

COMMUNITY ENVIRONMENTAL MONITORING PROGRAM AGREEMENT



By and Between

EAGLE MINE LLC

and

SUPERIOR WATERSHED PARTNERSHIP

IN COOPERATION WITH THE KEWEENAW BAY INDIAN COMMUNITY

December 12, 2019

FUNDED THROUGH THE COMMUNITY FOUNDATION OF
MARQUETTE COUNTY

Eagle Mine
a subsidiary of **hondmining**



Community Environmental Monitoring Program Agreement

By and between

Eagle Mine LLC

and

Superior Watershed Partnership

**Funded through the
Community Foundation of Marquette
County**

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LIST OF ABBREVIATIONS

Eagle Mine or Eagle	Eagle Mine, a Lundin owned company
SWP	Superior Watershed Partnership
CEMP, or “the monitoring program”	Community Environmental Monitoring Program
Foundation	Community Foundation of Marquette County
CEMPA “this agreement”	Community Environmental Monitoring Program Agreement
CEMPFA or “the Funding Agreement”	Community Environmental Monitoring Program Funding Agreement
USEPA or EPA	United States Environmental Protection Agency
KBIC	Keweenaw Bay Indian Community

1. INTRODUCTION

- (a) Purpose of this agreement: This agreement states how Superior Watershed Partnership (SWP), the Keweenaw Bay Indian Community, and Eagle Mine (Eagle), working with the Community Foundation of Marquette County (Foundation), will set up independent community monitoring of the environment surrounding Eagle Mine's operations.
- (b) Eagle Mine, a Lundin-owned company, has built facilities to mine nickel and copper from a deposit in Marquette County in Michigan's Upper Peninsula. Eagle has proven track record in transparency, environmental protection, safety, and strives to define modern mining. More information about Eagle Mine can be found at <http://eaglemine.com/>
- (c) Superior Watershed Partnership (SWP) is a non-profit organization dedicated to monitoring and protecting the waters of Michigan's Upper Peninsula. SWP has experience and expertise gained through years of environmental monitoring in the area of Eagle Mine. More information about SWP can be found at: <http://www.superiorwatersheds.org/>.
- (d) The Keweenaw Bay Indian Community is dedicated to protecting the cultural and environmental resources of their community. The KBIC's natural resource department has a wide range of experience relating to water quality, air, fisheries, and cultural heritage protection. More information about the KBIC can be found at: <http://nrd.kbic-nsn.gov/>
- (e) The Community Foundation of Marquette County (Foundation) is a charitable organization that exists to strengthen and enrich the lives of the residents of Marquette County by securing gifts and growing endowment funds for the long-term benefit of our Communities. The Foundation strives to provide leadership by working with State, local and federal agencies and private Foundations to attract funds, convene and encourage collaboration to address local issues and opportunities. More information about the Foundation can be found at: <http://cfofmc.org/>
- (f) The Community Environmental Monitoring Program (CEMP): Under this agreement, a program of environmental monitoring is established, although funded by Eagle Mine, the program is independent of the company. This Community Environmental Monitoring Program is controlled and run by community organizations that are committed to the environment of the region. The workings of the program and the information it generates are open to public view. Eagle believes that this is the best way to build public confidence and trust in its operations.
- (g) Community organizations and agreements: The SWP will set up and run the Community Environmental Monitoring Program in partnership with the KBIC. The Foundation will manage funding for the monitoring program as described in the Community Environmental Monitoring Program Fund Agreement (CEMPFA) (Attachment A), convene quarterly meetings between all organizations, and manage dispute resolution mediation sessions.
- (h) This agreement and the Funding Agreement control the relationship between the parties involved in

Plain English: SWP and Eagle Mine have written this agreement in non-legal, everyday language. Our aim is to make this agreement more readable and accessible to the community.

Throughout the agreement, boxes like this one are used to add explanations and diagrams. They are not part of the agreement text.

the monitoring program.

- (i) Conflict between the agreements: Because there are two agreements, it is possible that a rule in one agreement conflicts with a rule in the other agreement. If this happens, the rule in the CEMPFA is the one that should be followed. There is one exception to this principle - section 11 in this agreement - which talks about how Eagle or SWP can end the CEMPA earlier than planned. If something in either agreement conflicts with Section 11, Section 11 applies.

