

**MINNESOTA PUBLIC UTILITIES COMMISSION  
SUITE 350  
121 SEVENTH PLACE EAST  
ST. PAUL, MINNESOTA 55101-2147**

Katie Sieben	Chair
Joseph Sullivan	Vice Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
John Tuma	Commissioner

In the Matter of the Decommissioning Trust  
Fund for the Enbridge Energy, Limited  
Partnership Line 3 Replacement Pipeline

Docket No. PL-9/CN-21-823

**REPLY COMMENTS OF THE  
MINNESOTA DEPARTMENT OF  
COMMERCE**

The Department of Commerce replies to Enbridge Energy’s initial comments regarding the Decommissioning Trust Fund that the Minnesota Public Utilities Commission required as part of the certificate of need for Enbridge’s Line 3 Replacement Pipeline (L3R) (which Enbridge now identifies as “Line 93”).<sup>1</sup>

The Department offers a number of suggestions for specific Commission action. First, Enbridge proposes that, at the end of the comment period, the Commission identify “basic terms and conditions” of the trust and empower the Executive Secretary to approve a compliance filing of a trust agreement that is consistent with the Commission’s order.<sup>2</sup> The Department disagrees with this proposal because it lacks transparency and rigor and does not ensure that the trust will be established in the public interest. Instead, the Department proposes a schedule with specific milestones to ensure that Enbridge’s proposed trust is properly vetted before being put into place. Second, it is highly problematic for Enbridge to serve as the beneficiary of the trust, as Enbridge

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<sup>1</sup> See NOTICE OF EXTENDED COMMENT PERIOD (Feb. 9, 2022).

<sup>2</sup> Enbridge Initial Comments, p. 5.

has proposed. Instead, a state actor who is involved in overseeing the decommissioning should be the beneficiary of the trust. Third, to provide greater transparency and reliability, the Department recommends that Enbridge submit its decommissioning cost estimate for independent review and verification. Fourth, L3R has been in use since October of last year and Enbridge has known of the requirement to establish a decommissioning trust fund since September 2018. Despite the nearly four years of lead time, Enbridge has yet to reserve any amount toward funding the trust. To mitigate the risk of any shortfall in the amount of trust funds, the Department recommends that the Commission require Enbridge to make an initial lump sum payment equal to approximately twelve months' worth of contributions, followed by ongoing contributions. Finally, the Department agrees with many of Enbridge's proposals regarding the terms and conditions of the trust agreement but offers additional information for the Commission's consideration.

As the Commission considers the issues in this docket, it should do so with two primary objectives firmly in mind: 1) assuring that the trust is sufficiently funded to cover all costs that will be incurred to fully decommission L3R; 2) assuring that the necessary funds are available when they are needed (i.e., when L3R is taken out of service). The Commission should proceed in a manner that results in the establishment of the trust fund without undue delay while still providing an adequate opportunity for scrutiny and comment by interested parties and participants and ultimate approval by the Commission. The Commission's order approving the trust agreement should also provide for ongoing reporting and oversight to make sure that the two primary objectives identified above are being met.

**I. THE SCHEDULE SHOULD ASSURE THAT THE PROCESS CONTINUES TO MOVE FORWARD AND PROVIDES AN OPPORTUNITY FOR THE COMMISSION TO REVIEW AND APPROVE A PROPOSED TRUST DOCUMENT.**

Although the Commission ordered Enbridge to establish a decommissioning trust in September 2018, until the Commission issued its notice for comment in this docket, there has been

little transparent, public process relating to how the trust would operate. To assure that the process continues to move forward, the Department recommends that the Commission establish a schedule for completing some of the milestones required for the decommissioning trust fund. While the Department's initial comments anticipated that Enbridge would propose a schedule, Enbridge unfortunately did not.<sup>3</sup> The Department recommends that the Commission order a schedule that includes the following tasks and milestones, some of which can and should proceed concurrently.

<b>Task</b>	<b>Due date</b>	<b>Notes</b>
Enbridge to consult with tribal authorities.	Commence as soon as possible.	
The Commission to issue an order requiring the establishment of the decommissioning trust and establishing a schedule.	Following an agenda meeting where comments submitted in response to the Commission's Notice of Comment Period are considered.	
Enbridge to file for review and Commission approval a final, independently reviewed cost estimate.	Within one month of a Commission order establishing a schedule.	The Department believes that it is important that the cost estimate be independently reviewed to avoid potential bias. The Commission should review the estimate every three years to determine whether it is necessary to increase the amount of contributions.
Establish a monthly amount to be contributed to the trust fund.	Within two months of a Commission order approving the cost estimate.	The amount of monthly required contributions should be based on the estimated decommissioning cost and the length of time that the line is anticipated to remain in service. The Commission should review the monthly contribution amount as part of a triennial review of the cost estimate and adjust the

<sup>3</sup> Enbridge Initial Comments at 5-6.

		monthly contribution amount as needed.
Enbridge to make an initial contribution, equal to twelve months' worth of monthly contributions, to begin funding the trust, with monthly contributions thereafter.	Within three months of a Commission order establishing a schedule.	In its September 2018 Order, the Commission required Enbridge to establish a decommissioning trust fund as a condition of granting a certificate of need. <sup>4</sup> Although the pipeline was placed in service on October 1, 2021, Enbridge has yet to establish a reserve to fund the trust. <sup>5</sup> A substantial initial lump sum contribution is necessary to assure that the funding of the trust is not further delayed.
Enbridge to file for comment and Commission approval a list of terms and conditions required to be included in the final trust agreement.	Within one month of a Commission order establishing a schedule.	Certain terms and conditions that the Department believes are critical to the success of the trust are discussed below.
Commission to approve a final list of required terms and conditions.	Within six months of Enbridge filing its proposed list of terms and conditions.	
Enbridge to file, for comment and Commission approval, the identity of a proposed trustee and provide information explaining the process used to select the proposed trustee.	With one month of a Commission order establishing a schedule.	
Commission to approve a trustee.	Within three months of Enbridge identifying a proposed trustee.	

<sup>4</sup> *In re Appl. of Enbridge Energy, Ltd. P'Ship, for a Certificate of Need for the Proposed Line 3 Replacement Project in Minn. From the N.D. Border to the Wis. Border (Line 3 Replacement CN)*, Docket No. PL-9/CN-14-916, ORDER GRANTING CERTIFICATE OF NEED AS MODIFIED AND REQUIRING FILINGS (Sept. 5, 2018) (reissued on May 1, 2020) (September 2018 Order).

<sup>5</sup> See Exhibit A (Enbridge Response to DOC IR No. 5).

Enbridge to file for comment and Commission approval a proposed trust agreement.	Within six months of Commission approval of a trustee.	This is intended to allow Enbridge sufficient time to negotiate with the trustee regarding the agreement's terms. The Department has engaged the services of a trust expert to provide the Commission with expertise in reviewing the terms of the trust agreement.
Commission to approve a final trust document.	Within three months of Enbridge filing its proposed trust agreement.	Although "final," the trust agreement will necessarily contain provisions that address how the agreement may be modified.

Ordering a schedule like this will provide an appropriate opportunity for scrutiny and comment on the key elements necessary to establish the trust while also assuring that the process necessary to establish the final terms and conditions governing the trust continues to move forward.

## **II. ENBRIDGE SHOULD NOT BE THE BENEFICIARY OF THE TRUST.**

One challenge of establishing a decommissioning trust fund is the need to make predictions far into the future and provide for a variety of contingencies. One of the purposes for establishing the trust is to address the real possibility that Enbridge may not exist as a legal entity when that decommissioning work is needed. Plainly, appointing Enbridge as the beneficiary of the trust is inconsistent with this purpose. Further, if Enbridge were to act as beneficiary of a trust with assets of well over a billion dollars, this would raise concerns about Enbridge putting its own interests ahead of the public interest that the trust is intended to serve.

The Department believes that the most logical choice for trust beneficiary would be a state actor that has a role in overseeing the decommissioning. This would be consistent with the

approach taken in connection with establishing a similar trust for the NorthMet mining project, which named the Department of Natural Resources as the trust beneficiary.<sup>6</sup>

The trust beneficiary will need to work closely with one or more state agencies to accomplish decommissioning. Having the beneficiary be a state actor will allow greater efficiency in completing what promises to be a highly complex and demanding undertaking. Having a state actor as the trust beneficiary will improve transparency and public confidence in the process.

### **III. THE COMMISSION SHOULD REQUIRE ENBRIDGE TO SUBMIT AN INDEPENDENTLY REVIEWED AND VERIFIED COST ESTIMATE.**

Enbridge has developed its cost estimate based on a variety of sources, including the methodology required by the Canada Energy Regulator (“CER”) when appropriate, assumptions used by the CER for engineering and project management expense, estimates for the construction of L3R, expenses incurred in the removal of Line 3,<sup>7</sup> an estimate provided by a contractor in 2018, and an inflation factor. Although it is anticipated that taxes and administrative expenses will be paid from trust funds, the expense estimate does not appear to reflect these expenses.

It is critically important that the estimated cost of decommissioning be as accurate as possible given the best information currently available. Although all parties agree that this estimate will be reviewed on an ongoing basis, it will be to no one’s benefit if the initial estimate is significantly too high or too low. Accordingly, the Department proposes that Enbridge’s cost estimate be reviewed and verified by an independent auditor.

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<sup>6</sup> See Exhibit B at 1 (PolyMet Mining Corp. and Poly Met Mining, Inc. NorthMet Mining Project, Permit to Mine and Assignment, Appendix B, Requirements for Trust Fund Long-Term Costs, The NorthMet Project Long-Term Irrevocable Trust).

<sup>7</sup> Based on Enbridge’s response to the Department’s IRs, it appears that Enbridge received responses to its Request for Information from only two contractors, one of whom declined to submit an estimate. Enbridge has declined to identify either of the responding contractors. Exhibit C (Enbridge Response to DOC IR No. 3).

#### **IV. THE COMMISSION SHOULD REQUIRE ENBRIDGE TO BEGIN MAKING CONTRIBUTIONS TO THE FUND.**

To be clear, Enbridge's responsibility for funding the decommissioning trust does not depend in any respect on whether or how it is able to recover those amounts from its customers. Although Enbridge has long been aware of its obligation to establish a trust to pay for the decommissioning of L3R, Enbridge has not made any attempt to determine the monthly amount that is needed to assure that the trust is adequately funded, nor has it established a reserve for the purpose of funding the trust.<sup>8</sup> Enbridge states that it will not begin funding the trust until May 10 of the first calendar year after the Commission issues a final written order approving establishment of the fund.<sup>9</sup> Enbridge has described a process by which it intends to recover the costs of funding the trust from L3R's shippers and that it intends to collect such charges through the current target date for retirement of the line, October 1, 2051. The Commission is not limited by Enbridge's self-imposed constraints.

