

RURAL MUNICIPALITY OF MORRIS

BY-LAW NO. 1526/99

BEING a By-Law authorization the execution of an agreement between the Rural Municipality of Morris, the Province of Manitoba and the Federal Government for the purpose of constructing a flood protection diversion for the community of Lowe Farm, Manitoba.

WHEREAS the community of Lowe Farm, Manitoba requires flood protection for that community;

AND WHEREAS a tripartite agreement will provide for this flood protection service by the construction of a diversion ditch structure for the community;

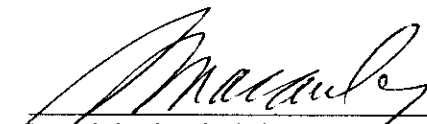
AND WHEREAS all parties are supportive of undertaking the construction project to provide flood protection for this community;

THEREFORE BE IT RESOLVED that the Rural Municipality of Morris, in Council duly assembled, enacts as follows:

1. That the Rural Municipality of Morris does now authorize the entering into an agreement with the Government of Manitoba and the Government of Canada for the purpose of constructing a flood protection structure for the community of Lowe Farm, Manitoba and that the said agreement shall be considered as Schedule "A" to this By-law.
2. That the Reeve and Municipal Administrator be hereby authorized to sign all necessary documents, on behalf of the Municipality, in order to complete this agreement.

DONE AND PASSED in open Council of the Rural Municipality of Morris, duly assembled this 11th day of August, 1999.

  
\_\_\_\_\_  
Reeve

  
\_\_\_\_\_  
Municipal Administrator

Read a first time on the 15th day of July, 1999  
Read a second time on the 11th day of August, 1999  
Read a third time on the 11th day of August, 1999.

CANADA-MANITOBA- RURAL MUNICIPALITY OF MORRIS  
AGREEMENT ON  
FLOOD PROTECTION INFRASTRUCTURE  
FOR THE URBAN AREA OF LOWE FARM

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_,

AMONG:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA hereinafter referred to as "Canada", or "the Government of Canada", represented by the Secretary of State (Western Economic Diversification)

AND:

HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA, hereinafter referred to as "Manitoba", or "the Government of Manitoba", represented by the Minister of Natural Resources

AND:

THE RURAL MUNICIPALITY OF MORRIS, hereinafter referred to as the "Proponent"

WHEREAS the Red River Valley in Manitoba is an area subject to the ongoing risk due to flooding;

AND WHEREAS the impacts of periodic and severe floods in the Red River Valley are unduly devastating to people and the regional economy;

AND WHEREAS appropriate investments in flood protection infrastructure have proved effective in protecting the Red River Valley from the devastating impacts of severe flooding;

AND WHEREAS, on May 1, 1997 the governments of Canada and Manitoba committed themselves to providing disaster assistance and support to the flood victims of the Red River Valley of Southern Manitoba through nine specific actions under the Canada-Manitoba Agreement on Red River Valley Flood Disaster Assistance (1997);

AND WHEREAS Section 5(b) of the Red River Valley Flood Disaster Agreement (1997) committed Canada and Manitoba to develop a joint, long-term plan for improved permanent dyking and enhanced flood proofing in the Red River Valley;

AND WHEREAS the governments of Canada and Manitoba entered into the Canada-Manitoba Agreement on 1997 Red River Valley Flood Proofing and Dike Enhancement, dated April 1, 1999;

AND WHEREAS the Governor in Council by Order-in-Council P.C. 1997-985 dated July 18, 1997, has authorized the Minister of Western Economic Diversification to enter into this agreement on behalf of the Government of Canada;

AND WHEREAS the Lieutenant Governor in Council by Order-in-Council \_\_\_\_\_ dated \_\_\_\_\_ has authorized the Minister of Natural Resources to enter into this Agreement on behalf of the Government of the Province of Manitoba;

AND WHEREAS the Rural Municipality of Morris, by Resolution No. \_\_\_\_\_, passed the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, has authorized the Reeve of the Rural Municipality of Morris to enter into this agreement on behalf of the Urban Area of Lowe Farm.

