
CONSTRUCTION AGREEMENT

between

WUSKWATIM POWER LIMITED PARTNERSHIP,

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD,

DATED June 28, 2006.

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CONSTRUCTION AGREEMENT

This Agreement made the 28th day of June, 2006.

BETWEEN:

WUSKWATIM POWER LIMITED PARTNERSHIP

(the "Owner")

OF THE FIRST PART,

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD

(the "Project Manager")

OF THE SECOND PART.

PREAMBLE

WHEREAS in accordance with and subject to the terms of a certain project development agreement dated June 26, 2006 (the "PDA") made between **Hydro**, Nisichawayasihk Cree Nation, Taskinigahp Power Corporation and the **Limited Partnership**, **Hydro** and Nisichawayasihk Cree Nation have agreed to the development of the Wuskwatim Project (as defined in the PDA) through the **Limited Partnership**, using agreements between the **Limited Partnership** and **Hydro**, among other things, to manage the construction of the Wuskwatim project in accordance with the provisions of this **Construction Agreement**;

AND WHEREAS Hydro, as the Project Manager has the human resources, the established systems, appropriate skills, experience and financial capacity required to plan, engineer, design and manage all aspects of construction and commissioning of the generating station and related facilities, the Parties wish to retain Hydro as Project Manager;

THEREFORE the Parties agree as follows:

ARTICLE 1 - SCOPE OF WORK AND RELATED WORKS

Scope of Work

1.01 The Project Manager will complete:

- (a) all required planning, engineering, designing;
- (b) the call for tenders;

- (c) award of the contracts for construction of the Wuskwatim dam and generating station;
- (d) commissioning of each of three turbine / generators and associated works to be supplied and installed; and for
- (e) procurement, award and administration of related contracts including those specified in **Schedule "A"**,

all of which constitute the Scope of Work to be performed by the Project Manager under this Construction Agreement.

Related Works

- 1.02** The Scope of Work under this Construction Agreement *does not* include construction of transmission lines and related works specifically described in a certain Interconnection and Operating Agreement between the Owner and the Project Manager which transmission lines will carry power to the construction site.
- 1.03** The Scope of Work under this Construction Agreement *does* include the design, construction, operation and maintenance of all temporary construction power facilities, including communications facilities, required for the construction of the Wuskwatim project.

ARTICLE 2 – SCHEDULE FOR CONSTRUCTION

Construction Start Date

- 2.01** Upon satisfaction of all of the conditions set out in Article 15 of the PDA, and receipt of the Construction Notice from the Owner as provided in section 2.7 of the PDA, the Project Manager shall commence the Work and proceed to complete the Work described in this Agreement (the "Construction Start Date").

Contractor Schedules

- 2.02** Detailed schedules for successive parts of the Scope of Work are to be developed by the Project Manager with construction contractors, manufacturers and suppliers as each is retained by the Project Manager to either construct, supply, install or commission specific parts of the Scope of Work.

Completion Date for the Scope of Work

- 2.03** The Parties agree to use their respective best efforts to achieve their common objective of completing the Scope of Work in approximately six (6) years from the Construction Start Date, subject to the Owner's right to halt construction in accordance with Article 2 of the PDA.
- 2.04** Obligations of the Project Manager under this Agreement with respect to each of the three turbine/generators shall be complete upon issuance by the Project Manager of the commissioning certificate for each of the three turbine/generators to be supplied and installed for the Project. The "**Construction Completion Date**" shall be the date upon which the commissioning certificate is issued for the last of the three turbine / generators. It is agreed that each of the three turbine/generators will be commissioned separately and on the date a commissioning certificate is provided for each, the Owner shall take responsibility for such turbine /generator. Following the Construction Completion Date, the Project Manager shall remain responsible for removing the camp, cleaning up the Work site and responding to and assisting with, where it is reasonable to do so, any deficiency claims from the Owner, all of which shall be costs of the Project, but for all other purposes the Owner shall take possession and operational control of the entire electric power generating station.

