

0039

Document Information Form

Mine Number: C/007/035

File Name: Incoming

To: DOGM

From:

Person N/A

Company N/A

Date Sent: October 12, 1993

Explanation:

Agreement

cc:

File in: C/007, 035, Incoming

Refer to:

- Confidential
- Shelf
- Expandable

Date _____ For additional information

RECEIVED

OCT 12 1993

AGREEMENT

DIVISION OF OIL, GAS & MINING

This AGREEMENT ("Agreement") is entered into this 30th day of September, 1993 by and between the Sunnyside Coal Company ("SCC") and Sunnyside Cogeneration Associates ("SCA"). SCC and SCA are sometimes referred to collectively as "Parties" and individually as "Party".

WHEREAS, the Parties are industrial entities doing business in the Sunnyside and East Carbon area of Carbon County, Utah; and

WHEREAS, each Party needs water for its industrial activities and the sources of water in the area are limited; and

WHEREAS, SCC has acquired an underground water right, WRNUM #91-231 (the "Water Right"), which covers the water encountered within the mines owned and operated by SCC. This water is used by SCC in its coal mining operation for dust control, production related uses and other additional uses; and

WHEREAS, SCA desires to purchase the Water Right from SCC; and

WHEREAS, the Parties desire to resolve their differences regarding a variety of issues;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. WATER RIGHT

The source of water for the Water Right comes from SCC's mines (such water is hereinafter defined as the "Water") and is currently being pumped through the #1 and #3 mines. The Water is only currently available at the surface when pumped from the various mines, using SCC's existing mine dewatering system (the "Mine Dewatering System"). SCC has pledged the Water Right to the State of Utah Division of Oil, Gas and Mining ("DOGMA") to secure SCC's reclamation obligation on its mining properties. The term "SCC Water System" shall be defined to collectively include the Mine Dewatering System, the East Carbon City Pipeline System and SCC's Auxiliary Water Distribution System, or pipelines as such terms are defined or set forth herein.

File in:
 Confidential
 Shelf
 Expandable
Refer to Record No. 0039 Date 10-12-93
In C/ 007, 035, Incoming
For additional information

II. PURCHASE

Subject to the terms and conditions contained herein, SCC agrees to sell and SCA agrees to purchase all of SCC's right, title and interest in the Water Right. SCA shall pay the \$600,000 purchase price for the Water and Water Right to the Escrow Agent (hereinafter defined). The purchase price shall be released by the Escrow Agent to SCC upon satisfaction of all of the covenants and conditions set forth in the Escrow Agreement attached hereto and incorporated by reference herein as Exhibit "A". SCC shall execute and deliver to the Escrow Agent a valid Quitclaim Deed conveying to SCA all of SCC's right, title and interest in the Water Right. SCC shall obtain a Deed of Reconveyance from DOGM with respect to DOGM's security interest in the Water Right, all in a form and substance satisfactory to SCA, and shall deliver such Deed of Reconveyance to the Escrow Agent.

III. USE OF WATER

While SCC continues Operations ("Operations" shall be defined as mining, reclamation, and wash plant activities) at the Sunnyside Mine, SCC shall continue to utilize the SCC Water System and the Mine Dewatering System in order to pump and to deliver the Water currently to Grassy Trail Creek, until the SCA System is complete, and thereafter to the Twin Tanks. SCA shall have the right to use all of the Water, after SCC's normal usage, free of charge by connecting to the SCC Water System including the Mine Dewatering System at the Twin Tanks facility near SCC's wash plant.

During the time that SCC continues Operations at the Sunnyside Mine, SCA's use of the Water shall be subject to SCC's current use of water for its Operations, but SCA use shall not be limited by water associated with the 1991 water agreement between SCC and Sunnyside City. SCC shall notify Sunnyside City that the 1991 agreement is being terminated pursuant to its terms.

After SCC ceases Operations at the Sunnyside Mine, SCA shall have the exclusive right to utilize all of the Water.

IV. COVENANTS AND AGREEMENTS

A. SCA shall:

1. Design and construct, at its own cost and expense, a water distribution system (the "SCA System") that will connect to the SCC Water System at the Twin Tanks within

12 months after receiving all material governmental approvals, permits, easements, and other rights of way necessary therefore, and use best efforts to obtain said approvals, permits, etc.

2. Have the right to take the Water free of charge from the SCC Water System while SCC continues Operations at the Sunnyside Mine.

3. Have the right to own, operate, maintain, replace or improve, or if necessary, construct any additional water distribution system, including wells, necessary to develop the Water Right or otherwise to improve or make more cost effective the access to and the delivery of the Water.

4. Have the right to make the Water available to other entities through SCA's System.

5. Carry and cause all persons working on the design, construction and operation of the SCA System to carry insurance in the types and amounts that are customary in accordance with prudent industry practice.

6. Indemnify, defend and hold SCC harmless from any loss, cost, liability or expense incurred by SCC solely arising with respect to the ownership, use, construction or operation of the SCA System.

7. Pay any taxes related to the ownership, use, construction or operation of the SCA System.

8. In the event of a default of SCC's obligation under Section IV B, SCA shall have the right (but not the obligation) to repair and/or operate the SCC Water System or any portion thereof. The Parties hereto agree that any costs reasonably attributable to a default of SCC of its obligations hereunder shall be payable by SCC to SCA upon written demand.

9. SCA shall use its best efforts to obtain approval from the State Engineer's Office that will allow SCA to utilize the Water in the SCA power plant facility.

B. SCC shall:

1. Provide all of SCC's rights to reasonable access, easements and related rights to SCA, its agents or assigns and reasonably assist SCA in obtaining any such rights from third parties, so that SCA can exercise its rights provided in Section IV A.3. above and connect the SCA System to the SCC Water System at or near the Twin Tanks.
2. Until the SCA System is completed, operate and maintain the SCC Water System in a manner that maximizes its delivery of the Water to the Grassy Trail Creek above SCA's diversion point 004.
3. Repair, replace, obtain rights to, or construct the SCC Water System in accordance with all applicable laws and regulations and good engineering practices, necessary to reliably deliver Water to the Twin Tanks, including but not limited to, utilizing the East Carbon City municipal pipeline from the area near SCC's UPDES discharge point 001 located next to Water Canyon to the area near SCC's discharge point 002 and 002A located next to Whitmore Canyon (hereinafter referred to as the "East Carbon City Pipeline System"), and thereafter to the Twin Tanks through a water line located in the Sunnyside Mine (hereinafter referred to as the "SCC Auxiliary Water Distribution System"). If SCC is unable to obtain the rights to utilize the East Carbon City Pipeline System, then SCC shall install a water system pursuant to the requirements set forth in this paragraph and said pipeline shall be part of the SCC Water System, which system shall be completed no later than the projected completion of the SCA System in accordance with Section IV A.1.
4. Maintain, in good working order at its own expense, and operate the SCC Water System in a manner so as to deliver the maximum amount of the Water to be delivered to the Twin Tanks until SCC stops mining coal at the Sunnyside Mine as provided by Section IV B.7.
5. Prior to ceasing Operations at the Sunnyside Mine, grant, convey, assign or transfer all of its right, title, and interest in the SCC Water System to SCA along with all title, rights of way, easements and authorizations necessary for SCA to own, operate,

maintain and develop the Water Right, including the continuation of those rights set forth in Section IV A.3.

