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Subject: CH0007 Funding Contract - rev 7 Aug 2018 Version 2
Date: Tuesday, August 7, 2018 12:57:26 PM
Attachments: [29730726_3.doc](#)

Francesco

Please disregard my previous email and see revised agreement for signature as attached.

There was a typo in Paragraph 20 in the previous version that is corrected in the revised document below.

Scott

Scott O'Brien

Project Manager - Muskrat Falls Generation (Consultant to LCMC)

PROJECT DELIVERY TEAM

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CH0007

FUNDING CONTRACT

MUSKRAT FALLS CORPORATION

and

ASTALDI CANADA INC.

1 August 2018

CH0007**2018 FUNDING CONTRACT**

Effective as of August 1, 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 (hereinafter referred to as the "**Company**")

- and -

ASTALDI CANADA INC.

a company duly registered at the Registraire des entreprises (NEQ) 1168070192, having its head office at 780 ave Brewster, Suite 03-300, Montreal Quebec H4C 2K1, (hereinafter referred to as the "**Contractor**")

WHEREAS Company and Contractor entered into the Civil Works Agreement for the construction of the intake and powerhouse, spillway and transition dams, Agreement No. CH0007, dated 29 November 2013 (the "**Agreement**");

AND WHEREAS the Parties entered into an agreement dated 27 July 2016 respecting additional compensation for concrete installation and steel erection for the months of July to October 2016, inclusive, which work formed part of the Work under the Agreement ("**Bridge Agreement**")

AND WHEREAS Company and Contractor entered into a Completion Contract regarding the intake and powerhouse, spillway and transition dams dated 1 December 2016 ("**Completion Contract**");

AND WHEREAS Company and Contractor entered into a settlement agreement to resolve claims and certain matters that arose within the period from December 1, 2016 up to and including December 14, 2017 ("**2017 Settlement Agreement**");

AND WHEREAS Company and Contractor entered into a Re-Advance Agreement dated 29 May 2018, and amended 11 June 2018, under which Company provide advances of funds to Contractor in addition to those provided under the Agreement and Completion Contract ("**2018 Re-Advance Agreement**");

AND WHEREAS the Parties have agreed on terms and conditions for incentive compensation if certain work scopes are performed by certain dates and for additional advances by Company and repayment by Contractor (“**Funding Contract**”);

NOW THEREFORE IN CONSIDERATION OF THEIR MUTUAL PROMISES and the exchange of valuable consideration, the receipt and sufficiency of which is hereby duly and irrevocably acknowledged, **THE PARTIES HERETO AGREE AS FOLLOWS:**

Scope of Work Adjustments

1. Company shall issue a Change Order to remove the following work from the Scope of Work and the corresponding credits against the Contract Price shall be as follows:

a. Tailrace excavation	\$1,000,000.00
b. Intake excavation	\$1,300,000.00
c. D/S Bridge Removal	\$ 200,000.00
Total	\$2,500,000.00

2. Company shall have the option to remove rollways no.’s 2, 3 and 4 from the Scope of Work. The option for rollway no. 3 shall be exercised no later than August 30, 2018 and the option for rollway no.’s 2 and 4 shall be exercised by no later than September 30, 2018. If Company exercises the option to remove rollway no. 3, then Company’s credit against the Contract Price shall be five million dollars (\$5,000,000.00).

3. If Company exercises the option to remove rollway no.’s 2 and 4, then Company’s credit against the Contract Price shall be twelve million dollars (\$12,000,000.00).

4. Contractor shall not be entitled to any compensation (including overhead and profit) for these reductions to the Scope of Work. If Company does not exercise an option to de-scope for a particular rollway, Contractor reserves its right to claim (including but not limited, to claims for extra-time and extra-costs) by reason of any prolonged period for execution of such rollway.

5. All other scopes of Work shall remain as per the original Agreement, the Completion Contract, 2017 Settlement Agreement and 2018 Re-Advance Agreement (collectively “Agreements”).

Schedule Incentives

6. Company shall pay Contractor a bonus of up to eight million dollars (\$8,000,000) for each of Completion Contract work scope objectives C1 and C2 as follows:

- a. Contractor shall be entitled to receive a payment as specified in Appendix A for completion of intermediate work scopes described therein by the dates specified therein.

- b. If Contractor completes intermediate work scope #5 in Appendix A by the date specified, except of Punch List B items, then Contractor shall be entitled to receive any previously missed intermediate work scope bonus payments.
 - c. If Contractor does not complete intermediate work scope #5 by the date specified in Appendix A then the amount payable for intermediate work scope #5 shall be reduced by 20% for each day following the specified completion date, and Contractor shall not be entitled to any previously missed payments.
 - d. If Contractor does not complete intermediate work scope #6 in Appendix A by the date specified in Table 1 below then the amount payable for intermediate work scope #6 shall be reduced by 20% for each day following the specified completion date.
7. For greater certainty, the dates for Contractor to become entitled to the bonus for completing an intermediate work scope are fixed and shall not be subject to change for any reason whatsoever including, without limiting the generality of the foregoing, if Contractor is impacted by any act or omission of Company's Other Contractors but excluding any intentional act by Company.