ARTICLE 3 – PROJECT MANAGER RESPONSIBILITIES

Plan, Design and Engineer the Project

- 3.01** The Project Manager shall be solely responsible hereafter for continuing the planning, designing, engineering and procurement required to complete the Scope of Work.
- 3.02** The Project Manager shall be responsible for obtaining all licenses, permits, orders, authorizations and approvals required for the Scope of Work except for the Closing Licenses, as defined in the PDA, which shall be obtained by the Owner, and the Project Manager shall execute all aspects of the Scope of Work in accordance with, and shall maintain, all licenses required throughout the term of this Agreement.

Fundamental Construction Features

- 3.03** The Project Manager shall execute all aspects of the Scope of Work in accordance with the Fundamental Construction Features as defined in the PDA.

Procurement for Specified Contracts

- 3.04** The Project Manager shall award contracts specified in **Schedule "A"** in accordance with the Project Manager's Northern Purchasing Policy and any amendments thereto which is attached as a schedule to the PDA.

Supply of Construction Power

- 3.05** As the sole provider of hydro-electric power in Manitoba, the Project Manager will supply the power required to complete the Scope of Work at rates consistent with those set out in **Schedule "B"** of this Construction Agreement.

Manage Construction of the Project

- 3.06** The Project Manager shall supervise, control and direct all aspects of the Scope of Work in accordance with this Construction Agreement and perform all statutory duties and ensure compliance with the obligations imposed on a 'prime contractor'.

Advisory Committee on Employment

- 3.07** The Project Manger agrees to establish an Advisory Committee on Employment in accordance with the Terms of Reference attached hereto as **Schedule "C"**.

Costs, Deviations and Progress Billings

- 3.08** The Project Manager shall provide the Owner with timely updates of Project costs and the Owner shall use those updates to predict and arrange receipt of the funds necessary to meet the Owner's cash flow requirements hereunder.
- 3.09** When any aspect of the plan, design or engineering significantly changes or actual costs for completion of the Scope of Work deviate substantially from the Project Manager's estimate and current budget, the Project Manager shall forthwith inform the Owner of the deviation and of the associated cost implications.
- 3.10** The Project Manager shall prepare and submit invoices to the Owner at the end of each calendar month for costs incurred in the billing period to plan, design, engineer and construct the Project including an itemized account of the value expended for work, services, the Project Manager's overhead and for materials supplied in the form of invoice attached as **Schedule "D"** to this Construction Agreement.

Monthly Reporting

- 3.11** After the Construction Start Date and throughout performance of the Scope of Work, except during any halt of construction, the Project Manager shall prepare and provide written reports monthly to the Owner in the form attached as **Schedule "E"** to this Construction Agreement. Prior to the resumption of construction following such halt, the Project Manager shall provide to the Owner updated summaries of project costs and anticipated cash flow requirements.

Access

- 3.12** During construction, the Owner shall provide access to the construction site and the Project Manager agrees to be bound by the terms of the Wuskwatim Generation Project Access Management Plan attached as a Schedule to the PDA.

Commissioning of Turbine / Generators

- 3.13** The Project Manager shall conduct all testing and have necessary revisions made to complete the satisfactory installation and start up of each of the three turbine / generators contemplated by the Scope of Work.
- 3.14** In accordance with the Power Purchase Agreement, the Project Manager shall record and account to the Owner for all power produced in the commissioning and start-up of each turbine / generator through to the date a commissioning certificate is issued for each turbine / generator. The energy so produced during commissioning is to be valued in the manner set out in the Power Purchase Agreement.

Assign Warranties

- 3.15** The Project Manager shall ensure that all product, equipment and material warranties for components of the completed electric generating station shall be assigned by contractors and any others to the Owner upon the Construction Completion Date or such earlier date or dates as may be appropriate to facilitate enforcement of warranty claims.