NOW THEREFORE the parties hereto mutually agree as follows:

1. DEFINITIONS

1.1 In this Agreement:

- (a) "Proponent" means the Rural Municipality (R.M) of Morris;
- (b) "fiscal year" means the period commencing on April 1 of any year and ending March 31 of the following year;
- (c) "Implementation Committee" means the Implementation Committee established pursuant to Section 3.1 of this Agreement;
- (d) "MWRB" means the Manitoba Water Resources Branch of Manitoba Natural Resources;
- (e) "PFRA" means the Prairie Farm Rehabilitation Administration of the Department of Agriculture and Agri-Food Canada, acting on behalf of Western Economic Diversification;
- (f) "Project" means the construction of a community dike and related infrastructure for the Urban Area of Lowe Farm, Manitoba, as further described or referenced in Schedule "A";
- (g) "Project Authorization" means a document which describes, among other things, the purpose, scope and nature of proposed works which will form the whole or part of the Project, party responsible for project

management, implementation method, schedule, cost-sharing, and budget for the works being authorized by Implementation Committee to proceed under the terms of this Agreement;

- (h) "Project Manager" means the person appointed by the Implementation Committee for the purpose of administering the Project.

## 2. SUBJECT MATTER

- 2.1 The purpose of this Agreement is to enable Canada and Manitoba to implement, in partnership with the Proponent, a program to construct new flood protection infrastructure and/or increase the capacity of existing flood protection infrastructure to stabilize the economy and protect people and property of the Urban Area of Lowe Farm in the Red River Valley.
- 2.2 The primary objectives of this Agreement are to:
- (a) assist the R.M. of Morris to provide the appropriate level of flood protection required to maintain existing and/or continue to attract housing, industry, and businesses within the Urban Area of Lowe Farm in the Red River Valley;
  - (b) reduce the potential for damage and disruption in the Urban Area of Lowe Farm due to future flooding in the Red River Valley;
  - (c) stabilize economic activity in the Urban Area of Lowe Farm that has been affected by flooding within the Red River Valley; and
  - (d) minimize the fiscal liabilities of governments, businesses and individuals which occur in the Urban Area of Lowe Farm due to severe flooding in the Red River Valley.
- 2.3 The flood protection infrastructure to be constructed under this Agreement is further described or referenced in Schedule "A" attached hereto.
- 2.4 The total cost to complete the Project is estimated at \$87,500 to be shared between Manitoba and the Proponent as set out in Section 5 and displayed in Schedule "A" attached hereto.

### 3. ADMINISTRATION AND MANAGEMENT

- 3.1 An Implementation Committee shall be established, for the term of this Agreement, comprising one member appointed by Canada, one member appointed by Manitoba, and one member appointed by the Proponent.
- 3.2 The Implementation Committee shall be responsible for the overall management and administration of this Agreement, and its duties shall include but not be limited to the following:
- (a) ensuring that the intent and the terms and conditions of this agreement are adhered to and complied with;
  - (b) appointing a Project Manager;
  - (c) taking all reasonably prudent steps to ensure that neither Canada, Manitoba or the Proponent incur or are potentially exposed to financial commitments in excess of the limits set out in Section 5;
  - (d) determining the format and content of Project Authorizations for the Project, which Authorizations shall require the unanimous approval of the Implementation Committee members;
  - (e) appointing a Technical Advisory Committee to establish technical guidelines, prepare Project Authorizations, and monitor the Project;
  - (f) ensuring the appointment of a Community Steering Committee to assist with the undertaking of local public consultations aimed at reaching community consensus on the proposed works, to advise on matters related to local issues and concerns, and to communicate Project information to the community;
  - (g) recommending the awarding of all goods, construction and professional service contracts;
  - (h) designating the appropriate party for the receipt of Project contribution funds from each of the parties, and for the payment of all eligible Project costs; and
  - (i) ensuring that program visibility is consistent with the division of funding between parties.

- 3.3 Canada, Manitoba, and the Proponent may expend up to \$50,000 out of funds provided for in this Agreement to acquire such professional or other services as may be required in support of the functions of the Project Manager.

#### 4. IMPLEMENTATION PROCEDURES

- 4.1 This Agreement shall commence on and take effect from the date on which it has been executed and shall terminate March 31, 2000, or such other date as may be mutually agreed to in writing by the parties hereto.
- 4.2 Engineering studies and designs undertaken prior to the signing of this Agreement to assist in the development of this Agreement may be considered for inclusion in Project Authorizations.
- 4.3 Works implemented in fiscal year 1998-99 prior to the signing of this Agreement, which are consistent with the subject matter and Schedule "A" of this Agreement, may be considered for inclusion in Project Authorizations.
- 4.4 Canada will, through PFRA, be responsible for the following:
- (a) assisting with the provision of technical support and information to the Community Steering Committee;
  - (b) notwithstanding Sections 4.5(c) and 4.6(c), but subject to the approval of the Implementation Committee, providing assistance in the delivery of the Project, including the tendering and award, in the name of Canada, of goods, construction and professional service contracts;
  - (c) acquiring professional and other services required in support of Agreement administration; and
  - (d) paying to either Manitoba or the Proponent, by way of advance payments, the amount due for eligible costs pursuant to Section 5 of this Agreement.
- 4.5 Manitoba will, through the MWRB, be responsible for the following:
- (a) assisting with the provision of technical support and information to the Community Steering Committee;