6. Plan the mining efforts in Mine #1 so that a low sump is created that will reasonably drain all of the area in Mine #1 into one location that can be dewatered directly to the surface. SCC shall work with SCA to find a mutually acceptable design for the sump.

7. Continue to operate the SCC Water System for 30 days following written notification to SCA that SCC has stopped mining coal in the Sunnyside Mine. Provided that in the event of an emergency cessation of mining which is beyond the reasonable control of SCC, non-performance of this obligation shall not constitute a default herein. However, SCC shall use best efforts to remedy this situation if possible. If SCC is unable to remedy this situation, then SCA shall have the right, at its own cost and expense, to repair and/or operate the SCC Water System or any portion thereof.

8. Indemnify, defend and hold SCA harmless from any loss, cost, liability or expense incurred by SCA solely arising with respect to the ownership, use, construction or operation of the SCC Water System.

V. SETTLEMENT

A. OPERATING AGREEMENT

The Parties hereto agree that the 1987 Operating Agreement shall be replaced with the Operating Agreement dated June 3, 1993, signed by the Parties and delivered to the Escrow Agent pursuant to the terms and conditions of the Escrow Agreement. Any and all claims arising under the 1987 Operating Agreement whatsoever are hereby waived, settled and compromised and resolved.

B. WATER RIGHTS

SCC hereby agrees that it has no claim of ownership in SCA's water rights, WRNUM #91-361 and WRNUM #91-372.

C. DOGM

SCC shall adequately cover the third lift consistent with DOGM abatement requirements under NOV 93-40-5-9(1) and SCA shall hydroseed said lift.

VI. GENERAL CONTRACT TERMS

A. Regulatory Approval

This Agreement to purchase the Water Right shall be conditioned upon SCA receiving regulatory approval permitting the Water to be used for purposes set forth herein. SCC will use reasonable efforts to assist SCA in obtaining any and all regulatory permits and changes to consummate this Agreement, including the change application with the State Engineer.

B. Authority and Enforceability

The Parties hereby represent and warrant that the execution and delivery of this Agreement has been duly authorized by all necessary corporate action and will not conflict with, result in any violation of, or constitute a default under, any provision of any agreement or other instrument binding upon or applicable to the Parties or any present law or government regulation or court decree applicable to the Parties. The Parties warrant that this Agreement constitutes a legal, valid and binding obligation of the Parties, enforceable in accordance with its terms.

C. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

D. Entire Agreement

This Agreement contains the entire agreement between the Parties respecting the subject matter of this Agreement and supersedes all prior understandings and agreements, whether oral or in writing, between the Parties respecting the subject matter of this Agreement including those specifically included in Section V herein, and this Agreement may only be amended in writing signed by the Parties.

E. Severability

If any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

F. Responsibilities and Rights

SCC shall use reasonable efforts to enforce, preserve and maintain all rights necessary to provide Water contemplated herein to SCA. However, SCC shall not be required to continue Operations at the Sunnyside Mine to meet the terms and conditions of this Agreement. This Agreement shall not impair the rights of SCC or SCA pursuant to the Deed, Assignment and Bill of Sale dated December 28, 1987.

G. Default

If either Party defaults in its obligations pursuant to this Agreement, the non-defaulting Party shall notify the defaulting Party of the default as set forth herein in Section VI H. The defaulting Party shall have a reasonable opportunity to cure the default before the non-defaulting Party exercises rights or remedies as set forth herein, but in any event such cure period shall not exceed 30 days unless extended by the Parties in writing. The Parties or Party shall use best efforts to remove or remedy said event or condition to enable performance pursuant to this Agreement.

H. Notice

All written notices under the Agreement shall be directed as follows, and shall be considered delivered when deposited in the U.S. Mail, return receipt requested, provided the notices are actually received, or when hand delivered:

Sunnyside Coal Company
Operations Office
Highway 123
P.O. Box 99
Sunnyside, Utah 84539
Telephone: (801) 888-4421
Telecopy: (801) 888-2581

Sunnyside Coal Company
Corporate Offices
The Registry
1113 Spruce Street
Boulder, CO 80302
Telephone: (303) 938-1506
Telecopy: (303) 938-5005

Denise A. Dragoo
Fabian & Clendenin
215 South State, Suite 1200
Salt Lake City, Utah 84111
Telephone: (801) 531-8900
Telecopy: (801) 596-2814

Sunnyside Cogeneration Associates
P.O. Box 58087
Salt Lake City, UT 84158-0087
Attn: Project Manager
Telephone: (617) 720-5550
Telecopy: (617) 720-4546

Sunnyside Cogeneration Associates
c/o Environmental Power Corporation
200 State Street, 13th Floor
Boston, MA 02109
Attn: President
Telephone: (617) 720-5550
Telecopy: (617) 720-4546

Fred W. Finlinson, Esq.
Callister, Duncan & Nebeker
10 East South Temple
800 Kennecott Building
Salt Lake City, Utah 84133
Telephone: (801) 530-7300
Telecopy: (801) 364-9127

Edward B. Koehler, Esq.
Hunton & Williams
200 Park Avenue, 43rd Floor
New York, NY 10166
Telephone: (212) 309-1000
Telecopy: (212) 309-1100

I. ESCROW

The Parties agree that all documents including the Operating Agreement and funds mentioned herein shall be placed with Zions First National Bank ("Escrow Agent") within 45 days of this Agreement to be held until all documents have been executed, title in WRNUM #91-231 has been verified, and regulatory approvals have been obtained, all as set forth in the Escrow Agreement attached in Exhibit A.

In the event SCA fails to deposit \$600,000 with the Escrow Agent, or fails to deposit the Operating Agreement with the Escrow Agent, SCC shall have the right to terminate this Agreement by giving written notice to SCA and the Escrow Agent as set forth herein.

In the event SCC does not execute and deliver a Quit Claim Deed to the Escrow Agent, or the State Engineer does not allow SCA to utilize substantially all of the Water in its facility, or final regulatory approval for said usage is not obtained by September 30, 1994, or DOGM fails to execute and deliver to the Escrow Agent a Deed of Reconveyance, or SCA determines that SCC does not own the Water Right, then SCA shall have the right to terminate this Agreement by giving written notice to SCC and the Escrow Agent as set forth herein.