ARTICLE 4 – OWNER RESPONSIBILITIES

Pay Project Manager Invoices

4.01

- (a) The Owner shall pay the Project Manager’s monthly invoices within five (5) business days following receipt. Monthly invoices received by the Owner prior to 4:00pm Central Standard Time (“C.S.T.”) on any business day will be deemed to have been received that day. Monthly invoices received on any non-business day or after 4:00pm C.S.T. on any business day shall be deemed to have been received by the Owner on the first business day that follows. For greater certainty, the term ‘business day’ shall mean any day on which the offices of the Project Manager are open for business.
- (b) The Owner shall pay the amount of each of the Project Manager’s monthly invoices without delay, deduction or set-off. The Owner shall be entitled to a credit to be set out in the applicable invoices for all power produced during commissioning as provided in Article 3.13 herein.

Aid Project Manager’s Performance

- 4.02** The Owner shall take all reasonable steps to enable the Project Manager to perform its obligations in accordance with the terms of this Construction Agreement.

ARTICLE 5 - FORCE MAJEURE

No Liability for Either Party

- 5.01** Neither the Owner nor the Project Manager shall be responsible or liable for, or deemed in breach of this Agreement because of any delay in the performance of their respective obligations under this Agreement due solely to circumstances beyond the reasonable control and without the fault or negligence of the party experiencing such delay, including, but not limited to: acts occasioned by violence of nature without interference or aid of man including but not limited to unusually severe weather conditions; strikes or other labour difficulties; war; riots; requirements, actions or failures to act on the part of governmental authorities preventing performance; inability despite due diligence to obtain required permits or licenses; accident; fire; damage to or breakdown of necessary facilities; or transportation delays or accidents (such causes hereinafter called “Force Majeure”).

Due Diligence

- 5.02** The party experiencing the Force Majeure shall exercise due diligence in endeavouring to overcome any Force Majeure impediment to its performance, but settlement of its labour difficulties shall be entirely within its discretion.

Notice Requirements

- 5.03** The party experiencing the Force Majeure shall promptly give oral notification to the other party. Such oral notification shall be confirmed in writing within five (5) days after such party has learned of the Force Majeure and every thirty (30) days thereafter, and such written notification shall give a full and complete explanation of the Force Majeure delay and its cause, the status of the Force Majeure, and the actions such party is taking and proposes to take to overcome the Force Majeure.

Cost Control and Payment Obligations

- 5.04** The party experiencing the delay shall undertake reasonable measures to remedy the Force Majeure to achieve minimum impact on the progress of the Scope of Work and the Owner will continue to reimburse costs actually incurred by the Project Manager hereunder including but in no way limited to all local wage and expense obligations incurred, all staff costs and expenses incurred for the transportation, lodging, demobilization, re-mobilization and additional administration associated with the relocation of the Project Manager's personnel on short or long term assignment resulting from the Force Majeure.

ARTICLE 6 – SUSPENSION OR TERMINATION OF CONSTRUCTION

Payment of Costs

- 6.01** Suspension or termination of the Scope of Work for any reason or time period whatsoever at the direction of the Owner or due to Force Majeure shall not suspend or relieve the Owner of its obligation to pay the Project Manager for all actual costs reasonably incurred in the planning, development, design, engineering, construction, commissioning and preservation of the products of the Scope of Work.
- 6.02** All such costs incurred by the Project Manger as a result of any such suspension or termination of the Scope of Work shall be paid by the Owner on a timely basis in accordance with the terms hereof.

