

This Memorandum of Understanding is made in duplicate on this 07 day of ^{July} ~~June~~, 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

PAUINGASSI 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. Pauingassi First Nation ("**Pauingassi**") 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 Pauingassi have indicated their intention to negotiate a Community Benefits Agreement, to be entered into between ESRA and Pauingassi, which Agreement will more fully set out the commitments and obligations of ESRA and Pauingassi;
- E. In the interim, ESRA and Pauingassi 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 Pauingassi 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 Pauingassi.
- 1.02 ESRA and Pauingassi 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 Pauingassi agrees that it will create a separate corporate entity, which for the purposes of this MOU is known as Pauingassi First Nation Inc. ("**PG 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. PG INC. will be wholly owned and controlled by Pauingassi.
- 2.02 PG 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 Pauingassi agrees that the accounts and financial records of PG INC. will be created and kept separate and apart from all other Pauingassi accounts. Monies deposited to the PG INC. account will be used only for project-related expenses. Shareholder dividends of PG INC. may only be paid when PG INC. is in a for-profit position and with prior approval by ESRA.
- 2.04 All cheques written on the PG INC. account will be co-signed by ESRA.
- 2.05 Pauingassi and ESRA will work with Pauingassi's financial institution to create a risk-management framework to provide for an appropriate credit facility (line of credit or otherwise) for PG INC.
- 2.06 ESRA and Pauingassi 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. Pauingassi and PG INC. are not precluded from entering into separate arrangements, agreements or accounts for unrelated contracts and works. ESRA and Pauingassi 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 PG INC. Pilot Project - Right of Way Clearing

- 3.01 ESRA will require clearing of the proposed alignment of the all-season road in order for ESRA's consultant engineers to determine the final right of way alignment for the all-season road. Pauingassi, through PG INC., represents that it can supply the labour and

equipment to clear the right of way. ESRA and Pauingassi agree that they will negotiate in good faith to enter into a two million dollar, three year contract between ESRA and PG INC. for right of way clearing (the "**Right of Way Clearing Contract**"). The work will be undertaken in accordance with an agreed-to work plan. ESRA and Pauingassi 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

- 3.02 ESRA and Pauingassi acknowledge that as the Project progresses, there will be opportunities for ESRA and Pauingassi to enter into additional contracts during the Pre-Construction, Construction and Post-Construction phases of the Project. ESRA and Pauingassi 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 Pauingassi 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, Pauingassi or PG INC., will be:
- procured in a transparent manner;
 - made public, subject to access to information or protection of privacy laws;
 - whenever possible, tendered; and
 - written in a manner that promotes local preference through the hiring of members/enterprises of Pauingassi or persons residing in the East Side.
- 4.02 Pauingassi agrees that it will obtain ESRA's prior approval if it or PG 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 Pauingassi agrees to ensure that third party contractors are paid wages equal to wages paid by PG INC. to its employees.
- 4.04 If applicable, Pauingassi will ensure that third party contracts require that the contractor provide a management plan, which provides for the training of Pauingassi members or PG 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 Pauingassi and PG INC. for contracts contemplated by the Community Benefits Agreement and the PG 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 Pauingassi and employees of PG 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 PG INC. with achieving COR certification.

5.04 ESRA will provide the required supervision, infrastructure and resources required to assist PG INC. to establish an equipment maintenance program.

6.00 Training

6.01 ESRA proposes the following training programs, valued at \$250,000.00, to take place in fiscal years 2010/2011 and 2011/2012 for members of Pauingassi:

- (a) 24-30 training positions (in total) during three separate three-week Introduction to Construction courses (on-site); and

12-16 further training positions for graduates of Introduction to Construction course (in total) during two separate five-week Construction Craft Worker (Labourer) courses (on-site);

Or,

- (b) 6-8 training positions (in total) for one six-week Heavy Equipment Operator course (on-site—subject to availability of required equipment).

6.02 ESRA and Pauingassi 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 July 31, 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 and Right of Way Clearing Contract identified in this MOU.

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

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

9.00 General

9.01 Neither ESRA nor Pauingassi 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 Pauingassi.

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

9.04 ESRA and Pauingassi 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 Pauingassi First Nation by their authorized officers on the dates noted below.

Witness

Nancy Delessee

FOR THE MANITOBA FLOODWAY AND EAST SIDE ROAD AUTHORITY

[Signature]
Chief Executive Officer

Date: July 19/10

FOR PAUINGASSI FIRST NATION

Per: [Signature]
Chief Harold Crow

Date: July 07-2010

Witness

Witness

Per: [Signature]
Moses Owens, Councilor

Date: July 07-2010

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Witness

Per: Nelson Owens
Nelson Owens, Councilor

Date: July 7 2010

Witness

Per: Robert T. Owens
Robert T. Owens, Councilor

Date: July 7 2010