In the event that the conditions of this Agreement have not been met on September 30, 1994, SCC agrees to extend this Agreement up to the earlier of (1) a two year period, or (2) final regulatory approval and SCA and SCC shall continue to use their best efforts to satisfy the conditions of this Agreement. SCC shall have the right to terminate this Agreement on September 30, 1996.

Upon receipt of such notice, the Escrow Agent shall return all funds and documents to the respective parties who sent said funds or documents. Termination of this Escrow provision shall not constitute a breach of this

Agreement and the Parties shall bear their own costs associated therewith.

J. Successors and Assigns

It is understood and agreed hereto that all the terms and conditions herein contained shall extend to, inure to the benefit of, and bind the Parties hereto and their respective successors and assigns.

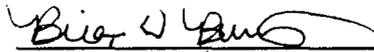
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and date first written above.

SUNNYSIDE COAL COMPANY

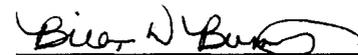
By: 
Its: PRESIDENT

SUNNYSIDE COGENERATION ASSOCIATES

KAISER SYSTEMS, INC.

By: 
Its: Legal Counsel

KAISER POWER OF SUNNYSIDE, INC.

By: 
Its: Legal Counsel

STATE OF COLORADO)
)
COUNTY OF BOULDER) ss.

The foregoing instrument was acknowledged before me this 30th day of September, 1993, by ROBERT M. BURHAM, of Sunnyside Coal Company, a Colorado corporation.

Paul A. Morris
NOTARY PUBLIC

My Commission Expires:
8-23-97

Residing At: 1113 Spruce St.
Boulder, CO 80302

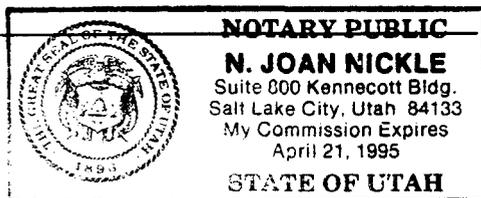
STATE OF UTAH)
)
COUNTY OF Salt Lake) ss.

The foregoing instrument was acknowledged before me this 30th day of September, 1993, by Brian W. Burnelt, Utah Counsel, of Kaiser Systems, Inc.

N. Joan Nickle
NOTARY PUBLIC

My Commission Expires:

Residing At:
Salt Lake City

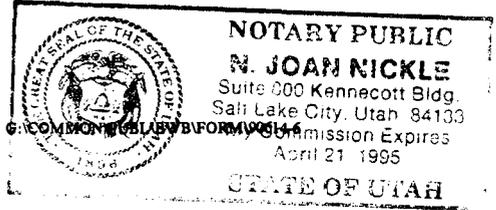


STATE OF Utah)
COUNTY OF Salt Lake) ss.

The foregoing instrument was acknowledged before me this 30th day of September, 1993, by Brian W. Burnett, Utah Coensed of Kaiser Power of Sunnyside, Inc.

N. Joan Nickle
NOTARY PUBLIC

My Commission Expires: _____ Residing At: Salt Lake City



September 30, 1993

ZIONS FIRST NATIONAL BANK
Trust Department
One South Main Street
Salt Lake City, Utah 84111

Re: Escrow Agreement - Agreement between Sunnyside Coal Company ("SCC") and Sunnyside Cogeneration Associates ("SCA") (referred to herein as the "Escrow Agreement")

Gentlemen:

Subject to the terms and conditions of that certain Agreement dated on or about September 30th, 1993 (the "Agreement"), entered into between SCC and SCA, SCC agrees to sell and SCA agrees to purchase all of SCC's right, title and interest in Water Right #91-231 (the "Water Right") and to settle various issues between the parties.

In connection with the closing, it is desired that Zions First National Bank ("Zions") act as escrow agent in connection with the purchase of the Water Right and the issues of the Agreement. This letter is intended to provide you with the necessary instructions from SCA and SCC in that regard. The papers, money or property described herein are hereinafter referred to as the "Escrow Property".

I. CONDITIONS FOR DISBURSEMENT OF FUNDS AND RELEASE OF OPERATING AGREEMENT

SCA shall deposit SIX HUNDRED THOUSAND DOLLARS (\$600,000.00) for the purchase of the Water Right (the "Purchase Price") within 45 days of the date of this Escrow Agreement. The Purchase Price shall be deposited in an interest bearing account ("Escrow Account") in the name of SCA. All interest earned from the Escrow Account shall be disbursed to SCA. The Purchase Price shall be distributed to SCC at such time SCA notifies Zions in writing that all of the conditions listed below have been met. Also at such time, the Operating Agreement shall be released to SCC, SCA, and DOGM.

The conditions which must be met before the disbursement of the Purchase Price and release of the Operating Agreement are as follows:

1. Regulatory approval is obtained from the Utah State Engineer's Office permitting the Water Right to be used for

purposes set forth in the Agreement. SCA agrees to use its best efforts to obtain such approval from the Engineer's Office, and SCC shall cooperate to assist SCA in receiving such approval;

2. SCC shall prepare, execute and deliver to Zions a Quit Claim Deed conveying the Water Right to SCA within 45 days of the date of this Escrow Agreement;

3. SCC shall obtain from the State of Utah Division of Oil, Gas and Mining ("DOGM") a Deed of Reconveyance, in which DOGM releases all of its liens and interests in the Water Right within 45 days of the date of this Escrow Agreement;

4. SCA shall approve of the status of title to the Water Right as evidenced by a title search and verification of SCC's Water Right ownership of record title, free and clear of material encumbrances ("Title Status"). SCA will bear the costs of the title search;

5. SCA shall deliver to Zions within 45 days of the date of this Escrow Agreement the executed original of that certain Operating Agreement dated June 3, 1993. SCA and SCC agree that they shall abide by the terms of the 1993 Operating Agreement during the Escrow period set forth herein as if such Operating Agreement had been delivered on the date thereof. However, if this Escrow does not close and the funds and documents do not transfer as contemplated herein, then the parties agree that the 1993 Operating Agreement and the Agreement shall not be in force or effect.

6. SCA and SCC shall notify DOGM by 3:00 p.m. on the date of this Escrow Agreement that the Operating Agreement dated June 3, 1993 between SCA and SCC is in effect subject to the terms of this Escrow Agreement.

II. TERMINATION OF ESCROW WITHOUT DISBURSEMENT OF FUNDS

In the event that (1) the Utah State Engineer's office affirmatively refuses to allow SCA to utilize substantially all of the Water in its facility; or if final regulatory approval for said usage is not obtained on or before September 30, 1994; or (2) if SCC has not executed and delivered to Zions a Quit Claim Deed conveying the Water Right to SCA; or (3) if DOGM has failed to execute and deliver to Zions a Deed of Reconveyance ; or (4) if SCA has not approved the Title Status, SCA shall have the option to terminate this Escrow by written notice to Zions and SCC and Zions shall return the funds and documents to the respective parties who delivered them to Zions. The Operating Agreement shall be returned to SCA.

