

WHEN RECORDED, PLEASE MAIL TO:
Salt Lake County Water Conservancy District
Attn: Dale F. Gardiner
P. O. Box 70
West Jordan, Utah 84084-0070

NO FEE

5469551
05 APRIL 93 09:38 AM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
SL CO WATER CONSERVANCY DIST
REC BY: REBECCA GRAY, DEPUTY

RIGHT-OF-WAY AND EASEMENT AGREEMENT

THIS AGREEMENT, made and entered into this 15th day of MARCH, 1993, by and between KENNECOTT UTAH COPPER CORPORATION, a Delaware Inc Utah corporation, hereinafter referred to as "Kennecott", and the SALT LAKE COUNTY WATER CONSERVANCY DISTRICT, a body politic of Salt Lake County, State of Utah, hereinafter referred to as "District".

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WITNESSETH:

WHEREAS, District desires to construct and thereafter maintain a buried culinary water pipeline (hereinafter called "pipeline") on Kennecott's property situated in Salt Lake County, State of Utah, for the purpose of providing culinary water service to residents within its service area; and

WHEREAS, said proposed culinary water pipeline will bisect the Bingham Creek channel, hereinafter referred to as "Bingham Creek"; and

WHEREAS, District, pursuant to Utah Code Ann. §§ 78-34-1(5), 78-34-2(2), 17A-2-1413(5) and 73-1-6, has the express power of eminent domain to condemn private property for the easement described in this Agreement; and

WHEREAS, on January 27, 1993, the Board of Directors of the Salt Lake County Water Conservancy District adopted a resolution authorizing the condemnation of the easement described in this Agreement; and

WHEREAS, Kennecott is willing to provide District a right-of-way and easement for such purpose on the following terms and conditions; and

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WHEREAS, both parties believe that additional eminent domain proceedings are better avoided;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows, to wit:

1. Kennecott hereby grants District, its successors and assigns, a right-of-way and easement, 20 feet in width, lying 10 feet on each side of the hereinafter four described center lines, for the purposes hereafter stated, through, across and under the premises situated in Salt Lake County, State of Utah, to wit:

#1

Salt Lake County Recorder Parcel Number 26-13-100-001:

A twenty (20.0') foot wide strip of land whose center line begins at a point South 89°50'20" East 10.0 feet from the Northwest corner of Section 13, Township 3 South, Range 2 West, Salt Lake Base and Meridian; thence South 0°05'44" West 2603.32 feet more or less, parallel to the section line. The area contained within the described permanent easement is 52,065 square feet (1.1952 acres).

#2

Salt Lake County Recorder Parcel Number 26-24-100-001:

A twenty (20.0') foot wide strip of land whose center line begins at a point North 89°59'32" East 10.0 feet from the Northwest corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian; thence South 0°11'37" West 1021.34 feet more or less, parallel to the section line. The area contained within the described permanent easement is 20,427 square feet (0.4689 acres).

#3

Salt Lake County Recorder Parcel Number 26-24-100-001:

A twenty (20.0') foot wide strip of land whose center line begins at a point North 89°59'32" East 10 feet and South 0°11'37" West 1431.93 feet, more or less, from the North West corner of Section 24, Township 3 South, Range 2 West,

Salt Lake Base and Meridian; thence South 0°11'37" West 1209.68 feet parallel to the section line. The area contained within the described permanent easement is 24,194 square feet (0.5554 acres).

#4

Salt Lake County Recorder Parcel Number 26-24-300-001:

A twenty (20.0') foot wide strip of land whose center line begins at a point easterly 10.0 feet from the West Quarter corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian; thence South 0°11'37" West 2642.13 feet more or less, parallel to the section line. The area contained within the described permanent easement is 52,843 square feet (1.2131 acres).

Said right-of-way and easement shall be used by District solely for the purpose of constructing, reconstructing, operating, repairing, replacing, and maintaining said pipeline for providing culinary water service within District's service area and for no other purpose. District shall have the right of reasonable ingress and egress to and from said right-of-way to maintain, operate, repair, inspect, protect, remove and replace the same. During temporary periods District may use such portion of Kennecott's property hereinabove described, along and adjacent to said right-of-way as may be reasonably necessary in connection with the construction, maintenance, repair, removal or replacement of said pipeline. Kennecott shall have the right to use said premises for any purpose, except that Kennecott shall not construct permanent structures or improvements within the easement area other than the existing Bingham Creek Channel and/or a bridge or roadway, providing that all of these uses shall not interfere with District's pipeline, nor obstruct or hinder District's access to the easement area or any other right granted to District hereunder.

2. As consideration for Kennecott's providing said right-of-way and easement, District agrees to pay Kennecott the sum of seven thousand nine hundred sixteen dollars (\$7,916.00), which amount is to be paid upon the execution of this Agreement.

3. Said pipeline, where it crosses underneath Bingham Creek, shall be suitably protected and of sufficient depth to avoid damage from erosion or Kennecott's equipment operation in cleaning and maintenance work. Plans and specifications as relating to said crossing of Kennecott's property must be approved by Kennecott prior to commencement of construction on said right-of-way, which approval shall not be unreasonably withheld.