The amount of necessary monthly contribution is the product of a number of factors, including: the estimate of costs necessary to complete decommissioning, investment returns, taxes and administrative expenses, and the length of time over which Enbridge will make contributions. It appears that all parties agree that the cost estimate and the amount of funds held by the trust should be reviewed on a regular basis, with monthly contribution amounts adjusted as necessary. The Commission can certainly establish a contribution amount now, based on the best information available, knowing that it will have an opportunity to revisit the issue to make adjustments.

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<sup>8</sup> See Exhibit A (Enbridge Response to DOC IR No. 5); Exhibit D (Enbridge Response to DOC IR No. 7).

<sup>9</sup> Enbridge Initial Comments at 10.

Enbridge previously estimated the cost of decommissioning at \$983 million.<sup>10</sup> Assuming a total fund requirement of \$983 million, which does not include either investment returns or tax and administrative expenses, and contributions commencing on L3R's in-service date of October 1, 2021 and continuing for a stipulated economic life of thirty years, funding the trust to the estimated expense level would require monthly payments of approximately \$2.73 million. However, nine months have passed without any contributions and Enbridge is already more than \$24 million behind on the amount needed to fund the trust.

Of course, a shortfall of \$24 million, although substantial, underestimates the amount by which contributions are already behind. Enbridge's current cost estimate is \$1.2 billion, which would require a monthly contribution of \$3.3 million if collected over 30 years. Using the Department's cost estimate of \$1.5 billion pushes that monthly contribution amount to approximately \$4.16 million. Assuming these cost estimates, there is currently a funding deficit between \$29.7 million and \$37.4 million, with the deficit growing every month.

Even this monthly amount is, however, likely conservatively low. The Department shares the concerns that Honor the Earth expressed concerning the uncertainty surrounding L3R's economic life.<sup>11</sup> The thirty-year economic life that Enbridge relies on is not the product of any study, but rather is the product of a stipulation between Enbridge and its shippers.<sup>12</sup> As Honor the Earth has noted, however, Enbridge's recent filing with FERC reflects an economic life for

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<sup>10</sup> *Line 3 Replacement CN*, Docket No. PL-9/CN-14-916, CN Modification Compliance Filing Update, Attachment C – Deactivation Cost Estimates (October 16, 2018).

<sup>11</sup> Petition to Open Docket for Line 3 Replacement Project Abandonment Trust Fund (Dec. 1, 2021) (eDocket No. 202112-180324-01 to 202112-180324-05).

<sup>12</sup> Enbridge Initial Comments at 9. While the Department understands that the L3R project is not considered part of the Mainline, the shortened timeframe remains informative as to the L3R's economic life.

Enbridge's Mainline system of twenty years.<sup>13</sup> To have even \$1.2 billion in trust assets available twenty years after the line was placed in service would require monthly contributions of \$5 million.

To mitigate the risk of a shortfall in the amount of the trust, the Department urges the Commission to direct Enbridge to make an initial lump sum contribution of at least \$45 million and continue to make monthly contributions of \$5 million unless and until the Commission adjusts that amount. Initially, because a trust has not yet been created, these funds could be placed into a security deposit account with the Department pending a Commission order approving a trust agreement. The security deposit account would be interest-bearing and interest earned would remain in the account. The funds could then be transferred to the trust once it has been established. A security deposit is a mechanism that the Department routinely uses with insurance companies and trust companies licensed by the state for which standard terms are available. Under the standard terms of the security agreement, once deposited, Enbridge would have no right, claim, or title to the funds which would be, therefore, not available to Enbridge's creditors.

**V. A NUMBER OF TERMS AND CONDITIONS MUST BE INCLUDED IN THE TRUST AGREEMENT IF THE TRUST IS TO ACCOMPLISH ITS INTENDED PURPOSES.**

Enbridge has suggested that the Commission delegate to the Executive Secretary responsibility for determining whether the final trust agreement that Enbridge submits as a compliance filing is consistent with "basic terms and conditions" to be identified by the Commission.<sup>14</sup> The Department does not believe that the process that Enbridge has outlined is workable. The Department believes that the parties should have an opportunity to review and comment on, and the Commission should review and approve, not just "basic terms and conditions," but the trust agreement itself, knowing that, so often, "the devil is in the details." The

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<sup>13</sup> Petition to Open Docket for Line 3 Replacement Project Abandonment Trust Fund at 2–7.

<sup>14</sup> Enbridge Initial Comments at 5.

Department is in the process of engaging the services of a trust expert to advise it in this matter. The Department and the Commission will have the benefit of that expertise in reviewing the trust agreement's terms.

The Department believes that there are certain issues that the trust agreement must address. These "must have" provisions, in addition to those described in the Department's initial comments<sup>15</sup> and above, include at least the following:

**A. Modification of the trust agreement**

The trust agreement must describe a process by which the agreement can be amended. Enbridge has suggested that the trust agreement should be able to be modified by agreement of Enbridge and the trustee.<sup>16</sup> The Department does not believe that Enbridge's agreement should be required to amend the trust. Rather, any material amendment of the trust agreement must be subject to Department and public comment and Commission review and approval.

**B. Regular Commission review**

Enbridge has proposed that the Commission review the decommissioning cost estimate every five years. The Department agrees with the concept of regular Commission review but believes such review should take place every three years rather than every five. Additionally, the review should not be limited to the cost estimate but should include all of the parameters that relate to determining the necessary amount of regular contributions – cost estimate, investment returns, taxes and administrative expenses, and the length of time over which Enbridge will make contributions. This regular review would also include a forecast of investment returns and taxes

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<sup>15</sup> DOC Initial Comments at 4.

<sup>16</sup> Enbridge Initial Comments at 8.

that is prepared by a professional investment advisor. This review may result in modification of the contribution amount or other changes in the trust.

**C. Establishment of an investment policy**

A formal, written investment policy should be made part of the trust agreement. This will help to assure that trust assets are invested appropriately.

**CONCLUSION**

Accordingly, the Department asks that the Commission:

1. Adopt a schedule with specific milestones to ensure that Enbridge's proposed trust is properly vetted before being put into place;
2. Order that a state actor who is involved in overseeing the decommissioning serve as the beneficiary of the trust;
3. Require Enbridge to submit its cost estimate for review and verification;
4. Require Enbridge to make a lump sum payment approximately equal to twelve months' worth of contributions and continue to contribute on an ongoing basis; and
5. Require that the trust agreement include provisions that address: modification of the agreement's terms, regular Commission review, and establishment of an investment policy.

Dated: June 17, 2022

Respectfully submitted,

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ATTORNEYS FOR DEPARTMENT OF  
COMMERCE



Minnesota Department of Commerce  
85 7th Place East | Suite 280 | St. Paul, MN 55101  
Information Request

**Docket Nos:** MPUC PL-9/CN-21-823

**Requested From:** Enbridge Energy Limited Partnership

**Type of Inquiry:** General

☐ Nonpublic ☒ Public

**Date of Request:** 05/26/2022

**Response Due:** 06/08/2022

**SEND RESPONSE VIA EMAIL TO:** Utility.Discovery@state.mn.us; commerce.attorneys@ag.state.mn.us;  
Katherine.Hinderlie@ag.state.mn.us; Greg.Merz@ag.state.mn.us

**Assigned Attorney:** Katherine Hinderlie; Greg Merz

**Email Address(es):** Katherine.Hinderlie@ag.state.mn.us; Greg.Merz@ag.state.mn.us

**Phone Number(s):** 651 757 1468; 651 757 1291

**ADDITIONAL INSTRUCTIONS:**

Each response must be submitted as a text searchable PDF, unless otherwise directed. Please include the docket number, request number, and respondent name and title on the answers. If your response contains Trade Secret data, please include a public copy.

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**Request Number:** 5

**Topic:**

**Reference(s):** Enbridge Energy Limited Partnership's Initial Comments

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**Request:**

Please state the amount Enbridge Energy Limited Partnership, Enbridge, Inc., or any of their affiliates have reserved for the purpose of funding the Decommissioning Trust Fund, as that term is used in Enbridge Energy Limited Partnership's Initial Comments.

**Response:**

Because the Minnesota Public Utilities Commission has not yet approved terms and conditions of the Decommissioning Trust Fund (the "Trust"), Enbridge has not yet reserved any funds for the purpose of funding the Trust. As stated in Enbridge's Initial Comments, Enbridge will begin funding the Trust on May 10 of the first calendar year following the issuance of the Commission's final written order approving the establishment of the Trust. Because Line 93 went into service on October 1, 2021, Enbridge will prorate the recovery of the decommissioning cost estimate over the economic life of Line 93 that remains on May 10 of the year that Enbridge commences funding the Trust.

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To be completed by responder

**Response Date:** June 8, 2022

**Response by:** Adam Sullivan

**Email Address:** adam.sullivan@enbridge.com

**Phone Number:** 218-235-4280

Exhibit A

**THE NORTHMET PROJECT  
LONG-TERM  
IRREVOCABLE TRUST**

## TABLE OF CONTENTS

	Page
ARTICLE 1      RECITALS .....	1
1.1    Permit to Mine Approval .....	1
1.2    Financial Assurance .....	1
1.3    Purpose of the Trust .....	1
1.4    Agreement Limitations .....	1
ARTICLE 2      CREATION OF TRUST, ADDITIONS AND DISTRIBUTIONS .....	1
2.1    Name of Trust and Beneficiary .....	1
2.2    Establishment of Trust .....	2
2.3    Trust Estate .....	2
2.4    Additions to Trust .....	2
2.5    Certain Additional Procedures .....	2
2.6    Distribution Restrictions .....	3
2.7    Distributions to the Beneficiary or Grantor .....	3
ARTICLE 3      ADMINISTRATION .....	4
3.1    Expenses of Trust.....	4
3.2    Taxes .....	5
3.3    Management of Trust Estate .....	5
3.4    Termination.....	5
3.5    Spendthrift Provision .....	6
ARTICLE 4      POWERS OF THE TRUSTEE.....	6
4.1    Investment Powers .....	6
4.2    Administrative Powers.....	6
4.3    Settle Purchases and Sales .....	8
4.4    Collect Income .....	8
ARTICLE 5      STATEMENTS.....	8
5.1    Accounting.....	8
5.2    Statements .....	8
5.3    Confirmations; Notification by Agreement .....	9
5.4    Valuation.....	9
5.5    Statement Review .....	9
5.6    Audit .....	9
ARTICLE 6      LIMITATION ON DUTIES; INDEMNIFICATION .....	10
6.1    Limitation on Duties .....	10
6.2    Advance of Funds or Securities .....	11
6.3    Indemnification .....	11
6.4    Statements .....	11
ARTICLE 7      RESIGNATION AND REMOVAL .....	11

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
7.1 Resignation; Removal .....	11
7.2 Delivery of Trust Estate to Successor .....	12
7.3 Eligible Trustees .....	12
7.4 Information Requests .....	12
ARTICLE 8 PROVISIONS APPLICABLE TO TRUSTEE .....	12
8.1 Bonds Waived .....	12
8.2 Compensation of Trustee .....	12
8.3 Third Party Reliance .....	12
8.4 General Provisions Relating to the Trustee .....	13
ARTICLE 9 MISCELLANEOUS PROVISIONS .....	14
9.1 Definitions .....	14
9.2 Constructional Rules .....	17
9.3 Authorized Persons .....	18
9.4 Notices and Addresses .....	19
9.5 General Provisions .....	20
9.6 Perpetuities .....	21

## THE NORTHMET PROJECT LONG-TERM IRREVOCABLE TRUST

THIS TRUST AGREEMENT (this “Agreement”), dated as of November 1, 2018 is between Poly Met Mining, Inc., a Minnesota corporation (“PolyMet” or the “Grantor”), US Bank, N.A. (the “Trustee”), and the Minnesota Department of Natural Resources, as beneficiary (“DNR” or the “Beneficiary”).

