

Exchange of Notes between the Government of Canada and the Government of the United States of America constituting an Agreement concerning the Construction of a Joint Ring Levee

Embassy of the United States of America
Ottawa, August 29, 1988

No. 364

The Embassy of the United States of America presents its compliments to the Department of External Affairs and has honor to refer to the discussions between representatives of the Department of the Army of the United States and the Government of Manitoba concerning their desire to cooperate in the field of flood control by constructing a joint ring levee to protect the town of Emerson, Manitoba, and the unincorporated village of Noyes, Minnesota.

The Embassy has the further honor to propose that construction of the joint ring levee project shall proceed in accordance with the attached plan, and that it consist of three segments: upgrading the levee around part of the town of Emerson; upgrading the levee around part of the village of Noyes; and construction of a levee adjacent and parallel to the international boundary along the United States' side of the international boundary, hereinafter referred to as the international levee segment, which will attach to the west end of the Emerson levee on its west side and the Noyes levee on its east side.

If the foregoing is acceptable to the Government of Canada, the Embassy has the honor to propose that this note, together with the attached plan, and the Government of Canada's reply shall constitute an agreement for construction of this project between our two governments which shall enter into force on the date of the Government of Canada's reply.

The Embassy of the United States of America avails itself of this opportunity to renew to the Department of External Affairs the assurances of its highest consideration.

Attachment:

Joint Ring Levee Project Plan

Plan for the Construction of a Joint Ring Levee Project to Provide Flood Protection to the Town of Emerson, Manitoba and the Unincorporated Village of Noyes, Minnesota

Article I

Obligations of the Province of Manitoba

The Province of Manitoba shall acquire the lands for and construct and maintain a levee at Emerson, Manitoba, at an elevation which shall accommodate the flows of the Red River of the North at a discharge rate of 122,000 cubic feet per second (3,455 cubic meters per second) plus three feet of freeboard with adequate interior flood control facilities. The levee and interior flood control facilities shall be designed and constructed in accordance with professional engineering standards of Manitoba. Construction of this levee shall be completed by December 31, 1989.

The Province of Manitoba shall reimburse the Department of the Army of the United States for all project costs of the International Levee segment of the joint ring levee which will be constructed under private competitive contract awarded and administered by the Department of the Army's Corps of Engineers. Reimbursable costs shall include expenses of engineering and design, necessary utility relocations, fill for the levee, physical construction (except for costs of real estate interests necessary for the International Levee segment, which shall be paid by St. Vincent Township, Minnesota), and supervision and administration costs, including overhead costs associated with construction.

The Province of Manitoba agrees to pay St. Vincent Township, Minnesota, the costs of routine maintenance of the International Levee segment. In liquidation of this obligation, the Province of Manitoba shall pay St. Vincent Township the sum of \$17,000 (United States dollars) on or before March 31, 1990, which sum shall be invested by St. Vincent Township, Minnesota, and allocated for the purpose of the routine maintenance of the International Levee segment. Costs of repair due to erosion, reconstruction, rehabilitation or other costs in excess of routine maintenance costs are not considered to be part of the routine maintenance of the International Levee segment.

Article II

Obligations of the Department of the Army of the United States

The Department of the Army acting through its Corps of Engineers shall, on lands provided by St. Vincent Township, Minnesota, construct a levee at Noyes, Minnesota at an elevation which shall accommodate the flows of the Red River of the North at a discharge rate of 122,000 cubic feet per second (3,455 cubic meters per second), plus three feet of freeboard with adequate interior flood control facilities.

The Department of the Army shall, on lands provided by St. Vincent Township, Minnesota, construct the International Levee segment of the joint ring levee under private competitive contract awarded and administered by the Department of the Army's Corps of Engineers at an elevation which will accommodate the flows of the Red River of the North at a discharge rate of 122,000 cubic feet per second (3,455 cubic meters per second), plus three feet of freeboard with adequate interior flood control facilities.

