

**COOPERATION AGREEMENT RESPECTING THE GIANT MINE REMEDIATION
PROJECT**

Dated for reference as of March ●, 2015

Between

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
AS REPRESENTED BY THE MINISTER OF INDIAN AFFAIRS AND NORTHERN
DEVELOPMENT (referred to as "Canada")**

and

**THE GOVERNMENT OF THE NORTHWEST TERRITORIES,
AS REPRESENTED BY THE MINISTER OF ENVIRONMENT AND NATURAL
RESOURCES (referred to as "GNWT")**

RECITALS

- A. Canada and GNWT recognize that the remediation of the former Giant Mine Site is a priority for the public;
- B. Canada and GNWT intend to work together to ensure that the Site is managed to protect human health, safety and the environment, and have agreed to cooperate and coordinate actions to achieve the cost-effective and timely remediation of the Site;
- C. Canada and GNWT have agreed to act as co-proponents of a project involving the care and maintenance and remediation of the Site, and have established a Giant Mine Remediation Project Team under the management of Canada;
- D. Canada and the GNWT submitted a Development Assessment Report for the Giant Mine Remediation Project to the Mackenzie Valley Environmental Impact Review Board, which issued its report of environmental assessment on June 20, 2013. The environmental assessment of the Giant Mine Remediation Project culminated in an approval by the federal and territorial responsible ministers under s. 130(1)(b)(i) of the *Mackenzie Valley Resource Management Act* on August 15, 2014;

Therefore, in consideration of the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, Canada and GNWT agree as follows:

INTERPRETATION

Definitions

1. For the purposes of this Agreement, the following words have the meanings ascribed to them below:

“Agreement” means this agreement, and the expressions “hereof”, “herein” and similar expressions refer to this agreement.

“Approved Remediation Plan” means the remediation plan for the Site which ultimately receives all necessary regulatory approvals and final government decisions to finance and proceed with the remediation of the Site.

“Giant Mine Remediation Project” means the care and maintenance of the site and the implementation of the Approved Remediation Plan and all ancillary activities related thereto.

“Giant Mine Remediation Project Team” means the employees of Canada and the GNWT responsible for the matters set out in section 20.

“Project Management Costs” means direct costs incurred properly and reasonably by the

GNWT for services and goods that are necessary for the completion of work associated with the care and maintenance of the Site, work associated with the development or implementation of the Approved Remediation Plan, or other work agreed to by the Senior Project Committee as constituting Project Management Costs. For the purposes of this definition, services may include surveying, engineering, testing and management services. Project Management Costs may include GNWT employee wages and benefits or overhead costs and administrative costs incurred by the GNWT in relation to services delivered directly by permanent employees of the GNWT or a corporation owned and controlled by the GNWT.

“Remediation Plan” means the Giant Mine Remediation Plan dated July 2007 that was prepared for Canada and the GNWT by SRK Consulting Inc. and SENES Consultants Limited and was submitted to the Mackenzie Valley Environmental Review Board, as that plan may be updated and elaborated over time.

“Senior Project Committee” has the meaning set ascribed to it in section 17.

“Site” means the area comprised by Reserve R662T, a reservation under the *Commissioner’s Lands Act*, as that Reserve may be modified from time-to-time, the area commonly referred to as the Giant Mine “town-site”, and the area of historic tailings deposition along the shore of north Yellowknife Bay.

Extended Meanings

2. Words importing the singular number include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders.

Headings

3. The division of this Agreement into articles and subsections and the insertion of headings are for convenience of reference only and do not affect the interpretation of this Agreement.

SCOPE OF APPLICATION AND LIMITATIONS

4. This Agreement applies to the Giant Mine Remediation Project and to the relationship, interactions, and roles and responsibilities of the parties as co-proponents in relation to the Giant Mine Remediation Project.
5. The parties to this Agreement are also parties to the Northwest Territories Lands and Resources Devolution Agreement, made on June 25, 2013. Though nothing in this Agreement is intended to affect the parties’ respective rights or responsibilities as described in the Devolution Agreement, in the event of a conflict this Agreement applies over the Devolution Agreement.