In the event that (1) SCA fails to deposit \$600,000 with Zions, or (2) SCA fails to deposit the Operating Agreement with Zions as provided herein, SCC shall have the right to terminate

this Escrow Agreement by giving written notice to SCA and Zions and Zions shall return the funds and documents as set forth above.

In the event that the conditions of this Escrow Agreement have not been met on September 30, 1994, SCC agrees to extend this Escrow Agreement for up to the earlier of (1) a two year period or (2) final regulatory approval, and SCA and SCC shall continue to use their best efforts to satisfy the conditions of this Escrow Agreement. SCC shall have the right to terminate this Escrow Agreement on September 30, 1996.

III. INSTRUCTIONS.

1. **Zions only a depository.** Zions acts hereunder as a depository only and is not responsible or liable for the sufficiency, correctness, genuineness or validity or any instrument deposited hereunder or with respect to the form or execution of the same or the identity, authority or rights of any person executing or depositing the same.

2. **Notice of default.** Zions shall not be required to take or be bound by notice of any default by the undersigned or to take any action with respect to such default involving any expense or liability unless notice in writing of such default is given to an officer of Zions by the undersigned or any of them, and unless Zions is indemnified in a manner satisfactory to it against any such expense or liability.

3. **Reliance upon Depositor.** Zions shall be protected in acting upon any notice, request, waiver, consent, receipt or other paper or document received from the undersigned and believed by Zions to be genuine.

4. **Limitation of liability.** Zions shall not be liable for any error of judgment or any act done or step taken or omitted by it in good faith or for any mistake of fact or law or for anything which Zions may do or refrain from doing in connection herewith, except for its own willful misconduct.

5. **Adverse claims.** In the event of an adverse claim or demand affecting the Escrow Property, Zions may refuse to comply with such claim or demand and may refuse to deliver or dispose of the Escrow Property until the rights of the adverse claimants have been finally adjudicated in a court of competent jurisdiction or until all differences shall have been adjusted by agreement and Zions shall have been notified thereof in writing signed by all interested persons.

6. **Authority for agreement.** Each party corporate represents and warrants that it has full corporate power and authority to enter into this Escrow Agreement and has taken all corporate action necessary to carry out the transaction contemplated hereby so that when executed this Agreement constitutes a valid and binding obligation enforceable in accordance with its terms.

7. **Compensation.** The fees for the services of Zions under the terms of this Agreement are set forth below. Zions shall have a first lien on the property and papers held by it hereunder for its compensation and any costs or expense incurred.

a. In the event the fees due Zions remain unpaid for a period of one year, Zions shall have the right and is hereby authorized in its sole and absolute discretion to discontinue the escrow, terminate all ties hereunder, close all accounting or other records, obtain payment of its compensation, costs, liability or expense and destroy all documents, records and files or retain such items in a dormant account status subject to the escheat laws of the State of Utah.

b. Zions' fees shall be paid from the interest earned on the funds held in escrow.

c. The fees of Zions shall be;

- Set-up & Acceptance* (D)
1. ~~Minimum~~ fee \$500.
 2. Annual fee \$300.
 3. Additional reasonable compensation for such other and further duties as may be required of Zions in the performance of this Agreement.

d. In addition to the escrow fee paid or agreed upon, the parties agree to pay the Zions' costs and expenses, including a reasonable attorney fees, in the event of any dispute or litigation threatened or commenced which requires Zions to refer such matter to its attorneys.

8. **Integration.** This instrument is the entire agreement of the parties hereto.

If the instructions described in this letter meet with your approval, please so indicate by dating and executing the attached copy of this letter in the indicated place and returning the same, as so executed, to the undersigned. Please accept our thanks for

your cooperation and assistance. Please advise us in the event there are any questions concerning the foregoing.

Very truly yours,

SUNNYSIDE COGENERATION ASSOCIATES

P.O. Box 58087
Salt Lake City, UT 84158-0087
Attn: Project Manager
and

c/o Environmental Power Corporation
200 State Street, 13th Floor
Boston, MA 02109
Attn: President

By

Its:

Brian W. Burns
Utah Council

SUNNYSIDE COAL COMPANY

Operations Office
Highway 123
P.O. Box 99
Sunnyside, Utah 84539

and

Corporate Offices
The Registry
1113 Spruce Street
Boulder, CO 80302

By

Its:

Albert B. B.
PRESIDENT

The undersigned acknowledges receipt of the within escrow instructions and agrees to proceed in strict accordance therewith.

DATED this 30th day of September, 1993.

ZIONS FIRST NATIONAL BANK

By: 
Its: SECOND VICE PRESIDENT

TRDLTRX\92166-4

ZIONS BANK

Zions First National Bank

DAVID VAN WAGONER, CCTS
Second Vice President
Corporate Trust Administrator

One South Main P.O. Box 30880 Salt Lake City, Utah 84130
(801) 524-2132 FAX (801) 533-0464

A subsidiary of Zions Bancorporation

CALLISTER, DUNCAN
& NEBEKER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SUITE 800 KENNECOTT BUILDING

SALT LAKE CITY, UTAH 84133

TELEPHONE 801-530-7300

FAX 801-364-9127

October 8, 1993

LOUIS H. CALLISTER
ADAM M. DUNCAN
GARY R. HOWE
L. S. McCULLOUGH, JR.
FRED W. FINLINSON
DOROTHY C. PLESHE
JOHN A. BECKSTEADT
JEFFREY N. CLAYTON
JAMES R. HOLBROOK
CHARLES M. BENNETT
W. WALDAN LLOYD
JAMES R. BLACK
H. RUSSELL HETTINGER
JEFFREY L. SHIELDS
STEVEN E. TYLER
GARY B. HANSEN
RANDALL D. BENSON

R. WILLIS ORTON
GEORGE E. HARRIS, JR.
T. RICHARD DAVIS
DAMON E. COOMBS
PAUL R. INCE
BRIAN W. BURNETT
ANDRÉS DIAZ
LYNDA COOK
JOHN H. REES
MARK L. CALLISTER
P. BRYAN FISHBURN
JAN M. BERGESON
JOHN B. LINDSAY
DOUGLAS K. CUMMINGS
LUCY KNIGHT ANDRE
KATHRYN C. KNIGHT

1 ALSO MEMBER ARIZONA BAR
2 ALSO MEMBER FLORIDA BAR
3 ALSO MEMBER MISSOURI BAR
4 ALSO MEMBER CALIFORNIA BAR
5 MEMBER CALIFORNIA BAR ONLY

OF COUNSEL
WAYNE L. BLACK, P.C.
FRED L. FINLINSON
CRAIG F. McCULLOUGH
RICHARD H. NEBEKER
EARL P. STATEN

LOUIS H. CALLISTER, SR.
(1904-1983)
PARNELL BLACK
(1897-1951)

