Order will be issued by Company and accepted by Contractor to increase the total estimated Contract Price stated in Appendix A – Schedule of Price Breakdown of Exhibit 2 – Compensation of the Agreement, consistent with the terms of Paragraph 1 of this Amending Agreement.

7. The form of the Irrevocable Standby Letter(s) of Credit for the Advance Payment Amount, as attached to this Amending Agreement as Attachment "A", is hereby made a part of Exhibit 14 – Performance Security as the new Appendix A – Form of Irrevocable Standby Letter of Credit to Exhibit 14 of the Agreement.
8. This Amending Agreement shall be effective from the date first above written and shall remain in full force and effect from such date.
9. Unless otherwise defined, all capitalized terms and expressions used herein shall have the meaning respectively ascribed thereto in the Agreement. Unless otherwise stated, references to a paragraph number are references to that numbered paragraph in this Amending Agreement and a reference to an Article are references to that Article in the Agreement.
10. This Amending Agreement includes Attachment "A". This Amending Agreement is supplementary to the Agreement and is read with and construed in accordance with the Agreement, as if this Amending Agreement and the Agreement, as amended, constitute one (1) agreement.
11. In the event of any conflict between the provisions of this Amending Agreement and the Agreement, the provisions of this Amending Agreement shall prevail.
12. Except as this Amending Agreement otherwise provides, the Agreement is in all respects ratified and confirmed and all terms, provisions and covenants thereof shall remain in full force and effect.
13. This Amending Agreement shall be binding upon and enure to the benefit of each of the Parties and their respective successors and assigns.
14. This Amending Agreement may be executed in any number of counterparts and any Party may transmit by facsimile or email in portable document format to the other Party a copy of this Amending Agreement executed by that Party, the receipt of which shall have the same force and effect as if the original thereof had in fact been delivered at the same time. Any original, facsimile copy, portable document format or photocopy of this Amending Agreement bearing one or more signatures on behalf of a Party shall be admissible against that Party in any legal proceeding as evidence of the execution and delivery of this Amending Agreement by that Party and without the requirement to produce an executed original of the Amending Agreement.
15. Each person signing this Amending Agreement as an authorized representative of a Party hereby represents and warrants that he or she is duly authorized to sign this Amending Agreement for that Party and that this Amending Agreement will, upon having been so executed, be binding on that Party in accordance with its terms.



IN WITNESS WHEREOF the parties hereto have executed and delivered this Amending Agreement as of the day and year first above written.

For and on behalf of **Muskrat Falls Corporation**


Signature of Authorized Representative

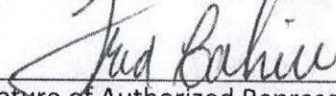
Gilbert Bennett
Name of Authorized Representative


Signature of Authorized Representative

James Meaney
Name of Authorized Representative

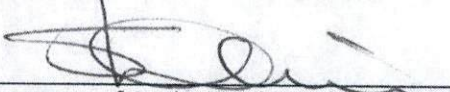
For and on behalf of **Cahill-Ganotec, a Partnership:**

For and on behalf of **G.J. Cahill (1979) Limited:**


Signature of Authorized Representative

Fred Cahill
Name of Authorized Representative

For and on behalf of **Ganotec Inc.:**


Signature of Authorized Representative

SEBASTIEN LARIVIERE
Name of Authorized Representative

Signature of Authorized Representative

Name of Authorized Representative

Execution page to the Amending Agreement dated as of February 21, 2018, between Muskrat Falls Corporation and Cahill-Ganotec, a Partnership.