2. THE COMMUNITY ENVIRONMENTAL MONITORING PROGRAM (CEMP)

- (a) Aims of the CEMP: The CEMP aims to build a comprehensive and accurate picture of Eagle Mine's environmental impacts. The CEMP will be open and independent and based on the highest scientific standards. For example, the CEMP will only use State or USEPA approved laboratories. The community will be able to see how the monitoring is funded, the agreements that set it up (including this one) and the information collected.
- (b) Scope of monitoring: Monitoring may cover Eagle's mining operations, Eagle's ore processing at the Humboldt Mill and potential environmental impacts along the ore transport route.
- (c) Structure of the CEMP: The CEMP will have three parts:
 1. Verification monitoring: SWP does verification monitoring to check on the environmental monitoring done by Eagle Mine.
 2. Additional monitoring: This is monitoring done by SWP over and above the monitoring that Eagle Mine does under its permits. SWP will undertake additional monitoring if it believes it is needed to build a complete picture of Eagle Mine's environmental impacts. Additional monitoring may include, traditional and edible plant studies, air quality monitoring, the ore transportation route, or additional well installations, and other areas.
 3. Community outreach: Community outreach aims to make sure that the results of the monitoring program are available and understood by the community. Community outreach will include, at least, community consultation, presentations, and on-line information.

Environmental monitoring: Monitoring the environment that could be affected by a mine is a complex business.

There are many *aspects* of the environment that could be selected for monitoring – the quality of water and air; levels of dust and other pollution; the health of animals and plants, their number and location and many, many more.

Understanding how a mine affects the environment also depends on a good understanding of the environment before the mine starts – *a baseline* of quality scientific data.

For example, an understanding of water quality should be based on many water samples from many locations over a long period of time before the mine gets underway. Once mining starts, many more samples and tests must be taken to check for changes from the baseline that might be caused by the mine.

The way that sampling and testing is done – *a methodology or standard* - must ensure that results can be easily compared with results from earlier samples and tests. Data must then be assessed and interpreted by experts who have good understanding of the natural processes and systems at work.

(d) Management of the CEMP: SWP, in partnership with the KBIC's Memorandum of Understanding (MOU) independently sets up and runs the CEMP, following the rules in this agreement as well as those in the Funding Agreement.

KBIC and SWP Memorandum of Understanding : This agreement was signed between SWP and KBIC in 2019. The MOU outlines how KBIC becomes part of the CEMP through SWP.

(e) Funds to pay for the CEMP: Eagle will pay for the CEMP by putting money into a fund with the Foundation. The Foundation will oversee these funds. The Foundation will distribute funds to SWP as long as SWP is running the CEMP according to the rules in this agreement and the Funding Agreement. In turn, SWP will distribute funds to the KBIC in alignment with the MOU, the work plan, and the budget.

(f) Community consultations on the CEMP: SWP will ask the community for suggestions about the work of the CEMP. This will be done as part of the community outreach program. It is up to SWP to decide if it adopts these suggestions, but it must respond in writing to each one detailing the technical or scientific reasons for its decision. These responses will be open and available to the community.

(g) Changing and improving the CEMP: The CEMP will change and adapt as Eagle's operations change over the life of the mine. Eagle Mine, SWP, KBIC, or the Foundation can meet at any time to discuss how to improve the CEMP. All organizations commit to discussing CEMP issues honestly and openly.

3. INDEPENDENCE OF SWP

(a) SWP will be independent in the way it runs the CEMP, although it must do so within the rules of the agreements and agreed monitoring standards. These agreed standards are based on best practice science. Within this framework SWP will have the final say on all things including:

1. Where monitoring data will be collected
2. Which subcontractors will do parts of the monitoring work
3. Which labs (meeting State of Michigan or EPA standards) will do scientific testing
4. How the quality of results is checked
5. Getting advice from scientists and experts on how to set up the monitoring
6. How to check results from Eagle Mine
7. How to approach additional monitoring
8. How to monitor water and environmental impacts along the transport route
9. How to monitor impacts on plants and animals
10. How to monitor air quality in Powell Township and figure out if changes in air quality are connected with Eagle Mine
11. The baseline data to be relied upon, taking into account the baseline data that Eagle has developed for its permits.

Baseline data: Baseline data gives a picture of the environment *before* a development goes ahead. Once a development is underway it allows monitors to compare new results to the baseline and see if there is change in the environment.

(b) CEMP Work Plan: SWP will write a Work Plan saying how it will conduct the monitoring. The Work Plan describes the activities that SWP plans to undertake and includes a timeline showing when

those activities will be done. The Work Plan also includes a budget saying how much each part of the CEMP costs. This Work Plan is updated yearly or more often if needed, and is made available to the community when complete.