### ARTICLE 1 RECITALS

1.1 **Permit to Mine Approval.** Pursuant to Minnesota Statutes Chapter 93 and Minnesota Rules Chapter 6132, Grantor submitted an application for a Permit to Mine, which would authorize Grantor to develop and operate the NorthMet Project in St. Louis County, Minnesota.

1.2 **Financial Assurance.** Prior to any decision by DNR to approve a Permit to Mine for the NorthMet Project, Grantor must provide financial assurance (a) in accordance with the terms outlined in the Special Conditions of the Permit to Mine, attached hereto as Appendix A; and (b) Minnesota Statutes Chapter 93 and Minnesota Rules Chapter 6132. Under the Permit to Mine, a portion of the financial assurance for the NorthMet Project must include a long-term funding mechanism, and the Trust is being established to satisfy this long-term obligation.

1.3 **Purpose of the Trust.** The purpose of the Trust created by this Agreement is to ensure that there is a source of funds to (i) be used by the DNR to perform the NorthMet MRC if Grantor fails to perform the Required NorthMet MRC Work, (ii) maintain environmental liability insurance with respect to the NorthMet MRC, and (iii) pay all taxes and expenses associated with the Trust as set forth in Article 3 (collectively, the “Trust Purposes”).

1.4 **Agreement Limitations.** Creation of this Trust does not relieve or release Grantor from the responsibility to perform under the Permit to Mine, satisfy reclamation obligations or conduct post-closure monitoring and maintenance obligations described in Minnesota Statutes Chapter 93, Minnesota Rules Chapter 6132 and the Permit to Mine, nor may anything herein be construed as limiting or in any way precluding the DNR’s authority to take any action relating to the NorthMet Project as may be required or permitted by applicable law. Creation of this Trust and the designation of the DNR as beneficiary of this Trust do not grant additional enforcement rights to the DNR with respect to the NorthMet Project, and the DNR must act in accordance with the Procedures when enforcing its rights with respect to the Trust Estate. The parties acknowledge that the Trust constitutes a financial assurance regulated under the Mining Laws, title to the assets comprising the Trust Estate is vested in the Trustee, and neither the Trust nor the Trust Estate is intended to be governed by, nor shall Grantor claim protection or rights under, any state’s or governmental entity’s Uniform Commercial Code or other similar laws, rules or regulations governing collateral or secured interests.

### ARTICLE 2 CREATION OF TRUST, ADDITIONS AND DISTRIBUTIONS

2.1 **Name of Trust and Beneficiary.** The name of the trust is The NorthMet Project Long-Term Irrevocable Trust (the “Trust”) and the beneficiary of the Trust is the DNR.

2.2 **Establishment of Trust.** The Grantor hereby represents and warrants that applicable law provides that the Grantor may enter into a trust agreement and establish a trust for the sole benefit of the beneficiary. Grantor hereby establishes this Trust for the benefit of the Beneficiary for the Trust Purposes set forth in Section 1.3. The Trustee must hold the Trust Estate, in Trust, as provided herein. The original fund balance and all other monies and other assets transferred to the Trust, together with all earnings and profits thereon, shall be referred to herein as the “Trust Estate.” All earnings or other gains on assets comprising the Trust Estate shall be retained as part of the Trust Estate until distributed in accordance with this Agreement. The Trust Estate shall not be used as financial assurance for, or to satisfy, any obligation other than as set forth in Section 1.3 hereof. The Trustee shall not be responsible for the amount or adequacy of the Trust Estate to satisfy the requirements of the Mining Laws, nor shall the Trustee have any duty to collect from Grantor any payments necessary to discharge any obligations or liabilities of Grantor under this Agreement or otherwise owed by Grantor to the State of Minnesota or the DNR under any applicable laws and regulations.

2.3 **Trust Estate.** The Trustee shall administer and distribute the Trust Estate in accordance with the provisions of this Agreement. The Trustee and Grantor intend that no person, other than the Beneficiary, shall have access to the Trust Estate except as herein provided. Grantor hereby represents and warrants that, immediately before contributing any assets hereto, the Grantor held title free and clear to such assets. Grantor hereby acknowledges that, upon such contribution, the Grantor relinquished its title to such assets. Grantor will fund the Trust with an initial contribution of \$10,000,000.00 immediately prior to the issuance of the Permit to Mine by the DNR.

2.4 **Additions to Trust.**

a. **Required Additions.** Grantor agrees to make additional contributions to the Trust in accordance with the terms outlined in Attachment 1 to the Special Conditions (including appendices thereto) of the Permit to Mine (the “Special Conditions (Attachment 1)”) when required by the Mining Laws. Specifically, Grantor shall contribute \$2,000,000 per year to the Trust beginning in Mine Year One through Mine Year Eight as provided in the Special Conditions (Attachment 1). Thereafter, additional contributions, if any, will be determined using the methodology set forth in the Special Conditions (Attachment 1). Grantor acknowledges that the DNR, in its regulatory capacity, has authority under and in accordance with the Mining Laws to make adjustments to the financial assurance terms in the Special Conditions (Attachment 1), to determine the amount and terms of any additions or reductions to the Trust and the Additional FA Instruments that are required under the Permit to Mine.

b. **No Pour-Over Additions.** In the event that the DNR receives proceeds resulting from disbursements under any of the Additional FA Instruments following a breach by Grantor of such Additional FA Instruments (“Proceeds”), DNR shall not contribute such Proceeds to the Trust and the Proceeds shall not be considered part of the Trust Estate.

2.5 **Certain Additional Procedures.** Grantor and Beneficiary acknowledge that under the Mining Laws, the DNR must annually evaluate the financial assurance amount necessary for the NorthMet MRC and make adjustments to such financial assurance amount (up or down) when required, and nothing herein is intended to alter such requirements under the Mining Laws. In

addition to such annual evaluation, Grantor and Beneficiary agree that at the earlier of: (a) the start of Mine Year 19 or (b) the time that the DNR determines that the Trust Estate is fully funded under the Special Conditions (Attachment 1), Grantor and Beneficiary shall utilize a three-year joint review cycle with respect to the Trust Estate requirements applicable to the NorthMet MRC. On a date agreed by the parties within the first calendar quarter of each three-year cycle, they shall meet to discuss anticipated additions (and the estimated projected amounts of such additions) to the Trust Estate or anticipated reductions (and the estimated projected amounts of such reductions) to the Trust Estate. Distributions of any excess amounts shall be made pursuant to Section 2.7 hereof.

2.6 **Distribution Restrictions.** Distributions from the Trust to the Beneficiary must be used solely for the Trust Purposes as set forth in Section 1.3 hereof. The Trustee shall make distributions of the Trust Estate to the Beneficiary or to Grantor only pursuant to a Certificate in accordance with this Agreement. Grantor may object if the Trust Estate is used for purposes other than those provided in this Agreement and reserves its rights to enforce this Agreement; provided that Grantor's sole remedy in the case of claims that a distribution to the DNR has been used in violation of this Agreement or the Mining Laws is to compel the Beneficiary to reimburse the Trust for funds determined by a court of competent jurisdiction or an administrative proceeding to have been used in violation of this Agreement or the Mining Laws and Grantor may not seek an injunction or other relief intended to prevent a distribution, (including any similar type of relief pursuant to an administrative proceeding) pursuant to a Certificate issued in accordance with this Agreement. Nothing herein waives any defense the Beneficiary may have to enforce the provisions of this Agreement or any rights or remedies the Grantor may have to seek a distribution to Grantor under this Agreement or to secure a release of the Trust Estate under the Mining Laws.

2.7 **Distributions to the Beneficiary or Grantor.**

a. **Forfeiture Distribution.** If a NorthMet Forfeiture occurs, DNR shall issue a Certificate directing distribution of part or all of the Trust Estate into a segregated account(s) identified by the Beneficiary, and such amount, together with accrued earnings thereon, shall be retained as part of such account(s) and shall be used by the Beneficiary only for the Trust Purposes in accordance with Section 1.3 hereof; provided, that if any law, regulation or operating practice of or applicable to any relevant department or agency of the State of Minnesota prohibits the maintenance of such funds or accrued earnings thereon in a segregated account, such funds or accrued earnings thereon may be commingled with other State funds so long as such funds and accrued earnings thereon are accounted for separately from other funds in any such account(s). If the entire Trust Estate is distributed to the Beneficiary and the Trust is terminated, such amount may be distributed less Final Expenses; provided that Grantor shall remain responsible for payment of Final Expenses to the extent not paid from the Trust Estate and any such remaining amounts of Final Expenses shall be paid by Grantor directly to the DNR following the termination of the Trust.

b. **Termination Distribution.** If requirements provided in Section 3.4(a) hereof have been satisfied, then all of the Trust Estate, less Final Expenses, shall be paid to Grantor, and the Trust shall be terminated set forth in Section 3.4(a) hereof.

c. **Distributions Prior to Full Release.** Subject to the timing contemplated in Section 2.5 and to the exception in paragraph (i) of this Section 2.7(c), if the Trust Estate exceeds

the amount determined by the DNR in accordance with the Permit to Mine to be necessary to satisfy the Trust Purposes, then as allowed under Minnesota Rules part 6132.1200 and under the Permit to Mine and the Procedures, excess funds in the Trust Estate shall be distributed to Grantor on one or more occasions prior to the complete release of Grantor from Permit to Mine responsibility for all of the mining area under Minnesota Rule part 6132.4800. Notwithstanding any provisions of the Mining Laws, Grantor agrees it will not request a distribution under this Section more than once every three years as contemplated in Section 2.5 hereof, except as allowed under paragraph (i) below:

i. In the event that any change in the Mining Laws, or any other applicable laws or regulations, may result in a reduction in the amount of the Trust Estate in excess of at least 3% of the Trust Estate balance, then, upon Grantor's request, the DNR shall promptly conduct a review to determine if the Trust Estate balance exceeds the amount necessary to satisfy the Trust Purposes in accordance with the Permit to Mine. Following the implementation of amendments to the Permit to Mine required under the Mining Laws, if any, resulting from said change in law, such excess amount shall be distributed to Grantor, notwithstanding that there has been another distribution to Grantor within three years of such request.

d. Prohibitions on Distributions. Notwithstanding the terms of paragraphs (a) - (c) of this Section 2.7, Grantor shall not be entitled to receive distributions from the Trust Estate during the occurrence of any of the following: (i) the occurrence and continuance of a Bankruptcy Event, or (ii) a NorthMet Forfeiture, provided that if the DNR determines that Grantor has cured the default following such NorthMet Forfeiture, then Grantor shall retain its rights hereunder to receive distributions.

e. Certification of Distributions. Any distributions of the Trust Estate pursuant to this Article shall be made only pursuant to a Certificate delivered by the DNR to the Trustee, with simultaneous notice to the Grantor. The DNR shall use the following forms of Certificate that are attached as Appendix B: a Certificate in the form provided in Exhibit 1 for any distribution under Section 2.7(a), a Certificate in the form provided in Exhibit 2 for any distribution under Section 2.7(b), and a Certificate in the form provided in Exhibit 3 for any distribution under Section 2.7(c). The Trustee shall not be liable for making any distributions or otherwise taking any action permitted to be directed by a Certificate hereunder. The Trustee shall have no obligation to investigate or otherwise interpret the validity of any Certificate and shall be deemed a "directed fiduciary" within the meaning of NRS 163.5549 with regard to distributions of the Trust Estate.

