

**First Amended Eagle Mine
Community Environmental Monitoring Program
Fund Agreement**

By and between

The Marquette County Community Foundation

And

Eagle Mine LLC

June 2, 2014

THIS FUND AGREEMENT (“Agreement”) made and entered into on 10th day of September, 2012, and first amended on the 2th day of June, 2014, by and between the Marquette County Community Foundation (“Foundation”) and Eagle Mine LLC (“Donor” or “Eagle”). The Donor hereby creates a special project fund with the Foundation through this Agreement to support the Eagle Mine Community Environmental Monitoring Program.

The Foundation is a nonprofit Michigan corporation exempt from taxation under Internal Revenue Code (“Code”) section 501(c) (3), a public charity described in section 170(b)(1)(A)(iv) of the Code, and accordingly is an appropriate institution within which to establish such a charitable fund.

The Foundation hereby creates a special project fund subject to the terms and conditions of this Agreement; and

The parties agree as follows:

1. NAME OF THE FUND

There is hereby established, in the Foundation, the Eagle Mine Community Environmental Monitoring Program Fund which will be so identified by the Foundation in all relevant literature, reports, promotional material and other public documents.

2. PURPOSE

Eagle seeks to build public confidence in the environmental management of the operations by establishing independent community monitoring of its environmental performance. Superior Watershed Partnership (“SWP”) is a non-profit organization that is committed to monitoring and protecting the waters of the Upper Peninsula and has the experience and expertise to implement the Community Environmental Monitoring Program. SWP’s implementation of the Community Environmental Monitoring Program will be conducted independently of any influence by any other party. “Community monitoring” means science based monitoring where professional staff, trained and qualified in the relevant discipline, conduct the monitoring. The Community Environmental Monitoring Program will reflect the following principles:

- a. Science based and standards based monitoring
- b. Independence
- c. Credible and comprehensive
- d. Scaled to the size and scope of the Eagle operations
- e. Transparent to the public

3. GIFTS

The Eagle Mine Community Environmental Monitoring Program Fund (“Fund”) includes monies donated to the Foundation by the Donor or any other person or entity when directed to be included in the special project fund and accepted by the Foundation. All gifts to the Fund shall become irrevocable once accepted by the Foundation. It is anticipated that gifts to this Fund will be intended to be available for current grant making. It is understood that this is not a permanently endowed fund.

4. OPERATION

Eagle will pay for the independent community environmental monitoring by giving funds to the Foundation pursuant to the Community Environmental Monitoring Program Agreement (“CEMP Agreement”) between Eagle and the SWP. The CEMP Agreement sets out how the Community Environmental Monitoring Program will be implemented.

SWP implements the Community Environmental Monitoring Program pursuant to the terms of the CEMP Agreement that establishes the procedures and standards for the Community Environmental Monitoring Program. The CEMP Agreement and its Exhibits are attached as Exhibit A hereto. In the event of any conflict between the terms of the CEMP Agreement and this Agreement, the terms of this Agreement shall control except in the case where:

- a. The CEMP Agreement is terminated pursuant to Section 13 of the CEMP Agreement, or
- b. There is a reserve fund remainder under Section 13(f), those provisions shall control.

5. COMMUNITY ENVIRONMENTAL MONITORING PROGRAM COMMITTEE (“CEMP COMMITTEE”)

Five independent community members act as volunteer members of the CEMP Committee to determine if the Community Environmental Monitoring Program is being implemented according to the CEMPA and CEMPFA. The CEMP Committee will be a Committee of the MCCF and will be accountable to the MCCF Board.

- a. The Foundation Board (“MCCF Board”) will select a member of the Marquette County Community Foundation who will Chair the CEMP Committee.
- b. The Keweenaw Bay Indian Community will be invited to select a member representing The Anishnabe Nation. If The Keweenaw Bay Indian Community does not nominate a representative, the MCCF Board will appoint a member from the community at large.
- c. The MCCF Board will select one member from each of the following sectors:
 - i. Environmental sciences
 - ii. Mining
 - iii. Community at large

The MCCF Board will select the members that it appoints based upon the criteria listed in Exhibit B hereto. The MCCF Board may seek outside assistance in making its selection of the CEMP Committee members.