- (c) CEMP Work Plan and mine phases: The Work Plan may change as Eagle Mine goes through phases of its mine life such as construction, operations, closure and remediation.
- (d) Additional monitoring: SWP may decide on its own to do additional monitoring, or additional monitoring can be requested by a community member.
- (e) Additional monitoring plan: If SWP decides that additional monitoring is needed to properly understand how the Eagle Mine is affecting the environment, it must develop a plan saying how it will do this monitoring.
- (f) Additional monitoring standards: Any additional monitoring must follow this agreement. SWP will seek help if needed to develop its additional monitoring plan from scientific experts, including Eagle's experts. The plan must describe the baseline data and the standards that will be used in the additional monitoring. Where relevant EPA or State standards exist, those standards will be used. Where there are no relevant EPA or State monitoring standards, SWP will develop a standard based on current scientific literature and advice.
- (g) Consultations on additional monitoring: SWP must give its additional monitoring plan, including budget, to Eagle Mine for comment.
 - 1. Eagle Mine must provide comments in writing within 28 days.
 - 2. If SWP agrees with the comments, it can revise the plan accordingly and get on with putting the revised plan into action.
 - 3. However, if SWP does not agree with Eagle's comments, then it must give its reasons to Eagle in writing within 14 days.
 - 4. If Eagle Mine objects to the additional monitoring within 14 days after receiving SWP's reasons, the issue will be resolved by working through the dispute resolution mediation process (covered in Section 6).
 - 5. While the dispute process is continuing, the disputed additional monitoring plan cannot be initiated until the dispute resolution mediation process is completed and final decision is communicated.
- (h) Use of contractors: All monitoring work must be done by SWP, although SWP can use contractors as long as they follow the rules in the agreements.

4. FUNDING OF THE CEMP

- (a) CEMP Budget: Eagle will provide funds for the CEMP budget as long as this agreement is in place. The CEMP budget provides for mutually agreed upon monitoring based on good science and methods to meet the purpose of this agreement. The budget will be part of the annual CEMP Work Plan.
- (b) Eagle payments: Eagle Mine will fund the CEMP up to \$300,000 per year. This money will be paid into an account held by the Foundation. The Foundation will receive annually \$20,000 as an

administration fee. Any funding not used in a given year will be used to off-set the following year budget.

- (c) Foundation Invoices Eagle Mine: The Foundation will invoice Eagle for CEMP funds according to the process described below:
1. SWP will submit a draft CEMP Work Plan and budget for the coming year to Eagle Mine by November 1. Eagle will provide comments to SWP on the draft Work Plan by December 1st. SWP and Eagle will resolve any issues in the draft Work Plan and budget by December 15th. In addition, SWP will submit the Final Work Plan and budget with final carry over expenses to Eagle by December 15th.
 2. Once the annual Work Plan and associated budget is agreed between SWP and Eagle, both organizations will jointly present the state of the Community Environmental Monitoring Program to the Foundation Executive Committee at an annual meeting set by the foundation director.
 3. The Foundation will send an annual report that will summarize the fund balance along with the first invoice to Eagle Mine and SWP. The invoice will reflect half the annual cost of the CEMP - January to June. This invoice will be for half the annual budget less any deductions that may be needed due to any carry over funding from the previous year. The Foundation will send this invoice in February and Eagle will pay this invoice by the end of March.
 4. The Foundation will send a second invoice to Eagle Mine in July for the second half of the annual cost of the CEMP – July to December. The amount of this invoice will be the same as the first invoice.
- (d) SWP invoices the Foundation: SWP will regularly invoice Foundation for CEMP costs according to the process described below:
1. Each SWP invoice will be sent to Foundation and shall include sufficient detail to demonstrate that the work being invoiced is part of the Work Plan, is within the annual budget and meets with the rules and standards set out in this agreement.
 2. Copies of invoices will be shared with Eagle at the same time that they are provided to the Foundation. Eagle may object to the invoice or specific items in the invoice. If Eagle objects it must let the Foundation and SWP know of its objection within 14 days of receiving the invoice.
 3. If Eagle objects, and the dispute cannot be resolved internally, then the mediation mechanism is triggered (see section 6).
 4. If Eagle objects to part of SWP's invoice, the Foundation will not pay that part of the invoice unless the objection is resolved in SWP's favor. The Foundation can pay the undisputed part of the invoice.
 5. If the invoice is approved, the Foundation will authorize payment out of the CEMP Fund.
- (e) SWP reports to the Foundation and Eagle Mine the following: Community feedback and outreach; number of community consultations, the number of public inquiries, how SWP responded to public inquires and questions and the date and how the communication was closed out. SWP will also report on CEMP website analytics; how many unique visitors and did SWP change communication or

consultation strategy based on analytical trends or community feedback. This data will be reported quarterly during the policy committee review. Inquiries, questions, and concerns regarding Eagle Mine's operations will be made publicly available on the CEMP website.

Community Feedback: Inquiries, questions, and concerns regarding CEMP or Eagle Mine's operations will be listed on the CEMP website.