TO CALL WRITER DIRECT

530-7428

James W. Carter, Director
Division of Oil, Gas & Mining
State of Utah
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Re: Sunnyside Cogeneration Associates

Dear Jim:

Enclosed please find the following documents:

1. An Agreement entered into September 30, 1993 by and between Sunnyside Coal Company ("SCC") and Sunnyside Cogeneration Associates ("SCA"). This document essentially sets forth the terms and conditions for the sale and purchase of Water Right #91-231 and settles various issues.
2. An Escrow Agreement dated September 30, 1993 by and between SCC, SCA and Zions First National Bank ("Zions"). This document sets forth the procedure for transferring title for the water right as well as other issues.
3. An Operating Agreement dated June 3, 1993 by and between SCA and SCC. This Agreement, which deals with operation of the waste coal pile owned by SCA and Permit No. ACT/007/035, is subject to the terms and conditions of the Agreement and Escrow Agreement. The original of this Agreement will be provided to the trust department at Zions.
4. Information on the David Van Wagoner, the bank officer for Zions assigned to the handle this matter.

SCA and SCC have devoted significant resources to resolving their differences and have entered into the above-mentioned agreements as settlement of their differences. We look forward to working together to resolve any future issues which may arise regarding the SCA permit

RECEIVED

OCT 12 1993

DIVISION OF
OIL, GAS & MINING

Jwc
YPB
ACT
TAM
10/12/93
007/035
#2
orig: mine file

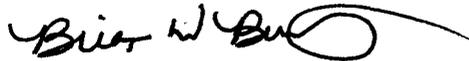
James W. Carter
October 8, 1993
Page 2

area. The parties need the Division of Oil, Gas & Mining's ("DOGM") cooperation and assistance to effectively handle the various permit and reclamation obligations as well as bond issues relating to the permit area. We are hopeful that this step will lead to a new era of cooperation between the parties and DOGM.

Thank you for taking some time on Wednesday to discuss the various SCA permit issues with us. We are hopeful that by working together we can resolve any problems related to our permit. If you have any questions, please feel free to contact me.

Sincerely yours,

CALLISTER, DUNCAN & NEBEKER



Brian W. Burnett

BWB/jb
cc: David Pearce
Bart Kraft
Mike Watson
Bob Burnham
Denise Dragoo
Gary Gray
Alane Boyd

RECEIVED

OCT 12 1993

OPERATING AGREEMENT

DIVISION OF OIL, GAS & MINING This Operating Agreement (this "Agreement") is made and entered into this 3rd day of June, 1993 between SUNNYSIDE COGENERATION ASSOCIATES, a Utah joint venture ("Owner" or "SCA") and SUNNYSIDE COAL COMPANY, a Colorado corporation ("Operator").

R E C I T A L S:

WHEREAS, Owner is engaged in planning, developing, constructing and operating a waste coal fired electric generating plant (the "Plant") near the Sunnyside mine and coal washing facilities ("Sunnyside Mine") in Carbon County, Utah, and Owner desires to utilize existing and future waste coal from the Sunnyside Mine for use as fuel for the Plant; and

WHEREAS, Operator is the owner and operator of Sunnyside Mine in Carbon County, Utah and desires to have future waste coal from the Sunnyside Mine utilized as fuel for the Plant; and

WHEREAS, Kaiser Coal Corporation ("Kaiser") by a Deed, Assignment and Bill of Sale dated as of December 28, 1987, (the "Deed") conveyed to Sunnyside Fuel Corporation ("SFC"), then affiliate of Owner, and SFC further conveyed and assigned to Owner the following:

1. The gob, coal tailings and slurry discharge associated with the Sunnyside Mine located or to be deposited on certain real property (the "Real Property") more particularly described in Exhibit "A";

2. The Real Property;

3. Ingress and egress across other real property associated with the Sunnyside Mine to Real Property for the purpose of transporting and removing Tailings as defined below ("Access"); and

4. Environmental permits associated with the Real Property including the State of Utah Coal Mining and Reclamation Permit now designated No. ACT/007/035 which relates to the Real Property. (Such permit and any modified reclamation permit which may be issued with respect to Owner's Real Property shall be referred to herein as the "Reclamation Permit"); and

WHEREAS Kaiser, as lessor, and Owner, as lessee, entered into a Land Lease Agreement dated as of March 30, 1987 and amended as of December 28, 1987 (the "Lease") to provide an area for use as a site for the Plant on properties described at Exhibit "B" (the "Plant Site") and to provide the right to use rights-of-way for power lines and other needs associated with the Plant, provided that such use is calculated to minimize interference with Operator's activities at the Sunnyside Mine; and

WHEREAS, Operator purchased the Plant Site from Kaiser subject to the Lease; and

WHEREAS, Operator, as owner of the Sunnyside Mine and successor in interest to Kaiser, has the benefit of all of the rights reserved to Kaiser under the Deed; and

WHEREAS, Owner and Operator desire to enter into this Operating Agreement to further evidence their respective rights and obligations with respect to the Real Property, the Plant Site and the Reclamation Permit.

NOW THEREFORE, in consideration of \$10.00, the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I: ENVIRONMENTAL RESPONSIBILITY

1.1 Environmental Responsibility.

(a) Subject to the terms of this Agreement, Owner shall be responsible for obtaining and maintaining in good standing all permits, licenses, reclamation bonds and any other governmental authority needed on the Real Property and the Plant Site to transport, deposit, stockpile, store, use, excavate and reclaim Tailings as defined below transported and deposited on the Real Property or the Plant Site.

(b) Owner shall be responsible and liable, except as provided for below, for any condition or situation that creates a violation of any permit, license, rule, regulation or statute, if that condition or situation occurs on the Real Property. SCA shall be responsible and liable for any condition or situation that creates a violation of any permit, license, rule, regulation or statute, or causes damage regarding the area as set forth in

the Operator's Utah Coal Mining and Reclamation Permit No. ACT/007/007, a description of which will be provided in Exhibit "C" as soon as available but in any event, not later than 18 months after the execution date of this Agreement (such area hereinafter being defined as the "Mine Area"), to the extent that condition or situation is caused or contributed to by SCA.

(c) Notwithstanding the foregoing, Operator shall be responsible and liable for any condition or situation that creates a violation of any permit, license, rule, regulation, or statute, if that condition or situation occurs on the Real Property or causes damage regarding the Real Property to the extent that condition or situation is caused or contributed to by the Operator or agents of the Operator. Operator shall be responsible for all outstanding DOGM violations given to Operator regarding the Real Property.

(d) Title to the Tailings as defined below shall transfer to the Owner at the boundary of the Real Property (it being agreed and understood that prior to such transfer the Operator shall have all of the responsibility, liability and duties with respect to such Tailings).