Attachment "A"

Appendix A

Form of Irrevocable Standby Letter of Credit

(date of issue)

To: *(COMPANY'S LEGAL NAME)*
(address)

From: *(ISSUING BANK)*
(address)

Subject: Our Irrevocable Standby Letter of Credit - Number (#)

WHEREAS *(legal name of Contractor)* having its head office at *(address of Contractor)* (hereinafter referred to as the "Applicant"), has signed a contract bearing the effective date of June 16, 2017, and reference number CH0031-001 with Muskrat Falls Corporation having its head office at 500 Columbus Drive, St. John's, NL A1B 0C9 (hereinafter referred to as the "Beneficiary"), for Supply and Install Mechanical and Electrical Auxiliaries (MF) (hereinafter referred to as the "Contract");

WHEREAS, by virtue of an Amending Agreement No. 1 executed by the Applicant and Muskrat Falls Corporation, the Applicant is required under Article 7.2 of the Contract to provide to the Beneficiary an Irrevocable Standby Letter of Credit;

We, *(name and address of bank)* (hereinafter referred to as the "Bank"), for the account of the Applicant, hereby issue in favor of the Beneficiary our transferable Irrevocable Standby Letter of Credit in the amount of *(insert)* Canadian Dollars (\$****) (hereinafter referred to as the "Credit"). We hereby irrevocably and unconditionally undertake to pay to the Beneficiary at sight, without protest or notification, and without inquiring any further proof or conditions, and without consideration for any objections or protests which the Applicant may make, any sum or sums not exceeding the aggregate sum of *(insert)* Canadian Dollars (\$****), free of all imposts, taxes, duties, charges, fees, withholdings and/or deductions whatsoever both present and future, of any nature whatsoever and by whomsoever imposed, and without set-off or counterclaim, upon presentation to the Bank of a demand in writing duly signed by two (2) Beneficiary's officers against this Credit, provided the demand is in the form set out in Exhibit "A" hereto, which forms an integral part of this Credit, and that such demand is made no later than on the *(insert)* day of *(insert month, year)* (hereinafter referred to as the "Expiry Date") or any automatically extended expiration date as set forth herein. Only the Beneficiary or a transferee may make drawings under this Credit.

This Credit shall be automatically extended for one (1) year periods from the Expiry Date or from any subsequent expiry date (hereinafter referred to as "New Expiry Date") successively, unless the Bank sends by express courier to the Beneficiary at the above-mentioned address,

with a copy to the Applicant, a written notice at least ninety (90) days prior to the Expiry Date or a New Expiry Date, stating that the Bank elects not to extend this Credit for any such additional period. In the event the Bank elects not to extend the Expiry Date or any New Expiry Date of this Credit, then the Bank hereby unconditionally and irrevocably undertakes to pay to the Beneficiary the total amount then outstanding under this Credit upon presentation to the Bank by the Beneficiary, prior to the Expiry Date or the New Expiry Date, of a demand for payment stating that the Bank has elected not to extend this Credit and that the Beneficiary is therefore entitled to such payment, provided the demand is in the form set out in Exhibit "B" attached hereto, which forms an integral part of this Credit. Such demand to be accompanied by the original of this Credit and its amendments, if any, for the Beneficiary's endorsement purpose; provided that the Bank shall return to the Beneficiary the original of this Credit and its amendments, if any, in the case of a partial drawing.

This Credit may be reduced by amendment, or automatically reduced by a certificate issued by the Beneficiary, in its letterhead, to the Bank stating the amount of reduction applicable to this Credit and presented to the Bank by the Applicant or the Beneficiary.

The terms of this Credit set forth in full the terms of our undertaking and this undertaking is not in any way modified, amended or amplified by reference to any document, instrument referred to in this Credit, or in which this Credit is referred to, or to which this Credit is related, and any such reference does not incorporate by reference any document, instrument or agreement.

Partial drawings are authorized. All costs related to this Credit are for the account of the Applicant.

The Beneficiary may transfer its rights under this Credit, in their entirety (but not in part) to any transferee; provided, however, that the transfer complies with applicable law and the transferee is not an entity that the Bank is prohibited to deal with. Transfer of the Beneficiary's rights under this Credit to any such transferee shall be effected only upon the presentation to us of this Credit accompanied by a transfer letter in the form attached hereto as Exhibit "C", as applicable, and the original of this Credit and its amendments, if any. Upon such transfer, the transferee shall have no further rights to transfer this Credit.

We consent to such transfer without charges or fees of any kind to the Beneficiary. Any charges due in connection with a transfer of this Credit, being the Bank's transfer fee of \$250 shall be for the Applicant.

This Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication no. 600) and for matters not covered by the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce, (ICC Publication no. 600) it shall be governed by and interpreted in accordance with the laws of the Province of Newfoundland and Labrador and the laws of Canada, applicable therein.

