



No. S-238572  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36. AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
MYRA FALLS MINE LTD.

PETITIONER

**ORDER MADE AFTER APPLICATION**

BEFORE THE HONOURABLE )  
JUSTICE FITZPATRICK ) 28/06/2024  
)

THE APPLICATION of the Petitioner, coming on for hearing before me at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 28<sup>th</sup> day of June, 2024; AND ON HEARING Jonathan B. Ross, counsel for the Petitioner and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the materials filed, including the Affidavit #4 of Hein Frey, affirmed June 17, 2024 (the "**Frey Affidavit #4**"), the Confidential Affidavit of Hein Frey, affirmed on June 17, 2024 (the "**Confidential Affidavit**") and the Third Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioner, the "**Monitor**") dated June 18, 2024; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

**SERVICE AND DEFINITIONS**


1. The time for service of the Notice of Application dated June 17, 2024 and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and service thereof is hereby dispensed with.


2. Capitalized terms used in this Order and not otherwise defined herein shall have the meaning given to them in the amended and restated initial order granted in these proceedings by the Honourable Justice Fitzpatrick dated December 28, 2023 (the "ARIO").

**STAY EXTENSION**

3. The Stay Period is hereby continued and extended to and including ~~October 31, 2024.~~ <sup>August 2, 2024</sup> 

**DIP AMENDMENT AND INCREASE IN INTERIM LENDER'S CHARGE**

4. The second amendment to the DIP Term Sheet dated June 20, 2024 (the "Second DIP Amendment") between the Petitioner and the Interim Lender, attached as **Schedule "B"** hereto is hereby authorized and approved, and the Petitioner is hereby authorized and empowered to borrow up to an additional ~~\$13~~ <sup>\$5.5</sup> million for an aggregate principal amount of ~~\$24~~ <sup>\$26.5</sup> million pursuant to the DIP Term Sheet (as amended by the first amendment to the DIP Term Sheet dated February 16, 2024 and the Second DIP Amendment (the "Amended DIP Term Sheet")). 

5. The Interim Lender shall be entitled to the benefit of the Interim Lender's Charge provided for in the ARIO to secure amounts advanced under the Amended DIP Term Sheet. The Interim Lender's Charge shall be increased to the maximum amount of ~~\$24~~ <sup>\$26.5</sup> million (plus accrued and unpaid interest, fees and expenses). 

6. The Interim Lender's Charge, as amended herein, shall continue to have the priority set out in paragraphs 40 and 42 of the ARIO.

#### **APPROVAL OF THE KERP**

7. The Key Employee Retention Plan (the "**KERP**") attached as **Schedule "C"** to this Order is hereby approved and the Petitioner is authorized and directed to make payment to the Key Employees (as such term is defined in the Frey Affidavit #4) in accordance with the terms thereof.

#### **GENERAL**

8. The Petitioner, the Monitor, or the Interim Lender, may from time to time apply for such further or other directions as may be necessary or desirable to give effect to this Order, including, without limitation, the discharge of their respective powers and duties under this Order, or any matter in connection therewith.

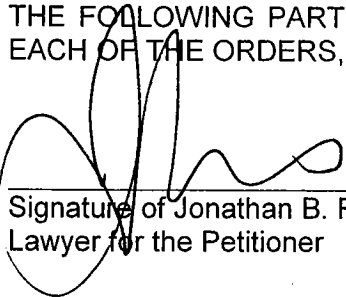
9. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner is hereby dispensed with.

10. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the date this Order is made.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status

to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

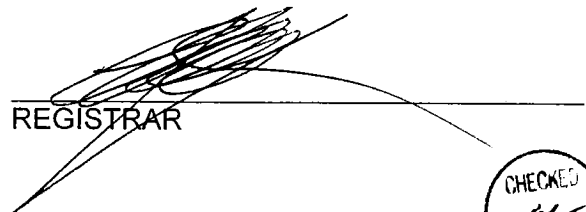
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of Jonathan B. Ross  
Lawyer for the Petitioner



BY THE COURT



REGISTRAR



Schedule "A"

LIST OF COUNSEL

COUNSEL NAME	PARTY REPRESENTED
Claire Hildebrand	Monitor – FTI Consulting Canada Inc.
Kelsey Meyer & Andrew Froh	Amalgamated Mining & Tunneling Inc.
Angelica Kovac	Wes wai Kum First Nation, We wac kai First Nation, Campbell River Indian Band, and Cape Mudge Indian Band
Aminollah Sabzevari	Canada Revenue Agency
Andrea K. Glen and Devin Wong	Ministry of Attorney General (Justice, Health & Revenue Corp)
David Cieloszczyk	Unifor Local 3019
Benjamin S. Lorimer	Heidelberg Materials, Texxon Cables and Frontline Machinery

Schedule "B"  
SECOND DIP AMENDMENT

## SECOND AMENDMENT TO DIP FACILITY TERM SHEET

Dated: June 20, 2024.