6. Canada and the GNWT agree to both negotiate a legally binding multi-party environmental agreement for the creation of an independent oversight body, as required by the decision of the responsible ministers in their August 15, 2014 project approval. Nothing in any such environmental agreement affects the parties' respective rights or responsibilities in this Agreement.
7. This Agreement does not transfer liabilities that each party otherwise may have with respect to the Site or that may arise due to any act or omission on the part of either party in carrying out the Giant Mine Remediation Project.
8. This Agreement covers the Giant Mine Remediation Project only and is not intended in any way to establish a precedent for any other mine site in the Northwest Territories.

PURPOSE OF AGREEMENT AND PARTIES' GOALS

9. This Agreement replaces the Cooperation Agreement Respecting the Giant Mine Remediation Project made between these parties as of March 15, 2005.
10. The purpose of this Agreement is to create a framework for Canada and GNWT to act as co-proponents of the Giant Mine Remediation Project.
11. The parties agree to further the following goals, and to do so in a cooperative and coordinated manner in relation to the Giant Mine Remediation Project:
 - (a) continue to protect human health, public safety, and the environment;
 - (b) continue to refine and continue to implement an effective care and maintenance plan;
 - (c) continue to refine, and at the appropriate time, implement the Approved Remediation Plan in a cost effective manner; and
 - (d) continue to maximize territorial economic opportunities.

REMEDIATION PLAN

12. The parties agree to continue to refine, update and elaborate the Remediation Plan, with the following objectives:
 - (a) To manage the underground arsenic trioxide dust by *in situ* freezing;
 - (b) To remediate the surface of the Site, recognizing that portions of the Site will necessitate land use restrictions;
 - (c) To minimize public health and safety risks associated with buildings, mine openings and other physical hazards at the Site; and
 - (d) To minimize the release of contaminants from the Site to the surrounding environment.
13. The parties agree to cooperate in all aspects of obtaining the approvals required for an Approved Remediation Plan.

14. For greater certainty, nothing in this Agreement requires the remediation of the Site to exceed the industrial standards set out in the Environmental Guideline for the Remediation of Contaminated Sites adopted pursuant to the *Environmental Protection Act*, R.S.N.W.T., 1988, c.E-7 in effect at the date of the responsible ministers' environmental assessment approval decision on August 15, 2014. This Agreement does not affect, or render either party responsible for, costs of any work undertaken for the purposes of exceeding this standard.

PERMITS, AUTHORIZATIONS AND REGULATORY REQUIREMENTS

15. As co-proponents, in accordance with their respective roles and responsibilities, both parties agree to cooperate in the development of regulatory applications and to secure the required permits, authorizations and other approvals (including, on request of a party, internal controls and financial approvals) required for the Approved Remediation Plan.
16. The coordination of remediation activities does not reduce the parties' obligation to comply with all applicable laws and permitting requirements, nor does it fetter any future decision-making responsibilities that a Minister may have in implementing this Agreement pursuant to subsequent regulatory applications.

SENIOR PROJECT COMMITTEE

17. The parties agree to jointly establish a project oversight committee reporting to the Minister (or designate) of each respective government (the "Senior Project Committee"). Canada's member of the Senior Project Committee shall be the Executive Director of Aboriginal Affairs and Northern Development Canada's Northern Contaminated Sites Branch, or the holder of a successor office responsible for the subject matter of this Agreement. The GNWT's member of the Senior Project Committee shall be the Assistant Deputy Minister, Corporate & Strategic Planning, Department of Environment and Natural Resources or the holder of an equivalent office responsible for the subject matter of this Agreement.
18. The Senior Project Committee shall be a forum for the parties to co-operate in the administration of this Agreement, and shall not perform management functions. Specifically, the Senior Project Committee shall provide general advice and guidance to, and develop options and recommendations for, the Giant Mine Remediation Project Team.
19. The Senior Project Committee members from each government are responsible for liaison with such other departments and agencies within their respective governments as may be appropriate for the purposes of this Agreement.

