

NON-FIRM QUALIFYING FACILITY POWER PURCHASE AGREEMENT

BETWEEN

KENNECOTT UTAH COPPER L.L.C.

AND

PACIFICORP

(SMELTER)

THIS AGREEMENT, entered into this \_\_\_th day of September 2013, is by and between Kennecott Utah Copper L.L.C. ("Seller") and PacifiCorp (each a "Party" and collectively, the "Parties").

RECITALS

Seller owns, operates, and maintains a waste heat-fired steam cogeneration facility for the generation of electric power located within the State of Utah, in and about the town of Magna, Utah and located within the County of Salt Lake with a Nameplate Capacity Rating of 31.8-megawatt ("MW") and expected average monthly output of about 18.5MW ("Facility"); and

Seller intends to operate the Facility as a "qualifying facility," as such term is defined in Section 3.2.6 below; and

Seller estimates that the monthly average amount of Delivered Energy to be produced by the Facility is 14,000 megawatt-hours ("MWh") pursuant to the scheduled maintenance as shown in Exhibit D hereto; and

Seller intends to utilize the output of the Facility to first offset power usage at its Kennecott Utah Copper operations; and

Seller shall sell and PacifiCorp shall purchase the Delivered Energy from the Facility in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 "Billing Period" means the time period between PacifiCorp's reading of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such

periods typically range between twenty-seven (27) and thirty-four (34) days and may or may not coincide with calendar months.

1.2 “Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, other than the energy or electricity itself, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or the use of renewable energy or other differentiated energy efficiency motive sources. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) renewable energy credits and efficiency credits.

1.3 “Commission” means the Public Service Commission of Utah.

1.4 "Contract Year" means a twelve (12) month period commencing hour ending 1AM Mountain Prevailing Time (“MPT”) on January 1 and ending midnight MPT on December 31 of the calendar year.

1.5 “Delivered Energy” shall have the meaning ascribed thereto in Section 4.2 of this Agreement.

1.6 "Facility" means Seller's waste-heat and natural gas-fired steam cogeneration facility as described in the Recitals and Exhibit A of this Agreement.

1.7 “Generation Interconnection Agreement” means the generation interconnection agreement(s), identified in Exhibit C, entered into separately between Seller and PacifiCorp’s transmission department, providing for the construction and operation of the interconnection facilities at the Point of Delivery.

1.8 “Initial Delivery Date” is defined in Section 4.1 of this Agreement.

1.9 “Nameplate Capacity Rating” means the maximum capacity of the Facility, expressed in MW, when operated consistent with the manufacturer’s recommended power factor and operating parameters, as set forth in Exhibit A.

1.10 "Net Output" means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments, if any. In the event that Seller elects to offset its own power usage instead of selling to PacifiCorp under this Agreement, then Net Output shall be reduced by the amount of energy and capacity self supplied.

1.11 "Point of Delivery" means the high side of the generation step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp's transmission system, as specified in the Generation Interconnection Agreement and in Exhibit B.

1.12 "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.13 "Prudent Electrical Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.14 "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for operation and maintenance of the Facility including without limitation those set forth in Exhibit C.

1.15 "Scheduled Maintenance Periods" means those times, as reflected in Exhibit D, during which the Facility is shut down for routine maintenance with the advance notice to PacifiCorp as provided in Section 6.2.

## SECTION 2: TERM

2.1 Effective Date. This Agreement shall become effective upon the occurrence of both: (1) execution by both Parties; and (2) after approval by the Commission whereby the Commission determines that the prices to be paid for energy and capacity sold to PacifiCorp are just and reasonable and in the public interest ("Effective Date"). For purposes of inter-jurisdictional cost allocation, this Agreement constitutes a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Protocol and, as such, the costs of those QF provisions are allocated as a system resource unless any portion of those costs exceed the cost PacifiCorp would have otherwise incurred acquiring comparable resources. In that event, the Revised Protocol assigns those excess costs on a situs basis to the State of Utah. The rates, terms and conditions in this Agreement are in accordance with the rates, terms and conditions approved by the Commission in Docket No. 03-035-14 and Docket No. 12-035-100 for purchases from qualifying facilities. In addition, for the purposes of inter-jurisdictional cost allocation, PacifiCorp represents that the costs of this Agreement do not exceed the costs PacifiCorp would have otherwise incurred acquiring resources in the market that are defined as "Comparable Resources" in Appendix A to the Inter-Jurisdictional Cost Allocation Revised

Protocol. In the event that the Commission order approving this Agreement contains any condition that is materially adverse to either Party, the Party adversely impacted by the condition may terminate this Agreement by providing the other Party notice within ninety (90) days of the entry of the Commission's order.

