

West Valley City, a municipal corporation
Right-of-Way Contract
Fee Simple Acquisition – Strip Take

Project No: F-2150(1)0 Parcel No.(s): 102:2C, 102:2EC, 102:C, 102:E, 102:EC
Job/Project /Authorization No: 53950 Pin No: 8557
Project Location: 6200 SOUTH; 6100 WEST TO SR-111
County of Property: SALT LAKE Tax ID / Sidwell No: 20-15-300-002 and 20-22-200-001
Property Address: N/A WEST VALLEY CITY, UT 84118
Owner's Address: 4700 W. Daybreak Parkway, Suite 3S, South Jordan, UT 84095
Primary Phone: (801)-204-2756 Owner's Home Phone: Owner's Cell Phone: (801)-699-0106
Owner/Grantor: Kennecott Utah Copper, LLC, a Utah limited liability company formerly known as Kennecott Utah Copper Corporation
City/Grantee: West Valley City, a Utah municipal corporation

IN CONSIDERATION of the foregoing and other considerations hereinafter set forth in this Right-of-Way Contract (the "**Contract**"), it is mutually agreed by the parties as follows:

Grantor hereby agrees to convey and sell by Quit Claim Deed, Quit Claim Deed, Perpetual Easement, Temporary Easement, Temporary Easement a parcel(s) of land (collectively, the "**Property**") known as parcel number(s) 102:2C, 102:2EC, 102:C, 102:E, 102:EC for transportation purposes. This Contract is to be returned to: Steven J Dale, Right of Way Agent c/o West Valley City, a municipal corporation, 3600 South Constitution Blvd, West Valley City, UT 84119.

1. Grantor will transfer the Property free of all liens, mortgages and monetary encumbrances provided that Grantee shall accept title to the Property subject to recorded easements, covenants, restrictions, rights-of-way, reservations and all other matters affecting the title to the Property appearing of record or discoverable by an inspection or survey of the Property and also subject to real property taxes and assessments for the year 2015 and thereafter. The obligations of this Section 1 are subject to the terms of Section 4.
2. Grantee agrees to accept the Property in an "AS IS" "WHERE IS" AND "WITH ALL FAULTS" in its present condition and state of repair, without representation or warranty of any kind or nature and specifically excluding any warranties of merchantability or fitness for any particular purpose. Grantee acknowledges and agrees that Grantee will acquire the Property based upon its own diligence review and not based upon any statement, representation or warranty of Grantor or any agent or representative of Grantor.
3. Grantor shall leave the Property in the same condition, as it was when this Contract was signed. No work, improvement, or alteration will be done to the Property other than what is provided for in this Contract. Grantor agrees to maintain the Property consistent with its current condition until the City takes possession.
4. Grantor agrees to pay any and all taxes assessed against the Property to the date of closing.
5. At closing, the City shall pay to Grantor the sum of \$30,500.00 as the purchase price (the "**Purchase Price**") for the Property. The City shall be solely responsible for all escrow and closing costs, recordation fees, costs of title insurance and any other costs and expenses related to closing. The City shall pay Grantor the Purchase Price without deduction or offset. Grantor shall have no responsibility to pay for any third party interests in and to the Property.
6. "**Transportation Purposes**" is defined as follows: The public use for which the Property or property right is being acquired herein, may include but is not limited to the following possible uses: the construction and improvement of a highway, which may include interchanges, entry and exit ramps, frontage roads, bridges, overpasses, rest areas, buildings, signs and traffic control devices, placement of utilities, clear zones, maintenance facilities, detention or retention ponds, environmental mitigation, maintenance stations, material storage, bio fuel production, slope protections, drainage appurtenance, noise abatement, landscaping, transit, project caused statutory relocations, and other related transportation uses.
7. Grantor is aware that Utah Code Ann. Sect. 78B-6-520.3 provides that in certain circumstances, the seller of property which is being acquired for a particular public use, is entitled to receive an offer to repurchase the property at the same price that the seller received, before the property can be put to a different use. Grantor waives any right Grantor may have to repurchase the Property being acquired herein, and waives any rights Grantor may have under Utah Code Ann. Sect. 78B-6-

Page 1 of 3
Grantor's Initials *SK*
Grantee's Initials *JS*

520.3.

8. Upon execution of this contract by the parties, Grantor grants the City, its contractors, permittees, and assigns, including but not limited to, utilities and their contractors, the right to immediately occupy and commence construction or other necessary activity on the Property for Transportation Purposes. The City shall indemnify, defend and hold harmless Grantor and its officers, directors, employees, agents and managers from and against any and all damages, claims, fines, demands and actions including, without limitation, attorney's fees and costs, arising out of or in any way related to the early occupancy of the Property and/or construction or other necessary activity on the Property for Transportation Purposes. The City shall or shall cause its contractor(s) to take all such actions as are necessary to prevent damage to the Grantor's property located adjacent to or in the vicinity of the Property. The City shall promptly repair any damage to Grantor's property located adjacent to or in the vicinity of the Property (including access roads) and return such property to the same condition as existed prior to entry.