### **ARTICLE 3 ADMINISTRATION**

3.1 Expenses of Trust. The Trustee may, at any time and from time to time, without prior notice, pay or reimburse itself from the Trust Estate all Trust expenses, including investment advisory and custodial fees, legal and accounting fees, and all other direct costs related to managing the Trust Estate. The Trustee may also pay itself on a regular basis the Trustee fees that are authorized pursuant to this Agreement. In the event of any dispute between the Beneficiary and Grantor under this Agreement, if the Beneficiary is the prevailing party, all costs, fees and expenses (including legal fees) incurred by the Beneficiary with respect to said dispute shall be paid or reimbursed by the Trust unless otherwise prohibited by law. All costs, fees and expenses

described in this Section, except for such costs, fees, and expenses for which Grantor is not responsible if it is the prevailing party in any dispute subject to the immediately preceding sentence, shall be funded by Grantor. Required contributions to the Trust under this Section 3.1 are in addition to the amounts required under the Special Conditions (Attachment 1).

3.2 **Taxes.** Grantor and Beneficiary acknowledge that (i) the Trust is a grantor trust under the tax law and that Grantor will be liable for income taxes due as a result of income and realized gains earned by the Trust Estate, and (ii) the Trustee will file and furnish Form 1041 as the Trust's method of reporting using the Trust's EIN and not the Grantor's EIN in all tax filings. Grantor may request from the Trustee the amount necessary to reimburse Grantor for Grantor's federal, state, and local tax liability as a result of income received or gains recognized by the Trust for that respective tax year. Distributions of amounts from the Trust to pay taxes shall not alleviate Grantor from the required minimum funding amounts set forth in Article 2 above and Grantor shall have sole responsibility to pay for or reimburse the Trust with respect to any taxes relating to the Trust or the Trust Estate, including if the Trust does not qualify as or ceases to be a grantor trust.

3.3 **Management of Trust Estate.** The Trustee has sole discretion to manage the Trust Estate subject to the restrictions on permissible investments set forth in Appendix B, including the requirement to invest in Authorized Investments only and in accordance with the Asset Allocation Instruction (collectively "Investment Restrictions"). The Grantor and Beneficiary hereby represent and warrant that the permissible investments set forth herein are acceptable. The following investments are considered "Authorized Investments:" publicly traded domestic equity securities as authorized pursuant to Minn. Stat. 11A.24, subd. 5; international equity securities that are publicly traded on a regulated exchange; government and corporate fixed income securities as authorized by Minn. Stat. 11A.24, subds. 2 and 3; and exchange traded and mutual funds as authorized by Minn. Stat. 11A.24, subd. 1. Grantor and Beneficiary shall from time to time (but no less frequently than annually) jointly provide the Trustee with written instruction for the asset allocation of Authorized Investments for the Trust Estate ("Asset Allocation Instruction") including rebalancing parameters and any other investment restrictions that Grantor and Beneficiary deem appropriate.

3.4 **Termination.**

a. **Termination Due to Satisfaction of Objectives.** The Trust shall terminate when the DNR in its regulatory capacity determines with respect to the NorthMet Property and in accordance with the Mining Laws that: (i) mining has ceased, (ii) all NorthMet MRC has been completed, (iii) all of the Long-Term Costs (as defined in the Permit to Mine) have been fully funded, (iv) all of the Trust Purposes have been met and (v) there are no uncured violations in accordance with applicable laws and regulations or the Permit to Mine.

b. **Termination Due to Lack or Vacation of Permit.** The Trust shall terminate if the DNR fails to make a final decision to issue the Permit to Mine within 120 days following the initial date of this Agreement or if the Permit to Mine is subsequently vacated. Upon termination, the Trustee shall distribute the remaining Trust Estate, if any, to Grantor.

3.5 **Spendthrift Provision.** The assets, income, and principal of the Trust Estate may not be assigned, anticipated or alienated in any manner by the Beneficiary or Grantor, nor shall the

Trust Estate be subject to attachment, bankruptcy proceedings or any other legal process, or to the interference or control of creditors or others. This Trust shall be a spendthrift trust within the meaning of Chapter 166 of the Nevada Revised Statutes; provided, however, pursuant to Article 1.4, above, this Trust is not intended to be a donative transfer to Beneficiary, and thus the provisions of NRS 166.170, Chapter 112 of the Nevada Revised Statutes where claims may be brought against the Grantor or Beneficiary are inapplicable in enforcing claims of a creditor of the Grantor or Beneficiary against the Trust Estate.

#### **ARTICLE 4 POWERS OF THE TRUSTEE**

4.1 **Investment Powers.** Subject to the Investment Restrictions, the Trustee has the power to:

a. **Purchase, Hold, and Sell Assets.** Purchase with, and hold as, assets in the Trust Estate without distinction between principal and income any securities or property that are Authorized Investments, including, but not limited to, any securities or property administered, advised, custodied, held, issued, offered, sponsored, supported by the credit of, underwritten, or otherwise serviced by the Trustee or by the Trustee's affiliate.

b. **Process Corporate Actions.** Respond to voluntary corporate actions (such as proxies, redemptions, or tender offers) and mandatory corporate actions (such as class actions, mergers, stock dividends, or stock splits) affecting shareholders of an asset. Notwithstanding anything herein to the contrary, the Trustee will, without providing notice, (i) cause assets to participate in any mandatory exchange transaction that neither requires nor permits approval by the owner of the assets and (ii) file any proof of claim received by the Trustee regarding class-action litigation over a security held in the Trust during the class-action period, regardless of any waiver, release, discharge, satisfaction, or other condition that might result from such filing.

c. **Hire Service Providers.** Hire service providers (including, but not limited to, investment managers, investment advisers, and brokers) to assist the Trustee in exercising the foregoing powers, including any service provider that is affiliated with the Trustee.

d. **Do Other Things.** Perform other acts necessary to the proper discharge of its duties under this Agreement.

4.2 **Administrative Powers.** Subject to the Investment Restrictions, the Trustee has the power to:

a. **Safe-keep Assets.** Safe-keep assets as set forth herein.

b. **Exchange Foreign Currency.** Exchange foreign currency into and out of United States dollars through customary channels, including the Trustee's foreign-exchange department.

c. **Settle Purchases and Sales.** Settle purchases and sales as set forth herein.

d. **Register Assets.** Register any asset in the name of the Trust (with the Trustee designated as trustee), the Trustee (with or without trust designation), or the Trustee's

nominee or to hold any asset in unregistered or bearer form or in such form as will pass title by delivery, provided that the Trustee's records at all times show that all such assets are part of the Trust.

e. Maintain Assets at a Depository or with a Sub-custodian. Maintain assets that are (i) book-entry securities at any central securities depository (such as the DTC), international central securities depository (such as Euroclear Bank SA/NV), or Federal Reserve Bank ("Depository") or with any sub-custodian and to permit such assets to be registered in the name of the Trust (with the Trustee designated as trustee), the Trustee (with or without trust designation), the Trustee's nominee, the Depository, the Depository's nominee, the sub-custodian, or the sub-custodian's nominee and (ii) physical securities at the Trustee's office in the United States and in a safe place.

f. Collect Income. Collect income as set forth herein.

g. Advance Funds or Securities. Advance funds or securities in furtherance of settling securities transactions and other financial-market transactions under this Agreement.

h. Sign Documents. Make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any or all other instruments that may be necessary or appropriate to the proper discharge of its duties under this Agreement.

i. Distribute Assets. Distribute assets as set forth herein.

j. Retain Disputed Funds. Withhold delivery or distribution of assets that are the subject of a dispute pending final adjudication of the dispute by a court of competent jurisdiction, except when delivery of assets is directed by a Certificate as required by the terms of this Agreement.

k. Hold Assets Un-invested. Hold assets un-invested pending investment, distribution, resolution of a dispute, or for other operational reasons, and to deposit the same in an interest-bearing or noninterest-bearing deposit account of the Trustee, notwithstanding any sweep direction for the Trust account or the Trustee's receipt of "float" income from such un-invested cash.

l. Litigate. Bring or defend lawsuits involving the Trust at the sole expense of the Trust and to settle the same, with approval of both Grantor and Beneficiary.

m. Provide Statements. Provide statements as set forth herein.

n. Provide Ancillary Services. Provide ancillary services to the Trust for no more than reasonable compensation.

o. Hire Service Providers. Hire service providers (including, but not limited to, attorneys, depositories, and sub-custodians) to assist the Trust in exercising the foregoing powers, including any service provider that is affiliated with the Trustee.

p. **Do Other Things.** Perform other acts necessary to the proper discharge of its duties under this Agreement.

4.3 **Settle Purchases and Sales.** The Trustee will settle purchases made with assets in the Trust Estate and sales of such assets, according to the Trustee's instruction-deadline schedule, provided that the Trustee has all the information and the Trust has all the assets necessary for the purchase or sale. The Grantor and the Beneficiary hereby represent and warrant that neither the Grantor nor the Beneficiary will (i) notify any third party that, despite the fact that the Trust account has insufficient assets for the transaction, the Trustee will settle the purchase of an asset nor (ii) direct anyone else to provide such notice.

4.4 **Collect Income.** The Trustee will collect all income, principal, and other distributions due and payable on assets in the Trust. The Trustee will, upon call or maturity of any asset, surrender such asset upon condition that the proceeds are paid into the Trust Estate.

## ARTICLE 5 STATEMENTS

5.1 **Accounting.** The Trustee will maintain proper books of account and complete records of assets and transactions in the Trust, including increases or decreases in the value of the Trust due to contributions to the Trust Estate, distributions from the Trust, investment experience on assets, and expenses and fees actually charged to the Trust.