6. FUNCTIONS OF THE CEMP COMMITTEE

The CEMP Committee will perform the following functions:

- a. Oversee funding of the Community Environmental Monitoring Program special project Fund by Eagle;

- b. Generally review the annual Work Plan to determine if the Work Plan is consistent with Section 2 of the CEMPA. If the CEMP Committee determines that any part of the Work Plan is not consistent with the CEMPA or CEMPFA ,the CEMP Committee will notify Eagle and SWP so those two parties can clarify or correct the Work Plan;
- c. Resolve disputes that may arise between SWP and Eagle regarding implementation of the Community Environmental Monitoring Program through use of the dispute resolution processes contained in the CEMP Agreement.
- d. Convene meetings requested by SWP or Eagle, including meetings to resolve disputes arising under the CEMP Agreement.
- e. Determine that any third party funding of the Community Environmental Monitoring Program complies with the procedures and standards established in the CEMP Agreement before accepting those funds.
- f. The CEMP Committee's minutes, correspondence and reports will be available to the public once approved by the MCCF Board through posting on the CEMP website.
- g. Operate according to the CEMP Committee guidelines (Exhibit C hereto).

The MCCF Board may approve payment of CEMP expenses if for some reason the CEMP Committee is unable to do so.

7. THE SPECIAL PROJECT FUND

- a. The Special Project Fund (Fund) will be the property of the Foundation. The Community Foundation may commingle the property of the Fund with the property of other component funds held by the Foundation, provided, however, that the separate identity of the Fund will be maintained and distributions from the Fund will be clearly identified as such to the grantees. A report of the Fund balance and relevant receipts and disbursements will be made by the Foundation to Eagle on a semi-annual basis. The annual external audit of the Foundation will be available upon request from Eagle.
- b. It is agreed that all assets held in the Fund will be subject to the Articles of Incorporation and Guidelines of the Foundation, including the power contained therein for the governing board to modify, as near as possible, any restrictions or conditions on the distribution of funds for any specified organization if, in its sole judgment, those restrictions become, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the area served by the Foundation.
- c. All funds remaining in the Fund at the end of the current funding period will be carried over to the next funding period, as designated in the CEMP Agreement. The Eagle contribution for the next funding period may be reduced by the carryover funds.
- d. If the Community Environmental Monitoring Program ceases to exist and monies for that project remain in the account, the Foundation may allocate those monies to a similar activity. Eagle will have one year from the termination of the monitoring program to re-establish an alternate community

monitoring program. If all programs cease to exist, the Foundation, with written agreement from Eagle, will allocate the remaining monies to an existing fund of the Foundation or a new fund whose purpose will be determined by the Foundation and Eagle.

- e. The special project fund will be charged a 5 % administrative fee. As a special project fund the 5% fee will be charged on each deposit made to the fund upon receipt of the deposit.
- f. Eagle will reimburse the Foundation for all direct recruitment costs for the CEMP Committee member selection process.

8. AMENDMENT

This Agreement may be modified by mutual written agreement of both parties.

9. LIST OF EXHIBITS

The following are the exhibits to this Agreement:

- a. Exhibit A: CEMP Agreement and its attachments.
- b. Exhibit B: CEMP Committee Selection Guidelines.
- c. Exhibit C: CEMP Committee Operational Guidelines.

Executed by the Parties on this the 2 day of June, 2014:

Marquette County Community Foundation

Eagle Mine LLC

By: Jack Lenten

By: Mike Welch

Name: Jack Lenten

Name: Mike Welch

Title: Chairman of the Board

Title: General Manager Eagle Mine

EXHIBIT C: CEMP COMMITTEE OPERATIONAL GUIDELINES

1. NAME

The name of this Committee is the Community Environmental Monitoring Program Committee (“CEMP Committee”), as established by the Community Environmental Monitoring Program Fund Agreement (“Fund Agreement”) between Eagle Mine LLC (“Eagle”) and the Marquette County Community Foundation (“MCCF”).

2. PURPOSE

2.1. **General Purpose.** The CEMP Committee is organized to review implementation of the CEMP and to resolve any disputes between Superior Watershed Partnership (“SWP”) and Eagle Mine.