GIANT MINE REMEDIATION PROJECT TEAM

20. The Giant Mine Remediation Project Team is responsible for:

- (a) continuing to refine, update and elaborate the Remediation Plan;
- (b) continuing to formulate a suite of regulatory applications for approval of the Remediation Plan, and participating in regulatory approval processes with respect thereto;
- (c) managing the care and maintenance and remediation activities undertaken at the Site;
- (d) briefing the senior managers and ministers of both governments as required;
- (e) preparing plans for emergency response activities due to the occurrence of any extraordinary events that may occur at the Site; and
- (f) addressing any other matter that may arise in carrying out the terms of this Agreement.

SUPPORT FOR PROJECT

- 21. As co-proponents, the parties will actively support the Giant Mine Remediation Project, deal with issues related to the project, and assist the Giant Mine Remediation Project Team with external relations, stakeholder and community engagement, and will represent the project in appropriate forums.

INFORMATION SHARING

- 22. The parties agree to share relevant information and records specific to the Giant Mine Remediation Project to the fullest extent possible within their discretion under the relevant access to information laws, subject only to the express exclusions under those legislative provisions.

ROLES AND RESPONSIBILITIES

Human resources and other Contributions

- 23. The parties agree that the GNWT will contribute to the Giant Mine Remediation Project Team the following, all of which are Project Management Costs: at least two full time GNWT employee positions, with functions identified by the Giant Mine Remediation Project Team; and additional goods and services falling within the definition of Project Management Costs as may be agreed to by the Senior Project Committee.
- 24. Subject to section 30, the parties agree that the total financial contribution of the GNWT to the Giant Mine Remediation Project, including all financial contributions made pursuant to the previous Cooperation Agreement Respecting the Giant Mine Remediation Project made between these parties as of March 15, 2005, shall not exceed \$23 million.
- 25. In addition to the contributions required by section 23 of this Agreement and for the purpose of reducing overall project costs, GNWT will use reasonable efforts to contribute, at no cost to Canada, a variety of in-kind services including but not limited to

regulatory application preparation, project management, monitoring, or technical activities. This may be achieved by the secondment, interchange, or other form of short-, medium-, or long-term assignment of appropriate staff.

26. Subject to sections 23 through 25, the parties will be responsible for their own personnel and internal costs related to their involvement in the Giant Mine Remediation Project.

Funding the Oversight Body

27. Canada agrees to fund the independent oversight body referred to in section 6, including for greater certainty research funding, in accordance with the terms of the agreement leading to its establishment.

Project Delivery

28. Canada acknowledges that it has the lead role and primary responsibility for the delivery of the Giant Mine Remediation Project.

Arsenic Trioxide

29. Canada acknowledges long-term responsibility for the arsenic trioxide dust stored underground at the Site.

Use and Occupancy of Lands and Other Property

30. GNWT agrees to provide to Canada unrestricted surface access to and occupancy of the Site for the purposes of the Giant Mine Remediation Project, as well as use of borrow materials located on the Site, all at no cost to Canada, subject to any applicable permitting requirements. If there are any fees, royalties, or other charges payable to the GNWT for required permits or the borrow materials, such costs are at the expense of the GNWT.
31. Subject to any legal obligation of the GNWT to any third-party that pre-exists the effective date of this agreement and provided it is for the purposes of the Giant Mine Remediation Project:
 - a. Canada has the unrestricted right to use, sell and retain the proceeds, or dispose of any buildings, fixtures, chattels or other property wherever situated on the Site, free of charge or cost to Canada; and
 - b. Canada has the unrestricted right to alter lands, and erect buildings and other infrastructure anywhere at the Site, free of charge or cost to Canada.
32. The GNWT shall use best efforts to remove, limit, or otherwise address any legal obligation to a third-party that could impair Canada's unlimited exercise of the rights in section 31, and to enable Canada to carry out the Giant Mine Remediation Project without third-party interference.

COMMUNICATIONS PROTOCOL

33. The parties shall establish a protocol for internal communications in relation to the Giant Mine Remediation Project.

COMMUNITY ENGAGEMENT

34. The parties agree to work cooperatively with respect to engagement with the City of Yellowknife and other people and organizations concerning the Giant Mine Remediation Project and its activities occurring at the Site.