### 5.2 **Statements.**

a. **Account Statements.** The Trustee will furnish the Grantor and the Beneficiary with (i) an account statement with the frequency designated below (or as subsequently agreed upon by the Trustee, the Grantor, and the Beneficiary) within thirty (30) calendar days after the end of the reporting period and (ii) a final account statement within thirty (30) calendar days after the Trustee has transferred all assets from the Trust as provided under this Agreement. Such account statements will reflect asset transactions during the reporting period and ending holdings in the Trust Estate. To the extent the Grantor and Beneficiary have established accounts in the Trustee's on-line portal, the Trustee will furnish such account statements by way of such system. If no frequency is so designated or agreed upon, the Grantor and the Beneficiary will be deemed to have designated "Monthly".

*(Check at least one):*

- ☐ Monthly
- ☐ Quarterly
- ☐ Semi-annually
- ☐ Annually

b. **Client-controlled Assets.** The Trustee will exclude from the account statements any asset that is not registered in the name of the Trust (with the Trustee designated as trustee), the Trustee (with or without trust designation), or the Trustee's nominee. The Trustee will also exclude from the account statements any asset that is not maintained by the Trustee at a Depository or with a sub-custodian nor held by the Trustee in unregistered or bearer form or in such form as will pass title by delivery ("Client-controlled Asset"). The Grantor and the

Beneficiary hereby acknowledge that (i) such assets are not held in the Trust and (ii) the Trustee is not acting as trustee of such assets and not responsible for performing any duties under this Agreement with respect to such assets.

c. Proxy-voting Reports. The Trustee will furnish the Grantor and Trustee with reports of how the Trustee voted proxies with respect to the Trust, in the form and frequency as the Grantor, the Beneficiary, and the Trustee may agree from time to time.

5.3 **Confirmations; Notification by Agreement.** Except to the extent the assets are subject to the Trustee's discretion to manage, the account statements described above (including their timing and form) serve as the sole written notification of any securities transactions effected by the Trustee for the Trust. Even so, the Grantor and the Beneficiary have the right to demand that the Trustee provide written notification of such transactions pursuant to 12 CFR Sections 12.4(a) or (b) at no additional cost to the Grantor or the Beneficiary.

5.4 **Valuation.** For purposes of reporting the value of an asset on an account statement:

a. Pricing, If Available. The Trustee will report a value that is (i) provided to the Trustee by a third-party pricing vendor or (ii) readily determinable on an established market, if such value is available to the Trustee when preparing the statement.

b. Pricing, If Unavailable. If such value is unavailable, the Trustee will report the most recent value that the Trustee received from the asset's broker, fund accountant, general partner, issuer, manager, transfer agent, or other service provider (commonly known as a pass-through price).

c. Limitations. The Grantor and the Beneficiary hereby acknowledge that the Trustee is performing a routine, ministerial, non-discretionary valuation function; that the reported value might be neither fair market value nor fair value (under accounting standards or applicable law); and that the reported value is not a substitute for (i) investigating the asset's value in connection with a decision to acquire, hold, dispose of, or exchange any securities or other investment property; (ii) obtaining and ensuring the reliability of an independent third-party appraisal with respect to such a decision; or (iii) obtaining Investment Advice.

d. Pricing Sources; Methodology. Upon the Grantor's or the Beneficiary's request, the Trustee will provide the same with information about the Trustee's pricing sources and methodologies.

5.5 **Statement Review.** The Grantor and the Beneficiary will review the Account statements promptly upon delivery.

5.6 **Audit.** On at least seven calendar days advance notice from the Grantor or the Beneficiary, the Trustee will permit the same's independent auditors to inspect during the Trustee's regular business hours any books of account and records of assets and transactions in the Trust.

## ARTICLE 6 LIMITATION ON DUTIES; INDEMNIFICATION

6.1 **Limitation on Duties.** The duties of the Trustee will be strictly limited to those set forth in this Agreement, and no implied covenants, duties, responsibilities, representations, warranties, or obligations will be read into this Agreement against the Trustee. Without limiting the generality of the foregoing, the Trustee has no duty to:

a. Request or obtain a ruling or other guidance from the IRS or any other governmental authority as to (or otherwise determine, monitor, or question) the tax character or consequences of the form and operation of the Trust.

b. Determine, monitor, or collect contributions from the Grantor or monitor compliance with any applicable funding requirements.

c. (i) Collect any income, principal, or other distribution due and payable on an asset if the asset is in default or if payment is refused after due demand or (ii) except as expressly provided herein, to notify the Grantor or the Beneficiary in the event of such default or refusal.

d. Provide notice of, or forward, mini-tenders (which are tender offers for less than 5% of an outstanding equity or debt issue) for any equity issue or, if any of the following is true, for any debt issue: The debt issue is not registered with the SEC. The debt issue has a “first received, first buy” basis with no withdrawal privilege and includes a guarantee of delivery clause. Or, the tender offer includes the statement that “the purchase price includes all accrued interest on the note and has been determined in the sole discretion of the buyer and may be more than or less than the fair market value of the notes” or similar language.

e. Question whether any direction received under this Agreement is prudent; to solicit or confirm directions; or to question whether any direction received under this Agreement by email or any financial-messaging system, network, or service acceptable to the Trustee, such as the Society for Worldwide Interbank Financial Telecommunication messaging system (“Messaging System”), or entered into the Grantor’s or the Beneficiary’s account in the Trustee’s on-line portal, is unreliable or has been compromised, such as by identity-theft.

f. Calculate, withhold, prepare, sign, disclose, file, report, remit, or furnish to any taxing authority or any taxpayer any federal, state, or local taxes, tax returns, or information returns that may be required to be calculated, withheld, prepared, signed, disclosed, filed, reported, remitted, or furnished with respect to the assets or Trust, except to the extent such duties are required by law to be performed only by the Trustee in its capacity as trustee under this Agreement (such as filing and furnishing any IRS Forms 1041 required to be filed and furnished with respect to the Trust) or are expressly set forth herein.

g. Monitor service providers hired by the Grantor or by the Beneficiary.

h. Maintain or defend any legal proceeding in the absence of indemnification, to the Trustee’s satisfaction, against all expenses and liabilities which it may sustain by reason thereof.

i. Advance funds or securities or otherwise expend or risk its own funds or incur its own liability in the exercise of its powers or rights or performance of its duties under this Agreement.

j. Question whether any assets substituted under this Agreement are of equal fair market value to the assets received therefor.

6.2 **Advance of Funds or Securities.** To the extent of any advance of funds or securities under this Agreement, the Grantor and the Beneficiary hereby grant the Trustee a first-priority lien and security interest in, and right of set-off against, the assets held in the Trust. The Trustee may execute that lien and security interest, and exercise that right, at any time. Furthermore, nothing in this Agreement constitutes a waiver of any of the Trustee's (i) rights as a securities intermediary under Uniform Commercial Code §9-206 or (ii) right of reimbursement under state trust law.

6.3 **Indemnification.** The Grantor hereby indemnifies and releases the Trustee and its affiliates and their directors, officers, employees, successors, and assigns (each, an "Indemnified Person"), and holds each Indemnified Person harmless from and against, and an Indemnified Person will incur no liability to any person for, any Harm that may be imposed on, incurred by, or asserted against an Indemnified Person by reason of the Indemnified Person's action or omission in connection with this Agreement or the Trust (including, but not limited to, an action or omission that is consistent with directions provided under this Agreement), except to the extent that a court of competent jurisdiction has made a final judgment that the Harm resulted directly from the Indemnified Person's willful misconduct, gross negligence, bad faith, material breach of this Agreement, or breach of fiduciary duty. These provisions will survive the termination of this Agreement.

6.4 **Statements.** The Trustee is not liable with respect to the propriety of the Trustee's actions or omissions reflected in a statement provided under this Agreement, except to the extent (i) a statement recipient objects to the Trustee within ninety (90) calendar days after delivery of such statement or (ii) such acts or omissions could not be discovered through reasonable examination of such statement.

## **ARTICLE 7 RESIGNATION AND REMOVAL**

7.1 **Resignation; Removal.** The Trustee may resign under this Agreement by providing notice to the Grantor and the Beneficiary. The Grantor and the Beneficiary may remove the Trustee under this Agreement for any reason by providing joint written notice to the Trustee. The resignation or removal will be effective ninety (90) calendar days after delivery of the notice. By such effective date and subject to the Beneficiary's approval of the appointment, the Grantor will appoint a new trustee and, after obtaining the Beneficiary's approval of such appointment, provide the Trustee with the new trustee's signed, written acknowledgment of trusteeship. If the Grantor fails to do so, the Trustee will have the right to petition a court at the Trust's expense for appointment of a new trustee.

7.2 **Delivery of Trust Estate to Successor.** Upon receiving such acknowledgment or notice of such court-appointment, the Trustee will transfer the Trust Estate to the new trustee as

directed by the Grantor and the Beneficiary or by the court, as the case may be. However, the Trustee will not be required to transfer any assets until the Trustee has received payment or reimbursement for all (i) compensation, expenses, fees, costs, or other charges incurred by the Trustee in providing services under this Agreement and (ii) funds or securities advanced under this Agreement.

7.3 **Eligible Trustees.** Any corporation or other entity authorized by the laws of the United States or by the laws of any state to administer trusts is eligible to serve as the Trustee; provided, however, that neither Grantor nor any person that controls, is controlled by, or is under common control with, Grantor may be eligible to serve as Trustee. A properly appointed successor trustee shall have all the title, rights, powers, immunities, privileges, and duties of the original Trustee. No successor trustee shall be obligated to examine the accounts, records, or acts of any previous trustee or to proceed against any previous trustee or successor trustee for any act or omission.

7.4 **Information Requests.** Minnesota Statutes Section 13.055 applies to this Trust and information of the Trust is subject to the requirements of that chapter.

## **ARTICLE 8 PROVISIONS APPLICABLE TO TRUSTEE**

The following provisions will apply to the Trustee and any duly appointed successor. Such provisions are not intended to permit the establishment of additional powers or authorities for Grantor or the Beneficiary.

8.1 **Bonds Waived.** The Trustee shall be permitted to qualify without giving a bond or other undertaking in any jurisdiction for the performance of its duties, unless a bond is otherwise required by law.

8.2 **Compensation of Trustee.** The Trustee is entitled to reasonable compensation payable from the Trust: (a) as agreed to in writing by the Trustee, Beneficiary, and Grantor; or (b) if not so agreed to, the Trustee's fees, as described in its fee schedule. A copy of the Trustee's fee schedule is attached hereto as Appendix D.

8.3 **Third Party Reliance.** For the purpose of verifying the Trustee's authority to perform any act, any person dealing with the Trustee may rely on a copy of this Agreement or selected excerpts from this Agreement, certified as correct by the Trustee or by a notary public, to the same extent as if the certified copy were the original. No person dealing with the Trustee shall be under any obligation to assure the correct application of any payment made to the Trustee or to inquire into the validity, expediency, or propriety of any acts or omissions of the Trustee.