(e) Operator shall indemnify and hold harmless Owner, its employees, contractors, agents, successors, assigns, partners and representatives from and against any losses or liability including any claims, damages, necessary costs or expenses, including, without limitation, reasonable legal, consulting,

engineering and other expenses, or any fines or penalties arising out of or resulting from any hazardous waste, substance, pollutant or contaminate arising or occurring in, on, or at the Real Property due to or occasioned by the acts or omissions of the Operator, its agent, employees or contractors subsequent to the date of this Agreement; provided however, this provision shall not relate to Tailings, as defined below, from the Sunnyside Mine. This provision shall survive the termination of this Agreement and shall remain in full force and effect until amended or terminated in writing by the Owner and Operator.

1.2 Reclamation Permit. On February 4, 1993, Owner received a Reclamation Permit for the Real Property from the State of Utah Division of Oil, Gas and Mining ("DOGM") which allows for (a) excavation, transportation and use of Tailings, as defined below, deposited on the Real Property as fuel in the Plant, (b) delivery of Tailings, as defined below, directly from the Sunnyside Mine to the Plant Site for use as fuel in the Plant, (c) postponement of reclamation on those portions of the Real Property which are proposed to be excavated as fuel for the Plant, and (d) designation of additional areas on the Real Property for deposit of Tailings from the Sunnyside Mine. Owner shall forthwith amend the Reclamation Permit to provide that DOGM and the U.S. Office of Surface Mining shall furnish copies directly to Operator of all written communications from such agencies to Owner regarding the Reclamation Permit, including,

without limitation, notices of violation, cessation orders, modifications of the Reclamation Permit and notifications of new or modified requirements of law or regulation affecting the Reclamation Permit.

ARTICLE II: DEPOSIT OF TAILINGS; OPERATIONS

2.1 Deposit of Tailings; Obligations:

(a) Without limiting the generality of the reservation of rights contained in the Deed, Owner hereby agrees that Operator shall have the continuing right during the term of this Agreement, subject to and in compliance with the Reclamation Permit, UPDES Permit, State of Utah Division of Air Quality Approval Order ("Air Permit") and all other applicable permits, to transport and deposit on the Real Property, gob, coal tailings, and slurry discharge ("Tailings") and Rock, as defined in Section 2.5 below, which come from the Sunnyside Mine. Owner shall have the right to direct the placement of Tailings and Rock on the Real Property, which placement shall allow for reasonable access for Operator. Notwithstanding the rights set forth herein, Operator shall not deposit industrial waste, such as hazardous materials or substances (including but not limited to, asbestos, chemicals, pollutants, contaminants, or toxic substances), construction waste, petroleum products and byproducts, garbage, refuse, junk, mining machinery, lumber or other materials of a similar nature (collectively "Industrial

Waste") on the Real Property; provided, however, this provision shall not relate to Tailings from the Sunnyside Mine. The Operator hereby agrees that it shall at its sole cost and expense immediately remove any prohibited Industrial Waste transferred to the Real Property after the execution date of this Agreement by the Operator's acts or omissions. The Industrial Waste Disposal Area located on the Real Property, previously utilized by the Operator, shall not be utilized after execution of this Agreement.

(b) Operator agrees that it will transport and deposit all Tailings produced from or generated by the Sunnyside Mine to the extent the Sunnyside Mine produces or generates the same and to the extent Owner is authorized by the terms of the Reclamation Permit, UPDES Permit and applicable permits to receive the same; provided, that nothing in this Agreement shall impose any obligation on Operator to continue operations at the Sunnyside Mine or affect mining practices at the Sunnyside Mine or Operator's coal washing facilities. Decisions as to whether particular products or materials are waste to the Sunnyside Mine and, therefore, to be deposited on the Real Property (or the Plant Site) pursuant to the terms hereof, shall rest solely with Operator as owner of the Sunnyside Mine, subject to the Industrial Waste prohibition set forth above and applicable laws.

(c) If in the event it shall reasonably appear to Operator that the actions or inactions of Owner have created an imminent

threat that the Reclamation Permit will be cancelled or that Operator will otherwise be barred by the governmental agencies having jurisdiction from continuing to exercise its rights to deposit Tailings from the Sunnyside Mine on the Real Property, and Owner shall have received written notice from the governmental agency having jurisdiction and failed to take appropriate action to remedy any such condition or default set forth in such notification, then Operator, subject to the rights and interest of the Bondholders' Trustee and Utah Power and Light, an assumed business name of PacifiCorp, ("UP&L") shall have the right, but not the obligation, to assume full and complete custody and control of the Real Property including slurry ponds and all other sites and areas on the Real Property reasonably required by Operator for the disposal of Tailings from the Sunnyside Mine.

In such event Operator, subject to the rights and interest of the Bondholders' Trustee and UP&L, shall have the further right, but not the obligation, to take such actions as shall be necessary to remedy the conditions or defaults associated with the Real Property which caused the Reclamation Permit or Operator's rights to deposit Tailings on the Real Property to be so jeopardized.

Notwithstanding the foregoing, Operator shall have no right to remedy any condition or default if Owner is proceeding with due diligence to remedy any such condition or default set forth

in the proper notice which is the cause of such condition or default or if Owner is by proper proceedings appealing the action by DOGM or other governmental agency having jurisdiction over the Real Property.

2.2 Operations and Maintenance Plan. Owner, in conjunction with the operator of the Plant, shall prepare for review by Operator, at least 3 months prior to the beginning of each calendar year during the term of this Agreement, an operation and maintenance plan ("O&M Plan") for the Real Property for such succeeding calendar year, except for 1993. Owner shall update the O&M Plan on a quarterly basis. Owner shall make reasonable attempts to incorporate comments by Operator in the O&M Plan so as to accommodate Operator concerns. The O&M Plan shall set forth, in reasonable detail, Owner's plans for excavation of Tailings during such succeeding year. The O&M Plan shall also demonstrate that areas of sufficient size are permitted and available on the Real Property for Operator to deposit all Tailings produced and generated by the Sunnyside Mine during such ensuing calendar year regardless of whether Owner's excavation operations are conducted as planned or are suspended or curtailed due to Force Majeure or other causes. It is the intent of Owner and Operator, and the O&M Plan shall provide, that Owner and Operator shall plan, schedule and conduct their respective operations on the Real Property during the term of this Agreement in such manner that areas of sufficient size to allow Operator

during each calendar year to deposit at least twelve months worth of Tailings produced and generated by the Sunnyside Mine.

2.3 Notice.

(a) Owner shall provide Operator with the following written notifications:

(i) Owner shall provide Operator with at least ninety (90) days advance notice, or as soon as reasonably possible, of the proposed submission of any modification or amendment of the Reclamation Permit. Owner shall make reasonable attempts, but not be obligated, to incorporate Operator's concerns submitted in writing to the Owner. Owner shall conform such proposed amendment to the requirements of this Agreement.