- (b) acquiring such lands, buildings and rights or interests in land, and such water rights, flood easements, rights-of-way, rights of access, permits, licenses and approvals as may be required for construction and completion of the Project, and making all such acquisitions available to the Project;
- (c) notwithstanding Sections 4.4(b) and 4.6(c), but subject to the approval of the Implementation Committee, providing assistance in the delivery of the project, including the tendering and award, in the name of Manitoba, of goods, construction and professional service contracts;
- (d) acquiring professional and other services required in support of Agreement administration;
- (e) paying to either Canada or the Proponent, by way of advance payments, the amounts due for eligible costs pursuant to Section 5 of this Agreement; and
- (f) assuming responsibility for ownership, operation and maintenance of the Project in accordance with Section 4.8.

4.6 The Proponent will be responsible for the following:

- (a) appointing a Community Steering Committee to undertake public consultations aimed at reaching community consensus on the proposed works, to advise on matters related to local issues and concerns, and to communicate Project information to the community;
- (b) assisting Manitoba in acquiring such lands and buildings and rights or interests in land and such water rights, flood easements, rights-of-way, right of access, permits, licenses and approvals as may be required for construction and completion of the Project;
- (c) notwithstanding Sections 4.4 (b) and 4.5 (c), but subject to the approval of the Implementation Committee, providing assistance in the delivery of the Project or a portion thereof, including the tender and award, in the name of the Proponent, of goods, construction and professional service contracts;
- (d) acquiring professional and other services requires in support of Agreement administration;
- (e) paying to either Canada or Manitoba, by way of advance payments, the amount due for eligible costs pursuant to Section 5 of this

Agreement; and

- (f) notwithstanding Section 4.5 (f), assuming responsibility, upon Project completion, for the ongoing grass maintenance of the grassed sections within the Project rights-of-way.
- 4.7 Lands owned by Canada or Manitoba which are required and made available for the Project shall be made available by each party at no cost to the Project or the Proponent.
- 4.8 When the Implementation Committee is satisfied that the construction of the Project or usable portion thereof has been completed in accordance with the provisions of this Agreement, the Project Manager will issue to the parties a Certificate of Completion identifying the completion date. Manitoba will, as of the completion date identified on the Certificate, assume complete responsibility for the ownership, operation and maintenance of the Project or portion thereof, excepting therefrom the correction of defects relative to work performed under goods or construction contracts and that become evident within the warranty period provided under the goods or construction contracts. The Proponent will accept on behalf of the owner the responsibility for grass maintenance in the grassed sections of the Project rights-of-way.

## 5. FINANCIAL PROVISIONS

- 5.1 Subject to the terms and conditions of this Agreement, and in particular Manitoba and the Proponent having obtained the necessary authorities required by Sections 4.5 (b) and 4.6 (b), and subject to the funds being made available by the Parliament of Canada, Canada will pay 45 percent of the eligible project costs as defined in Sections 5.4(a) and 5.4(b) to a maximum of \$39,375.
- 5.2 Subject to the terms and conditions of this Agreement and subject to the funds being made available by the Legislative Assembly of Manitoba, Manitoba will pay 45 percent of the eligible project costs as defined in Sections 5.4(a) and 5.4(b), to a maximum of \$39,375.
- 5.3 Subject to the terms and conditions of this Agreement, the Proponent will pay up to 10 percent of the eligible project costs as defined in Sections 5.4(a) and 5.4(b), to a maximum of \$8,750.
- 5.4 a) For the purposes of this Agreement, "eligible costs" means the following:

- (i) all costs reasonably and properly incurred and paid to consultants or other third parties in respect of project studies and in support of Agreement administration;
  - (ii) all costs reasonably and properly incurred and paid to consultants, contractors, and suppliers of materials, equipment and services in respect of the investigation, design, construction, correction of deficiencies, public consultations and communications for the Project;
  - (iii) costs for land and the acquisition of land from parties other than Canada or Manitoba, including reasonable fees associated with such acquisitions or transfers;
  - (iv) federal and provincial taxes, including the non-refundable portion of the federal Goods and Services Tax (G.S.T.); and
  - (v) legal fees and expenses that the parties hereto may become liable to pay in respect of their undertakings under this Agreement.
- b) The following costs are not "eligible costs" under this Agreement:
- (i) the value of any lands already owned by Canada or Manitoba;
  - (ii) the costs of any services provided by Canada, Manitoba or the Proponent, other than through consultants, contractors, suppliers or other third parties; and
  - (iii) the costs of operating a facility or any portion thereof after commissioning or receipt of a Certificate of Completion issued pursuant to Section 4.8; and
  - (iv) the refundable portion of the federal Goods and Services Tax (G.S.T.).

