

**LIMITED NOTICE TO PROCEED****LOWER CHURCHILL PROJECT**

This Limited Notice to Proceed Agreement ("LNTP") is made effective as of August 14, 2015, by and 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 ("**Company**")

- and -

**BARNARD -PENNECON JV LTD**, a body corporate constituted pursuant to the laws of Newfoundland and having its registered office in St. John's, Newfoundland and Labrador ("**Contractor**")

**WHEREAS** Company and the Contractor are in the process of finalizing an agreement for the Construction of the North and South Dams for the Lower Churchill Project at Muskrat Falls, Labrador, Contract Package CH0009-001 (the "**Agreement**") in the form of the draft attached as part of Schedule 3 hereto;

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

**AND WHEREAS** the Parties wish to enter into this LNTP to record the basis upon which 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 Schedule 3.
2. **Agreement.**
  - (a) Subject to Sections 2(b) and 5(d) and subject to discretionary board approval of both Parties, the Company and Contractor intend to execute the Agreement before 31-Oct-2015, in the form attached as part of Schedule 3 hereto, subject only to negotiation of any

terms and conditions identified as "Outstanding Items to be Addressed" in the Schedule 3 which are not yet agreed to between the Parties and any issues identified by the entities providing financing for the LCP and their independent engineer.

- (b) The Parties undertake to negotiate exclusively with each other for the Work during the term of this LNTP and the Parties expect to conclude these negotiations within three weeks of the date of this LNTP. Provided the Parties have negotiated mutually acceptable wording for those terms and conditions identified in Schedule 3 as "Outstanding Items to be Addressed" and any issues identified by the entities providing financing for the LCP and their independent engineer ("Outstanding Items"), and received their respective board approvals then the Parties shall execute the Agreement in the form set out in Schedule 3 with only those changes necessary to incorporate the mutually acceptable wording.
- (c) The Parties shall enter into good faith negotiations to resolve any Outstanding Items by making revisions to the Agreement, if necessary, as a result of such resolution, subject to discretionary board approval of both Parties. For greater certainty, the Parties agree that the negotiations shall be limited to the Outstanding Items and that, except for the Outstanding Items, the Parties agree to all the terms and conditions set out in the Agreement in the form set out in Schedule 3.
- (d) The Company is providing the Contractor with the binding LNTP so that the Contractor performs the Initial Work with the objective of preserving and maintaining the Contract Price and Milestone Schedule for the Agreement.
- (e) Upon execution of the Agreement and subject to Section 3(c) herein, the terms of this LNTP shall have no further application and the Work and the compensation therefore shall be solely governed by the executed Agreement.

### 3. Initial Work.

Company hereby directs Contractor to commence the following Initial Work:

- (a) The Initial Work is described in Schedule 1 and shall be performed by Contractor in accordance with Schedule 1. 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. For greater certainty, the terms of this LNTP shall take precedence over the terms in the Agreement form attached as Schedule 3 in the event of any inconsistency.
- (b) 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.
- (c) If the Agreement is executed, the remuneration paid to the Contractor with respect to the Initial Work pursuant to this LNTP shall be included in and form a part of the Contract Price pursuant to the Agreement and will not be an extra above and beyond the Contract Price. Such remuneration shall be credited against the Contract Price 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.

- (d) 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 Contractor for performance of the Initial Work up to the maximum amounts as set out in Schedule 2 (the sum of which shall be the “LNTP Price”).
- (b) Company shall compensate Contractor for the Work described in Schedule 1 in accordance with the Articles, Exhibit 2 – Compensation, and Exhibit 3 – Coordination Procedures, all attached as part of Schedule 3.
- (c) Contractor shall invoice Company for the Initial Work with such supporting documentation as Company may reasonably require and in accordance with the invoicing terms and conditions set out in the Agreement Form attached as part of Schedule 3.