Construction of the International Levee segment and the levee at Noyes shall be in accordance with the plans and specifications for Flood Control on the Red River of the

North, Noyes, Minnesota, prepared by the St. Paul District, Corps of Engineers, dated July 1988, and shall be completed by December 31, 1989. Such construction shall be subject to the laws, regulations, and policies of the United States.

St. Vincent Township, Minnesota, shall operate, maintain, replace, and rehabilitate the International Levee segment and the levee at Noyes upon completion of construction in accordance with regulations prescribed by the Department of the Army and as required under Public Law 99-662. The Department of the Army shall ensure that St. Vincent Township complies with such regulations through annual maintenance inspections.

The Department of the Army of the United States shall keep detailed and accurate accounts and records of all reimbursable expenditures made by the Corps of Engineers to construct the International Levee segment of the joint ring levee. The United States Department of the Army shall maintain such accounts and records for at least three years following the construction of the International Levee segment. The Corps of Engineers shall make the records of the expenditures for the International Levee segment available for inspection and audit by officials from the Province of Manitoba after reasonable notice to the Corps of Engineers.

Article III

Availability of Funds and Manpower

All activities to be carried out under this Plan shall be subject to the funds and manpower available to the United States Department of the Army and the Province of Manitoba in each fiscal year in which this Plan is in effect.

Article IV

Payment Procedures

The United States Department of the Army's Corps of Engineers shall submit monthly invoices to the Province of Manitoba for the cost of materials and work performed on the International Levee segment.

Payments made by the Province of Manitoba to the Department of the Army or St. Vincent Township shall be made in United States dollars within thirty days after receipt of invoices from the United States.

Any amount payable by the Province of Manitoba to the Department of the Army or St. Vincent Township with respect to costs or contributions incurred under this Plan shall be paid within thirty days of receipt of the invoice. Undisputed amounts due that are not paid within thirty days shall accrue interest as prescribed by the U.S. Treasury Department beginning on the thirty-first day following receipt of the bill.

Article V

Disputes

The Governments of Canada and the United States shall seek to resolve differences arising under this Plan in good faith through negotiation or other forms of dispute resolution mutually acceptable to them.

Article VI

Indemnification

The Department of the Army of the United States shall hold and save the Province of Manitoba free and harmless from all damages arising from the construction and operation of the portions of the flood control project that are constructed by the Department of the Army's Corps of Engineers, except for any damages that may arise due to the sole fault or negligence of the Province of Manitoba or contractors of the Province of Manitoba.

The Province of Manitoba shall hold and save the Department of the Army and its Corps of Engineers free and harmless from all damages arising from the construction and operation of the portions of the flood control project that are constructed or maintained by the Government of Manitoba, except for any damages that may arise due to the sole fault or negligence of the Department of the Army of the United States or contractors of the Department of the Army of the United States.

Article VII

Property Rights

All information, intellectual property, patents, designs, data, analyses of data generated by any activity under this Plan shall be freely and exclusively exchanged between the Province of Manitoba and the Department of the Army of the United States.

Article VIII

Public Announcement

Any public announcement relating to this Plan as well as any official opening ceremonies for the activities contemplated by this Plan shall be arranged jointly by the Province of Manitoba and the Department of the Army of the United States.

Canadian Embassy

Washington, D.C., August 30, 1988.

No. 286

The Embassy of Canada presents its compliments to the Department of State of the United States of America and has the honour to refer to Note No. 364 of August 29, 1988, received from the Embassy of the United States in Ottawa, Canada.

The Embassy of Canada is pleased to inform the Department of State that the proposals outlined in the Embassy's Note are acceptable to the Government of Canada and to confirm that the Embassy's Note, together with [sic] the attached Plan and this reply, which is equally authentic in English and French, shall constitute an Agreement for construction of the joint ring love* project between our two Governments which shall enter into force on the date of this reply.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State of the United States of America the assurances of its highest consideration.