5. DONATIONS TO THE CEMP FUND

- (a) Contributions by others: Any person or organization can contribute funds towards the CEMP. These contributions will also be paid into the Foundation fund. Any additional monitoring paid for with this money must also follow the rules outlined in these agreements.
- (b) Use of contributions: These extra funds can be used to continue monitoring that is about to end because of other priorities in the Work Plan. These funds may also be used for additional monitoring. Additional monitoring paid for in this way can start as soon as the monitoring standards are established, approved by Eagle Mine, and included in the Work Plan. Any additional monitoring paid for by another person or organization must still be done by SWP or its approved subcontractors.

6. RESOLVING DISAGREEMENTS

- (a) In the event the parties cannot resolve any disagreements themselves, either party may invoke this dispute resolution process by notifying the other party, with a copy of the notice to the Foundation CEO/President. The parties will submit the disagreement to an agreed upon mediator, with the initial mediation session to be scheduled within two weeks of invoking the process. If the disagreement is not resolved after two mediation sessions of two hours duration each, the parties will proceed to the dispute resolution process below.
- (b) Selection of a Dispute Resolution Committee. If the parties themselves cannot resolve a dispute, either party may refer the dispute to a CEMP Dispute Resolution Committee (DRC). The Foundation CEO/President will serve as the non-voting chairperson of the CEMP DRC. If the Foundation CEO/President is unable to serve as the DRC chairperson, the Foundation Board President will serve as the DRC chairperson. Within two weeks of receiving notice of the dispute from one of the parties, the DRC chairperson will select an additional three to five members of the DRC from candidate lists submitted by the parties. The candidate list shall be created by Eagle Mine and SWP if mediation outlined in Section 6(a) fails to resolve the dispute. The voting members of the DRC may include members of the Foundation Board and should include members with diverse interests and expertise such as tribal, environmental, industry, mining and local government.
- (c) DRC candidate list. SWP and Eagle Mine will create and maintain a DRC candidate list that **will** be submitted to the Foundation in January of each year.
- (d) Proceedings of the DRC Committee. The DRC chairperson will convene a meeting to the DRC as soon as feasible after appointment of the DRC members. The Parties will submit their written position statements on the dispute to the DRC at least one week before the DRC meeting, and may request that they be allowed to make in-person presentations of no more than 30 minutes to the DRC. The DRC will render its decision within 2 weeks of convening and the DRC chairperson will

notify the parties. The DRC' decision will be posted on the CEMP website and available to the public.

- (e) Agreement of Parties to Abide by DRC Decision. The Parties agree to abide by the decision of the CEMP DRC and that they will not publicly criticize the role of the Foundation in selecting the DRC committee members or the ultimate outcome of the DRC's decision, although either party may publicly disagree with the decision and state the reasons for its disagreement.
- (f) Types of disputes: There are two kinds of disputes that might happen over the life of the agreements: technical or scientific disputes; and disputes about the interpretation of the agreements. Technical or scientific disputes will be resolved by the peer review process. This includes disputes about the standards that ensure the quality of monitoring; how results are interpreted; the need for additional monitoring; and the CEMP Work Plan. The peer review process is described below.
- (g) Starting the peer review process: Eagle Mine or SWP can start the peer review process if there is a disagreement on technical or scientific matters.
- (h) The peer reviewer: The peer review process depends on a "peer reviewer". A peer reviewer must be an expert in the area of the disagreement. The peer reviewer will consider the views of Eagle Mine and SWP and make findings about the issue.
- (i) Selecting a peer reviewer: Eagle Mine and SWP will meet to select a peer reviewer. If Eagle and SWP cannot agree on which peer reviewer to use, they can each put forward a candidate to the CEMP DRC. The CEMP DRC will decide which peer reviewer to use.
- (j) The CEMP DRC will decide, how much money to spend and how much time the dispute process will take. Money to pay for the peer reviewer and other expenses will come from the CEMP Fund. Eagle and SWP will provide the peer reviewer with position statements and supporting documentation or data, with copies also provided to the CEMP DRC.
- (k) Ending the dispute: Eagle Mine and SWP will each be given the peer reviewer's findings. Both agree to abide by these findings.
- (l) Making the findings public: After notifying the CEMP DRC, SWP will publicize the findings within one week of their completion. If Eagle Mine does not agree with the findings, after consultations with SWP, it can make its opinion of the finding's public. If SWP does not agree with the findings, after consultations with Eagle, it can also make its opinion public by posting on the CEMP web site.
- (m) Disputes about the interpretation of the agreements: Disputes about the interpretation of this agreement or the CEMPFA will be submitted to the CEMP DRC for a decision. The CEMP DRC may ask outside experts to help resolve the dispute.