### **8.4 General Provisions Relating to the Trustee.**

a. The duties, responsibilities, and obligations of the Trustee shall be limited to those expressly set forth in this Agreement, and no duties, responsibilities, or obligations are implied or shall be inferred. The Trustee shall not be required to expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. The Trustee may conclusively rely upon any document it believes to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter

stated in any such document. The Trustee shall not be accountable for the use or application of any funds paid from the Trust Estate pursuant to any direction given under this Agreement. The Trustee shall not be required to take any action that it determines could adversely affect any of its rights, powers, duties, indemnities, privileges, or immunities hereunder or to expose it to any risk or liability. The Trustee shall have no responsibility with respect to the NorthMet Project or compliance with the Permit to Mine, or any document amending or supplementing either of them by Grantor or any other person. The permissive right of the Trustee to take any action shall not be construed as a duty to so act.

b. If at any time the Trustee is served with any judicial or administrative order, judgment, decree, writ, or other form of judicial or administrative process that in any way affects the Trust Estate (including orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of any of the Trust Estate), the Trustee is authorized to comply therewith in any manner as it or its legal counsel of its own choosing (other than Grantor's counsel or the Beneficiary's counsel) deems appropriate; and if the Trustee complies with any such judicial or administrative order, judgment, decree, writ, or other form of judicial or administrative process, the Trustee shall not be liable to any of the parties or any other person even though the order, judgment, decree, writ, or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Trustee is served with an order relating to this Agreement, the Trust or the Trust Estate, the Trustee shall promptly deliver a copy of such order to the Beneficiary and Grantor.

c. The Trustee shall not be liable for any action taken or omitted or for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder or under any contract, obligation, or liability made or incurred by the Trustee hereunder, except to the extent resulting from its gross negligence or willful misconduct.

d. The Trustee shall not be responsible in any respect for the form, execution, validity, value, adequacy, or genuineness of documents, funds, or other property deposited under this Agreement, or for any description therein, or for the identity, authority, or rights of persons executing, delivering, or purporting to execute or deliver, any such document, funds, or other property.

e. In the event of any ambiguity or uncertainty under this Agreement or in any notice, instruction, direction, or other communication received by the Trustee, the Trustee may, in its sole discretion, refrain from taking any action other than to retain possession of the Trust Estate, unless the Trustee receives a written direction from the sender of the notice that eliminates the ambiguity or uncertainty.

f. Except with respect to directions pursuant to a Certificate, in the event of any dispute between or conflicting claims by or among Grantor, the Beneficiary, and any other person with respect to any of the Trust Estate, the Trustee shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands, instructions, or directions with respect to the Trust Estate so long as the dispute or conflict continues, and the Trustee shall not be or become liable in any way to Grantor or the Beneficiary for failure or refusal to comply with the conflicting claims, demands, instructions, or directions. The Trustee shall be entitled to refuse to act until, in its sole discretion, either: (i) the conflicting or adverse claims or demands shall have been

determined by a final order, judgment, or decree of a court of competent jurisdiction that is not subject to appeal, or has been settled by agreement between the conflicting parties as evidenced in a writing satisfactory to the Trustee, or (ii) the Trustee shall have received security or an indemnity satisfactory to it sufficient to hold it harmless from and against any and all losses that it may incur by reason of so acting. In addition, the Trustee may elect, in its sole discretion, to commence an interpleader action or seek such other judicial relief or orders as it may deem, in its sole discretion, necessary.

g. The Trustee is authorized to comply with and rely upon any notices, instructions, directions, or other communications that it believes to have been sent or given by the Beneficiary or a person or persons authorized by the Beneficiary. Whenever under the terms hereof the time for giving a notice or performing an act falls upon a day other than a Business Day, such time shall be extended to the next Business Day.

h. In no event shall the Trustee be liable for: (i) acting in accordance with or relying upon any instruction, direction, notice, demand, certificate, or document from the DNR, (ii) for any consequential, punitive, or special damages, (iii) for an amount in excess of the value of the Trust Estate at the time of the event giving rise to the Trustee's liability.

i. The Trustee may consult with legal counsel (other than Grantor's or the Beneficiary's counsel) as to any matter relating to this Agreement. The Trustee shall not incur any liability in respect of any action taken, suffered, or omitted by it under this Agreement in good faith and in reliance on any advice of counsel.

j. The Trustee shall not incur any liability for not performing any act or fulfilling any duty, obligation, or responsibility under this Agreement by reason of any occurrence beyond the control of the Trustee (including any act or provision of any present or future law or regulation or civil or governmental authority, any act of God or war, any act of terrorism, any civil or military disturbance, sabotage, epidemic, riot, accident, flood, or labor dispute, any governmental action, any failure, service interruption, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

## **ARTICLE 9 MISCELLANEOUS PROVISIONS**

9.1 **Definitions.** Unless the language or context clearly indicates that a different meaning is intended, capitalized terms used herein have the meanings specified in this Article 9.

a. **Additional FA Instrument(s).** "Additional FA Instrument(s)" means one or more of the financial instruments authorized under the Mining Laws, including letters of credit and reclamation bonds, approved by DNR to be used to provide financial assurance applicable to the NorthMet Property pursuant to the Permit to Mine.

b. **Agreement.** "Agreement" has the meaning provided in the introductory paragraph.

c. **Bankruptcy Event.** "Bankruptcy Event" means (i) Grantor's or Parent's (1) application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for Grantor or for all or substantially all of its assets,

or its authorization of such application or consent, or (2) the commencement of any proceedings seeking such appointment without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of 60 days from inception; (ii) Grantor's or Parent's (1) authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction, or (2) the institution of such proceedings against Grantor without such authorization, application or consent, which proceedings remain undismissed or unstayed for 60 days from inception or which result in adjudication of bankruptcy or insolvency within such time.

d. Beneficiary. "Beneficiary" has the meaning provided in the introductory paragraph.

e. Business Day. A "Business Day" is any day except: (i) a Saturday, (ii) a Sunday, (iii) a day on which the commercial banks in the state of the situs of the administration of the Trust are authorized or required by law to be closed, and (iv) a state holiday in said Trust-situs state on which state employees generally are excused from work. In the event of any conflict between the definitions of "Business Day" hereunder and in any financial instrument subject to the Additional FA Instruments as defined herein, the definition of "Business Day" establishing the latest date shall govern in any circumstances where both definitions are applicable.

f. Certificate. "Certificate" means a certificate executed by the DNR in accordance with this Agreement and in the form of the attached Exhibits to Appendix B. A Certificate shall be delivered to the Trustee directing the Trustee as to the specific amount of the Trust Estate to distribute, the recipient of such amount, payment instructions, and a reference to the section of this Agreement pursuant to which such amounts are being distributed.

g. Control. The term "control" means the ability, alone or in concert with others, to determine, indirectly or directly, the manner in which an entity conducts its activities.

h. DNR or Minnesota Department of Natural Resources. All references to the "DNR" shall mean the Minnesota Department of Natural Resources. For all purposes of this Agreement, any written instructions signed by any person serving as Commissioner of the DNR or his or her designee will be deemed to be the instructions of the DNR. If in the future the DNR is not the agency then statutorily charged with administering the Mining Laws or the Permit to Mine, as amended, then the term "Minnesota Department of Natural Resources" or the "DNR" will mean the agency or agencies then statutorily charged with those responsibilities, and such change in agencies shall not be considered an assignment hereunder.

i. Final Expenses. "Final Expenses" means the final costs, fees and expenses (as set forth in Article 3) of the Trust, any taxes owing with respect to the Trust or not yet reimbursed by Grantor and final payments relating to environmental insurance.

j. Grantor. "Grantor" for purposes of this Agreement means Poly Met Mining, Inc., a Minnesota corporation or any lawful successor.

k. Indemnified Person. "Indemnified Person" has the meaning provided in Section 6.3.

l. Mining Laws. “Mining Laws” means Minnesota Statutes Chapter 93 and any of its implementing regulations, including without limitation, the Nonferrous Metallic Mineral Mining regulations under Minnesota Rules Chapter 6132 and the Permit to Mine.

m. NorthMet Forfeiture. “NorthMet Forfeiture” means the following have occurred: (i) (A) the DNR has determined that (1) Grantor has defaulted in its performance of actions required under this Agreement or the NorthMet MRC, including any Required NorthMet MRC Work, (2) the Commissioner of the DNR has issued an order and notice of such order to Grantor and Trustee specifying such default, the measures required to cure said default and the time allowed to cure such default (the “Order”), and (3) after receiving such Order, Grantor has failed to timely cure that default in accordance with the Order and applicable Mining Laws and Procedures; or (B) Grantor has assigned this Agreement (or engaged in actions or a transaction that would constitute an assignment hereunder) in violation of this Agreement; and (ii) with respect to (A) and (B) above, the DNR has completed and complied with all of the Procedures.

n. NorthMet Long-Term Maintenance, Reclamation, and Corrective Action Plans or NorthMet MRC. The terms “NorthMet Long-Term Maintenance, Reclamation, and Corrective Action Plans” or “NorthMet MRC” mean all maintenance, reclamation, contingency action and corrective action required under the Mining Laws for the NorthMet Property including: (i) carrying out long-term monitoring, maintenance, water treatment, and other activities to address Long-Term Costs (as defined in the Permit to Mine); (ii) performing all reclamation activities, including closure and postclosure maintenance activities; and (iii) completing corrective action, if noncompliance with design or operating criteria in the Permit to Mine occurs.

o. NorthMet Property. The term “NorthMet Property” means those lands, facilities, disturbances, infrastructure and other features in St. Louis County, Minnesota that are included within the mining area defined under and incorporated into the Permit to Mine as approved or may be approved, by DNR for said NorthMet Property; provided that NorthMet Property does not include any lands, facilities, disturbances, infrastructure and other features (“Excluded Properties”) with respect to which any Person other than Grantor is responsible for required long-term costs, monitoring, maintenance, reclamation, contingency action and/or corrective action (collectively, “reclamation” for this paragraph) under a permit to mine issued by the DNR, regardless of whether the same is located within the boundaries of the mining area in the Permit to Mine. For avoidance of doubt, if PolyMet is responsible under the Permit to Mine for reclamation for any facilities, disturbances, or other features located within the boundaries of the Excluded Properties, then such facilities, disturbances, or other features shall not be included within the definition of Excluded Properties.

p. Order. “Order” has the meaning provided in Section 9.1(m).

q. Parent. “Parent” means PolyMet Mining Corp., a Canadian corporation.

r. Permit to Mine. “Permit to Mine” means that certain Permit to Mine issued pursuant to Minnesota Rules Chapter 6132 by the DNR to PolyMet for the NorthMet Property, as said permit may be amended or modified from time to time in accordance with the applicable Mining Laws.

s. Person. The term “person” means a natural person or any legal entity, including a firm, corporation, a partnership, joint venture, a limited liability company, a trust, and an association.

t. PolyMet. “PolyMet” has the meaning provided in the introductory paragraph.

u. Procedures. “Procedures” means in a manner complying with the procedures set forth in Minnesota Rules Chapter 6132.1200 (in effect as of the date of this Agreement).

v. Proceeds. “Proceeds” has the meaning provided in Section 2.4(b).

w. Required NorthMet MRC Work. “Required NorthMet MRC Work” means any and all work required under the applicable Mining Laws, including the NorthMet Permit to Mine, to implement and complete any element of the NorthMet MRC.

x. Special Conditions (Attachment 1). “Special Conditions (Attachment 1)” has the meaning provided in Section 2.4(a).

y. Trust. “Trust” has the meaning provided in Section 2.1.

z. Trust Estate. “Trust Estate” has the meaning provided in Section 2.2.

aa. Trust Purposes. “Trust Purposes” has the meaning provided in Section 1.3.

bb. Trustee. “Trustee” has the meaning provided in the introductory paragraph, or any duly appointed successor trustee.

