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NUNAVUT WATER BOARD

NUNAVUT IMALIRIYIN KATIMAYIT
OFFICE DES EAUX DU NUNAVUT

DRAFT

NWB WATER COMPENSATION DETERMINATION
PROCESS AGREEMENT

BETWEEN:

Agnico Eagle Mines Limited (Agnico Eagle or the Applicant)

AND

The Kivalliq Inuit Association (KIA or the DIO)

Agnico Eagle and the KIA collectively referenced as the Parties

PREAMBLE

WHEREAS pursuant to Articles 10 and 13 of the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada (Nunavut Agreement)*, the Nunavut Water Board (NWB) was established on July 9, 1996, as an institution of Public Government with responsibilities and powers over the regulation, use and management of fresh water in the Nunavut Settlement Area (NSA); and

WHEREAS pursuant to Article 20 of the *Nunavut Agreement*, Inuit in Nunavut are provided with rights to water, vested in a Designated Inuit Organization (DIO), and these rights include rights to the use of water on, in, or flowing through Inuit Owned Lands

(IOL), as well as the right to have water flowing through IOL substantially unaffected in quality, quantity, and flow; and

WHEREAS pursuant to Article 20, Section 20.3.1 of the *Nunavut Agreement* and s. 63(1) of the *NWNSRTA*, when an application to the NWB involves the use of water or deposit of waste that is likely to have a substantial effect on water quality, quantity, or flow of water through IOL the Applicant must enter into a compensation agreement with the DIO for any loss or damage which may be caused by the potential changes to quality, quantity or flow of the water; and

WHEREAS pursuant to Article 20, Section 20.3.2. of the *Nunavut Agreement* and s. 63(1)(b) of the *NWNSRTA* in the event that the DIO and the Applicant are unable to reach an agreement, either may refer the determination of the appropriate compensation to the NWB, and the decision of the NWB shall be binding; and

WHEREAS on February 22, 2019 the NWB was requested by the Applicant to assist the Parties in determining water compensation in respect of an amendment to Water Licence No: 2AM-MEA1526 to authorize changes as proposed under the In-Pit Tailings Disposition Proposal submitted by Agnico Eagle on February 23, 2018 (the Amendment Application),

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. GENERAL

- 1.1. The purpose of this Agreement is to identify the objectives, expectations of the Parties and key elements of the process governing the NWB making a water compensation determination as required under Article 20 of the *Nunavut Agreement* and ss. 63-67 of the *NWNSRTA* in respect of the Amendment Application and as requested by the Applicant.
- 1.2. This Agreement must also be interpreted in a manner consistent with all provisions of the *Nunavut Agreement* and the *NWNSRTA*.

2. WATER COMPENSATION DETERMINATION PROCESS

- 2.1. The water compensation determination shall be made by a panel of two or more NWB members duly appointed in accordance with Article 13, Section 13.3.6 of the *Nunavut Agreement*. The Water Compensation Determination Panel (WCDP) shall consist of three Board members which will include the Chairperson of the Board, and the Board members appointed to the WCDP will be the same panel of three Board members who will consider the related Amendment Application (the Meadowbank Panel, P9).
- 2.2. Due to the narrowness of the question of compensation and the evidence considered to make the water compensation determination, the WCDP's involvement in determining the water compensation amount shall not be seen to influence the ability of the same Panel members to subsequently decide whether the amendment to the water licence will be granted to the Applicant, nor what terms and conditions (other than water compensation amounts) will be considered necessary by the Panel in the event a water licence amendment is ultimately issued.

- 2.3. In accordance with the requirements of Article 20, Section 20.3.3 of the *Nunavut Agreement* and s. 67 of the *NWNSRTA* the WCDP shall consider, at a minimum, the following factors in making the water compensation determination:
- a. the adverse effects of the change in quality, quantity or flow of water;
 - b. the cumulative effects of the change and of any existing uses of waters and deposits of waste;
 - c. the nuisance, inconvenience, disturbance or noise caused by the change in quality, quantity or flow of water;
 - d. the cultural attachment of Inuit to Inuit Owned Lands, including water, which may be affected by the change in quality, quantity or flow of water,
 - e. the peculiar and special value of Inuit Owned Lands, including water, which may be affected by the change in quality, quantity or flow of water; and
 - f. any interference with Inuit rights established by the *Nunavut Agreement*, the *NWNSRTA*, or otherwise.
- 2.4. The onus is on the Parties to provide the WCDP with sufficient information to make the compensation determination, including providing, at a minimum, information addressing all of the factors listed under 2.3 above. Where the WCDP does not receive sufficient information from the Parties, the WCDP may, upon notice to the Parties, seek the additional information the WCDP considers necessary to make a fair determination, from any source the WCDP considers appropriate in the circumstances.
- 2.5. As information relevant to the water compensation determination may have been previously provided to the Board by the Parties in association with the Amendment Application, the Parties may cross-reference this material in their submissions to the WCDP for the water compensation determination.
- 2.6. The water compensation determination will be undertaken as an oral hearing, to be conducted in Baker Lake, Nunavut, the community most directly affected by the changes to the water uses and waste deposits proposed in the Amendment Application.
- 2.7. In accordance with Article 20, Part 3 of the *Nunavut Agreement* and ss. 63-67 of the *NWNSRTA*, the water compensation determination made by the WCDP shall be binding on the Parties and the substance of the water compensation determination will not be reconsidered by the Panel during any subsequent general water licensing processes.