ARTICLE 7 – GENERAL PROVISIONS

Enurement

7.01 This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

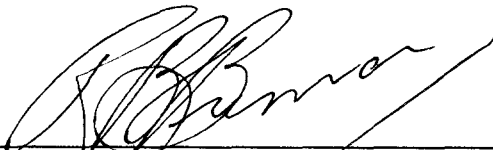
Limited Partnership

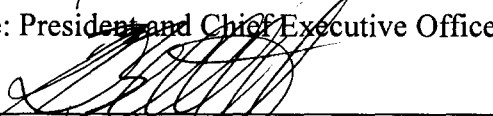
7.02 The parties hereto acknowledge that Wuskwatim Power Limited Partnership is a limited partnership formed under the laws of the Province of Manitoba, a limited partner of which is only liable for any of its liabilities or any of its losses to the extent of the amount that the limited partner has contributed or agreed to contribute to the capital of the limited partnership and the limited partner's pro rata share of any undistributed income. The parties hereto acknowledge that the obligations of Wuskwatim Power Limited Partnership shall not be personally binding upon, nor shall resort be had to, the property of any of the limited partners, their heirs, successors and assigns, and that resort shall only be had to the property of the Wuskwatim Power Limited Partnership or the property of its general partner. 5022649 Manitoba Ltd. is the sole general partner of the limited partnership.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

The Project Manager:

THE MANITOBA HYDRO-ELECTRIC BOARD


By: 
Name: Robert B. Brennan
Title: President and Chief Executive Officer

By: 
Name: Robert D. Bettner
Title: Assistant Corporate Secretary

The Owner:

WUSKWATIM POWER LIMITED PARTNERSHIP by its General Partner

5022649 Manitoba Ltd.

By: 
Name: Ken R. E. Adams
Title: Chairman

SCHEDULE A

Specified Contracts for Award

1. RFP 014001 for the construction of the Access Road to the Wuskwatim Project to a joint venture between Nisichawayasihk Construction Limited Partnership and Strilkewski Northern Ltd.
2. RFP 014011 for the provision of Cross Cultural Training, Ceremonies and On-Site Counseling Consulting Services for the construction of the Wuskwatim Project to NCN.
3. RFP 014002 for the provision of Phase I and Phase II Catering Services for the construction of the Wuskwatim Project to a joint venture between NCN and Sodexo MS Canada Ltd.
4. RFP 014005 for Site Preparation and Development of the camp and worksite area for the construction of the Wuskwatim Project to a joint venture between Nisichawayasihk Construction Limited Partnership and Strilkewski Northern Ltd.
5. RFP 014007 for the supply and installation of Sewer and Water Services for the camp and worksite area for the construction of the Wuskwatim Project to a joint venture between Nisichawayasihk Construction Limited Partnership and Strilkewski Northern Ltd.
6. RFP 014003 for the provision of Phase I and Phase II Security Services for the construction of the Wuskwatim Project to a joint venture between NCN and Sodexo MS Canada Ltd.

SCHEDULE B

Supply Rates for Power used in Construction

General Service Medium

**Non-Residential: Utility-owned
Transformation exceeding 200 kV.A**

Tariff No. 2004-30

Monthly Basic Charge	\$27.65
plus	
Energy Charge:	2.339¢/k.W.h
plus	
Demand Charge*	\$8.32/k.V.A

Notes:

Minimum monthly bill is the Basic Charge plus Demand Charge

Primary metering of multiple Utility-owned transformation - add 2% to kV.A for each transformation greater than one.

Demand Charge is applied to the Monthly Billing Demand defined as the greater of the following expressed in kV.A:

- i. measured demand*
- ii. 70% of highest measured demand in the Billing Year** for the months of December, January, February.*
- iii. 25% of contract demand.*
- iv. 25% of the highest measured demand in any of the previous 12 months.*

**Billing year -Twelve monthly billing periods commencing with the month of December and ending the following November*

General Service Large

**(Non-Residential: Customer-owned
Transformation exceeding 750 V but NOT
exceeding 30 kV)**

Tariff No. 2004-60

Energy Charge:	2.196¢/kW.h
Demand Charge*:	\$7.089/kV.A.

Exceeding 30 kV but NOT exceeding 100 kV

Tariff No. 2004-61

Energy Charge:	2.138¢/kW.h
plus	
Demand Charge*	\$6.051/kV.A

Exceeding 100 kV

Tariff No. 2004-62

Energy Charge	2.119¢/kW.h
plus	
Demand Charge*	\$5.401/kV.A

Notes:

* Minimum monthly bill is the Demand Charge.