2.2. Expiration Date. Except as otherwise provided herein, this Agreement shall terminate at 11:59:59 p.m. MPT on December 31, 2014.

### SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 Subject to Commission approval, the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

3.1.5 Subject to Commission approval, this Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2 Seller represents, covenants, and warrants to PacifiCorp that:

3.2.1 Seller is a Utah Limited Liability Company having a place of business within the State of Utah, in and about the town of Magna, Utah and located within the County of Salt Lake.

3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.

3.2.3 Seller's directors and officers/other management have taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 The Facility is and shall for the term of this Agreement continue to be a "qualifying facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PacifiCorp prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may, at Seller's sole expense, require Seller to provide PacifiCorp with a written legal opinion from an attorney in good standing in the state of Utah stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

#### SECTION 4: DELIVERY OF POWER

4.1 Commencing at 00:00:01 a.m. MPT on January 1, 2013 ("Initial Delivery Date") and continuing through the term of this Agreement, Seller shall sell and PacifiCorp shall purchase the Delivered Energy from the Facility at the Point of Delivery as more particularly described in Section 4.2 hereto.

4.2 Commencing on the Initial Delivery Date, Seller shall have the option, but not the obligation, to provide and deliver Net Output to PacifiCorp at the Point of Delivery, on a non-firm basis, during all hours, HE0100 through HE2400 Mountain Prevailing Time ("MPT"), Monday through Sunday, from the Facility (the amount of energy that Seller actually delivers to PacifiCorp from the Facility, not to exceed 31.8MW, shall be referred to herein as the ("Delivered Energy")). Seller shall not deliver Delivered Energy at a rate exceeding the Nameplate Capacity Rating on an hour average basis. PacifiCorp shall take all Delivered Energy at the Point of Delivery.

4.3 Seller shall not make any sales of any portion of the Net Output to parties other than PacifiCorp through the term of this Agreement. However, Seller may elect to offset its

own power usage instead of selling to PacifiCorp under this Agreement, and the Net Output shall be reduced by the amount of energy and capacity self supplied.

4.4 Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Nameplate Capacity Rating through any means including, but not limited to, replacement of, modification of, or addition of existing equipment, except with the written consent of PacifiCorp, provided that, in the event that Seller desires to increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Nameplate Capacity Rating and PacifiCorp has failed, within ten (10) days of notice of such desire to PacifiCorp by Seller, to give its unqualified written consent thereto, then Seller may, notwithstanding any other provision of the Agreement, immediately terminate this Agreement whereupon Seller shall have no further obligation to PacifiCorp hereunder and shall have no liability to PacifiCorp for any costs or losses or liabilities related to the termination of this Agreement. To the extent not otherwise provided in the Generation Interconnection Agreement, all costs associated with the modifications to PacifiCorp's interconnection facilities or electric system occasioned by or related to the interconnection of the Facility with PacifiCorp's system, or any increase in generating capability of the Facility, or any increase of delivery of Nameplate Capacity Rating from the Facility, shall be borne by Seller.

#### SECTION 5: PURCHASE PRICES

PacifiCorp shall pay Seller for the Delivered Energy to be calculated as follows:

$$\text{Payment (\$)} = \text{Energy Price (\$/MWh)} \times \text{the Delivered Energy (MWh)} \times 1.0397$$

“Energy Price” is the price set forth in Exhibit E for the month in which the Delivered Energy was delivered.

The 1.0397 adjustment factor accounts for avoided line losses. This adjustment factor is based on a rate of 4.26% for real power losses for voltage of 46 kV or greater as set forth in Schedule 10 of PacifiCorp's Open Access Transmission Tariff (OATT) approved in the settlement of Federal Energy Regulatory Commission (FERC) Docket No. ER11-3643.

## SECTION 6: OPERATION AND CONTROL

6.1 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output or Delivered Energy from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement.

6.2 Seller may cease operation of the entire Facility or individual units, if applicable, for Scheduled Maintenance Periods not to exceed a total of sixty (60) days each Contract Year at such times as are provided in the monthly maintenance schedule set forth as Exhibit D.

