

This Memorandum of Understanding is made in duplicate on this 2nd day of June, 2009

BETWEEN:

THE EAST SIDE ROAD AUTHORITY INC.
a corporation owned and controlled by the
Government of Manitoba

AND

BERENS RIVER FIRST NATION
a band as defined in the *Indian Act* as represented by its
CHIEF AND COUNCILLORS

WHEREAS:

- A. The East Side Road Authority Inc. ("**ESRA**") has been incorporated by the Government of Manitoba for the purpose of constructing and maintaining an all-weather road along the East Side of Lake Winnipeg (the "**Project**");
- B. As part of its mandate, ESRA wishes to increase the benefits of the Project for communities that will be impacted by the Project, which benefits include, but are not limited to, maximizing local procurement, employment and training opportunities;
- C. Berens River First Nation ("**Berens River**") is located in the area commonly known as the East Side of Lake Manitoba ("**East Side**"), and is a community that will be impacted by the Project;
- D. ESRA and Berens River have indicated their intention to negotiate a Community Benefits Agreement, to be entered into between ESRA and Berens River, which Agreement will more fully set out the commitments and obligations of ESRA and Berens River;
- E. In the interim, ESRA and Berens River wish to set out their respective rights and responsibilities, as agreed to in principle, in this Memorandum of Understanding ("**MOU**");

NOW THEREFORE, in consideration of the recitals set out above, the parties agree as follows:

1.00 Community Benefits Agreement

- 1.01 ESRA and Berens River each agree that they will negotiate in good faith the terms and conditions of the Community Benefits Agreement to be entered into between ESRA and Berens River.
- 1.02 ESRA and Berens River will each cooperate with each other to work towards the attainment of the objects and intent of this MOU and will use their best efforts to ensure the successful implementation of the Community Benefits Agreement.

2.00 Separate Entity

- 2.01 Berens River agrees that it will create a separate corporate entity to be known as Pigeon River Contractors Ltd. ("**PRC**") to enter into contracts with ESRA to deliver the Pilot Project Contracts for Pre-Construction services described in this MOU, as well as any future contracts entered into with ESRA during the Construction phase and Post-Construction phase of the Project. PRC will be wholly owned and controlled by Berens River.
- 2.02 PRC employees will be paid wages equal to wages paid by contractors bidding on similar work (or at minimum, in accordance with *The Construction Industry Wages Act*), or in accordance with a Project Management Agreement.
- 2.03 Berens River agrees that the accounts and financial records of PRC will be created and kept separate and apart from all other Berens River accounts. Monies deposited to the PRC account will be used only for project-related expenses. Shareholder dividends of PRC may only be paid when PRC is in a for-profit position and with prior approval by ESRA.
- 2.04 All cheques written on the PRC account will be co-signed by ESRA.
- 2.05 Berens River and ESRA will work with Berens River's financial institution to create a risk-management framework to provide for an appropriate credit facility (line of credit or otherwise) for PRC.
- 2.06 ESRA and Berens River agree that the financial accounts, records and credit facilities described in 2.03, 2.04 and 2.05 apply to financing arrangements and contracts entered into with ESRA, including any Third Party Contracts contemplated at section 4.00 of this MOU. Berens River and PRC are not precluded from entering into separate arrangements, agreements or accounts for unrelated contracts and works. ESRA and Berens River agree that any separate arrangements, agreements or accounts will not require ESRA approval or signing authority, provided that they are included in any audited financial statements required by ESRA.