Without limiting the generality of the provisions of Section 5.4(b), eligible costs shall not include any costs in respect of salaries, fringe benefits, travel, removal or any other related expenses for any employee of Canada, Manitoba or the Proponent concerned, nor any fee for the use by any of those parties of any capital assets which are the property of or are in the control of any of those parties; nor any costs for accommodation, utilities or related services in the premises of Canada, Manitoba or the Proponent excepting those eligible costs approved by the Implementation Committee

pursuant to Sections 3.3, 4.4(c), 4.5(d), and 4.6(d).

- 5.5 Either Canada through PFRA, Manitoba through the Manitoba Water Resources Branch, or the Proponent will make payments for all eligible project costs. Canada, Manitoba, and the Proponent will each contribute its share of eligible costs by way of advance payments to either Canada, Manitoba or the Proponent as follows:
- (a) On or before the 25th day of each month the Project Manager will provide Canada, Manitoba and the Proponent with a statement certified by the Project Manager exhibiting the estimated amount of eligible project costs which will be incurred in the next month, the share of the estimated eligible project costs to be borne by each, and a breakdown as to the distribution of each party's share of estimated eligible project costs; and
  - (b) Canada, Manitoba or the Proponent will contribute their share of the estimated eligible project costs referred to in 5.5(a) above within 30 days of receipt of the statement.
- 5.6 All goods and services provided under this Agreement, excepting therefrom services provided by the parties hereto, shall be subject to federal and provincial taxes as provided in Section 5.4(a)(iv) and 5.4(b)(iv).
6. RECORDS AND AUDIT
- 6.1 Canada, Manitoba, and the Proponent shall:
- (a) maintain separate, detailed and accurate records of account and payments in respect of their eligible project costs and make same available at all reasonable times for inspection and audit by representatives of the other parties to this Agreement;
  - (b) obtain audits of all financial records and provide copies of audited financial records to the other parties on request of either of the other parties;
  - (c) permit and grant the other parties to this Agreement the right to audit the accounts and records as they may deem necessary or advisable; and
  - (d) adjust or correct any account as between or amongst the parties as may be found to be appropriate by audit or inspection of the records

pertaining to this Project.

- 6.2 Following completion of any fiscal year and following completion of all work under this Agreement, the Project Manager will provide Canada, Manitoba and the Proponent with a statement certified by the Project Manager as to all eligible project costs incurred and the contribution share amounts paid by each of the parties hereto.
- 6.3 Following completion of all work under this Agreement, any amounts of funding provided to Canada, Manitoba or the Proponent and not required to satisfy cost-sharing provisions shall be refunded to the party which provided the funding.

## 7. PUBLIC INFORMATION AND PARTICIPATION

- 7.1 Canada and Manitoba agree to undertake, in cooperation with the Proponent, the development and delivery of a program of public information respecting the implementation of this Agreement.
- 7.2 All public information activities undertaken in connection with this Agreement shall clearly make reference to this Agreement and fully and fairly reflect the contributions of each party to the Project.
- 7.3 No party shall make an announcement of a cost shared activity under this Agreement without prior consent of the others.
- 7.4 Notwithstanding Subsection 7.3, a specific public promotion activity may be delivered by Canada, by Manitoba, or jointly, but both parties shall have the opportunity to review all details of such activities prior to its delivery.
- 7.5 Without limiting the generality of the foregoing, Canada and Manitoba agree to erect and maintain, on the direction of the Implementation Committee:
  - (a) during the course of the construction of the Project, where practical, a project sign or signs with the parties' identity graphic guidelines, appropriately acknowledging the participation of all parties; and
  - (b) where relevant upon completion of the Project, a permanent sign or plaque to the effect set forth in Clause 7.5(a).