7. DATA SHARING

- (a) Data sharing: Eagle Mine will share all the data from its regulatory compliance programs that are within the prevue of the CEMP's monitoring agreement with SWP. SWP will make this data public

according to the rules in Section 9 below.

- (b) Serious risks: Eagle Mine and SWP will tell each other, by phone or email, of any data that suggests a danger to community health or the environment, as soon as they become aware of the risk. If this communication is by phone, it will be followed up with a confirming email. SWP will release this information to the community as soon as possible.
- (c) Breaches of permits: Any data that shows that Eagle Mine has breached its regulations or permit conditions will be shared verbally within 24 hours of discovery. The data will be shared in writing within 14 working days and will be made public at that time.
- (d) Other data: All other data will be shared in writing within 14 working days upon receipt.

8. MAKING DATA AND OTHER INFORMATION PUBLIC

- (a) Ownership and sharing of data: SWP will own any of the data it collects and will provide the data to the community in a way that is easily understood by the widest possible audience. Data interpretation and communication will follow good risk communication practice and standards, describe if the data is a risk or not to human health or the environment, and follow the standards outlined in the CEMP Notification Plan (Attachment B). Data will be made available on the Internet within 45 days of receipt unless the data is being disputed.
- (b) Raw data: SWP can give raw data in tables along with explanations and notes to anyone who asks for it. The quality of this data must be assured as to its reliability by SWP and Eagle Mine before it is released and it cannot be released before it is made available on the Internet.
- (c) Eagle Mine review: SWP will give Eagle Mine the opportunity to review information that it plans to put on the Internet. Eagle can make suggestions on how to present the information to make sure it is clear and properly understood. Eagle Mine will finish its review in time to allow SWP to release information according to the schedule described below.
- (d) Conflicting data interpretation: If Eagle Mine's and SWP's data explanation conflict, both statements will be posted on the CEMP website for public view.
- (e) Serious risks: Data that indicates a danger to community health or the environment will be released pursuant to the CEMP Notification Plan). Prior to any public release of data, SWP must ensure that risk communication standards outlined in section 8(a) are followed.
- (f) Breaches of Permits: Data that shows Eagle Mine is breaching its environmental regulations or permit conditions must be published on the Internet no later than 14 days after Eagle Mine is notified. This data must also be presented in a way that most people understand and be published along with notes explaining how the breach will affect the environment following standards in Section 8(a). SWP must also publish Eagle's explanation of how it thinks the breach will affect the environment. Both Eagle Mine and SWP can make suggestions about how to address the

Raw data: Raw data is the data that comes direct from testing or monitoring devices. For example, a table of minute-by-minute wind speed data from a weather station is raw data – it is not summarized or interpreted.

breach when the data is made public. Communicating breaches of permit is also referenced in the CEMP Notification Plan.

- (g) Other data: Data that shows that Eagle Mine is working according to its regulations or permit conditions can be released as soon as it is presented in a way that most people can understand and that follows standards in 8(a). This data must be released within 14 days of becoming available.
- (h) Agreements and CEMP information: This agreement, the CEMPFA and their amendments set up the CEMP. These agreements will be made public. Final CEMP Work Plans and budgets will also be made public. SWP can ask for advice from anyone else about the CEMP and give them CEMP documents as long as it provides copies of these documents to Eagle Mine at the same time. These documents might include the CEMP Work Plan and budget.

9. COMMUNITY OUTREACH

SWP will develop a community outreach plan as part of the CEMP Work Plan. The community outreach plan will be updated each year, reported out during quarterly policy review meetings along with the update of the Work Plan. Outreach will follow standards written throughout the agreement and outlined in the CEMP Notification Plan (Attachment B).

10. TERM

- (a) Term: This agreement starts on the day that it is signed and ends on December 31st, 2025. This agreement may end sooner if it is terminated (see section 11 below).
- (b) Renewing the agreements: The CEMP agreements are intended to cover the life of Eagle mine, from construction to mining as well as closure and rehabilitation. Eagle Mine and SWP may agree to renew this agreement for additional three-year periods to cover the life of the mine.

11. TERMINATION

- (a) Termination: Eagle Mine or SWP can terminate their involvement by giving 60 days' notice. Each party must outline their reasons for wanting to terminate as well as how the situation might be fixed. A termination notice cannot trigger the disputes processes described in section 6.
- (b) Avoiding termination: If either Eagle Mine or SWP give a termination notice, both parties will try to fix the issues of concern before the end of the notice period to allow the CEMP to continue.
- (c) Costs of termination: If Eagle Mine or SWP terminate this agreement SWP must be reimbursed for any costs accrued prior to the CEMP termination. The amount of reimbursement will be approved by the Foundation, but it cannot be more than Eagle Mine's last half-year payment. Reimbursements will only be made on costs that SWP can demonstrate.
- (d) Termination and equipment: SWP will retain ownership of any equipment it purchased to run the CEMP if the value of that equipment is less than \$10,000. If the value of the equipment is more than \$10,000 Eagle Mine and SWP will agree on how to dispose of that equipment.

