

WHALE TAIL SECURITY MANAGEMENT AGREEMENT

(FINAL, September 5, 2017)

Between:

**KIVALLIQ INUIT ASSOCIATION
(KIA)**

and

**AGNICO EAGLE MINES LIMITED
(the Proponent)**

and

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the Minister of Indigenous and Northern
Affairs (the Minister)**

NUNAVUT WATER BOARD

Date: September 26, 2017

Exhibit No.: 12

WHEREAS the Proponent is seeking a licence from the Nunavut Water Board (NWB) for its Whale Tail Project situated in the Kivalliq Region of Nunavut.

WHEREAS KIA, as the fee simple owner of Inuit Owned Lands on which the Whale Tail Project will be situated, has rights, powers, functions and authorities in relation to the surface of those lands, as set forth in the *Nunavut Land Claims Agreement* (Nunavut Agreement) and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA).

WHEREAS KIA holds and manages Inuit Owned Lands, and exercises its rights, powers, functions and authorities, for the benefit of Inuit.

WHEREAS the Minister has rights, powers, functions and authorities in relation to land and water management throughout Nunavut as set forth in the *Department of Indian Affairs and Northern Development Act*, the Nunavut Agreement and the NWNSRTA.

WHEREAS the Minister's rights, powers, functions and authorities, including the right to hold and use security required by the NWB, may not be fettered in any way, by agreement or otherwise.

WHEREAS the NWNSRTA gives the NWB the authority to require the Proponent to furnish and maintain security with the Minister in the form, of the nature, subject to such terms and conditions and in an amount prescribed by, or determined in accordance with, the *Nunavut Waters Regulations* or that is satisfactory to the Minister.

WHEREAS KIA, as a condition of granting a production lease for the Whale Tail Project, requires the Proponent to post security relating to the environment, operation, abandonment and reclamation of the Whale Tail Project.

WHEREAS both land and water impacts are an integral part of the Proponent's reclamation plan and reclamation cost estimate and are considered together holistically by the NWB when it requires the Proponent to furnish and maintain security pursuant to subsection 76(1) of the NWNSRTA.

WHEREAS this Agreement is intended to be an arrangement as contemplated by section 76.1(1) of the NWNSRTA for the purpose of, amongst other things, reimbursing KIA for its costs as permitted by section 76.1(1)(a) of the NWNSRTA, and the NWB must, in accordance with subsection 76.1(3), take this Agreement into account when it determines the amount of security required to be furnished and maintained by the Proponent.

WHEREAS the parties recognize that security furnished by the Proponent and maintained with the Minister and KIA needs to be applied reasonably such that there is adequate security to ensure the environmentally responsible operation, shutdown, interim care, maintenance and reclamation of the Whale Tail Project and that neither the Minister nor KIA should be under secured with respect to the costs of those activities.

NOW THEREFORE, the parties agree as follows.

ARTICLE 1

APPLICATION

This Agreement applies with respect to the Proponent's Whale Tail Project

ARTICLE 2

PROPOSAL TO THE NWB

In the course of the Proponent's application to the NWB for a type A water licence for the Whale Tail Project, the Proponent shall propose the following, as approved by KIA and the Minister, to the NWB:

- (a) a reclamation plan that includes a reclamation cost estimate of measures to prevent, counteract, mitigate and remedy adverse effects on persons, property and the environment;
- (b) to furnish and maintain security of a specified amount, form and nature and subject to specified conditions sufficient to provide for the reclamation cost estimate with respect to land and water;
- (c) to furnish and maintain half of the security with the Minister and the other half with KIA;
- (d) that the NWB takes into account this Agreement, pursuant to subsection 76.1(3) of the NWNSRTA, when it determines the amount of security required to be furnished and maintained with the Minister;
- (e) that the Proponent will not perform work in respect of which security has not been furnished and maintained;
- (f) that the Proponent will provide evidence to the NWB and the Minister, within 10 days after furnishing security with KIA, showing the amount, form, nature and conditions of the security and that it has been received by KIA;
- (g) that the Proponent will provide evidence to the NWB and to KIA, within 10 days after furnishing security to the Minister, showing the amount, form, nature and conditions of the security and that it has been received by the Minister; and
- (h) the periodic review of security, taking into account any material changes to the Whale Tail Project or the risk of environmental damage, and the adjustment of the amount of security as a result of such reviews.

Signature
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ARTICLE 3

AGREEMENT SUBJECT TO LICENCE CONDITIONS

If the NWB does not impose licence conditions that provide for the matters referred to in Article 2 and that are acceptable to KIA and the Minister, this Agreement shall cease to be binding on the parties.