DISPUTE RESOLUTION

35. In the event of a dispute between the parties arising out of this Agreement the parties agree to explore resolution through negotiation or other appropriate dispute resolution procedures before resorting to litigation.

ECONOMIC DEVELOPMENT

36. Both parties agree to maximize northern economic development opportunities in carrying out the Giant Mine Remediation Project, subject to the policies and legislation of each government.

DESIGNATED CONTACTS AND CORRESPONDENCE

37. GNWT designates the Assistant Deputy Minister of Environment and Natural Resources as its contact person under the Agreement. Canada designates the Executive Director, Northern Contaminated Sites Branch, Aboriginal Affairs and Northern Development Canada as its contact person under this Agreement.
38. All correspondence to GNWT concerning this Agreement shall be sent to:

- (a) **Assistant Deputy Minister
Corporate & Strategic Planning
Environment and Natural Resources
Government of the Northwest Territories
Scotia Centre, 6th Floor
P.O. Box 1320
Yellowknife, NT X1A 2L9**

39. All correspondence to Canada concerning this Agreement shall be sent to:

(b) **Executive Director**
Northern Contaminated Sites Branch
Aboriginal Affairs and Northern Development Canada
OTTAWA, ON K1A 0H

40. Either party may give notice in writing of a change in designated contact person, or a change in his or her contact information.

GENERAL PROVISIONS

Severability

41. Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction shall not invalidate or impair the remaining provisions hereof which shall be deemed severable from any such prohibited or unenforceable provision and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Entire Agreement

42. This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all previous relevant negotiations, communications and other agreements, whether written or oral, between the parties. In entering into this Agreement, neither party is relying on any representations other than those contained in this Agreement.

Modifications

43. No amendment of this Agreement will be effective unless it is in writing and signed by both parties.

Force Majeure

44. In the event that either party is prevented from complying in a timely manner with any time limit posed in this Agreement solely because of a strike, fire, flood, act of God, or other circumstances beyond its control and which by the exercise of all reasonable diligence, is unable to prevent, then either party may request an extension of time or seek other modifications to the Agreement from the other.

Members of House of Commons Not to Benefit

45. As required by the *Parliament of Canada Act*, it is an express condition of this Agreement that no member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

Not a Partnership or Joint Venture

46. Nothing contained in this Agreement shall be deemed to constitute the parties as partners, joint venturers or principal and agent.

Financial Administration Act (Northwest Territories)

47. In compliance with Section 46 of the Northwest Territories *Financial Administration Act* it is a statutory condition of this Agreement that an expenditure pursuant to the Agreement will be incurred only if there is a sufficient uncommitted balance in the appropriated item for the fiscal year in which the expenditure is required under this Agreement.

Financial Administration Act (Canada)

48. In compliance with Section 40 of the *Financial Administration Act (Canada)*, it is a statutory condition of this Agreement that payments by Canada under this Agreement are subject to there being appropriation for the particular service for the fiscal year in which any commitment under this Agreement would come in the course of payment.

Official Languages Act (Canada)

49. This Agreement must be made in both of Canada's official languages, and the two versions of the Agreement are equally authoritative in accordance with s. 10.(2)(b) of the *Official Languages Act (Canada)*.

Further Assurances

50. The parties undertake to provide and enter into such further and other documents or agreements as may be necessary to give effect to the terms of this Agreement.

Governing Law

51. This Agreement is governed by and is to be construed in accordance with the laws of the Northwest Territories and the laws of Canada applicable therein.

TERM OF AGREEMENT

52. This Agreement will be effective once both parties have signed it and remains in force for ten years unless terminated by the written agreement of both parties.
53. No later than nine years after the effective date of this Agreement the parties shall meet to discuss the renewal or amendment of this Agreement.

SIGNATURES

The undersigned have the authority to make this Agreement on behalf of the parties.

On behalf of GNWT

On behalf of Canada



Hon. J. Michael Miltenberger
Minister of Environment and Natural Resources



Hon. Bernard Valcourt, PC MP
Minister of Indian Affairs and Northern
Development

Signed July 13, 2015

Signed June 3, 2015