(f) Remaining Funds: Any Eagle funding left in the CEMP fund will be kept in Foundation non-endowment fund. Any remaining money will be used for community environmental monitoring of Eagle Mine. A further agreement between Eagle and Foundation will outline how this monitoring will be done.

Legal language: Note that this clause has not been written in plain English. Legal language has been kept to ensure that the strict legal Meaning of Indemnity is preserved.

12. HEALTH AND SAFETY

- (a) Health and safety standards: Eagle Mine has given SWP a copy of its health and safety standards which are included in this agreement at Attachment C. SWP has reviewed the standards and agrees that all its staff, trainees and contractors will abide by the standards as they go about their monitoring activities.
- (b) Access to Eagle Mine operations: All SWP personnel who wish to enter Eagle Mine operations must be at least 18 years old and follow all of Eagle’s health and safety rules.

13. INSURANCE

- (a) Policies: For the term of this agreement, SWP will maintain at least the following insurance:
 - 1. A General Liability policy to the value of \$1,000,000 per occurrence and \$2,000,000 in total; and
 - 2. A Hired and Non-owned Automobile liability to the value of \$1,000,000 per claim occurrence; and
 - 3. Workers’ compensation at a level required by the State of Michigan.
- (b) Additional Insured: SWP has added Eagle Mine LLC to its General Liability policy as an additional insured to cover Eagle for any work SWP does connected with the CEMP.
- (c) Contractors: Contractors working for SWP will meet the same insurance requirements as Eagle’s contractors who work on its mine site. Eagle will tell SWP what these requirements are.

14. INDEMNITIES

- (a) Eagle shall indemnify, protect, defend and hold SWP and the Foundation harmless from and against all claims, damages, costs, expenses, liabilities, actions, suits, fines and penalties (including without limitation reasonable attorneys’ fees and expenses) of any kind or nature.
- (b) SWP shall indemnify, protect, defend and hold Eagle and the Foundation harmless from and against all claims, damages, costs, expenses, liabilities, actions, suits, fines and penalties (including without limitation reasonable attorneys’ fees and expenses) of any kind or nature whatsoever, suffered or incurred by Eagle, which result from or arise out of any claim for personal injury (including death) suffered by any person (including employees of Eagle) and loss of or damage to property (including loss of use of thereof), in either case proximately caused by or arising out of SWP’s actions on this project up to the extent of coverage of SWP’s liability insurance, and no further. Notwithstanding the same, SWP shall not be required to indemnify Eagle from and against claims, damages, costs, expenses, liabilities, actions, suits, fines and penalties to the extent the same are proximately caused by or arise out of the intentional, reckless, or negligent acts or omissions of Eagle (including without

limitation willful misconduct), or its contractors, agents, representatives, affiliates, or other person under its control.

15. GOVERNING LAW

This agreement operates under the laws of the State of Michigan and Michigan law will govern its interpretation.

16. RELATIONSHIP OF EAGLE MINE AND SWP

Making this agreement does not mean that Eagle Mine and SWP have formed any kind of commercial relationship including joint ventures or business partnerships.

17. AMENDMENT

No alterations to this agreement can be made without the written consent and signature of both Eagle Mine and SWP.

18. CONTACT BETWEEN SWP AND EAGLE

Communications between SWP and Eagle Mine are outlined in the CEMP Notification Plan (Attachment B).

Executed by the Parties on this the _____ day of _____, 2019:

Superior Watershed Partnership

By: 