3.00 Pilot Project - Contracts with PRC

Gravel Crushing

- 3.01 ESRA will require significant aggregate material for the purposes of the Project (size and quantity to be determined) to be crushed and stockpiled. Berens River, through PRC, represents that it can provide this material. ESRA and Berens River agree that they will negotiate in good faith to enter into a contract between ESRA and PRC for Gravel Crushing. ESRA and Berens River further agree that the Gravel Crushing contract will form part of the "benefits" to be included in the Community Benefits Agreement.
- 3.02 ESRA and Berens River agree that the Gravel Crushing contract, with an estimated maximum value of \$7.5 million dollars, will take into account the following elements:
- (a) the term of the contract will be for 3 years;
 - (b) the unit cost for the gravel will be based on current market prices for remote communities, adjusted for quantities;
 - (c) ESRA will include a capacity-building allowance of up to 25% of the unit cost;
 - (d) ESRA will have a 10 year option following the term of the contract to obtain aggregate from PRC at the unit cost adjusted for inflation
- 3.03 Related to the Gravel Crushing contract, ESRA agrees that it will assist Berens River with the relocation of its crushing operation to an agreed-to location, including the establishment of a work camp. The estimated maximum cost of these works is \$1.0 million dollars.

Right of Way Clearing

- 3.04 ESRA will require the proposed alignment of the East Side Road to be cleared, from Berens River to Bloodvein First Nation. Berens River, through PRC, represents that it can supply the labour and equipment to clear the right of way. ESRA and Berens River agree that they will negotiate in good faith to enter into a contract between ESRA and PRC for Right of Way Clearing. ESRA and Berens River further agree that the Right of Way Clearing contract will form part of the "benefits" to be included in the Community Benefits Agreement.
- 3.05 ESRA and Berens River agree that the Right of Way Clearing contract will take into account the following elements:
- (a) the clearing will take place between 2009 and 2010;
 - (b) ESRA will pay PRC on a cost plus 10% basis;
 - (c) Costs will be limited to wages, fuel and equipment rental;
 - (d) Usable harvested material may be used by PRC/Berens River (at no additional cost to ESRA)

Future Contracts

- 3.06 ESRA and Berens River acknowledge that, as the Project progresses, there will be opportunities for ESRA and Berens River to enter into additional contracts during the Construction phase and Post-Construction phase of the Project. ESRA and Berens River agree that they will negotiate in good faith any future contracts, and where applicable these future contracts will form part of the "benefits" to be included in the Community Benefits Agreement.

4.00 Third Party Contracts

- 4.01 ESRA and Berens River each agree that contracts resulting from the Community Benefits Agreement, including the contracts referenced in section 3.00 of this MOU, whether entered into by ESRA, Berens River or PRC, will be:
- procured in a transparent manner;
 - subject to access to information or protection of privacy laws, public;
 - whenever possible, tendered; and
 - written in a manner that promotes local preference through the hiring of members/enterprises of Berens River or persons residing in the East Side.
- 4.02 Berens River agrees that it will obtain ESRA's prior approval if it or PRC enters into a non-tendered arrangement or sub-contract, joint venture or partnership related to its responsibilities or obligations as set out in this MOU or in the Community Benefits Agreement.
- 4.03 Berens River agrees to ensure that third party contractors are paid wages equal to wages paid by PRC to its employees.
- 4.04 If applicable, Berens River will ensure that third party contracts require that the contractor provide a management plan, which provides for the training of Berens River members or PRC employees to assume management roles in the future.

5.00 Project and Contract Administration – ESRA

- 5.01 ESRA will provide Project and Contract Administration services to Berens River and PRC for contracts contemplated by the Community Benefits Agreement and the PRC contracts set out at section 3.00 of this MOU. The Project and Contract Administration services will be provided by ESRA with the goal of mentoring members of Berens River and employees of PRC, in order that they may take over these roles for future contracts.

- 5.02 Without limiting the generality of the foregoing, the Project and Contract Administration services to be provided by ESRA will include:
- (a) preparation of bi-weekly progress estimate documents;
 - (b) direct payment of suppliers and/or subcontractors, if requested;
 - (c) office and field supervision (payroll log, quantity measurements, accounts payable)
 - (d) arrange for required permits and approvals
 - (e) tendering of supplier and subcontracts as necessary
 - (f) expediting of payment for approved progress estimates
- 5.03 ESRA will provide the required staff, supervision and resources required to assist PRC with achieving COR certification.
- 5.04 ESRA will provide the required supervision, infrastructure and resources required to assist PRC to establish an equipment maintenance program.