9.2 **Constructional Rules**. The following constructional rules shall govern the interpretation of this Agreement.

a. Trust Situs and Governing Law. The situs of the Trust shall be Nevada. Nevada trust law shall apply with respect to all trust-related provisions of this Agreement, and Minnesota law shall apply where specifically referenced in the Trust Agreement and with respect to all mining, reclamation, forfeiture and other laws other than those governing the trust-related provisions of this Agreement. Notwithstanding anything contrary in the foregoing sentence, the Beneficiary, Trustee, and Grantor specifically agree that the exclusive venue for any dispute or other proceeding that may arise under this Agreement shall be any federal or state court within Ramsey County in the State of Minnesota, and the parties hereby consent to such exclusive venue in a court located in the State of Minnesota. In the event the state and federal courts in the State of Minnesota decline jurisdiction over a proceeding that may arise under this Agreement, the Beneficiary, Trustee, and Grantor specifically agree that in such case the exclusive venue for any dispute or other proceeding that may arise under this Agreement shall be any federal or state court within Washoe or Clark County in the State of Nevada.

b. Other Principles of Construction. Words in any gender include the other gender; the singular includes the plural and vice versa; “pay” and “distribute” also include assign,

convey, and deliver; the table of contents, headings, and underlined paragraph titles are for guidance only and shall have no significance in the interpretation of this Agreement; and “including” means including by way of example and not by way of limitation.

c. Miscellaneous. Unless otherwise expressly specified herein, any reference to any law or regulation in this Agreement shall mean such law or regulation as amended from time to time, or if any law or regulation referenced herein is superseded and replaced, then the replacement law or regulation shall be applicable to this Agreement.

d. Limited Amendment Power. The Trust created by this Agreement is irrevocable. Furthermore, this Agreement may not be amended by the Beneficiary or Grantor acting alone, but the Beneficiary and Grantor may at any time jointly amend this Agreement. However, no amendment shall increase, reduce, or otherwise affect the duties and responsibilities or any rights, privileges, indemnities, or immunities of the Trustee without its prior written consent. A fully executed copy of each amendment shall be delivered promptly to the Trustee.

e. Binding Effect; Assignment. This Agreement shall bind Grantor, the Beneficiary, and the Trustee, and their respective assigns and successors in interest. Neither Grantor nor the Beneficiary may assign all or any part of its rights or obligations under this Agreement without the prior written consent of the other; further, any successor or assignee of PolyMet must receive prior approval of the DNR in accordance with the Mining Laws to be the permittee under the Permit to Mine and agree to perform all obligations of PolyMet under the Mining Laws and this Agreement. For purposes of this Agreement, a change to provide any Person with greater than 50% of the shareholder voting control or equity ownership of Grantor or the sale of substantially all of Grantor’s assets constitutes an assignment.

### 9.3 Authorized Persons. With respect to this Agreement:

a. The Grantor will notify the Trustee of the identity of each (i) employee of the Grantor who is authorized to act on the Grantor’s behalf, (ii) third-party agent that is authorized to act on the Grantor’s behalf, and (iii) employee of each third-party agent who is authorized to act on such agent’s behalf. In no event is any such agent authorized to amend this Agreement or to terminate this Agreement.

b. The Beneficiary will notify the Trustee of the identity of each (i) employee of the Beneficiary who is authorized to act on the Beneficiary’s behalf, (ii) third-party agent that is authorized to act on the Beneficiary’s behalf, and (iii) employee of each third-party agent who is authorized to act on such agent’s behalf. In no event is any such agent authorized to amend this Agreement or to terminate this Agreement.

c. The Trustee may assume that any such employee or agent of the Grantor continues to be so authorized, until the Trustee receives notice to the contrary from the Grantor (or, with respect to any such employee of any such agent, from such agent). The Trustee may assume that any such employee or agent of the Beneficiary continues to be so authorized, until the Trustee receives notice to the contrary from the Beneficiary (or, with respect to any such employee of any such agent, from such agent).

d. The Grantor hereby represents and warrants that any such employee or agent of the Grantor was duly appointed and is appropriately monitored and covenants that the Grantor will furnish such employee or agent with a copy of this Agreement, as amended from time to time, and with a copy of any communications given under this Agreement to the Grantor. The Grantor hereby acknowledges that (i) such employee's or agent's actions or omissions are binding upon the Grantor as if the Grantor had taken such actions or made such omissions itself and (ii) the Trustee is indemnified, released, and held harmless accordingly.

e. The Beneficiary hereby represents and warrants that any such employee or agent of the Beneficiary was duly appointed and is appropriately monitored and covenants that the Beneficiary will furnish such employee or agent with a copy of this Agreement, as amended from time to time, and with a copy of any communications given under this Agreement to the Beneficiary. The Beneficiary hereby acknowledges that (i) such employee's or agent's actions or omissions are binding upon the Beneficiary as if the Beneficiary had taken such actions or made such omissions itself and (ii) the Trustee is indemnified, released, and held harmless accordingly.

9.4 **Notices and Addresses.** All notices, requests, demands, and other communications required or permitted to be given under this Agreement will be in writing and will be deemed to have been duly given if delivered personally; deposited in the United States mail (postage pre-paid), registered or certified mail, return receipt requested (and, in the case of the Trustee, received at its address set forth below); entered into the Grantor's or the Beneficiary's account in the Trustee's on-line portal; sent to the Trustee by Messaging System or faxed (with telephone confirmation of receipt), addressed as follows:

If to Grantor: Poly Met Mining, Inc.  
Attn: Chief Financial Officer  
444 Cedar Street  
Suite 2016  
St. Paul, Minnesota 55101

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Trustee: Mark J. Simones  
Senior Vice President and Relationship Manager  
800 Nicollet Mall, BC-MN-H5AM  
Minneapolis, Minnesota 55402

If to the Beneficiary: Director of Lands and Minerals  
Minnesota Department of Natural Resources  
500 Lafayette Road North  
Box 45  
St. Paul, Minnesota 55155

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 9.5 **General Provisions.**

- a. Each of the parties hereto hereby waives the right to trial by jury.
- b. The rights and remedies conferred upon the parties hereto shall be cumulative, and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. The waiver of any right or remedy hereunder shall not preclude the subsequent exercise of such right or remedy.
- c. The Grantor hereby represents and warrants that: (i) this Agreement has been duly authorized, executed, and delivered on its behalf and constitutes its legal, valid, and binding obligation and (ii) the execution, delivery, and performance of this Agreement by it do not and will not violate any applicable law or regulation.
- d. If one or more of the covenants, agreements, provisions, or terms of this Agreement are held invalid for any reason whatsoever, those covenants, agreements, provisions, and terms will be treated as severable from the remaining covenants, agreements, provisions, and terms of this Agreement and will in no way affect the validity or enforceability of the remaining covenants, agreements, provisions, and terms of this Agreement. If the invalidity of any covenant, agreement, provision, or term of this Agreement deprives any party of the economic benefit intended to be conferred by this Agreement, the parties must negotiate in good faith to develop and substitute a replacement covenant, agreement, provision, or term having an economic effect that is as nearly as possible the same as the economic effect of this Agreement as intended.
- e. This Agreement constitutes the entire agreement of the parties with respect to the subject matter and supersedes all prior oral or written agreements in regard thereto.
- f. The provisions herein relating to the limitation of liability, duties, responsibilities, and obligations of the Trustee and indemnification shall survive termination of this Agreement and/or the resignation or removal of the Trustee.
- g. No printed or other material in any language, including prospectuses, notices, reports, and promotional material that mentions US Bank, N.A. by name or the rights, powers, or duties of the Trustee under this Agreement shall be issued by any other party hereto, or on such party's behalf, without the prior written consent of the Trustee.
- h. This Agreement may be executed by each of the parties hereto in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all such counterparts shall together constitute one and the same agreement.

9.6 **Perpetuities.** The parties intend that this Trust be excluded from the statutory rule against perpetuities under NRS 111.1037, due to it being a nondonative transfer. If, however, this Trust is not found to be excluded from the statutory rule against perpetuities, and the Trust is not sooner terminated pursuant to Article 3.4, this Trust shall terminate 365 years after the initial contribution pursuant to Article 2.3 is received by the Trustee. In the event the Trust terminates as a result of the foregoing, the Trustee shall distribute the Trust as directed by the Beneficiary in accordance with the Mining Laws.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Grantor, the Beneficiary and the Trustee have signed this Agreement on the dates set forth below to be effective for all purposes as of the date first above written.

**MINNESOTA DEPARTMENT OF  
NATURAL RESOURCES**

By: /s/ Tom Landwehr

<u>TOM LANDWEHR</u>	<u>COMMISSIONER</u>
Name	Title

**POLY MET MINING, INC.**

By: /s/ Jonathan Cherry

<u>JONATHAN CHERRY</u>	<u>PRESIDENT &amp; CEO</u>
Name	Title

**US BANK, N.A**

By: /s/ Mark J. Simones

<u>MARK J. SIMONES</u>	<u>SENIOR VICE PRESIDENT</u>
Name	Title



Minnesota Department of Commerce  
85 7th Place East | Suite 280 | St. Paul, MN 55101  
Information Request

**Docket Nos:** MPUC PL-9/CN-21-823

**Requested From:** Enbridge Energy Limited Partnership

**Type of Inquiry:** General

☐ Nonpublic ☒ Public

**Date of Request:** 05/26/2022

**Response Due:** 06/08/2022

**SEND RESPONSE VIA EMAIL TO:** [Utility.Discovery@state.mn.us](mailto:Utility.Discovery@state.mn.us); [commerce.attorneys@ag.state.mn.us](mailto:commerce.attorneys@ag.state.mn.us);  
[Katherine.Hinderlie@ag.state.mn.us](mailto:Katherine.Hinderlie@ag.state.mn.us); [Greg.Merz@ag.state.mn.us](mailto:Greg.Merz@ag.state.mn.us)

**Assigned Attorney:** Katherine Hinderlie; Greg Merz

**Email Address(es):** [Katherine.Hinderlie@ag.state.mn.us](mailto:Katherine.Hinderlie@ag.state.mn.us); [Greg.Merz@ag.state.mn.us](mailto:Greg.Merz@ag.state.mn.us)

**Phone Number(s):** 651 757 1468; 651 757 1291

**ADDITIONAL INSTRUCTIONS:**

Each response must be submitted as a text searchable PDF, unless otherwise directed. Please include the docket number, request number, and respondent name and title on the answers. If your response contains Trade Secret data, please include a public copy.