6.3 If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PacifiCorp of the necessity of such unscheduled maintenance, the time when such shutdown has occurred or will occur and the anticipated duration of such shutdown. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during non-peak hours.

6.4 Delivered Energy shall be provided per Seller's schedule. Seller shall provide Buyer its estimated delivery pattern from the Seller's qualifying facility on the first business day of the month or as soon thereafter as practicable, for the following calendar month. Seller shall provide such schedules and schedule changes to PacifiCorp's scheduling personnel per Section 23 using the best information available, but it is understood that the delivery pattern is only an estimate and, therefore, shall not be binding on Seller.

6.5 Unit Availability. Seller offers no guarantee of unit availability; however, Seller agrees to notify PacifiCorp of unplanned unit outage and will use reasonable commercial efforts to keep the Facility operating at highest availability for providing Delivered Energy to PacifiCorp.

## SECTION 7: FUEL/MOTIVE FORCE

7.1 PacifiCorp shall have no obligation to procure or pay for any fuel that might be used in the operation of the Facility.

7.2 Seller shall maintain responsibility, for managing, accounting for, or reporting greenhouse gas emissions, if any, including but not limited to carbon dioxide emissions from the Facility (including from Net Output or Delivered Energy), and conversely, Seller shall not be responsible for managing, accounting for, or reporting greenhouse gas emissions including but not limited to carbon dioxide emissions from generation facilities associated with Seller's

purchase of power from PacifiCorp to replace Net Output or Delivered Energy from the Facility otherwise not available to Seller as a result of this Agreement.

7.3 Seller shall maintain the ownership of, or rights to, any and all Environmental Attributes, if any, resulting from energy generated by the Facility during the term of this Agreement.

#### SECTION 8: [RESERVED]

#### SECTION 9: METERING

9.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement.

9.2 Metering shall be performed at the location and in the manner specified in Exhibit B and the Generation Interconnection Agreement.

9.3 The metering equipment will be inspected, tested, repaired and replaced as provided in the Generation Interconnection Agreements. If any of the inspections or tests discloses Inaccurate Metering as defined in the Generation Interconnection Agreements, a correction will be made as provided in those agreements. Any correction in billings or payments resulting from a correction in the meter records shall be settled and netted in accordance with Section 10.

9.4 To the extent not otherwise provided in the Generation Interconnection Agreement, all PacifiCorp's costs relating to all metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

#### SECTION 10: BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Delivered Energy to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties or otherwise.

10.2 In the event that a portion of the bill or adjustment arising hereunder is disputed, payment of the portion not in dispute shall be made when due. Seller and PacifiCorp shall seek to make a determination on any disputed amount within sixty (60) days after issuance of Seller's notice of dispute. Nothing herein shall be construed to preclude a Party from resorting to any remedy available at law or in equity.

10.3 Any amounts from PacifiCorp to Seller owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

## SECTION 11: DEFAULT AND REMEDIES

11.1 The following events shall constitute defaults under this Agreement:

11.1.1 Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to breach of Section 4.3 and failure to make a payment when due or) or breach by a Party of a representation or warranty set forth in this Agreement, if such failure or breach is not cured within thirty (30) days following written notice;

11.1.2 Filing of a petition in bankruptcy by or against a Party if such petition is not withdrawn or dismissed within sixty (60) days after it is filed;

11.1.3 Seller's failure to cure any default under the Generation Interconnection Agreement within the time allowed for a cure under such agreement.

11.2 In the event of any default hereunder that is not cured in the manner provided for in the Agreement, the non-defaulting Party may terminate this agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement. The rights provided in this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

## SECTION 12: INDEMNIFICATION, LIABILITY AND INSURANCE

12.1 Indemnities.

12.1.1 Seller shall release, indemnify, protect, and hold harmless PacifiCorp, its directors, officers, agents, representatives, successors, and assigns from and against any and all loss, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with, the energy delivered by Seller hereunder to and at the Point of Delivery, and facilities on Seller's side of the Point of Delivery, or Seller's operation and/or maintenance of the Facility, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 PacifiCorp shall release, indemnify, protect, and hold harmless Seller, its directors, officers, agents, representatives, successors, and assigns from and against any and all loss, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with the energy delivered by Seller hereunder after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others,

excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents or representatives.

12.2 Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 Neither party shall be liable to the other party for special, punitive, indirect or consequential damages, whether arising from contract, tort (including negligence), strict liability, or otherwise.