2.2. **Objectives and Duties.** The details of how the CEMP will be implemented are contained in the CEMP Agreement between Eagle and SWP (“CEMPA”), which is an exhibit to the Fund Agreement. The CEMP Committee’s objectives and duties include the following:

- a. Determine if the CEMP is being implemented consistent with Section 2 of the CEMPA and its attachments. If the CEMP Committee determines that any proposed CEMP activities are not consistent with the CEMPA or CEMPFA, the CEMP Committee will notify Eagle and SWP so those two parties can clarify or correct the activities.
- b. Convene meetings as requested by SWP or Eagle including meetings to resolve differences about the implementation of the CEMP according to the terms of the CEMPA.
- c. Review payment of all invoices for work done consistent with the CEMPA and the Fund Agreement.
- d. Coordinate peer reviews when SWP and Eagle request such a peer review to resolve technical issues in the CEMP.
- e. Determine if any third party funding of the CEMP work complies with the standards and procedures of the CEMPA before accepting such funding.

3. CEMP COMMITTEE

3.1. **Number of Committee Members.** The Committee shall consist of five (5) volunteer members appointed to the Committee by the MCCF Board of Directors and the Keweenaw Bay Indian Community (KBIC) according to the composition and selections process designated in the Fund Agreement.

3.2. **Qualifications.** Any person may be nominated to serve on the Committee provided the person is of the age of majority in Michigan and resides in the Upper Peninsula of Michigan.

3.3. **Term.** The term of any member of the Committee shall be for three (3) years. Any member may serve an indefinite number of terms as long as he/she continues to meet the qualifications set forth in 3.2 above.

3.4. **Resignation.** Any member of the Committee may resign at any time by submitting his or her resignation in writing to the Chairman of the Committee.

3.5. **Duties of the Committee.** It shall be the duty of the Committee to:

3.5.1. Review the annual CEMP Work Plan submitted by SWP to determine if the Work Plan is consistent with Section 2 of the of the CEMPA. If the CEMP Committee determines that any

proposed action in the Work Plan is not consistent with the CEMPA or CEMPFA, the CEMP Committee will notify Eagle and SWP so those two parties can clarify or correct the Work Plan.

- 3.5.2. Upon approval of the CEMP Work Plan notify Eagle of the approval and ask MCCF to remit a written payment request to Eagle in a form agreed between Eagle and the MCCF.
- 3.5.3. Review monthly invoices submitted by SWP and if the Committee determines that the work done was consistent with the standards established in the CEMPA, approve payment of the SWP invoices. The Committee may accept a certification by an SWP authorized officer that all work invoiced was done consistent with the standards and procedures in the CEMPA as proof of consistency with the CEMPA, thus obviating a need for the Committee to review individual invoice entries. If required, the Committee may request that SWP provide additional documentation of how the work done was consistent with the CEMPA.
- 3.5.4. Where Eagle provides an objection to the certification of the SWP authorized officer, the Committee shall convene a meeting between the SWP and Eagle within 21 days of receipt of the objection, hear from both sides and make a decision about whether the invoiced work done by SWP is consistent with the standards and procedures of the CEMPA.

3.6. **Compensation.** Committee members shall serve without compensation.

3.7. **Vacancies.** In the event a Committee member tenders a written resignation or becomes unable or unwilling to fulfill his or her duties, the MCCF Board may replace the Committee member for the duration of the unexpired term. The MCCF Board will use the guidelines set forth in Exhibit B to the Funding Agreement in appointing such temporary Committee members, including an assessment of how such a member will assist the Committee in its functions.

If the opening on the Committee is of the Anishnabe member, the MCCF Board will solicit KBIC's nomination for that position. If the KBIC does not wish to nominate for that position at that time, the CEMP Committee Chair, with the approval of the MCCF Board, will select someone to temporarily fill that position. The CEMP Committee Chair will select someone that he believes is able to assist the functions of the CEMP Committee. The Chair will apply the selection guidelines in Exhibit B of the Funding Agreement (Community Member representative) in making this selection. If the KBIC nominates for the Anishnabe member position at any time, the temporary appointment will be asked to step down so the KBIC nominee can take that position.

3.8. **Removal of Committee Member.** A Committee member may be removed by the MCCF Board.