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**Request Number:** 3

**Topic:**

**Reference(s):** Enbridge Energy Limited Partnership's Initial Comments, Attachment A

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**Request:**

Please provide copies of all responses to any RFP referred to in Enbridge Energy Limited Partnership's Initial Comments, Attachment A, and all documents received with any such response.

**Response:**

Enbridge received two responses to the RFI, which are attached as Enbridge Response to DER IR No. 3\_Attachment 3. In accordance with Minnesota Rules, part 7829.0500 and Minnesota Statutes Chapter 13, Enbridge has redacted identifying information from this attachment because it contains trade secret information that is commercially sensitive and is considered confidential and proprietary information. Release of this information would have a detrimental effect on Enbridge and its contractors by providing potential competitors and others with valuable information not otherwise readily ascertainable and from this these persons would obtain economic value. Enbridge does not have permission from its contractor to disclose the redacted identifying information.

---

To be completed by responder

**Response Date:** June 8, 2022

**Response by:** Dave Hodek

**Email Address:** [dave.hodek@enbridge.com](mailto:dave.hodek@enbridge.com)

**Phone Number:** (218) 522-4828

Exhibit C

[REDACTED]

September 5, 2018

Enbridge Energy, Limited Partnership

Re: Contractor Response:  
RFI WPX-1268889-18  
Line 3 Replacement ("L3R) Removal

Dear Mr. Stauber,

Thank you for including [REDACTED] in the above referenced RFI process. Based on the data and provided within the RFI documents, we do not feel there is adequate information supplied to produce a Lump Sum estimate however [REDACTED] would be interested providing a T&M estimate for this work when more information is made available on acceptable construction practices within areas of adjacent pipelines with sufficient cover to safely reach Line 3 for removal. We will strive to provide value and work together as partners on this project as [REDACTED] has in the past. Please to not hesitate to call me to discuss this project or any other ones in the future.

Sincerely, [REDACTED]  
[REDACTED]  
[REDACTED]

Vice-President West Operations

September 5, 2018

Derek Stauber  
Enbridge Contracts Coordinator

Re: L3 Replacement Removal  
[REDACTED] Proposal [REDACTED]

Derek,

[REDACTED] is pleased to offer this budget proposal for your consideration for the above mentioned RFI. In addition, we offer the following clarifications for your consideration and as a part of our budget.

**Inclusions:**



- Pricing is inclusive of all mainline pump stations and mainline pipe.
- We have included matting efforts to protect nearby lines and ground disturbance.
- We have included materials for capping and filling all HDD's with grout to be abandoned in place.
- We have included import fill for non-wetland areas.
- We have included capping piping under concrete at each station. Any piping below concrete is to be abandoned in place.
- We have included a budget to perform four-way sweeps.

**Exclusions:**

- We have not included any efforts to clear the ROW.
- We have not included any efforts for removal of any concrete.
- We have not included any pipe cleaning efforts. We have assumed that the pipe has already been cleaned and pigged and deemed inactive.
- We have not included any efforts to decommission the transformers or drain the fluids from them. It is assumed that this will be performed by others.
- We have not included any costs associated to NDT.
- We have not included any permit or bonding fees.

**Clarifications:**

- We have used current (2018) rates for all labor and equipment.
- We assume rough handling L93 would be acceptable and have not included a 2' zone around pipe free from mechanical excavation.

- 
- 
- We assume we would be able to cut all sand bags and dispose of sand fill in the excavation.
  - We have assumed that all material being removed will not be re-used.
  - We have assumed that removed items will be moved to one central location per spread (provided by others) and have not included any costs for disposal of pipe, fittings, valves, pumps, motors, electrical gear, etc.

We thank you for the opportunity to provide this budget and look forward to hearing from you. If you should have any questions or require additional information, please feel free to contact.

Regards,



Lead Estimator

Enbridge Energy, Limited Partnership  
Line 3 Replacement Project  
Removal

Revision: 0  
Date: 17-Aug-2018  
Page 1 of 1

ATTACHMENT E  
PRICING WORKSHEET

	DESCRIPTION OF WORK	AMOUNT	TOTALS
<b>MAINLINE</b>		<b>LUMP SUM</b>	
<b>Spread 1</b>			
3.1.1.1	Removal and Backfilling	\$ 104,625,419.83	
3.1.1.2	Land Restoration	\$ 7,306,866.91	
3.1.1.3	Special Treatment	\$ 1,351,671.27	
	<b>Spread 1 Total</b>		\$113,283,958.02
<b>Spread 2</b>			
3.1.1.1	Removal and Backfilling	\$ 113,658,404.91	
3.1.1.2	Land Restoration	\$ 15,012,504.50	
3.1.1.3	Special Treatment	\$ 540,668.51	
	<b>Spread 2 Total</b>		\$129,211,577.91
<b>Spread 3</b>			
3.1.1.1	Removal and Backfilling	\$ 124,546,319.66	
3.1.1.2	Land Restoration	\$ 23,285,659.58	
3.1.1.3	Special Treatment	\$ 1,081,337.02	
	<b>Spread 3 Total</b>		\$148,913,316.26
<b>Spread 4</b>			
3.1.1.1	Removal and Backfilling	\$ 143,731,451.84	
3.1.1.2	Land Restoration	\$ 24,857,747.15	
3.1.1.3	Special Treatment	\$ 1,622,005.53	
	<b>Spread 4 Total</b>		\$170,211,204.51
<b>Spread 5 (RA-21 Option)</b>			
3.1.1.1	Removal and Backfilling	\$ 174,124,683.21	
3.1.1.2	Land Restoration	\$ 21,960,653.65	
3.1.1.3	Special Treatment	\$ 2,433,008.29	
	<b>Spread 5 (RA-21 Option) Total</b>		\$198,518,345.15
	<b>MAINLINE 5 SPREADS WITH RA-21 SUB-TOTAL</b>		<b>\$760,138,401.85</b>
<b>Spread 5 (RA-22 Option)</b>			
3.1.1.1	Removal and Backfilling	\$ 174,770,917.02	
3.1.1.2	Land Restoration	\$ 18,445,508.80	
3.1.1.3	Special Treatment	\$ 1,892,718.54	
	<b>Spread 5 (RA-22 Option) Total</b>		\$195,109,144.36
	<b>MAINLINE 5 SPREADS WITH RA-22 SUB-TOTAL</b>		<b>\$756,729,201.06</b>
<b>FACILITIES</b>		<b>Unit Price (each)</b>	
3.1.2.1	Meter Manifold	\$ 103,500.00	
3.1.2.1	Valve Manifold	\$ 99,000.00	
3.1.2.2	Electrical Building	\$ 217,400.00	
3.1.2.2	Instrumentation Building	\$ 237,000.00	
3.1.2.3	Booster Pump Station	\$ 477,700.00	
3.1.2.3	Pump Station: 4-pump configuration	\$ 918,000.00	
	Pump Station: 3-pump configuration	\$ 826,000.00	
	Pump Station: 2-pump configuration	\$ 745,000.00	
3.1.2.4	Below Grade Sump Tank	\$ 105,800.00	
3.1.2.5	Mainline Valve	\$ 114,300.00	
3.1.2.6	Pig Trap Assembly	\$ 66,800.00	
	<b>FACILITIES UNIT PRICE TOTAL</b>		<b>\$3,910,500.00</b>



Minnesota Department of Commerce  
85 7th Place East | Suite 280 | St. Paul, MN 55101  
Information Request

**Docket Nos:** MPUC PL-9/CN-21-823

**Requested From:** Enbridge Energy Limited Partnership

**Type of Inquiry:** General

☐ Nonpublic ☒ Public

**Date of Request:** 05/26/2022

**Response Due:** 06/08/2022

**SEND RESPONSE VIA EMAIL TO:** [Utility.Discovery@state.mn.us](mailto:Utility.Discovery@state.mn.us); [commerce.attorneys@ag.state.mn.us](mailto:commerce.attorneys@ag.state.mn.us);

[Katherine.Hinderlie@ag.state.mn.us](mailto:Katherine.Hinderlie@ag.state.mn.us); [Greg.Merz@ag.state.mn.us](mailto:Greg.Merz@ag.state.mn.us)

**Assigned Attorney:** Katherine Hinderlie; Greg Merz

**Email Address(es):** [Katherine.Hinderlie@ag.state.mn.us](mailto:Katherine.Hinderlie@ag.state.mn.us); [Greg.Merz@ag.state.mn.us](mailto:Greg.Merz@ag.state.mn.us)

**Phone Number(s):** 651 757 1468; 651 757 1291

**ADDITIONAL INSTRUCTIONS:**

Each response must be submitted as a text searchable PDF, unless otherwise directed. Please include the docket number, request number, and respondent name and title on the answers. If your response contains Trade Secret data, please include a public copy.

---

**Request Number:** 7

**Topic:**

**Reference(s):** Enbridge Energy Limited Partnership's Initial Comments

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**Request:**

Please provide any calculation that you have performed of the "amount that needs to be contributed to the Decommissioning Trust Fund each year, based on the decommissioning cost estimate, the expected inflation rate, earnings in the trust, and trust expense," as discussed in Enbridge Limited Partnership's Initial Comments at pages 9 through 10.

**Response:**

Enbridge has yet to assess the amount that would need to be contributed to the Decommissioning Trust Fund (the "Trust") on an annual basis in order to ensure it is fully funded at the end of the 30-year economic life of Line 93, which will be October 1, 2051. Enbridge proposes to follow the methodology it has in place for determining the annual abandonment collection amount for its CER-regulated pipelines in Canada. Under this methodology, an annual collection amount is determined by factoring in the decommissioning estimate, the collection period, estimates of inflation, rate of return on the Trust's investment portfolio, and the administrative expenses and taxes paid by the Trust. The Trust fund balance is monitored on an annual basis, and a periodic re-basing (generally every five years) of the annual collection amount is undertaken to ensure that collections are on track to cover the costs of decommissioning at the end of the pipeline's economic life.

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To be completed by responder

**Response Date:** June 8, 2022

**Response by:** Erin Rolstad

**Email Address:** [erin.rolstad@enbridge.com](mailto:erin.rolstad@enbridge.com)

**Phone Number:** (403) 767-3627

Exhibit D