### RECITALS:

- A. Myra Falls Mine Ltd. (the "**Borrower**"), as borrower, and Trafigura US Inc. (the "**DIP Lender**"), as lender, entered into a DIP facility term sheet dated December 17, 2023 (the "**DIP Facility Term Sheet**");
- B. On February 16, 2024, the Borrower and the DIP Lender executed an amendment to the DIP Facility Term Sheet (the "**First Amendment**"), to extend the Maturity Date (as defined in the DIP Facility Term Sheet) to June 30, 2024;
- C. The Borrower now requires a further extension of the Maturity Date and an increase in the Maximum Amount (as such terms are defined in the DIP Facility Term Sheet); and
- D. Subject to the terms and conditions contained in this agreement (this "**Second Amendment**"), the parties hereto have agreed to further amend the DIP Facility Term Sheet on the terms and conditions set out below.

**NOW THEREFORE** in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

### 1. DEFINITIONS

- 1.1 **Use of Defined Terms.** Unless otherwise defined herein or the context otherwise requires, capitalized terms used in this Second Amendment, including its preamble and recitals, have the meanings provided in the DIP Facility Term Sheet, as amended by the First Amendment, as applicable.

### 2. AMENDMENTS TO DIP FACILITY TERM SHEET

- 2.1 **Amendments.** Subject to the satisfaction of each of the conditions to effectiveness set forth in this Second Amendment, the parties agree to amend the First Amendment and the DIP Facility Term Sheet as follows:

- 2.1.1 Section 5.2 of the First Amendment shall be deleted and replaced with:

**"Governing Laws.** This Amendment is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of British Columbia and the federal laws of Canada applicable therein."

- 2.1.2 the reference to “June 30, 2024” in the DIP Facility Term Sheet, in paragraph (a) of the heading “**Maturity Date**” shall be deleted and replaced with “October 31, 2024”;
- 2.1.3 the reference to the “Maximum Amount” in the DIP Facility Term Sheet, in the heading “**DIP Facility**” shall be amended to reflect the following:

“up to the maximum principal amount of CDN \$34 million”

### **3. REPRESENTATIONS AND WARRANTIES**

- 3.1 **Representations.** The Borrower represents and warrants to the DIP Lender that, as of the date hereof (after giving effect to this Second Amendment):
  - 3.1.1 This Second Amendment has been duly authorized, executed and delivered by the Borrower;
  - 3.1.2 This Second Amendment constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other applicable laws affecting creditors’ rights generally and to general principles of equity, regardless of whether considered in a proceeding in equity or at law;
  - 3.1.3 The representations and warranties set forth in the DIP Facility Term Sheet, and the other DIP Credit Documentation are true and correct in all respects on and as of the date hereof as though made on and as of such date, unless stated to be made as of a specified date; and
  - 3.1.4 No Default or Event of Default has occurred and is continuing.

### **4. CONDITIONS**

- 4.1 **Conditions Precedent.** This Second Amendment shall become effective on the date upon which there has been receipt by the DIP Lender of the following (which conditions precedent are for the sole and exclusive benefit of the DIP Lender and may be waived by the DIP Lender):
  - 4.1.1 a counterpart of this Second Amendment executed by the Borrower;
  - 4.1.2 receipt by the DIP Lender of updated Cash Flow Projections, in form and substance satisfactory to the DIP Lender in its discretion; and
  - 4.1.3 an order issued by the Court, which authorizes and approves the terms of this Second Amendment and the increase of the DIP Lender’s Charge to the maximum amount of CDN\$34 million.



**5. GENERAL PROVISIONS**

- 5.1 **Headings.** The inclusion of headings in this Second Amendment is for convenience of reference only and does not affect the construction or interpretation hereof.
- 5.2 **Governing Law.** This Second Amendment is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of British Columbia and the federal laws of Canada applicable therein.
- 5.3 **Assignment.** This Second Amendment enures to the benefit of, and is binding upon, the parties and their respective successors and permitted assigns.
- 5.4 **Conflicts.** If, after the date of this Second Amendment, any provision of this Second Amendment is inconsistent with any provision of the DIP Facility Term Sheet, the relevant provision of this Second Amendment shall prevail.
- 5.5 **DIP Credit Documentation.** This Second Amendment constitutes DIP Credit Documentation for all purposes under the DIP Facility Term Sheet.
- 5.6 **Counterparts.** This Second Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original agreement and all of which shall constitute one agreement. All counterparts shall be construed together and shall constitute one and the same agreement. This Second Amendment, to the extent signed and delivered by means of electronic transmission (including, without limitation, facsimile and Internet transmissions), shall be treated in all manner and respects as an original agreement and should be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

*- remainder of page intentionally left blank -*

**IN WITNESS WHEREOF** the parties hereto have executed this Second Amendment as of the date first written above.

**MYRA FALLS MINES LTD.**

By:



Name:

Title: Authorized Signatory

I have the authority to bind the corporation.

