

This Memorandum of Understanding is made in duplicate on this 30<sup>th</sup> 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

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

#### **Pilot Project - Right of Way Clearing and Road Improvements**

- 3.01 ESRA will require clearing and grubbing the existing right of way of the proposed all-season road between St. Theresa Point and Wasagamack
- 3.02 In addition, ESRA requires improvements to the pioneer road within the existing right of way between St. Theresa Point and Wasagamack.
- 3.03 St. Theresa Point, through STP INC., represents that it can supply the labour and equipment to clear and grub the right of way and to provide the pioneer road improvement works.
- 3.04 ESRA and St. Theresa Point agree that they will negotiate in good faith to enter into a two million dollar, three year contract between ESRA and STP INC. for right of way clearing and roadway improvements (the "**Right of Way Clearing and Roadway Improvements Contract**"). The work will be undertaken in accordance with an agreed-to work plan. ESRA and St. Theresa Point further agree that the Right of Way Clearing and Roadway Improvements Contract will form part of the "benefits" to be included in the Community Benefits Agreement.

#### **Future Contracts**

- 3.05 ESRA and St. Theresa Point acknowledge that as the Project progresses, there will be opportunities for ESRA and St. Theresa Point to enter into additional contracts during the Construction phase and Post-Construction phase of the Project. ESRA and St. Theresa Point 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 St. Theresa Point 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, St. Theresa Point or STP 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 St. Theresa Point or persons residing in the East Side.
- 4.02 St. Theresa Point agrees that it will obtain ESRA's prior approval if it or STP 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 St. Theresa Point agrees to ensure that third party contractors are paid wages equal to wages paid by STP INC. to its employees.
- 4.04 If applicable, St. Theresa Point will ensure that third party contracts require that the contractor provide a management plan, which provides for the training of St. Theresa Point members or STP 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 St. Theresa Point and STP INC. for contracts contemplated by the Community Benefits Agreement and the STP 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 St. Theresa Point and employees of STP 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 STP INC. with achieving COR certification.
- 5.04 ESRA will provide the required supervision, infrastructure and resources required to assist STP 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 St. Theresa Point:
  - (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 St. Theresa Point 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 and Right of Way Clearing and Roadway Improvements Contract identified in this MOU.

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

8.03 St. Theresa Point acknowledges that the commitments of ESRA are subject to approval by the Government of Manitoba.

### **9.00 General**

9.01 Neither ESRA nor St. Theresa Point 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 St. Theresa Point.

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

9.04 ESRA and St. Theresa Point 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 St. Theresa Point First Nation by their authorized officers on the dates noted below.

Witness

Nancy DeWisser

FOR THE MANITOBA FLOODWAY AND EAST SIDE ROAD AUTHORITY

[Signature]  
Chief Executive Officer

Date: January 29, 2010

Witness

Sean McDougall

FOR ST. THERESA POINT FIRST NATION

[Signature]

Date: January 20, 2010

Witness

Sean McDougall

[Signature]

Date: JANUARY 20, 2010

Witness

Sean McDougall

[Signature]

Date: Jan 21, 2010

Witness

Alan McQuill

Wayne [Signature]

Date: Jan 25 / 2010

Witness

Alan McQuill

Pamela [Signature]

Date: Jan 25 / 2010

Witness

Alan McQuill

James [Signature]

Date: Jan 25, 2010

Witness

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Date: \_\_\_\_\_