

RURAL MUNICIPALITY OF MORRIS

BY-LAW NO. 1541/00

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 dyke/diversion for the community of Rosenort, Manitoba.

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

AND WHEREAS a tripartite agreement will provide for this flood protection service by the construction of a dyke/diversion 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 Rosenort, 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 15th day of June, 2000.



Reeve

Municipal Administrator

Read a first time on the	10th	day of	May	, 2000
Read a second time on the	15th	day of	June	, 2000
Read a third time on the	15th	day of	June	, 2000.

- (d) minimize the fiscal liabilities of governments, businesses and individuals which occur in the LUD of Rosenort due to severe flooding in the Red River Valley.
- 2.3 The total cost to complete the Project is estimated at \$12,200,000 to be shared amongst Canada, Manitoba and the Proponent as set out in Section 5 of this agreement.

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) ensuring that program visibility is consistent with the division of funding between parties.

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, 2003, 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 after April 1, 1998 prior to the signing of this Agreement, which are consistent with the subject matter and Schedule "A" of this Agreement, may be included in Project Authorizations.
- 4.4 Canada will, through WD and/or PFRA, be responsible for the following:
- (a) assisting with the provision of technical support and information to the Technical Advisory Committee and 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 quarterly 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 Technical Advisory Committee and 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, licences 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 quarterly payments, the amount 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 required in support of Agreement administration;
- (e) entering into a maintenance agreement with Manitoba for the ongoing maintenance of the Project including grass maintenance of the grassed section within the Project rights-of way upon Project completion; and
- (f) paying to either Canada or Manitoba, by way of quarterly payments, the amount due for eligible costs pursuant to Section 5 of this Agreement.

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 Manitoba 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.

5. FINANCIAL PROVISIONS

5.1 Subject to the terms and conditions of this Agreement, 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 4.3 , 5.4(a) and 5.4(b) to a maximum of \$5,490,000.

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 4.3, 5.4(a) and 5.4(b).

5.3 Subject to the terms and conditions of this Agreement, and subject to funds made available by the Proponent's authority, the Proponent will pay 10 percent of the eligible project costs as defined in Sections 4.3, 5.4(a) and 5.4(b).

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.
 - (vi) land owned by the Proponent which is required for the project. The Proponent will receive a credit toward their share of the project based on a current appraised value of said land and/or may provide gravel maintenance on municipal roads used for dykes and receive an agreed upon amount from the Implementation Committee to be applied as a credit toward their share of the project cost.
- 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 4.4(c), 4.5(d), and 4.6(d).

- 5.5 Either Canada through WD, 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 quarterly payments to either Canada, Manitoba or the Proponent as follows:

- (a) The Project Manager will provide Canada, Manitoba and the Proponent with a quarterly statement certified by the Project Manager exhibiting the amount of eligible project costs incurred in the prior quarter, the share of the estimated eligible project costs to be borne by each party, and a breakdown as to the distribution of each party's share of eligible project costs; and
 - (b) Canada, Manitoba and the Proponent will contribute their share of the eligible project costs referred to in 5.5(a) above within 60 days of receipt of the statement.
- 5.6 All goods and services provided under this Agreement, excepting 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 respective 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 written 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 all parties to this Agreement 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 Subsection 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 respective agents and employees from and against all claims, damages, losses and expenses including legal fees arising out of or attributable to the fulfillment of their respective 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.
- 8.7 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 insured 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
Manitoba Conservation
200 Saulteaux Crescent
Winnipeg, Manitoba
R3J 3W3

To the Proponent: R.M. of Morris
Box 518
207 Main Street N.
Morris, Manitoba
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 endure to the benefit of and shall be binding upon the Parties hereto, and their respective heirs, executors, administrators, successors and assigns.

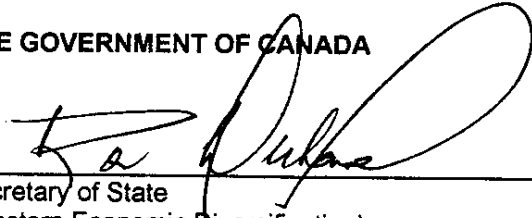
IN WITNESS WHEREOF this Agreement has been executed on behalf of Canada, on behalf of the Province of Manitoba, and on behalf of the Rural Municipality of Morris, by their duly authorized officers, on the date first above written.

IN THE PRESENCE OF

THE GOVERNMENT OF CANADA

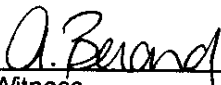


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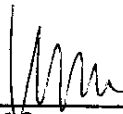


Secretary of State
(Western Economic Diversification)

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF MANITOBA




Witness




Minister of Conservation

RURAL MUNICIPALITY OF MORRIS



Reeve

(Affix Municipal Seal)



Chief Administrative Officer