9. Grantor agrees that Grantee may remove the current railroad crossing located at approximately station 27+30 of the project plans in order to construct a road. Grantee may remove the railroad crossing on the purchased properties and on the property included in the temporary construction easement.

10. If the existing railroad crossing located at approximately station 27+30 of project plans is reactivated in the future, Grantee shall replace, reconstruct and upgrade the railroad crossing (the "**Crossing**") in accordance with the following terms and conditions:

- a. If Grantor elects, in its sole discretion, to reactivate the Crossing, Grantor shall provide written notice to Grantee of reactivation and shall request the reconstruction and upgrade of the Crossing in that notice.
- b. Grantee shall, at its sole cost and expense, promptly commence and thereafter diligently complete the reconstruction and upgrade of the Crossing within two years of receipt of the written notice described in subsection 10(a) above.
- c. Grantee shall construct the upgrade the Crossing in accordance with then applicable regulations, standards and requirements of the Utah Transit Authority. Upon completion of construction, Grantee shall send Grantor written notice of completion. Within ninety (90) days of receipt of notice of completion, Grantor shall inspect the Crossing and shall notify the Grantee of any deficiencies, corrections and defects. Grantee shall undertake the work to complete the deficiencies, corrections and defects. Upon Grantee's completion of the deficiencies, corrections and defects, Grantee shall notify Grantor, and Grantor shall have an additional ninety (90) days to notify the Grantee of any further deficiencies, corrections and defects. Grantee shall warrant the reconstructed and upgraded Crossing free from deficiencies and defects for a period of one year commencing upon Grantee's completion of all deficiencies, corrections and defects identified by Grantor.
- d. After the expiration of the one-year warranty under Section 10(c), Grantor shall be solely responsible for the maintenance of the Crossing in accordance with Title 19 of the West Valley City Municipal Code at Grantor's sole cost and expense.
- e. Grantee shall not be responsible for constructing a railroad crossing at any other location or to accommodate any potential realignment in the future. Grantee's obligation is limited only to reconstructing and upgrading the Crossing removed by Grantee under Section 9 pursuant to the terms and conditions of this Section 10.
- f. If Grantee does not complete the work to reconstruct and upgrade the Crossing within two years of receipt of Grantor's written notice under Section 10(a), Grantor may, but shall not be obligated to, undertake the work in whole or part to reconstruct and upgrade the Crossing at Grantee's cost and expense. If Grantor so performs any of Grantee's obligations, the full amount of the actual costs and expenses incurred by Grantor shall immediately be owing by Grantee, and Grantee shall pay to Grantor upon demand the full amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable laws.
- g. If the railroad crossing is not reactivated in the future, Grantee shall have no obligations under this Section 10.

11. If either party brings or commences any legal action or proceeding to enforce any of the terms of this Contract (or for damages by reason of an alleged breach of this Contract), the prevailing party, if any, in such action shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

12. This Contract shall survive the closing and shall not merge into the deeds and easements contemplated herein.

13. This Contract supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by

either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby.

14. Failure of either Grantor or Grantee to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Grantor's or Grantee's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Contract.

15. The validity, interpretation and performance of this Contract, and any dispute arising under this Contract, shall be construed, enforced and governed in accordance with the laws of the State of Utah.

16. Grantor and Grantee agree this Contract is an option to purchase the Property until approved by the West Valley City Council provided that this Contract shall automatically expire if Grantee fails to exercise the option by written notice to Grantor within six (6) months of the date this Contract is executed by Grantor. Time is of the essence of this Contract.

17. This Contract may be executed in duplicate counterparts and delivered by facsimile or electronic mail.

IN WITNESS WHEREOF, the undersigned have executed this Right-of-Way Contract as of the dates below written.

APPROVED AS TO FORM
RIO TINTO/KUC-LEGAL DEPARTMENT
By: [Signature]
George J. Stewart
Senior Corporate Counsel
Date: 9/9/2015

GRANTOR:

[Signature]
Kennecott Utah Copper, LLC

Date:

September 17, 2015

GRANTEE:

[Signature]
Steven J. Dale / Acquisition Agent

Date:

September 28, 2015

[Signature]
Coby S. Wilson / Team Leader

September 29, 2015

Approved by Mayor Ron Bigelow

September ____, 2015

Attest: City Recorder

September ____, 2015

APPROVED AS TO FORM
West Valley City Attorney's Office
By: [Signature]
Date: 9/29/15