6.00 Training

- 6.01 ESRA proposes the following training programs to take place in 2009 for members of Berens River:
- (a) 8-10 training positions for a two week Intro to Construction course (on-site; June/July 2009)
 - (b) 8-10 training positions for a two week Intro to Construction course (off-site; August 2009)
 - (c) 2-4 training positions for a six week Labourers course (off-site; summer/fall 2009)
 - (d) 2-4 training positions for a six week Heavy Equipment Operator course (off-site; June/July 2009)
- 6.02 ESRA proposes the following training programs to take place in 2010 for members of Berens River:
- (a) 16-20 training positions (in total) for a two week Intro to Construction course (on-site)
 - (b) 6-8 training positions for a six week Labourers course (off-site)
 - (c) 8-10 training positions (in total) for a six week Heavy Equipment Operator course (off-site)
- 6.03 ESRA and Berens River agree that the training programs will form part of the "benefits" to be included in the Community Benefits Agreement.

7.00 Term

- 7.01 This MOU will continue until such time as the Community Benefits Agreement, Gravel Crushing Contract and Right of Way Clearing Contract, as referred to in this MOU have been entered into, or by July 31 2009, whichever occurs sooner.

8.00 No Legal Obligations

- 8.01 The MOU is not intended to and does not create binding legal obligations. The legal obligations between any of the parties hereto will be set out in the Community Benefits Agreement, Gravel Crushing Contract and Right of Way Clearing Contract identified in this MOU.
- 8.02 ESRA acknowledges that the commitments of Berens River are subject to approval and a band council resolution.
- 8.03 Berens River acknowledges that the commitments of ESRA are subject to approval by the Government of Manitoba.

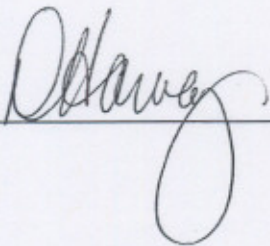
9.00 General

- 9.01 Subject to the foregoing, neither ESRA nor Berens River will assign or transfer this MOU or any of the rights or responsibilities hereunder without the prior approval of the other party. Any assignment made without prior approval shall be void and of no effect.
- 9.02 Berens River acknowledges that, if *The Manitoba Floodway Authority Act* is amended, ESRA will become part of the Crown agency currently known as the Manitoba Floodway Authority. If ESRA becomes part of the Crown agency, the rights and responsibilities of ESRA as set out in this MOU will be transferred to the Crown agency, and no prior approval of Berens River is required.
- 9.03 No amendment or change to or modification of this MOU will be valid unless it is in writing and signed by ESRA and Berens River.
- 9.04 Nothing in this MOU is to be construed as one party acting as agent for the other party.

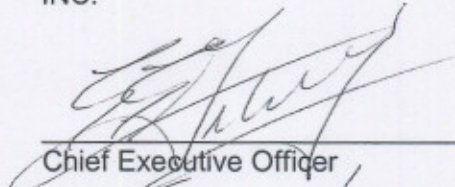
9.05 ESRA and Berens River agree that they will each act reasonably and without delay with respect to any decisions or recommendations that they may have to make with respect to the matters set out in this MOU.

This Memorandum has been executed by the East Side Road Authority Inc. and by Berens River First Nation by their authorized officers on the dates noted below.

Witness



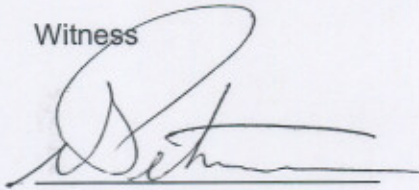
FOR THE EAST SIDE ROAD AUTHORITY
INC.



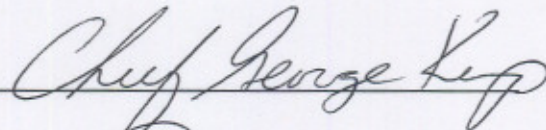
Chief Executive Officer

Date: JUNE 2/09

Witness



FOR BERENS RIVER FIRST NATION



Date: June 2, 2009.

Witness

Date: _____