

This Memorandum of Understanding is made in duplicate on this 12th day of July, 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

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

equipment to clear the right of way. ESRA and Poplar River agree that they will negotiate in good faith to enter into a two million dollar, three year contract between ESRA and PR 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 Poplar River 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 Poplar River acknowledge that as the Project progresses, there will be opportunities for ESRA and Poplar River to enter into additional contracts during the Pre-Construction, Construction and Post-Construction phases of the Project. ESRA and Poplar 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 Poplar 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, Poplar River or PR 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 Poplar River or persons residing in the East Side.
- 4.02 Poplar River agrees that it will obtain ESRA's prior approval if it or PR 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 Poplar River agrees to ensure that third party contractors are paid wages equal to wages paid by PR INC. to its employees.
- 4.04 If applicable, Poplar River will ensure that third party contracts require that the contractor provide a management plan, which provides for the training of Poplar River members or PR 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 Poplar River and PR INC. for contracts contemplated by the Community Benefits Agreement and the PR 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 Poplar River and employees of PR 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 PR INC. with achieving COR certification.

5.04 ESRA will provide the required supervision, infrastructure and resources required to assist PR 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 Poplar River:

- (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 Poplar 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 referred to in this MOU has been entered into, or by August 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 Poplar River are subject to approval and a band council resolution.

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

9.00 General

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

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

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

Witness

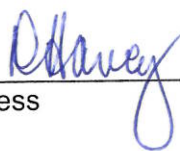


FOR THE MANITOBA FLOODWAY AND EAST SIDE ROAD AUTHORITY



Chief Executive Officer

Date: July 12/2010




Witness

FOR POPLAR RIVER CREE NATION

Per: 

Chief Russell Lambert

Date: July 12 '10



Witness

Per: 

Emile John Mason, Councilor

Date: July 12/2010

(continued on page 6)