(ii) Owner shall provide Operator with at least twelve (12) months written advance notice, or, if less than twelve (12) months, as soon as reasonably possible, of any planned temporary or permanent cessation of operations at the Plant and shall provide Operator with immediate telephonic or written notice of any unscheduled temporary or permanent cessation of operations at the Plant.

(iii) Owner shall provide Operator with notice of the receipt of any notice of violation or cessation order relating to the Reclamation Permit within twenty-four (24) hours, or as soon as reasonably possible, of the receipt of any such notice or order by Owner.

(iv) Owner shall provide Operator with immediate notice of any other notifications, regulatory changes or other matters affecting the Reclamation Permit, Owner's operations on the Real Property, or Owner's operation of Plant.

(v) Owner shall provide Operator with reasonable dumping and disposal instructions in writing for Tailings consistent with Owner's Reclamation Permit for each calendar month at least thirty (30) days in advance of the beginning of such month or as soon as reasonably possible. Operator shall have five (5) business days after receipt of instructions from Owner to approve or propose reasonable changes in writing. If Owner does not receive Operator's proposed changes in writing within five (5) business days, the instructions shall be deemed approved. Owner shall incorporate Operator's proposed changes unless the proposed changes are deemed by Owner to be unreasonable under the circumstances.

(b) Operator shall provide Owner with the following written notifications:

(i) Operator shall provide Owner with at least twelve (12) months advance written notice, or if less than twelve (12) months, as soon as reasonably possible, of any planned temporary or permanent cessation of operations at the Sunnyside Mine and shall provide Owner with immediate telephone or written notice of any unscheduled temporary or permanent cessation of operation at the Sunnyside Mine.

(ii) Operator shall provide Owner with notification and a copy thereof of any notice it may receive relating to the Reclamation Permit including notifications regarding regulatory changes or matters relating to the operations of the Sunnyside Mine or the use of the Real Property.

2.4 Coarse Refuse. Operator will deliver gob and coal tailings from the Sunnyside Mine wash plant generally characterized as larger than 28 mesh ("Coarse Refuse") to either the Plant Site or the Real Property, as directed by Owner. Without limiting Section 1.1, Owner shall be responsible for obtaining all permits, licenses and authority required on the Real Property and/or Plant Site for Operator to transport, deposit, stockpile and store coarse refuse on the Real Property and/or Plant Site. Operator shall cooperate with the Owner in obtaining and maintaining all such permits, licenses and authority. Owner shall level the Coarse Refuse so that Operator can continue to deliver Coarse Refuse to the Real Property. Operator agrees to drive over the Coarse Refuse in such a manner as to compact the Coarse Refuse which will prevent fires and allow additional Tailings to be placed on top of the lift in accordance with the Reclamation Permit, UPDES Permit, Air Permit, and other permits.

2.5 Rock. Owner will designate an area or areas for disposal on the Real Property for rock from the Bradford breaker at the Sunnyside Mine wash plant ("Rock") from development at the

Sunnyside Mine or expansions thereof or new mines developed on lands now owned or hereafter acquired by Operator which utilize the Sunnyside Mine facilities for the processing and shipment of Tailings and Rock, and Owner shall provide Operator with access to the designated area(s) for purposes of transporting and depositing Rock within such area(s). Operator shall make best reasonable efforts to deliver Rock which is substantially free from Industrial Waste.

2.6 Coal Slurry. Operator shall be responsible for delivery of refuse slurry which is comprised of water and fine waste coal generally characterized as smaller than 28 mesh ("Coal Slurry") from the Sunnyside Mine to the Real Property pursuant to the O&M Plan, Owner's instructions and in accordance with all permits, via the Operator's slurry ditch to the slurry ponds (cells) located on the Real Property. Owner shall be responsible for maintaining slurry ditches and for cleaning out and maintaining the slurry ponds on the Real Property in accordance with applicable laws, licenses, authorizations and permits. Operator will be responsible for maintaining slurry ditches and obtaining and maintaining all permits, licenses and authorization associated with the coal slurry until delivery to the slurry ditch on the Real Property. Owner shall be responsible for maintaining sufficient capacity in the slurry ponds for receipt of slurry from Operator's slurry ditch.

2.7 Site Security. The parties hereto agree that Owner shall not be responsible for the loss or damage to any property of Operator and/or its agents or subcontractors, if any, except if such loss or damage results from the willful or grossly negligent acts of Owner, its contractors or subcontractors, including Main, as defined in Section 6.1, Savage Industries Inc. ("Savage") or Tampella Services Inc. ("Tampella"). Consistent with the rights and obligations of each party hereto, Operator shall, at its sole cost and expense, furnish whatever security it finds necessary to adequately protect its property.

2.8 Roads and Access. It shall be the sole responsibility of Owner to construct and maintain such roads, ways and transportation facilities required for the transportation of the Tailings on the Real Property and/or to the Plant Site in accordance with applicable laws, licenses, authorizations and permits. Operator shall coordinate its activities with the Owner so as to promote efficiency of effort and to comply with the regulatory requirements imposed on the Real Property and the use, operation, and maintenance of the Plant. Owner shall be responsible for dust control, in compliance with the Air Permit, for roads and working areas on the Real Property.

2.9 Structures and Improvements. Notwithstanding the reservation of rights of Operator contained in the Deed, the construction of roads or conveyors on the Real Property by the Operator shall be subject to the reasonable approval of the Owner

or its designated agent; further, in no event shall Operator in its exercise of such rights, impair the transportation of persons and materials to, or the use, operation and maintenance of the Plant, or Owner's use of or access to the so-called Tonka Road. The Operator agrees that as part of its duties hereunder it shall notify Owner of any areas of, or structures located on, the Real Property which may need repair or alteration.

2.10 Sedimentation Ponds. Owner shall be responsible for maintaining the sedimentation ponds, basins, silt fences, ditches, culverts and related items on the Real Property.

2.11 Reclamation Soil Borrow Area. The Reclamation Soil Borrow Area, located on the Real Property, is owned by Owner and Owner shall utilize this material in the Owner's DOGM reclamation plans.

2.12 Revegetation Test Plot and Boundary Demarcation. Owner shall be responsible for the Revegetation Test Plot and for maintaining the boundary markers between the Real Property and the Sunnyside Mine permit area for the term of this Agreement. Owner shall provide Operator with copies of all reports or studies which are conducted on the Revegetation Test Plot.

2.13 Power Lines. Operator shall be responsible and liable for all costs associated with maintaining power lines in accordance with applicable laws that provide power to the Sunnyside Mine which touch or cross the Real Property.

ARTICLE III: TERM

3.1 Term. The Term of this Agreement shall be effective from the date hereof and shall continue for a period of thirty (30) years from the date hereof provided, however, that the parties may mutually agree in writing to extend this Agreement for subsequent five (5) year terms at any time after any date which is ninety (90) days prior to the expiration or termination of this Agreement.