(NAME OF BANK)

per: _____

EXHIBIT "A"

(date)

To: (full name & address of the issuing bank)

From: (full name & address of Company)

Subject: This is the form of demand specified in the Irrevocable Standby Letter of Credit number (number) issued on the (date) by (name of the issuing bank)

Dear Sirs,

We, the undersigned, being the Beneficiary under the above captioned Irrevocable Standby Letter of Credit (hereinafter referred to as the "Credit") issued by (name and address of the issuing bank) on the instructions of (name of the Contractor) the Applicant, hereby request you to pay to us on receipt by you of the present demand the amount of (currency and amount in figures and letters).

We state and declare:

that the Applicant is an Insolvent Party as defined in Contract number CH0031-001, or is a Defaulting Party as defined in Contract number CH0031-001 and has failed to rectify or taken reasonable steps to rectify the default or breach;

and

that the Beneficiary has sent by facsimile at (insert fax number) and by express courier to the Applicant, attention of (insert name) a written notice of default, specifying the nature of default, at least fifteen (15) calendar days prior to this demand;

that as a result thereof, we have become entitled under the terms of the Contract number CH0031-001 to be paid the amount claimed above;

and

that said amount has not otherwise been paid to us, whether directly or indirectly, by or on behalf of the Applicant.

The original of the Credit and its amendments, if any, are enclosed herewith.

(name of Company)
(address of Company)

per: _____
Name: _____
Title: _____

per: _____
Name: _____
Title: _____

EXHIBIT "B"

This is the form of demand specified in Irrevocable Standby Letter of Credit number [#] issued on the [date], by [name of the issuing bank]

[date]

To: (ISSUING BANK'S NAME)
(address)

From: (COMPANY'S NAME)
(address)

Subject: This is the demand specified in Irrevocable Standby Letter of Credit number [#] issued on the [date], by [name of the issuing bank]

Dear Sirs,

We, the undersigned, being the Beneficiary under the above captioned Irrevocable Standby Letter of Credit (hereinafter referred to as the "Credit") issued by [issuing bank's name and address] on the instructions of [Contractor's name] (the "Applicant"), hereby request you to pay to us on receipt by you of the present demand the amount of [currency and amount in figures and letters] only.

We state and declare:

that the Beneficiary has been notified by the Bank of its election not to extend the Credit and that the Beneficiary is therefore entitled to such payment; and

30 days have passed from the receipt of the Bank's notice not to extend the Credit and that as of the date of the present demand for payment the Applicant has not provided the Beneficiary with a satisfactory substitute irrevocable standby letter of credit or alternate satisfactory security.

The original of the Credit and its amendments, if any, are enclosed herewith.

[Company's name and address]

per: _____
Name: _____
Title: _____

per: _____
Name: _____
Title: _____

cc to the Applicant

EXHIBIT "C"

This is the form of transfer specified in Irrevocable Standby Letter of Credit number [#] issued on the [date], by [name of the issuing bank].

_____, 20__

Name and Address of Issuing Bank:

Attention:

Re: Your Irrevocable Standby Letter of Credit ("Credit") number _____ dated _____ in favour of (insert Company name) _____

To Whom it May Concern:

The undersigned Beneficiary, (insert Company name), hereby irrevocably transfers and assigns to:

(Name and Address of Transferee)

(the "Transferee") all rights of the undersigned Beneficiary to draw under the above Credit in its entirety, subject to the same terms and conditions.

By this transfer, all rights of the undersigned Beneficiary in such Credit are transferred to the Transferee and the Transferee shall have the sole right relating to any amendments whether to increase or extensions or other amendments and whether now existing or hereafter made, all amendments are to be advised to the Transferee without necessity of any consent of or notice to the undersigned Beneficiary.

The original of such Letter of Credit is returned herewith together with any and all amendments, and we ask you to endorse the transfer on the reverse side of the original Letter of Credit, and forward it directly to the Transferee with your customary Notice of Transfer.

Signature Authenticated

Yours very Truly

(Name of Bank)

(Name of Beneficiary)

(Signature of Bank)

(Signature of Beneficiary)