3. PAYMENT OF COMPENSATION

- 3.1. Reflecting Article 20, Section 20.3.4 of the *Nunavut Agreement*, and s. 67(2) of the *NWNSRTA*, unless otherwise agreed by the Parties, all awards shall provide for periodic payments and a periodic review of water compensation to ensure that water compensation is adjusted over time to reflect the nature and duration of the water use.

- 3.2. As required by s. 63(2) of the *NWNSRTA*, in the event that the NWB makes a determination of appropriate compensation and a water licence amendment is subsequently issued by the Board, the payment of the compensation shall be included as an amendment to the existing terms and conditions of Water Licence No: 2AM-MEA1526.

4. PAYMENT OF COSTS

- 4.1. In accordance with Article 20, Section 20.3.4 of the *Nunavut Agreement*, and s. 63 of the *NWNSRTA*, the costs of the DIO incurred in the water compensation determination process shall be borne by the Applicant, unless otherwise determined by the NWB.

5. REQUEST FOR CONFIDENTIALITY

- 5.1. The Board maintains a public registry containing information and documents in respect of licence applications, and unless a party expressly requests confidentiality for all or part of the information exchanged by the parties during the NWB's conduct of a water compensation determination, the information exchanged by the Parties during the water compensation determination process will be made available on the NWB's public registry. Valid claims for confidentiality may include exemptions to disclosure such as those contemplated under the *Access to Information Act*, R.S.C. 1985, c A-1.
- 5.2. Even if a claim for confidentiality is granted by the WCDP, the amount of compensation fixed by the WCDP is a matter that must be reported in the licensing decision and if an amended water licence is granted, will also be set out in the amended terms and conditions of Water Licence No: 2AM-MEA1526. Consequently, the amount of compensation fixed by the WCDP and NWB determinations regarding periodic payment and periodic review will be provided in the relevant documents on the NWB's public registry.

6. SCHEDULE

- 6.1. The Parties agree that unless directed otherwise by the Board in writing, the water compensation determination conducted under this Agreement will be governed by the following schedule:
- a. **On or before March 15, 2019** the Parties will provide written submissions to the Board regarding the scope of issues to be considered by the WCDP during the NWB's water compensation determination;
 - b. **On or before March 18, 2019** the Board will provide direction to the Parties on the final scope of issues that will be considered by the WCDP during the NWB's water compensation determination;
 - c. **On or before April 8, 2019**, the Parties will provide all materials in support of their assessment of the appropriate measure of water compensation to the Board;
 - d. **On or before April 13, 2019**, the Board will review the Parties' materials provided under 6.1(c) above, and the WCDP will identify and provide notice to the Parties if the WCDP identifies that information in addition to the materials provided by the Parties is considered necessary to arrive at a fair determination;

- e. **On or before April 15, 2019** the Parties will file the presentation materials on which they intend to rely at the in-person oral hearing conducted by the NWB in support of the water compensation determination;
- f. **The week of April 22-26, 2019** (hearing tentatively planned for **April 24**), the NWB will conduct a one-day in-person oral hearing to support the Board's water compensation determination; and
- g. **Within 30-45 days** following the NWB's closure of the Record associated with the Amendment Application (occurring either at the close of the WCDP's oral hearing or subsequently when the WCDP is satisfied that all information required to conclude the Board's water compensation determination has been received), the Board will issue a decision (and if applicable) amended Licence No: 2AM-MEA1526, providing the Meadowbank Panel's decision with respect to both the amendments required to authorize the In-Pit Tailings Disposition Proposal and the WCDP's determination regarding water compensation and any amendments to the water licence required to reflect the WCDP's determination.

7. EFFECTIVE DATE

7.1. This Agreement comes into effect on signing.

IN WITNESS WHEREOF THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED IN THEIR respective names by their duly authorized representatives.

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Agnico Eagle Mines Limited)	Kivalliq Inuit Association
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