## 8. GENERAL PROVISIONS

- 8.1 No member of the House of Commons, the Senate of Canada, or the Legislative Assembly of Manitoba shall be admitted to any share or part of any contract, agreement or commission made pursuant to this Agreement or to any benefit to arise therefrom.
- 8.2 The Proponent shall conduct all its activities relative to this Agreement in accordance with the Municipal Council Conflict of Interest Act.
- 8.3 The Project funded under this Agreement will comply with the requirements of all relevant federal and provincial legislation, including but not limited to environmental and planning legislation.
- 8.4 Canada, Manitoba, and the Proponent may independently or jointly effect an evaluation of the project with regard to the stated objectives.
- 8.5 This Agreement may be amended from time to time by agreement of the signatories hereto expressed in writing.
- 8.6 Each party to the Agreement shall indemnify and hold harmless the other parties and their agents and employees from and against all claims, damages, losses and expenses including legal fees arising out of or attributable to the fulfillment of obligations pursuant to this Agreement provided that any such claim, damage, loss or expense is:
- (a) attributable to bodily and personal injury, sickness, disease, death or injury or damage to or destruction of tangible property; and
  - (b) is caused by the negligent act or omission of the party or any person for whom the party is in law responsible.
- 8.8 Canada, Manitoba and the Proponent shall include in their respective goods, construction and professional service contracts wording that will:
- (a) obtain indemnification for Canada, Manitoba and the Proponent from any of their respective contractors or consultants working on the Project;
  - (b) obtain and maintain industry standard builders risk and general liability insurance to adequately cover the risk exposure as determined by the party undertaking the contracting. The general liability insurance shall have a minimum of \$5.0 million per occurrence and shall be in the form of a Wrap-up policy that shall include as insureds Canada,

Manitoba and the Proponent and all contractors and consultants working on the Project;

- (c) maintain industry standard professional liability insurance to cover error, omission or mistake of a professional or technical nature, with minimum limits of \$1.0 million per occurrence or claim; and
  - (d) ensure construction contractors provide industry standard bid and contract security, including a Performance Bond with a minimum value of 50% of the total contract price.
- 8.9 Any notices, consents, or other communications required to be given pursuant to this Agreement shall be adequately served or delivered if sent by prepaid registered post addressed as follows:

To Canada:           Regional Director  
                              PFRA Manitoba Region  
                              200-303 Main Street  
                              Winnipeg, Manitoba  
                              R3C 3G7

To Manitoba:         Director, Water Resources Branch  
                              Natural Resources  
                              200 Saulteaux Crescent  
                              Winnipeg, Manitoba  
                              R3J 3W3

To the Proponent:   R.M. of Morris  
                              Box 518  
                              207 Main Street N.  
                              ROG 1KO

and should either Canada, Manitoba or the Proponent change address, that party shall provide the parties with written notice of such change immediately in the manner described above.

- 8.10 This document and Schedule "A" attached hereto shall be deemed to constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, representations and documents in relation hereto made by any party to this Agreement and shall ensure to the benefit of and shall be binding upon the Parties hereto, and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF this Agreement has been executed on behalf of Canada, on behalf of the Province of Manitoba, and on behalf of the Rural Municipality of Morris, by their duly authorized officers, on the date first above written.

IN THE PRESENCE OF

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

Witness

Secretary of State (Western Economic Diversification)

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA**

Witness

Minister of Natural Resources

**RURAL MUNICIPALITY OF MORRIS**



Reeve

  
Chief Administrative Officer

*(Affix Municipal Seal)*

SCHEDULE "A"

Urban Area of Lowe Farm  
FLOOD PROTECTION INFRASTRUCTURE

Proposed Works

The proposed works are generally as described in the January, 1998 report entitled "Permanent Dike Study, Lowe Farm, Manitoba. The estimated quantities are subject to change in the final layout and design but, based on the feasibility study, the proposed works include: upgrading of the Heppner dyke; upgrading of a short length of permanent dyke; provision of internal drainage works; and other associated works necessary for a complete flood protection system.

Estimated Costs

The total costs deemed eligible under this Agreement to complete the above work is estimated at \$87,500.

Additional costs:	\$6000	Legal Survey	(estimated)
	\$12,000	Land Acquisition	(estimated)

Cash Flow:

<u>Actual</u> <u>1997-98</u>	<u>Actual</u> <u>1998-99</u>	<u>Projected</u> <u>1999-2000</u>	<u>Projected</u> <u>2000 - 2001</u>
\$4,500	\$3,000	\$55,000	\$0
		\$6,000	
		\$12,000	
		<b>(\$73,000 + \$7,000 contingency) = \$80,000</b>	
<b>NEW TOTAL COST = \$87,500</b>			

Projected Cost Sharing

Canada	Manitoba	R.M. of Morris
\$39,375	\$39,375	\$8,750