12.4 Without limiting any liabilities or any other obligations of either Party, each Party shall comply with all applicable worker's compensation and employer's liability acts and shall furnish a certificate of insurance, in a form reasonably satisfactory to the other Party, prior to connection of the Facility to PacifiCorp's electric system.

12.5 Maintenance of Insurance Coverage. Without limiting any liabilities or any other obligations of Seller, each Party shall, prior to connection of the Facility to PacifiCorp's electric system, secure and continuously carry with insurers acceptable to PacifiCorp (which will not be unreasonably withheld), or self insure, the following insurance coverage:

12.5.1 Business Automobile Liability insurance with a minimum single limit of \$1,000,000 for bodily injury and property damage with respect to vehicles, if any, whether owned, hired or non-owned, assigned to or used in connection with this Agreement.

12.5.2 Employers' Liability insurance with a minimum limit of \$ 1,000,000.

12.5.3 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$ 1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement except as provided under Excess Umbrella Liability below.

12.5.4 Excess Umbrella Liability insurance with a single limit of at least \$10,000,000 per occurrence in excess of the limits of insurance provided above required to bring the sum of Commercial General Liability and Excess Umbrella Liability to \$11,000,000.

12.5.5 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming the other Party, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

12.5.6 All liability policies required by this Agreement shall include provisions that such insurance is primary insurance with respect to the interests of the other Party and that any other insurance maintained by the other Party is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to the other Party if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to the other Party if canceled for any other reason. A certificate in a form satisfactory to the other Party certifying to the issuance of such insurance, shall be furnished to the other Party. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. Insurance coverage provided on a "claims-made" basis shall be maintained by each Party for a minimum period of five (5) years after the completion of this Agreement.

12.5.7 Each Party, at its option, may self-insure for any or all of the coverage described above. In the event and to the extent a Party so elects, that Party shall advise the other Party in writing. For all such self-insurance maintained by a Party, that Party agrees to provide the other Party all the benefits that would otherwise be available and provided under an insurance policy in accordance with the requirements set forth above in this Section 12.5, including but not limited to defense of claims.

### SECTION 13: FORCE MAJEURE

13.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which is in each case (i) beyond the reasonable control of such Party, (ii) by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and (iii) by the exercise of due diligence, such Party shall be unable to prevent or overcome. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

13.1.1 the non-performing Party shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and,

13.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and,

13.1.3 the non-performing Party uses its reasonable commercial efforts to remedy its inability to perform.

13.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

13.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

13.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to a Force Majeure event, within six months after the occurrence of the event.

#### SECTION 14: REGULATORY TERMINATION

PacifiCorp may terminate this Agreement if Seller (i) suspends operations at the Facility for more than 30 days as the result of a regulatory or legal action by either the State of Utah or the United States Environmental Protection Agency which has become final without further appeal or (ii) loses its QF certification.

#### SECTION 15: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### SECTION 16: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Utah, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### SECTION 17: PARTIAL INVALIDITY

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

## SECTION 18: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

## SECTION 19: WAIVER OF JURY TRIAL

TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

## SECTION 20: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. PacifiCorp's compliance with the terms of this Agreement is conditioned on Seller's submission to PacifiCorp prior to the Commercial Operation Date and maintaining thereafter copies of all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility.

## SECTION 21: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

## SECTION 22: ENTIRE AGREEMENT

21.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Delivered Energy from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

## SECTION 23: NOTICES

22.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

**To PacifiCorp:**

**All Notices:**

Street: 825 NE Multnomah Street  
City: Portland, OR 97232  
Attn: Contract Administration, Suite 600  
Phone: (503) 813 - 5952  
Facsimile: (503) 813 - 6291  
Duns: 00-790-9013  
Federal Tax ID Number: 93-0246090

**Invoices:**

Attn: Back Office, Suite 700  
Phone: (503) 813 - 5578  
Facsimile: (503) 813 - 5580

**Scheduling:**

Attn: Resource Planning, Suite 600  
Phone: (503) 813 - 6090  
Facsimile: (503) 813 - 6265

**Payments:**

Attn: Wholesale Sales  
PO Box 5504  
Portland, OR 97228

**Wire Transfer:**

To be provided by PacifiCorp to  
Kennecott in separate letter

**Credit and Collections:**

Attn: Credit Manager, Suite 700  
Phone: (503) 813 - 5684  
Facsimile: (503) 813 - 6292