Name: Carl Lindquist

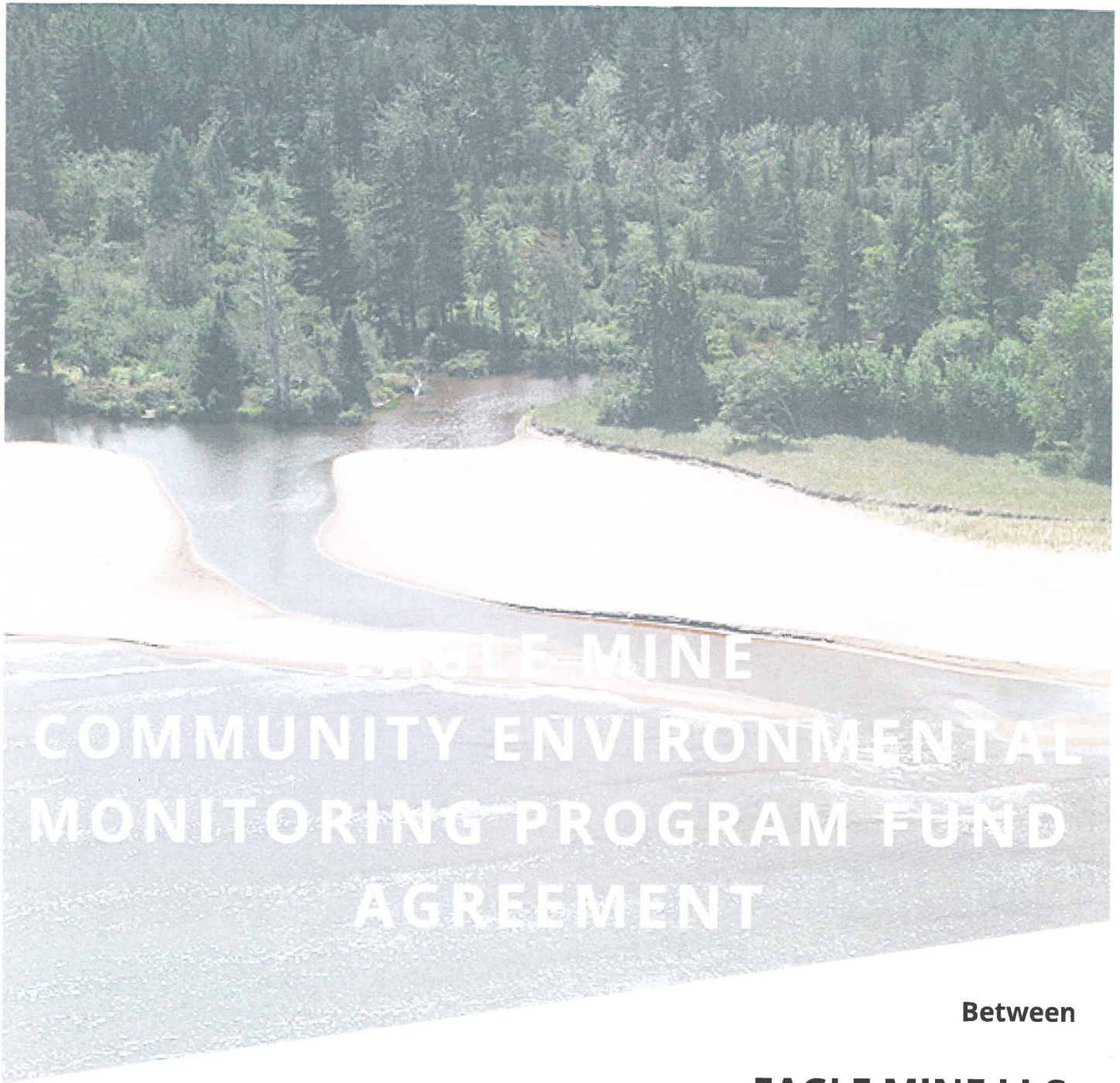
Title: Executive Director

Eagle Mine LLC

By: 

Name: Kristen Mariuzza

Title: Managing Director, Eagle Mine



Between

EAGLE MINE LLC
and
**THE COMMUNITY FOUNDATION OF MARQUETTE
COUNTY**

December 12, 2019



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

Between

The Community Foundation of Marquette County

And

Eagle Mine LLC

THIS FUND AGREEMENT (“Agreement”) made and entered into on ___ day of _____, 2019, by and between the Community Foundation of Marquette County (“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 activities described in the CEMP Agreement. 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 to be made exclusively for implementation of the CEMP. The CEMP Agreement determines 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 11 of the CEMP Agreement, or
- b. There is remaining funds under Section 11(f), those provisions shall control.