**TRAFIGURA US INC.**

By:



Name:

Title: Authorized Signatory

I have the authority to bind the corporation.

Schedule "C"

KEY EMPLOYEE RETENTION PLAN

# MEMO

TO: Tom Powell – FTI Consulting Canada Inc., in its capacity as  
Monitor

FROM: Hein Frey

CC: Maciej Sciazko  
Virginie Gauthier – Gowling WLG LLP  
Stuart Olley – Gowling WLG LLP

DATE: May 30, 2024

RE: Myra Falls Mine Ltd. (“MFM”) – Request for KERP Approval

## 1. Introduction.

MFM commenced proceedings (the “**Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act* on December 18, 2023. Upon the commencement of the Proceedings, MFM transitioned the Myra Falls Mine (the “**Mine**”) from production to Care and Maintenance (“**C&M**”), terminated most of its employees, and is now at steady state activities with the minimal amount of salaried and hourly employees. The transition was successful with minimal disruption while high safety standards were maintained. The number of employees currently employed in C&M has been reduced significantly compared to 2018 when 57 full time employees were employed during care and maintenance.

## 2. Discussion.

Table 2 summarizes the list of employees whom MFM employs during C&M as well as their roles and responsibilities. Since the commencement of the Proceedings, including following the outcome of the failed SISP, management at MFM (“**Management**”) has observed a decline in employee morale and dissatisfaction with not having received the bonuses that they would have been entitled to in 2023.

Considering these developments, MFM is seeking the Monitor’s approval and support for a key employee retention plan (“**KERP**”), the salient terms of which are reflected below.

### Beneficiaries

MFM believes that the salaried employees listed in Table 1 (the “**Key Employees**”) are key to the C&M operations of MFM and would be essential should a quick restart of the Mine materialize.

While all employees currently retained, including the Key Employees, are necessary for C&M, Management believes that the Key Employees have expertise and skills in their specific fields that would be difficult to replace if the Key Employees were to leave. In addition, the Key Employees possess in-depth knowledge of future projects and strategic development of the Mine, which Management believes must be retained to preserve MFM’s ability to re-open the Mine.

#### KERP Terms

The amounts proposed to be paid to the Key Employees are based on the amounts that the Key Employees would have been entitled to receive had the contractual annual performance incentive (“**API**”) for salaried employees payable at the end of the 2023 production year been paid. Management notes that in 2023, APIs were not paid to salaried employees, however production bonuses were paid throughout the year to hourly employees as per the collective bargaining agreement.

The total amount payable under the KERP equals \$300,000

Pursuant to the KERP, Key Employees would be entitled to be paid 50% of their individual KERP amount on the first payroll following June 24, 2024, with the remaining 50% payable on the first payroll following December 31, 2024. Each payment would be conditional on the Key Employee being employed at the date of the payment. Key Employees will not earn or accrue any partial KERP entitlement if they resign or are terminated prior to June 24, 2024, or December 31, 2024, as the case may be. If a Key Employee is terminated without cause, the full amount of their KERP Payments (to the extent not already paid) will be payable to them on termination.

Should any Key Employee resign or be terminated for cause prior to full payment of their respective KERP Payments, MFM will be authorized to pay any such remaining KERP Payments to one or more alternative employees pursuant to the terms of the KERP, provided that the total amount of all KERP Payments payable to all employees shall not be greater than as set out in the KERP.

### **3. Conclusion.**

MFM is seeking the Monitor's consent to the above described KERP. Trafigura US Limited has agreed to provide sufficient funding under the DIP Financing to fund the amounts required to be paid pursuant to the KERP.

Regards

Hein Frey

Table 1:

The table consists of approximately 10 columns and 25 rows. The top row contains several header cells, some of which are redacted with black boxes. The subsequent rows contain data, but the vast majority of the cells are obscured by black redaction boxes. Only a few small, white rectangular areas are visible within the grid, suggesting that the original content has been almost entirely removed for security or privacy reasons. The table is enclosed in a black border.





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**ORDER**

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**GOWLING WLG (CANADA) LLP**

Barristers & Solicitors  
Bentall 5, Suite 2300,  
550 Burrard Street  
Vancouver, BC V6C 2B5

**Attention: Jonathan B. Ross**

Tel: 604.683.6498      Fax: 604.683.3558

File No. A172589

MD/SPK