**With additional Notices of an Event of  
Default or Potential Event of Default  
to:**

(same street address, above)  
Attn: Dean S. Brockbank, Esq.  
Phone: (801) 220-4568  
Facsimile: (801) 220-3299

**To Kennecott:**

**All Notices:**

Street: 4700 Daybreak Parkway  
City: South Jordan, UT 84095  
Attn: Scott Farrell  
Phone: 801-569-6683  
Facsimile: 801-569-6688  
Duns:  
Federal Tax ID Number: 1331-08-078

**Invoices:**

Attn: Aaron Walkoviak  
Street: 4700 Daybreak Parkway  
City: South Jordan, Utah 84095  
Phone: 801-204-2406  
Facsimile: 801-569-6688

**Scheduling:**

Attn: Scott Farrell Phone: 801-569-6683  
Facsimile: 801-569-6688

**Payments**

Rio Tinto Accounts Payable  
4700 Daybreak Parkway  
South Jordan, UT 84095

**Wire Transfer:**

To be provided by Kennecott to PacifiCorp  
in separate letter

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PACIFICORP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

KENNECOTT UTAH COPPER L.L.C.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A DESCRIPTION OF SELLER'S FACILITY

Seller's Facility consists of a waste-heat fired steam cogeneration turbine-generator; the turbine manufactured Mitsubishi-Westinghouse and the generator manufactured by GEC- Alstom. More specifically:

### **Steam System Process Description**

#### **System Overview**

During the smelting, converting and acid producing processes, large quantities of heat are liberated by the chemical reactions that are taking place. To maintain the integrity of the equipment, this heat is dissipated in the production of steam. The smelter steam system consists of units to generate steam, superheat the steam, transport the steam to the point of use, and extract energy from the steam. Steam is generated and used at two different pressure ranges. Steam in the pressure range of 820 to 870 psig is referred to as high pressure (HP) steam and steam in the 100 to 145 psig range is referred to as low pressure (LP) steam.

#### **High-Pressure Steam System**

The process begins with the flash smelting and flash converting furnaces. These furnaces release hot process gases that must be cooled prior to entering electrostatic precipitators (ESPs) and the acid plant gas cleaning process. Each furnace has a waste heat boiler to recover heat from the process gases as steam. The smelting furnace boiler is roughly twice the size and capacity of the converting furnace boiler. The waste heat boilers generate high-pressure, saturated steam. To utilize this steam to power rotating equipment, the steam quality must be upgraded by raising its temperature (superheating). The steam is heated (from about 525°F to 755°F) in a pressure vessel called a direct-fired superheater. The piping used to transport the steam from the superheater to the point of use is called the high-pressure header.

The primary use of high pressure, superheated steam is to power two steam turbine driven compressors in the acid plant. Excess steam from the HP header is normally "let down" (pressure reduced) to the LP header. It also can be let down, desuperheated, and the steam condensed to recover the water in the dump condenser. After the energy in the HP steam has been extracted in driving the acid plant compressors, the exhaust steam is then directed to the LP header.

There are two natural gas direct-fired boilers (designated Auxiliary and Holman) to provide high-pressure, superheated steam to the HP steam header. This steam is used both for startup and for the supply of supplemental steam when required. The steam from the direct-fired boilers is routed into a boiler header that feeds the HP steam header. At low operating rates, steam is taken from the boiler header, desuperheated (cooled back down to saturation temperature), and piped to the inlets of the direct-fired superheater and acid plant superheater to provide them with the minimum design steam flow for operation.

## **High-Pressure Steam Equipment Description**

### Flash Furnace Waste Heat Boilers

The primary purpose of the flash furnace waste heat boilers is to cool the furnace off-gas and collect the about one third of the dust generated from the process before the gas enters ESPs and acid plant gas cleaning equipment. These boilers consist of radiation and convection sections. In these sections, water is circulated through the tubes from the steam drum by a pump. This is called forced circulation. The boilers are designed to operate at 870 psig. The high pressure is required to assure that the outside tube wall temperature is maintained above the acid dew point of the process gas. The waste heat boilers do not have a superheating section; therefore they export saturated steam.

The amount of steam produced by the waste heat boilers varies as the operating material feed rates to the furnaces varies (non-linearly). Under typical operating conditions the smelting process produces about 90,000 pounds per hour (pph) of high-pressure saturated steam and the converting process produces about 45,000 pph of similar steam.