* Demand Charge is applied to the Monthly Billing Demand defined as the greater of the following expressed in kV.A:

- i. measured demand.*
- ii. 70% of highest measured demand in the Billing Year** for the months of December, January, February.*
- iii. 25% of contract demand*
- iv. 25% of the highest measured demand in any of the previous 12 months.*

**** Billing year - Twelve monthly billing periods commencing with the month of December and ending the following November.**

SCHEDULE C

Advisory Committee on Employment - Terms of Reference

Purpose:

The Advisory Committee on Employment (ACE) is intended to be a forum for addressing employment related problems, in particular Aboriginal employment, related to construction of the Wuskwatim Project. ACE will be established to find solutions to problems, receive and review complaints, monitor/report and make recommendations to the Wuskwatim Project Manager on employment related matters. The ACE will have no direct authority in these matters.

Roles and Responsibilities:

- **Serve as a forum** for receiving and considering employment related complaints associated with construction of the Wuskwatim Project.
 - Endeavour to resolve complaints in a cooperative and timely manner. Inform the Wuskwatim Project Manager of the outcome or recommended course of action
 - Establish a complaints-handling process and communicate it to relevant parties and individuals
 - In this role, ACE shall not supplant and will, wherever possible, avoid duplicating other Wuskwatim Project organizations or committees with a mandate for dealing with specific types of complaints. Where relevant, ACE will direct the complainant to the appropriate Wuskwatim Project organization or committee. This is of particular importance in dealing with complaints that need to be addressed through the grievance procedures established under the Burntwood Nelson Collective Agreement (BNA).
- **Provide advice** to the Wuskwatim Project Manager regarding the implementation of the job referral process initially, as the process is being developed, and later in response to monitoring/evaluation of its effectiveness.
- **Review and provide advice** to the Wuskwatim Project Manager about the appropriateness of job order qualifications.
- **Provide advice** to the Wuskwatim Project Manager regarding strategies, materials and processes for cross-cultural orientation of workers at the work site (working and living at the construction site).
- **Provide advice** to the Wuskwatim Project Manager regarding strategies, materials and processes to help retain Aboriginal workers on the construction site, including potential role of on-site counselor – initially, provide advice in design of retention strategy, and later provide advice regarding adjustments to strategy in response to results apparent through monitoring.

- **Monitor** Aboriginal employment associated with the Wuskwatim Project, including under the BNA job order process and under negotiated contracts. Monitor employment of Aboriginal people from NCN (at Nelson House and elsewhere), as well as employment of Aboriginal people from other communities.
- **Monitor** the results and effectiveness of the BNA job order, negotiated contract hiring, worker orientation and job retention processes.
- **Report** in a regular and timely way to the Wuskwatim Project Manager:
 - Complaints received and addressed
 - Aboriginal employment (number of hires, skill areas, turnover, link to PPT, community of residence, First Nation, etc.)
 - Effectiveness of the BNA job referral process
 - Results of the hiring process for negotiated contracts
 - Status and outcomes of job qualification reviews
 - Status and results of the worker orientation program
 - Status and results of the worker retention strategy
 - Notable training and employment related outcomes occurring at the Wuskwatim construction site (both positive and negative)
 - Other matters addressed by the Committee.
- **Provide recommendations** to the Wuskwatim Project Manager regarding employment, particularly Aboriginal employment.

Administer an annual budget that enables the Committee to fulfill its roles and responsibilities.

Inform Wuskwatim workforce about the Committee's existence and its roles and responsibilities.

Provide recommendations to the Project Manager about:

- improvements that could be made to employment strategies and processes on future northern hydroelectric projects
- how to address employment matters during the operations and maintenance phase of the Wuskwatim Project.

