

This Memorandum of Understanding is made in duplicate on this 19<sup>th</sup> day of November, 2009

BETWEEN:

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

- and -

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

### Pilot Project - All Weather Road Alignment

- 3.01 **Exploration of Proposed All Weather Road Alignment.** ESRA requires assistance from Wasagamack in developing an access road to determine the proposed right of way alignment for the future all weather road between Wasagamack and Norway House Cree Nation. Wasagamack represents that, through WFN Inc., it can supply the labour and equipment to provide this assistance to ESRA. Subject to the terms and conditions of the Community Benefits Agreement, ESRA shall enter into, and Wasagamack shall cause WFN Inc. to enter into, an agreement setting out the parameters of the exploration of the proposed all weather road alignment (the "**Proposed Alignment Agreement**").

- 3.02 ESRA and Wasagamack agree that the Proposed Alignment Agreement, with an estimated maximum value of \$2.0 million dollars, will be performed over a term of three years, in accordance with an agreed-to work plan, and includes the dismantling and removal of the existing two bridges.

#### **Potential Additional Pilot Project Contracts**

- 3.03 **Pre-Construction Right of Way Clearing and Gravel Crushing.** ESRA may require future additional Pre-Construction pilot projects, such as right of way clearing and gravel crushing. Wasagamack specifically acknowledges that these potential additional pilot project contracts are at the sole discretion of ESRA and are subject to any approvals that ESRA may be required to obtain. If these additional Pre-Construction pilot projects are proceeded with, ESRA and WFN Inc., through Wasagamack, agree to negotiate in good faith to enter into the necessary contracts to give effect to these additional Pre-Construction pilot projects.

#### **Future Contracts**

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

## **6.00 Training**

- 6.01 ESRA proposes one of the following training programs described in (a) and (b) below to take place in 2010 for members of Wasagamack:
- (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 Wasagamack 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 has been entered into, or by December 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 and Pilot Project Agreements identified in this MOU.

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

8.03 Wasagamack 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 Wasagamack 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 Wasagamack acknowledges that, if *The Manitoba Floodway Authority Act* is amended, ESRA will become part of the Crown agency to be known as the Manitoba Floodway and East Side Road Authority. If ESRA becomes part of this 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 Wasagamack 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 Wasagamack.

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

9.05 ESRA and Wasagamack 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 Wasagamack First Nation by their authorized officers on the dates noted below.

Delaney  
Witness

FOR THE EAST SIDE ROAD AUTHORITY INC.

[Signature]  
Chief Executive Officer

Date: Nov 19/09

Delaney  
Witness

FOR WASAGAMACK FIRST NATION

Per: [Signature]

Date: Nov. 19 / 09

Delaney  
Witness

Per: [Signature]

Date: Nov 19 / 2009

Delaney  
Witness

Per: [Signature]

Date: Nov 19/09

Delaney  
Witness

Per: [Signature]

Date: Nov 19 / 09

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Witness

Per: \_\_\_\_\_

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