### Powerhouse Direct-Fired Superheater

The purpose of the natural gas direct-fired superheater is to superheat the saturated steam produced by the furnace waste heat boilers so that it can be used to power the acid plant compressor turbines. Steam passes through tubes that line the walls of the combustion chamber and tubes in the combustion gas stream where the steam is heated from a saturation temperature of about 525°F to about 755°F. Feed water for the waste heat boilers is heated in an economizer section of the superheater.

In order to avoid overheating the superheater tubes, a minimum flow of 45,000 pph of saturated steam is required before lighting the burners. At times, the steam produced by the waste heat boilers is less than 45,000 pph. To make sure that there is sufficient steam for the superheater, steam from the direct-fired boilers is desuperheated and routed back to the superheater steam-side inlet.

### Direct-Fired Boilers

The purpose of the two direct-fired boilers (designated “auxiliary” and “Holman”) is to supply steam to start up the steam system and acid plant and to provide supplemental steam when the amount produced by the waste heat boilers is insufficient. The auxiliary boiler is an 80,000 pph boiler (typically operating at 36,000 pph) designed to produce 855 psig steam, superheated to 755°F. The Holman boiler is a 135,000 pph boiler (typically operating at 55,000 pph) and designed to produce similarly specified steam. Boiler feed water is preheated in economizer sections in both units by utilizing heat from the boiler exhaust gases. The boilers are fired with natural gas or propane.

### Acid Plant Turbine Compressors

The turbines for the acid plant compressors produce about 5,000 horsepower each when supplied with about 200,000 pph steam at 820 psig and 750°F produced by the waste heat and direct-fired boilers. The turbines are of the non-condensing type and exhaust low-pressure (100 - 140 psig) superheated steam to the low-pressure header.

### **Low-Pressure Steam System**

The second major part of the process is the generation of steam in the acid plant. The acid plant heat recovery system (HRS) consists of two HRS boilers that generate low-pressure, saturated steam by recovering heat from the production of sulfuric acid. One waste heat boiler generates LP saturated steam by recovering heat from the process gas, and a superheater recovers heat from the process gas and superheats the steam produced by the three boilers.

The piping from the acid plant to the powerhouse is referred to as the low-pressure header. Approximately half of the LP steam from the acid plant is generated and superheated in the acid plant. The other half consist of LP superheated steam exhausted by the compressor turbines. The LP steam is routed to the steam turbine-generator (STG) to produce electricity. The exhaust from this turbine is condensed in the main condenser to recover condensate.

Excess steam from the HP header is letdown to the LP header. When the supply of LP steam is greater than the turbine-generator can use or if the STG is off line, steam from the LP header is let-down, desuperheated and routed to the dump condenser to recover condensate.

### **Low-Pressure Steam Equipment Description**

#### **Acid Plant HRS Boilers**

The purpose of the two HRS boilers is to remove heat from the hot acid in the heat recovery towers. These boilers are designed to produce 140 psig steam which dictates the operating temperature. These boilers are a “kettle” type boiler where hot acid is circulated in tubes submerged in water. Under typical operating conditions, these boilers combined produce about 160,000 pph of LP steam.

#### **Acid Plant Waste Heat Boiler**

The purpose of the acid plant waste heat boiler is to remove heat from the process gas prior to entering the heat recovery towers. The boiler is designed to operate at 145 psig. This boiler is a “fire tube” boiler with hot process gases in the tubes surrounded by boiler water on the shell side of the boiler. Under typical operation, about 45,000 pph of LP steam is produced from the acid plant waste heat boiler.

## Acid Plant Superheater

The primary purpose of the acid plant superheater is to remove excess heat generated in the first catalyst pass of the acid plant by the chemical reaction of converting sulfur dioxide to sulfur trioxide. This removal of heat, and in fact the overall control of temperature, is critical in order to protect the integrity of the catalyst and structural steel within the converter tower. The secondary purpose is to superheat the steam produced by the HRS and waste heat boilers.

## Steam Turbine Generator (STG)

The purpose of the steam turbine generator is to recover energy from the waste steam in the form of electricity. The STG is designed to produce up to 31.5 megawatts of power from waste steam when delivered steam at 98 psig and 630°F. Steam from the STG is exhausted to vacuum and condensed to recover the water for reuse. Under typical operation of the smelting and converting furnaces and the heat recovery system in the acid plant, a combined 410,000 pph of LP steam enters the STG and produces about 27 MW of power. The overall average for a month is about 18.5 MW when considering the operating availability and utilization of the two furnaces.