Composition and Processes:

- Committee provides advice and makes recommendations to the Wuskwatim Project Manager. The Project Manager is required to inform the Committee in a timely manner of how their recommendations have been addressed. If the Committee is not satisfied with the response, the recommendations could be advanced by the Project Manager to the Limited Partnership.
- Committee members will endeavour to understand and will respect the roles, responsibilities and functions of other committees and agencies relevant to the Wuskwatim Project, in order

to judge whether issues are appropriate for the ACE to address. Committee members will be provided with orientation about this.

- **Committee Membership**

- NCN 2 (may include ATEC Director)
- Manitoba Hydro 2 (incl. NCN person working for MH)
- Manitoba Advanced Education and Training 1
- Hydro Projects Management Association 1
- Allied Hydro Council 1

Members are appointed for at least a two year term by their respective organizations.

- **Chairperson**

- Committee to be chaired by a Manitoba Hydro representative.

- **Duration of Committee**

- Establish prior to construction
- Runs throughout construction period.

- **Frequency of Meetings**

- Scheduled meetings to review progress at least once every quarter or as determined by the Committee. Additional meetings may be called by co-chairs to address emergent issues
- To address eligible complaints expeditiously, teleconference meetings (not previously scheduled) can be convened by the co-chairs.

- **Decision-making**

- Endeavour to achieve consensus. If consensus cannot be achieved, decide on basis of majority vote. All Committee members are eligible to vote.

- **Meeting Process**

- Meeting notes will be recorded and distributed to Committee members within two weeks of the meeting date
- Chair may request facilitator to manage meetings.

- **Outside Communications**

- Chair is responsible for external communications on behalf of the Committee. Chair must consult with the Project Manager and Limited Partnership project communications staff prior to undertaking external communications.

- **Per Diems**

NCN representatives who are not fully employed on Wuskwatim Project related jobs will be paid a per diem along with reasonable expenses

SCHEDULE D

Form for Monthly Invoices



**WUSKWATIM GENERATING
STATION INVOICE**

To:

Wuskwatim Power Limited Partnership
Attn.: Shauna Bailey
PO Box 815, 820 Taylor Avenue
Winnipeg, Manitoba
R3C 2P4

Invoice Date:

Invoice Number:

Customer Number:

Invoice Description: Wuskwatim Power Limited Partnership construction costs for Wuskwatim Generating Station for the billing period _____ (monthly) as per details on page 2.

Amount Due:

Payment Transfer:

Royal Bank
220 Portage Avenue
Winnipeg, Manitoba, R3C 2P3
Bank number 003
Transit number 00007
Account # 1043413

Payment Terms:

5 business days from receipt of invoice.

GST Registration Number:

#122063779

Invoice Inquiries:

Kim Wardrop - Major Projects Dept.
1146 Waverley Street, Bay 12
Winnipeg, Manitoba, R3T 0P4
Phone (204) 474-3731
E-mail - kwardrop@hydro.mb.ca



**WUSKWATIM GENERATING
STATION INVOICE**

Invoice Details:

Construction Agreement:

Contract Progress Payment	-
Contract Progress Payment	-
Other Contract Payments	-
Less: Contract Holdbacks	-
Consulting Fees	-
Manitoba Hydro Labour	-
Manitoba Hydro Expenses	-
Sub-Total	-

Management Agreement:

Manitoba Hydro Labour	-
Manitoba Hydro Expenses	-
Consulting Fees	-
Sub-Total	-

Adjustments to Previous Invoice -

Total -

GST @ 7% -

Amount Due -

SCHEDULE E

Format for Monthly Reports

LOGO

Wuskwatim Generating Station
Monthly Report

REPORT FOR THE PERIOD ENDING (dd/mm/yy)

EXECUTIVE SUMMARY

ENGINEERING

(high-level progress update)

CONTRACTS

(progress update)

MASTER SCHEDULE

(high-level progress update)

SITE LABOUR

(table of total site labour by various preference categories)

ENVIRONMENTAL

(statement on period activities)

SAFETY

(table of safety statistics)

TRAINING

(statement on period activities)

CULTURAL

(statement on period activities)

COSTS

(progress update)