Advances

8. For the purposes of this Funding Contract, the term "Default" shall mean an event of default described in Article 24.1 of the Agreement, including deemed events of default pursuant to paragraph 39 of the Completion Contract and paragraph 28 of this Funding Contract.
9. Reimbursement of advances, including those made to date and any further advances under this Funding Contract, is suspended until:
- a. Completion of Work Scope Objective C4; or
 - b. the Agreements are terminated by Company for Contractor's Default, the date of termination.
10. At Company's sole and absolute discretion Company may advance further funds on a weekly basis up to September 30, 2018, following Company's review of Contractor's work progress and cash flow requirements, which cash flow requirements shall be updated weekly by Contractor.
11. Work progress will be based on the following intermediate milestones for each Unit:
- Placement of PxUSA-01
 - Placement of all level 2 pours
 - Reshoring completed
 - Placement of all level 4 pours
 - Placement of all level 5 pours
 - Placement of Pit Walls Level 2 pours
 - Spiral case shoring removed
 - Gen floor steel complete

Spiral case floors & hydraulic passage accepted
Pit Free

12. For greater certainty, Company may cease providing advances at any time in its sole and absolute discretion.
13. If, in any week, an advance of funds by Company will exceed the value of the Advance Letter of Credit, then prior to Company making the advance, Contractor shall increase the value of the Advance Letter of Credit in an amount sufficient to secure the amount to be advanced
14. Upon completion of work scope objective C4, Company shall be entitled to be reimbursed for the full amount of advances made between July 1, 2018 and September 30, 2018, from the C4 work scope payment and remaining the work scope payments until all such advances have been repaid.
15. All advances made by Company prior to July 1, 2018, and any advances made after September 30, 2018, which have not been re-paid by Contractor shall be reimbursed to Company as set out in paragraph 16 below.
16. At Substantial Completion or any earlier termination of the Agreement for Default:
 - a. Contractor shall reimburse Company within 5 days the full amount of any outstanding advances made as a result of or prior to this Funding Contract; and
 - b. If Contractor is unable or unwilling to reimburse Company the full amount of the outstanding advances, Company shall be entitled to recover the advances from the Advance Letter of Credit and, if the Advance Letter of Credit number 504-12-0013280 issued by National Bank of Canada ("Advance LC") is insufficient, from the Performance Letter of Credit number 504-12-0013271 issued by National Bank of Canada ("Performance LC").
17. The following reimbursement of advances provisions are deleted:
 - a. paragraph 5 of the Re-Advance Agreement;
 - b. paragraphs 11 and 12 of the Completion Contract.

Progress Payments

18. Concrete Production payments shall continue as per the terms of the Completion Contract.
19. The value and payment of the work scope objectives remains as per the Completion Contract.
20. Concerning rollways, if Company removes rollways (2, 3 and/or 4) from Contractor's Scope of Work, Company and Contractor shall adjust the quantities for pay items to reflect the de-scoping and Company shall receive the credits described in paragraphs 2 and/or 3. For greater certainty, while the precise mechanics are to be agreed, the net reduction(s) in the Contract Price shall equal the amount(s) described in paragraph 2 and/or 3 above.

Security Adjustments

21. Contractor shall forthwith obtain and deliver to Company a revised Performance LC and Advance LC to remove references to a 15 days notice of default in the demand letters to National Bank of Canada.
22. Until such time as revised Performance and Advance LCs are delivered to Company pursuant to paragraph 21, Contractor agrees that it is deemed to have received fifteen (15) days notice of any Default, and that Company may upon any such Default deliver to the National Bank of Canada the demand letters in the form set out in the original Performance LC and original Advance LC.
23. If an advance is not re-paid when due or upon termination of the Agreement for Default, Contractor waives any right it may have to dispute a Notice of default and Company shall be entitled to recover the outstanding balance of advances owing to Company from the security described above.

Use of Funds

24. Contractor shall not factor any funds received under this Funding Contract, whether received as compensation for progress or as advances.
25. Contractor shall pay its Personnel on a priority basis, then pay all statutory deductions/obligations and Subcontractors and suppliers.
26. Contractor shall use all funds received under this Funding Contract solely for the purpose of paying costs to perform the Work.
27. Contractor shall submit to Company on a weekly basis the following information:
 - a. a schedule of eligible costs associated with the Work that Contractor intends to pay using funds received or to be received from Company under this Funding Contract or under the Agreements; and
 - b. a reconciliation of cash flows detailing the actual and forecasted weekly cash inflows and outflows at a level of detail acceptable to Company.