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.
- (c) In no event will the compensation payable to Contractor upon termination exceed the value of that part of the LNTP Price for the Initial Work completed as of the effective date of the termination. For greater certainty, the compensation determined by this Section 5 shall be Contractor’s sole and exclusive remedy for termination of this LNTP.
- (d) Subject to paragraphs (a) to (c) in this Section, if Company and Contractor have not executed the Agreement by no later than 31-Oct-2015, or any other date agreed to by 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.

## 6. Intellectual Property

- (a) "Intellectual Property" means all intellectual property and intellectual property rights, including all trade secrets, patents, patent applications, trade-marks, copyrights, inventions, processes, discoveries, designs, techniques, drawings, specifications, data, software (hard copies and machine readable formats) and know-how.
- (b) Contractor retains its rights in its Intellectual Property conceived, reduced to practice, designed, provided or developed by or for the Company or used by the Contractor in the course of the Initial Work (collectively, "**Contractor Intellectual Property**")
- (c) Contractor grants to the Company a perpetual, royalty-free, non-exclusive, fully paid up, non-transferable (except as provided below) licence to:
  - (i) use all such Contractor Intellectual Property in respect of the operation and maintenance, construction, commissioning, refurbishment, replacement, alteration, relocation, decommissioning, dismantling or demolition of the Initial Work;
  - (ii) assign all licence rights granted to Company under this Section 6 to a Person which becomes the owner of the Initial Work; and
  - (iii) with prior written consent of Contractor, which consent shall not be unreasonably be withheld, disclose on a confidential basis any Contractor Intellectual Property to any person which requires such Contractor Intellectual Property in respect of any of the actions referred to in Section 6(c)(i).

## 7. 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
  - (i) 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) to the address or telefax number or email address set forth below.

(A) To Company:

Name: Scott O'Brien  
Position: Project Manager  
Address: 350 Torbay Road, Suite 2

St. John's, NL

A1A 4E1

Telephone: (709) 570-5987

E-mail: [ScottOBrien@Lowerchurchillproject.ca](mailto:ScottOBrien@Lowerchurchillproject.ca)

(B) To Contractor:

**BARNARD -PENNECON JV LTD**

Name: Derek Tisdel

Position: Vice President & Operations Manager

Address: PO Box 99, 701 Gold Avenue  
Bozeman, MT  
59715

Telephone: (406) 586-1995

E-mail: [Derek.tisdel@barnard-inc.com](mailto:Derek.tisdel@barnard-inc.com)

(ii) 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.

(iii) 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 facsimile or email, on the day of transmittal thereof; provided that if any such notice or other communications so delivered or transmitted by facsimile 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 facsimile 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, Person 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, Person 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 enure 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 the Company. Company may assign this LNTP in accordance with the provisions of Article 33.0 - Assignment in the Agreement.
- (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 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.
- (k) In the case of any conflict or ambiguity between the text/body of the LNTP and the Schedules, the body of the LNTP shall take precedence over the Schedules.

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

MUSKRAT FALLS CORPORATION

BARNARD PENNECON JV LTD

By: P. Harrington

By: \_\_\_\_\_

Name: PAUL HARRINGTON

Name: \_\_\_\_\_

Title: PROJECT DIRECTOR

Title: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1****DESCRIPTION OF INITIAL WORK**

The objective of this LNTP is the performance of activities and obligations described below by the Contractor related to contract package CH0009-001 – Construction of North and South Dams, the sum of which constitutes the “Initial Work”.

**Performance**

Contractor shall execute Initial Work activities up to and including October 31, 2015. The Initial Work shall be performed in accordance with the terms and conditions of the Agreement Form, and as if contract package CH0009 had been awarded in its entirety. All such Initial Work shall be performed to ensure that the dates for the Milestones listed in Exhibit 9 – Schedule of the Agreement Form are achieved.

**LNTP Deliverables**

Contractor shall submit deliverables in accordance with Exhibit 4 – Supplier Document Requirements List of the Agreement Form as per the RFP.

**Schedule and Execution Plan**

Contractor shall perform the Work in accordance with Contractor’s work schedule and execution plan submitted and updated during the bidding process.