ARTICLE 4

PROTECTION FROM OVER-BONDING

KIA shall not require the Proponent to furnish or maintain additional security that duplicates security furnished and maintained by the Proponent with the Minister pursuant to the water licence, and with KIA, pursuant to this Agreement.

ARTICLE 5

OBLIGATION TO FURNISH SECURITY AND RIGHT OF ACCESS

(1) The Proponent shall furnish and maintain security with the Minister in accordance with the water licence and furnish and maintain security in the same amount with KIA in accordance with the production lease for the Whale Tail Project

(2) The Proponent agrees that KIA may apply security it holds exclusively to reimburse KIA

(a) for costs incurred by KIA to implement measures to prevent, counteract, mitigate or remedy any adverse effects on persons, property or the environment, or to complete any work required under the reclamation plan, including, without limitation, any site investigation, risk management and any post-remedial studies, investigations and monitoring and one half of the cost of the report referred to in Article 6, and

(b) to reimburse Her Majesty in right of Canada for costs referred to in paragraph 76(2)(b) of the NWNSRTA.

(3) The Proponent agrees that the Minister may apply security it holds for the purposes referred to in paragraph 76(2)(b) of the NWNSRTA which may include, as the case may be, reimbursing KIA for costs incurred by KIA referred to in paragraph 5(2)(a) and Her Majesty in right of Canada for half of the cost of the report referred to in Article 6

ARTICLE 6

REPORT REQUIRED

- (1) KIA shall notify the Minister within a reasonable period of time prior to incurring costs referred to in paragraph 5(2)(a)
- (2) The Minister and KIA shall commission, before KIA incurs costs referred to in paragraph 5(2)(a) that exceed \$3,000,000.00 to implement measures with respect to an event, a jointly designated person to make a report, within a specified time period, which includes:
- (a) a description of the circumstances and the recommended measures and project manager,
 - (b) an assessment of the likelihood that the recommended measures will achieve the intended goal, meet regulatory standards and, if applicable, meet the reclamation plan referred to in the licence,
 - (c) the schedule for completion of the recommended measures; and
 - (d) an assessment of the costs of the recommended measures using industry best practices on procurement.
- (3) KIA, the Proponent and the Minister shall provide the designated person with the information necessary to make the report in a timely manner
- (4) KIA and the Minister shall share the report with the Proponent.
- (5) KIA and the Minister shall each pay half the costs of the report
- (6) KIA and the Minister may incur costs in accordance with the report's recommendations, up to the maximum amount of security each holds under this Agreement

ARTICLE 7

OBLIGATION TO REIMBURSE CANADA

When the conditions set by the NWB to abandon, reclaim and close the Whale Tail Project have been met and at the request of the Minister, KIA shall reimburse Her Majesty in Right of Canada for costs referred to in paragraph 76(2)(b) of the NWNSRTA up to an amount that is no greater than security held by KIA after it has been applied to reimburse KIA for costs referred to in paragraph 5(2)(a).

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ARTICLE 8

OBLIGATION TO REIMBURSE KIA

When the conditions set by the NWB to abandon, reclaim and close the Whale Tail Project have been met and at the request of KIA, the Minister shall reimburse KIA for costs referred to in paragraph 5(2)(a) up to an amount that is no greater than security held by the Minister after it has been applied to reimburse Her Majesty in Right of Canada for costs referred to in paragraph 76(2)(b) of the NWNSRTA.

ARTICLE 9

TERMINATION

KIA or the Minister may terminate this Agreement, for any reason it deems fit, upon not less than 90 days' notice in writing given to the other parties and the NWB. Upon termination, KIA and the Minister may each require additional security from the Proponent, which, together with security furnished and maintained pursuant to this Agreement, shall be held by KIA in accordance with the production lease between KIA and the Proponent, and by the Minister in accordance with the NWNSRTA.

ARTICLE 10

GOVERNING LAW

This Agreement is governed by and construed in accordance with the Laws of Nunavut and the Laws of Canada applicable in Nunavut.

ARTICLE 11

IMPLEMENTATION

Representatives of KIA, the Minister and the Proponent may meet in person or by any electronic means to discuss any issues with respect to the interpretation, implementation or enforcement of the Agreement, including its financial administration, the notification protocols and the coordination of any mitigating or remedial measure to be undertaken by both KIA and the Minister, including the procurement of third-party contractors.

Kivalliq Inuit Association:

Signature D. [Signature]
Title President

Date September 20, 2017

Agnico Eagle Mines Limited:

Signature [Signature]

Date 09/14/2017

Title Senior Vice President, Environment, Sustainable Development and People

Representative of Her Majesty the Queen in Right of Canada and the Minister of
Indigenous and Northern Affairs Canada:

Signature [Signature]

Date 09/13/17

Title Minister Deputy Minister