5. CEMP DISPUTE RESOLUTION PROCESS

- a. In the event the parties cannot resolve any disagreements themselves, either party may invoke this dispute resolution process by notifying the other party, with a copy of the notice to the Foundation CEO/President. The parties will submit the disagreement to an agreed upon mediator, with the initial mediation session to be scheduled within two weeks of invoking the process. If the disagreement is not resolved after two mediation sessions of two hours duration each, the parties will proceed to the dispute resolution process below.
- b. Selection of a Dispute Resolution Committee. If the parties themselves cannot resolve a dispute through the mediation process, either party may refer the dispute to a CEMP Dispute Resolution Committee (DRC). The Foundation CEO/President will serve as the non-voting chairperson of the CEMP DRC. If the Foundation CEO/President is unable to serve as the DRC chairperson, the Foundation Board President will serve as the DRC chairperson. Within two weeks of receiving notice of the dispute from one of the parties, the DRC chairperson will select an additional three to five members of the DRC from candidate lists submitted by the parties. The candidate list shall be created by Eagle Mine and SWP if mediation outlined in Section 6(a) of the CEMP Monitoring Agreement fails to resolve the dispute. The voting members of the DRC may include members of the Foundation Board and should include members with diverse interests and expertise such as tribal, environmental, industry, mining and local government.
- c. DRC candidate list. SWP and Eagle Mine will create and maintain a DRC candidate list that will be submitted to the Foundation in January of each year.
- d. Proceedings of the DRC Committee. The DRC chairperson will convene a meeting to the DRC as soon as feasible after appointment of the DRC members. The Parties will submit their written position statements on the dispute to the DRC at least one week before the DRC meeting, and may request that they be allowed to make in-person presentations of no more than 30 minutes to the DRC. The DRC will render its decision within 2 weeks of convening and the DRC chairperson will notify the parties. The DRC’ decision will be posted on the CEMP website and available to the public.

If SWP and Eagle Mine find themselves in a dispute that they cannot resolve with the dispute resolution process designated in the CEMP Agreement, either party may refer the dispute to the CEMP DRC. SWP and Eagle have agreed to abide by the final decision of the CEMP DRC on any dispute that is referred to the CEMP DRC.

6. THE FUND

The Fund will be the property of the Foundation. The 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.

- a. It is agreed that all assets held in the Fund will be subject to the Articles of Incorporation and Bylaws of the Foundation, including the power contained therein for the governing board to modify, to the extent permitted, 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.
- b. 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 will be reduced by the carryover funds.
- c. The Foundation will prepare an invoice to Eagle for half the annual cost of the CEMP - January to June. This invoice will be for half the annual budget less any deductions that may be needed due to carry over funds from the previous year. The Foundation will send an annual fund balance report to Eagle Mine and SWP that describes carry over funding. The fund balance report and invoice will be sent to Eagle in February and Eagle Mine will pay the invoice by the end of March.
- d. The Foundation will send a second invoice to Eagle Mine in July for the second half of the annual cost of the CEMP – July to December. The amount of this invoice will be the same as the first invoice.
- e. If the Community Environmental Monitoring Program ceases to exist and monies for that project remain in the Fund, 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 a permanently-endowed fund of the Foundation whose purpose will be determined by the Foundation and Eagle.
- f. The permanently-endowed Fund will be charged an annual \$20,000 administrative fee. As a special project fund, the \$20,000 fee will be charged on the first of the

two semi-annual invoices made to the Fund upon receipt of the deposit. Any funding not used in a given year will be used to offset the following year administration fee.

Legal language: Note that this clause has not been written in plain English, on legal advice. Legal language has been kept to ensure that the strict legal Meaning of Indemnity is preserved.

7. INDEMNITIES

- a. Eagle shall indemnify, protect, defend and hold SWP and the Foundation harmless from and against all claims, damages, costs, expenses, liabilities, actions, suits, fines and penalties (including without limitation reasonable attorneys' fees and expenses) of any kind or nature

- b. SWP shall indemnify, protect, defend and hold Eagle and the Foundation harmless from and against all claims, damages, costs, expenses, liabilities, actions, suits, fines and penalties (including without limitation reasonable attorneys' fees and expenses) of any kind or nature whatsoever, suffered or incurred by Eagle, which result from or arise out of any claim for personal injury (including death) suffered by any person (including employees of Eagle) and loss of or damage to property (including loss of use of thereof), in either case proximately caused by or arising out of SWP's actions on this project up to the extent of coverage of SWP's liability insurance, and no further. Notwithstanding the same, SWP shall not be required to indemnify Eagle from and against claims, damages, costs, expenses, liabilities, actions, suits, fines and penalties to the extent the same are proximately caused by or arise out of the intentional, reckless, or negligent acts or omissions of Eagle (including without limitation willful misconduct), or its contractors, agents, representatives, affiliates, or other person under its control.

8. AMENDMENT

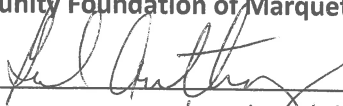
This Agreement may be modified by mutual written agreement of both parties.

9. LIST OF EXHIBITS


- a. Exhibit A: CEMP Agreement and its attachments.

Executed by the Parties on this the _____ day of _____, 2019:

Community Foundation of Marquette County

By: 
Name: GAIL ANTHONY
Title: Chairman of the Board CEO

Eagle Mine LLC

By: 
Name: Kristen Mariuzza
Title: Managing Director Eagle Mine