Default and Termination

28. Article 24.1 of the Agreement shall be deemed to include the following as events of default:
 - a. Failure to meet payroll obligations.
 - b. Failure to achieve intermediate work scope #5 for units 1 or 2 by each of their respective bonus completion dates specified plus 14 calendar days.
 - c. If Contractor is insolvent (unable to pay its debts as they generally become due).
 - d. Except for frivolous liens, if liens are registered by Subcontractors and/or Suppliers, the cumulative value of which exceeds the greater of 10% of the cost of the unpaid balance of the Contract Price at any point in time or \$10,000,000.00.

- e. If Contractor fails to re-pay advances made under this Funding Contract.
 - f. If Contractor breaches the Use of Funds provisions stated above.
29. Upon a Default, the remedies under the Agreements shall be immediately available to Company, including reimbursement of all advances.
30. Upon a Default, in addition to the obligations of Contractor under Article 24.13 of the Agreement, Contractor shall not impede Company from retaining or employing Contractor's Personnel for the purposes of finishing the Work.
31. Exhibit 16 to the Agreement including, but not limited to, the Dispute Review Board provisions:
- a. do not apply to any issue regarding reimbursement of advances made by Company to Contractor;
 - b. shall not apply to or impede Company's exercise of the remedies under the Agreements upon termination for Default; and
 - c. are only available to Contractor for claims for damages upon termination for Default.

Consents

32. Contractor shall obtain Astaldi SpA's to consent to this Funding Contract.
33. Contractor shall obtain the Performance Bond and Holdback Release Bond sureties' consent to this Funding Contract.
34. Notwithstanding execution of this Funding Contract by the Parties, this Funding Contract shall be subject to and conditional upon all written consents from parties to the LCP financing agreements that are required by the terms of those agreements.

Confidentiality

35. Neither Party shall disclose this Funding Contract, the subject matter of related negotiations without prior written approval of the other Party. If disclosure is required by Applicable Laws, the rules and regulations of any regulatory body or stock exchange, so far as it is lawful and practical to do so prior to such disclosure, the Party who is required to make the disclosure shall promptly liaise with the other Party to obtain that other Party's advice regarding such disclosure.

Agreements Affirmed

36. Except as expressly modified by this Funding Contract the Parties affirm all of their rights and obligations under the Agreements and that the Agreements are and remain in full force and effect.

- 37. This Funding Contract, and the payment by Company to Contractor and other matters contemplated by it, shall not be deemed to be an admission of fault, wrongdoing or liability on the part of either Party, which fault, wrongdoing or liability is expressly denied in respect of any cause, matter or thing arising from or in relation to this Funding Contract.
- 38. For greater certainty, the governing law and attornment provisions of Article 1.19 of the Agreement shall apply to this Funding Contract.

General

- 39. Unless otherwise defined, all capitalised terms and expressions used herein shall have the meaning respectively ascribed thereto in the Agreement and Completion Contract. Unless otherwise stated, references to a paragraph number are references to that numbered paragraph in this Funding Contract.
- 40. Each Party confirms that it has read this Funding Contract and fully understands its terms and that each Party voluntarily accepts its rights and obligations under this Funding Contract as it is in the best interests of each Party to do so. Each Party further confirms that they each have received the benefit of independent legal advice regarding the terms of this Funding Contract.

EXECUTED AS AN AGREEMENT on __ August 2018, and effective as of 1 August 2018:

For and on behalf of Muskrat Falls Corporation

Signature of Authorized Representative

Name of Authorized Representative

Signature of Authorized Representative

Name of Authorized Representative

For and on behalf of Astaldi Canada Inc.

Signature of Authorized Representative

Name of Authorized Representative

Astaldi S.p.A., the guarantor under the Parent Company Guarantee dated November 29, 2013, consents to the above terms and acknowledges that the Parent Company Guarantee retains its full and unimpaired validity, force and effect.

Signature of Authorized Representative

Name of Authorized Representative

APPENDIX A

	Intermediate Work Scopes	Unit 1		Unit 2	
		Date	Bonus	Date	Bonus
1	Placement of level 4 concrete complete	Done	0	13-Aug-18	\$500,000
2	Placement of level 5 concrete complete	Done	0	02-Sep-18	\$500,000
3	Pit walls complete (all 3 levels poured)	07-Aug-18	\$500,000.00	08-Oct-18	\$500,000
4	Generator floor steel installed and grouted. All interior pit wall surfaces repairs complete. All coating applied to interior pit walls and floors.	12-Sep-18	\$1,500,000	22-Oct-18	\$1,000,000
5	All remaining scope in the unit. To avoid any doubt, all scope shall be completed and is not limited to: runway steel repairs, high bay lighting, roof drains, floor and wall coatings and miscellaneous steel. Unit ready for Andritz start.	22-Sep-18	\$4,000,000	23-Nov-18	\$4,000,000
6	Semi Spiral Case Work Complete including all shoring removal, concrete repairs up to head gate slot and semi spiral case floor pours. (completion of work scope objective C1 and C2)	28-Oct-18	\$2,000,000	23-Nov-18	\$1,500,000
Maximum Bonus Available to be Earned			\$8.0 M		\$8.0 M