4. District shall obtain all necessary permits and licenses from public authorities for the installation of said pipeline and bear the entire cost and expense in connection with the construction, installation, maintenance, repair or renewal of said pipeline.

5. After District begins transporting water through the pipeline, subsequent nonuse of said pipeline for the purpose for which it was originally constructed, continuing at any time for a period of one year, shall constitute an abandonment thereof by District and of the right-of-way and easement herein made, and in case of such abandonment or the breach by District of any of the conditions, agreements and covenants herein contained, Kennecott shall have the right to terminate this Agreement at any time by giving thirty (30) days notice in writing to District of its intention to terminate the same and at the expiration of said thirty (30) days notice, the right-of-way and easement herein provided shall terminate and be at an end

and District shall be without recourse or redress of any character against Kennecott by reason thereof; but nothing herein shall be construed as a limitation of District's power to exercise its power of eminent domain in accordance with law to reacquire this easement by condemnation should it choose to do so.

6. Kennecott excepts and reserves a perpetual easement, right and privilege on the part of itself, its successors, lessees, licensees and assigns, at any and all times hereafter, to discharge over and upon each and every portion of said lands, any and all gases, dust, dirt, fumes, particulates, liquids and other substances and matter which may be released, given, thrown or blown off, flow or seep, emitted or discharged in the course of, by, or through the existence, or operations, of any and all of the smelting plants, reduction works, mines, mills, refineries, power plants, manufactories, tailing deposits and other works or factories which are now or which may hereafter at any time be lawfully established or operated by Kennecott or its successors, grantees, lessees, licensees or assigns, or any of them, within Salt Lake or Tooele Counties, State of Utah.

7. Kennecott does not assume any liability resulting from the granting of this easement or the exercise thereof, and the District agrees to indemnify, save harmless, and defend Kennecott, its officers, directors, employees, and agents from and against any and all losses, expenses, costs (including without limitation to attorneys' fees), claims, actions, demands, damages and liabilities imposed or claimed to be imposed upon Kennecott, its officers,

directors, employees, and agents because of bodily injuries, including death, or for damage to property, sustained by any person, including without limitation employees of the District, employees of Kennecott or employees of third parties, or environmental liabilities (excluding any environmental liability to the extent it was or is the responsibility of Kennecott, irrespective of the District's actions), arising out of or in consequence of District's construction, maintenance, operation, or existence of pipeline or use of said easement and right-of-way and such adjacent portions of Kennecott's property as District shall utilize from time to time, and whether such bodily injuries, death or damage to property arise or are claimed to arise in whole or in part out of negligence or any other grounds for legal liability (including violation of any duty imposed by statute, ordinance or regulation) on the part of the District, or of Kennecott, the employees or agents of any of them, or of any third party, including any liability caused by the sole negligence of Kennecott, its officers, directors, employees and agents, but excluding the willful misconduct of Kennecott, its officers, directors, employees and agents. District specifically waives, with respect to any action brought against it by Kennecott, the defense that laws providing for workers' compensation shall bar recovery by Kennecott under this indemnification provision.

8. Kennecott expressly reserves the right to construct, operate and maintain roads, canals, ditches, culverts, pipelines or other drainage works, and any other facilities desired by Kennecott upon, along, under or across said premises, provided only that such shall be

constructed, operated and maintained by Kennecott so as not to interfere with the use thereof by District. District agrees to repair or replace at its sole cost and expense, any property or facilities of Kennecott damaged or injured by the acts or omissions of District, its employees, servants or agents in the construction, maintenance, operation, existence or use of said right-of-way and such adjacent portions of Kennecott's property as District shall utilize from time to time.

9. It is hereby understood that any parties securing this grant on behalf of District are without authority to make any representations, covenants or agreements not herein expressed.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers on the date first written above.

KENNECOTT UTAH COPPER CORPORATION


By R. K. Dunham KSD
its Vice President

SALT LAKE COUNTY WATER
CONSERVANCY DISTRICT

By Robert Maloney
its PRESIDENT

STATE OF UTAH)
 : ss.
County of Salt Lake)

On the 4th day of March, 1993, personally appeared before me R.K. Davey who being by me duly sworn did say that he is Vice President of KENNECOTT UTAH COPPER CORPORATION, and that the foregoing instrument was signed on behalf of said corporation and said R.K. Davey duly acknowledged to me that said corporation executed the same.

My Commission Expires:
 Notary Public
KEITH L. HANSEN
P.O. Box 525
Brighton Canyon, Utah 84008
My Commission Expires
October 24, 1993
State of Utah


Keith L. Hansen
Notary Public

Residing at:
Salt Lake County, Utah

STATE OF UTAH)
 : ss.
County of Salt Lake)

On the 3rd day of February, 1993, personally appeared before me Gerald K. Maloney, who being duly sworn, did say that he is the President of the Salt Lake County Water Conservancy District, a body politic, and that the foregoing instrument was signed on behalf of said Salt Lake County Water Conservancy District, and said Gerald K. Maloney acknowledged to me that said District duly executed the same.

My Commission Expires:

 Notary Public
EARL W. CHAPMAN
3495 South 900 West
Salt Lake City, Utah 84119
My Commission Expires
May 2, 1993
State of Utah

Earl W. Chapman
Notary Public

Residing at:
S L C Utah