4. **OFFICERS AND COMMITTEES**

- 4.1. **Officers.** Officers of this Committee shall be the Chairman and Secretary of the Committee.
 - 4.2. **Chairman.** The Chairman shall preside over all meetings of the Committee and exercise a vote. The MCCF representative to the Committee shall serve as the Chairman of the Committee. The Chairman will set the date for the annual meeting of the Committee and such other meetings as may be required to fulfill the purposes of the Committee. The Chairman shall be responsible for ensuring that the operations of the Committee are in accord with these guidelines.
 - 4.3. **Secretary.** The Chairman will select the Secretary from among the Committee members. The Secretary shall keep minutes of the meetings, distribute such minutes to the Committee, send
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meeting notices to all Committee members and attend to all correspondence as directed by the Chairman. If the Secretary is unable to attend a meeting of the Committee, the Chairman shall assign a member of the Committee to keep minutes of the meeting and to distribute such minutes to the rest of the Committee members.

- 4.4. **Committees.** The Committee may appoint such other committees as from time to time shall be designated by a resolution of the Committee. These committees may consist of persons who are not members of the Committee and shall act in an advisory capacity to the Committee.

5. MEETINGS

- 5.1. **Annual Meeting.** The Annual Meeting of the Committee shall be held in November, after issuance of the updated CEMP Work Plan by SWP, the time and date to be set by the Chairman. The purpose of the Annual Meeting is to review the SWP Work Plan, review the implementation of the CEMP by SWP and Eagle, and issue a brief report to SWP and Eagle, including any recommendations for how implementation of the CEMP may be improved. If for any reason the Annual Meeting is not held in November, the Annual Meeting will be held upon notice required of a special meeting.
- 5.2. **Special Meeting.** Upon the request of any two (2) Committee members, or SWP, or Eagle, for a special meeting, the Chairman will call a special meeting of the Committee.
- 5.3. **Meeting Notice.** The Secretary will provide ten days' notice of the Annual Meeting or any special meeting to every current member of the Committee by first class mail, telephone or email. If by email, a return confirmation is required.
- 5.4. **Quorum.** A majority of members either present or by proxy shall constitute a quorum for any meeting of the Committee. Members may attend a Committee meeting by teleconference with the approval of the Chairman.
- 5.5. **Proxy Votes.** Each voting member of the Committee may designate another voting member as proxy provided written authorization if filed with the Secretary prior to any vote. Such authorization shall be dated and be good for only the specified meeting.
- 5.6. **Voting.** Each member of the Committee is entitled to one vote, either in person or by proxy. The Committee shall attempt to make decisions by consensus. If the Committee cannot reach consensus on an issue, a majority vote of the members of the Committee present at a meeting or by proxy shall be controlling.

6. DISPUTE RESOLUTION PROCESS

- 6.1. The Committee will resolve any disputes between SWP and Eagle that cannot be resolved by those parties informally. The Committee will resolve disputes over technical issues using the Peer Review Process specified in the CEMPA. All other disputes will be resolved by the Committee after hearing the positions of the parties.
 - 6.2. The Peer Review Process is specified in the CEMPA, but generally consists of SWP and Eagle notifying the Committee of the issue requiring resolution, including an agreed expert with technical expertise in the subject that is in dispute. If SWP and Eagle cannot agree on the peer reviewer, they shall each provide to the Committee two nominees for peer reviewer and the Committee shall select the peer reviewer.
 - 6.3. The Committee shall oversee administration of the Peer Review Process including setting deadlines for submission of position statements, ensuring that the peer reviewer has access
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to all relevant data and issuance of the peer reviewer's decision to SWP and Eagle upon receipt by the Committee.

6.4. The MCCF board will not modify a decision of the Committee made under the dispute resolution process as long as the process outlined in the CEMPFA and CEMPA is followed.

7. AMENDMENTS

The MCCF Board of Directors may amend these Guidelines.

8. CONSTRUCTION AND TERMS

If there is any conflict between the provisions of these Guidelines and the Fund Agreement, the provisions of the Fund Agreement shall govern.

9. EFFECTIVE DATE OF THESE GUIDELINES

These Guidelines shall be effective when approved by the MCCF Board of Directors, and when at least four (4) members of the Committee have accepted in writing their appointment to the Committee by the MCCF Board of Directors.

10. DISSOLUTION

The MCCF Board may dissolve the Committee.