The maximum output that the generator has achieved is the Nameplate Capacity Rating of 31.8 MW

Station service requirements are described as follows:

l/o vapor extraction fan 580FA918M - 2 HP - each leg 1.5 amps

STG prime oil pump 580PP908AM - 100 HP - each leg 55.0 amps

STG auxiliary oil pump 580PP908BM - 100 HP - not running

Main condensate pump 580PP917M - 100 HP - each leg 80.0 amps

Main condensate pump 580PP916M - 100 HP - not running

Other equipment measurement not taken:

STG turning gear 580TG916M - 7.5 HP  
(only runs when STG off)

STG oil reservoir heater 580HE908 - 8kW

STG space heater 580HE909 - 7kW  
(intermittent use)

Location of the Facility: The Facility is operating at the Kennecott Garfield Smelter in the vicinity of Magna in Salt Lake County, Utah.

**EXHIBIT B**  
**POINT OF DELIVERY / PARTIES' INTERCONNECTION FACILITIES**

Point of Delivery is generally described in the Generation Interconnection Agreement dated February 16, 2004 as the "Point of Interconnection", including a one line drawing and description of Generating Station, Generation Interconnection Facilities, and PacifiCorp Interconnection Facilities. Specific facilities are:

(i) **Generating Station:** Seller's 31.8 MW steam turbine generation station including electric generators, step-up transformers and appurtenant facilities, located at Kennecott's Smelter in Magna, Utah.

(ii) **Generation Interconnection Facilities:** Seller's existing electrical facilities interconnecting the Generating Station with PacifiCorp's 138 kV transmission line from PacifiCorp's Terminal Substation and facilities provided and installed by Seller pursuant to the Generation Interconnection Agreement.

(iii) **PacifiCorp Interconnection Facilities:** PacifiCorp's existing 138 kV transmission facilities connecting the Seller's Interconnection Facilities with PacifiCorp's transmission system and communication and metering facilities installed pursuant to the Generation Interconnection Agreement.

EXHIBIT C  
REQUIRED FACILITY DOCUMENTS

INTERCONNECTION AND OPERATIONS AGREEMENT BETWEEN UTAH POWER AND LIGHT COMPANY AND KENNECOTT CORPORATION dated 21 October 1988

GENERATION INTERCONNECTION FACILITIES AGREEMENT between PACIFICORP and KENNECOTT UTAH COPPER CORPORATION dated February 16, 2004

FIRST AMENDMENT TO INTERCONNECTION OPERATION AND MAINTENANCE AGREEMENT between PACIFICORP and KENNECOTT UTAH COPPER CORPORATION dated July 28, 2004

PROOF OF COMPLIANCE WITH SECTION 12.5.7. (SELF-INSURANCE REQUIREMENTS).

PROOF OF QF SELF-CERTIFICATION

**EXHIBIT D**  
**MONTHLY MAINTENANCE SCHEDULES**

Scheduled Maintenance Periods during the Term are tentatively scheduled for:

- KUCC will incur dual furnace outages at regular intervals of six weeks. The outages on the furnace will preclude the STG from operating. Each of these outages represent zero power production and have a duration of approximately 10 hours, dependent on maintenance requirements and plant condition.

These schedules are tentative and may be adjusted by Seller with thirty (30) day written notice to PacifiCorp.

**EXHIBIT E**  
**PRICING (\$/MWh)**

“HLH” means the following:

October through April inclusive  
7:00 a.m. to 11:00 p.m., Monday thru Friday, except holidays.  
May through September inclusive  
1:00 p.m. to 9:00 p.m., Monday thru Friday, except holidays.

Holidays include only New Year's Day, President's Day, Memorial Day, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday or Sunday, the Friday before the holiday (if the holiday falls on a Saturday) or the Monday following the holiday (if the holiday falls on a Sunday) will be considered a holiday and consequently Off-Peak.

“LLH” means those hours that are not HLH hours.

<b>Month in 2014</b>	<b>HLH</b>	<b>LLH</b>
January	\$35.70	\$30.36
February	\$35.70	\$30.36
March	\$35.70	\$30.36
April	\$35.70	\$30.36
May	\$46.38	\$30.36
June	\$46.38	\$30.36
July	\$46.38	\$30.36
August	\$46.38	\$30.36
September	\$46.38	\$30.36
October	\$35.70	\$30.36
November	\$35.70	\$30.36
December	\$35.70	\$30.36