**SCHEDULE 2****COMPENSATION FOR INITIAL WORK**

- a) Company shall pay Contractor by monthly progress payments in accordance with the Price Items of the Schedule of Price Breakdown related to the Initial Work and in accordance with Article 12 and Exhibit 2 – Compensation of the Agreement Form.
- b) Payments for the Initial Work shall not exceed a value of \$24,500,000.00 (the LNTP Price).
- c) If during the term of the LNTP, the Contractor is required to enter into any agreement with third parties to perform any reimbursable activity and in order to comply with Exhibit 9 - Schedule of the draft Agreement Form, the Contractor shall first obtain Company's Approval to enter into such agreements.
- d) If the LNTP is terminated in accordance with Section 5 of this LNTP Company will pay Contractor:
  - for Initial Work performed up to the effective date of the termination, less any compensation previously paid by Company to Contractor for any portion of such Initial Work;
  - any part of the Initial Work that Company directs Contractor to complete after the effective date of termination;
  - a portion of the amount for the Price Item for Demobilization, as listed in the Schedule of Price Breakdown of the Agreement Form, which shall be in the same proportion to the actual percentage completion of Mobilization;
  - the reasonable cost of any liability related to agreements made by Contractor for Initial Work scope, which has not been recovered through payment for the Work actually performed; provided that any such cost shall not exceed 5% of the price of the Approved agreement.

**SCHEDULE 3****AGREEMENT FORM**

The following documents comprise the form of the Agreement

Articles	Articles (Rev 7 Aug) - attached
Exhibit 1	Scope of Work - attached
Exhibit 2	Compensation – attached ( 2) clean & tracked changes - Attachment 1 - Measurement & Payment - Schedule of Unit Price Breakdown - Personnel Rate Schedule - Equipment Rate Schedule - Estimated Trade Person-Hour Schedule - Monthly Payment Forecast
Exhibit 3	Coordination Procedures - attached
Exhibit 4	Supplier Document Requirement List – supplied with RFP
Exhibit 5	Health and Safety Requirements – supplied with RFP
Exhibit 6	Environment and Regulatory Compliance Requirements – supplied with RFP
Exhibit 7	Quality Requirements – supplied with RFP
Exhibit 8	Subcontractors, Manufacturers and Material Sources – supplied with Bid
Exhibit 9	Schedule (2016 River Diversion) - attached
Exhibit 10	Declaration of Residency – supplied with RFP
Exhibit 11	Company Supplied Documents – supplied with RFP
Exhibit 12	Site Conditions - attached
Exhibit 13	Provincial Benefits – supplied with Bid
Exhibit 14	Performance Security – to be provided in accordance with Article 7
Exhibit 15	2017 River Diversion Option (Schedule of Unit Price Breakdown & Milestone Schedule) – Schedule of Unit Price Breakdown to be provided by Contractor, Schedule for 2017 River Diversion – attached)

Note 1. All the above documents were issued with the RFP on 01-Aug-2014 at Rev 0.

Note 2. The Drawings which form a part of the Agreement were issued by Engineer with the original RFP and by Addendum and are incorporated into this LNTP by reference.

Note 3. Any Exhibit listed above but not attached is incorporated into this LNTP by reference.

**OUTSTANDING ITEMS TO BE ADDRESSED**

- 1) Incorporate any revisions made through the Bid Clarification Master during the bidding period, which have not already been incorporated.
- 2) Incorporate any clarifications or revisions confirmed in the Commercial and Technical Clarification Forms (Technical Nos. 1 to 3 and Commercial Nos. 1 to 9) issued during the Proposal evaluation period;
- 3) Finalization of all Appendices of Exhibit 2, in complete alignment with one another, Exhibit 2, the Articles and the Commercial and Technical Clarifications issued during the Proposal evaluation period;
- 4) Incorporate “good housekeeping” revisions.
- 5) Incorporate any other mutually agreed revisions.