

This Memorandum of Understanding is made in duplicate on this 25 day of January, 2010.

BETWEEN:

THE MANITOBA FLOODWAY AND EAST SIDE ROAD AUTHORITY
a Crown agency continued pursuant to
The Manitoba Floodway and East Side Road Authority Act

AND

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

WHEREAS:

- A. The East Side Road Authority ("**ESRA**"), a division of the Manitoba Floodway and East Side Road Authority continued pursuant to subsection 2(1) of *The Manitoba Floodway and East Side Authority Act*, has been given the mandate by the Government of Manitoba to construct and maintain 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. Hollow Water First Nation ("**Hollow Water**") is located in the area commonly known as the East Side of Lake Winnipeg ("**East Side**"), and is a community that will be impacted by the Project;
- D. ESRA and Hollow Water have indicated their intention to negotiate a Community Benefits Agreement, to be entered into between ESRA and Hollow Water, which Agreement will more fully set out the commitments and obligations of ESRA and Hollow Water;
- E. In the interim, ESRA and Hollow Water 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 Hollow Water 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 Hollow Water.
- 1.02 ESRA and Hollow Water 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 Hollow Water agrees that it will create a separate corporate entity, which for the purposes of this MOU is known as Hollow Water Inc. ("**HW INC.**") 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. HW INC. will be wholly owned and controlled by Hollow Water.
- 2.02 HW INC. 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 Hollow Water agrees that the accounts and financial records of HW INC. will be created and kept separate and apart from all other Hollow Water accounts. Monies deposited to the HW INC. account will be used only for project-related expenses. Shareholder dividends of HW INC. may only be paid when HW INC. is in a for-profit position and with prior approval by ESRA.
- 2.04 All cheques written on the HW INC. account will be co-signed by ESRA.
- 2.05 Hollow Water and ESRA will work with Hollow Water's financial institution to create a risk-management framework to provide for an appropriate credit facility (line of credit or otherwise) for HW INC.
- 2.06 ESRA and Hollow Water 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. Hollow Water and HW INC. are not precluded from entering into separate arrangements, agreements or accounts for unrelated contracts and works. ESRA and Hollow Water 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 Contracts with HW INC.

Pilot Project - Road Improvements

- 3.01 ESRA requires on-going improvement of a portion of the existing Rice River Road. Hollow Water, through HW INC., represents that it can provide these road improvement works. ESRA and Hollow Water agree that they will negotiate in good faith to enter into a contract between ESRA and HW INC. for road improvement (the "**Road Improvement Contract**"). ESRA and Hollow Water further agree that the Road Improvement Contract will form part of the "benefits" to be included in the Community Benefits Agreement.
- 3.02 ESRA and Hollow Water agree that the Road Improvement Agreement, with an estimated value of six million dollars over a three year term and in accordance with an agreed-to work plan, and will include the crushing of aggregate material, hauling and placement of the aggregate, road grading and re-alignment of the right of way.

Pilot Project - Right of Way Clearing

- 3.03 ESRA will require the proposed alignment of the East Side Road to be cleared, along the upgraded Rice River Road alignment. Hollow Water, through HW INC., represents that it can supply the labour and equipment to clear the right of way. ESRA and Hollow Water agree that they will negotiate in good faith to enter into a one million dollar, three year contract between ESRA and HW INC. for right of way clearing (the "**Right of Way Clearing Contract**"). ESRA and Hollow Water further agree that the Right of Way Clearing Contract will form part of the "benefits" to be included in the Community Benefits Agreement.

Future Contracts

- 3.04 ESRA and Hollow Water acknowledge that, as the Project progresses, there will be opportunities for ESRA and Hollow Water to enter into additional contracts during the Construction phase and Post-Construction phase of the Project. ESRA and Hollow Water 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 Hollow Water 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, Hollow Water or HW INC., 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 Hollow Water or persons residing in the East Side.
- 4.02 Hollow Water agrees that it will obtain ESRA's prior approval if it or HW INC. 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 Hollow Water agrees to ensure that third party contractors are paid wages equal to wages paid by HW INC. to its employees.
- 4.04 If applicable, Hollow Water will ensure that third party contracts require that the contractor provide a management plan, which provides for the training of Hollow Water members or HW INC. 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 Hollow Water and HW INC. for contracts contemplated by the Community Benefits Agreement and the HW INC. 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 Hollow Water and employees of HW INC., 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 HW INC. with achieving COR certification.
- 5.04 ESRA will provide the required supervision, infrastructure and resources required to assist HW INC. to establish an equipment maintenance program.

6.00 Training

- 6.01 ESRA proposes the following training programs to take place in 2010 and 2011 for members of Hollow Water:
- (a) 32-40 training positions (in total) during four separate three-week Introduction to Construction courses (on-site);
 - (b) 12-16 training positions for graduates of Introduction to Construction course (in total) during two separate five-week Construction Craft Worker (Labourer) courses (on-site);
 - (c) 12-16 training positions for graduates of Introduction to Construction course (in total) during two six-week Heavy Equipment Operator courses (on site, subject to availability of required equipment).
- 6.02 ESRA and Hollow Water 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 referred to in this MOU has been entered into, or by March 1, 2010, 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, the Road Improvement Contract and Right of Way Clearing Contract identified in this MOU.

8.02 ESRA acknowledges that the commitments of Hollow Water are subject to approval and a band council resolution.

8.03 Hollow Water acknowledges that the commitments of ESRA are subject to approval by the Government of Manitoba.

9.00 General

9.01 Neither ESRA nor Hollow Water 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 No amendment or change to or modification of this MOU will be valid unless it is in writing and signed by ESRA and Hollow Water.

9.03 Nothing in this MOU is to be construed as one party acting as agent for the other party.

9.04 ESRA and Hollow Water 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 Manitoba Floodway and East Side Road Authority and by Hollow Water First Nation by their authorized officers on the dates noted below.

Witness



FOR THE MANITOBA FLOODWAY AND EAST
SIDE ROAD AUTHORITY


Chief Executive Officer

Date: JAN 25 / 2010

Witness

FOR HOLLOW WATER FIRST NATION

Norma Spence

[Signature]
CHIEF LARRY BARKER

Date: JAN 25/2010

Witness

Norma Spence

[Signature]
COUNCILLOR FERLON BARKER

Date: JAN 25/2010

Witness

Norma Spence

[Signature]
COUN HENRY MONIAS

Date: JAN 25/2010

Witness

Date: _____

Witness

Date: _____