ARTICLE IV: FORCE MAJEURE

4.1 Force Majeure. Neither party shall be liable to the other for any failure to perform such party's obligations hereunder to the extent and for the period that such failure is due to any cause beyond its reasonable control which cannot be remedied through exercise of due diligence or expenditure of reasonable sums of money (all of which causes are called "Force Majeure" herein), including but not limited to civil disturbances, war, fires, climatic conditions not reasonably foreseeable, acts of God, acts of public enemy, or acts or failures to act by any governmental entity; and with respect to SCA, if Utah Power & Light ("UP&L") (or its successors or assigns) shall not be required to purchase electrical power generated at the Plant as a result of an event of Force Majeure or otherwise under that certain Power Purchase Agreement between SCA and UP&L dated January 30, 1987, as amended. Without

limiting the foregoing, any such act, event or occurrence resulting from the negligence of such party shall not constitute a Force Majeure under this Agreement.

4.2 Obligations of Affected Party. The affected party shall (a) notify the other party promptly in writing of the occurrence of any Force Majeure which may hamper or impair the performance of such affected party, (b) give full information concerning such Force Majeure, (c) promptly exercise all due diligence and expend all reasonable sums of money to remove or lessen the effect of such Force Majeure, and (d) promptly notify the other party of the ending date of such Force Majeure. No suspensions or reduction due to Force Majeure shall invalidate the remainder of this Agreement; provided, however, on removal or remedy of the Force Majeure event in whole or in part, the parties shall resume their performance as provided for herein.

ARTICLE V: FEES AND TAXES

5. Fees and Taxes. Owner will pay all fees, taxes and royalties, if applicable, assessed and levied directly on the Real Property, including but not limited to real estate taxes, reclamation fees imposed pursuant to Section 402(a) of the Federal Surface Mining Control and Reclamation Act of 1977 and the excise tax imposed pursuant to Section 4121 of the Federal Black Lung Benefits Revenue Act of 1977. Operator agrees to

promptly forward to Owner any notifications it receives regarding the Real Property, the Plant Site or the Plant.

ARTICLE VI: OWNER'S RIGHTS AND OBLIGATIONS

6.1 Other Agreements. Owner has entered into an Operations and Maintenance Agreement with Chas. T. Main Inc., now doing business as Parsons Main, Inc. ("Main") attached as Exhibit "D" and certain other agreements with third parties relating to the use, operation and maintenance of the Plant (collectively, the "Plant Operation Agreements"). Operator further acknowledges that Owner may assign or delegate certain of its rights and responsibilities to Main, Savage, Tampella and other parties through the Plant Operation Agreements, however, such agreements shall not relieve Owner of any responsibilities or obligations under this Agreement.

6.2 Cooperation and Notices. Operator agrees to cooperate with Owner's agents including Main, Savage and Tampella in their exercise of any of Owner's rights and responsibilities under this Agreement assigned or delegated under the Plant Operation Agreements. Operator shall accept any authorized communication from Owner's agents pursuant to such Plant Operation Agreements as though the same were given by Owner. Owner shall provide Operator with a list of authorized agents, which list shall be amended from time to time to reflect current conditions.

ARTICLE VII: INDEPENDENT CONTRACTOR

7. Independent Contractor. It is agreed and understood that Operator is in all respects an independent contractor, and nothing contained in this Agreement shall make Operator an agent or employee of Owner, its partners, parent corporation or affiliates. Operator shall be solely responsible for selecting the manner and method of its obligations under this Agreement, Operator shall cooperate with Owner, Main and Savage and shall comply with the reasonable requests of Owner, Main or Savage concerning the Operator's activities on the Real Property as provided for herein.

ARTICLE VIII: REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties. Each party to this Agreement represents and warrants to the other party as follows:

(a) such party has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder;

(b) the execution and delivery by such party of the Agreement and the performance of its obligations hereunder has been authorized by all necessary action (corporate, partnership or otherwise) and, upon execution thereof by the other party, this Agreement will be the legal, valid and binding obligation of such party;

(c) other than as expressly set forth herein, no consent, approval or other authorization is needed for the execution or delivery by such party of this Agreement or the performance of its obligations hereunder; and

(d) neither the execution or delivery by such party of this Agreement nor the performance by such party of its obligations hereunder conflicts with or causes or will cause a violation of any laws, corporate or partnership documents (as the case may be) or default or breach under any other contracts, agreements or instruments by which it or any of its properties are or may be bound.

8.2 Survival. The representations contained in this Article VIII shall survive the execution and delivery of this Agreement.

ARTICLE IX: DEFAULT

9. Default. If either party defaults in any of its material obligations hereunder and fails to cure such default within thirty (30) days after receiving written notice from the other party of such default (or if a cure cannot be completed within such thirty-day period, then within such longer period as reasonably may be required so long as the defaulting party has commenced its cure within such thirty-day period and is diligently pursuing such cure), then the other party in addition to any other rights it may have at law or in equity may terminate

this Agreement by giving written notice to the defaulting party of its intention to do so specifying the date on which this Agreement shall be terminated (which shall not be less than ten (10) days after the date such notice of termination is delivered). Such termination shall not relieve any obligation of either party arising or having become due prior to the termination.

ARTICLE X: INDEMNIFICATION

10. Indemnification. Each party agrees to defend at its own cost and expense and to indemnify and hold harmless the other party and its officers, directors, employees, partners, successors and representatives from any loss, damage, liability, demand, claim, damage to property or personal injury or death, legal or administrative proceeding, and costs and expenses (including but not limited to reasonable attorneys' fees and expenses) relating to or arising from any of the same, including those relating to or arising from any Industrial Waste, (each a "Loss"), to the extent any Loss results from or arises directly or indirectly, or in whole or in part from any negligent or willful act or omission or material breach of this Agreement by such party, its agents or its employees.

ARTICLE XI: EXISTING AGREEMENTS

11. Existing Agreements. Owner and Operator acknowledge and agree that each is subject to all of the rights, obligations, terms and conditions imposed or reserved in the Deed and in the Lease in accordance with their terms and that this Agreement does not diminish, limit, enlarge, terminate, supersede or modify the respective rights, obligations, terms and conditions of these agreements.

ARTICLE XII: MISCELLANEOUS

12.1 Notices: All notices, payments reports, consents and other communications between the parties shall be in writing and shall be sufficient when delivered in person or when mailing by certified United States mail, postage prepaid, or when delivered by personal delivery or sent by telecopy to the parties at their respective addresses, which shall prevail unless notice of a change is given in writing:

TO OWNER:

Local

Sunnyside Cogeneration Associates
Attention: David Pearce
P.O. Box 58087
Salt Lake City, Utah 84158-0087

Boston Office

Sunnyside Cogeneration Associates
Attention: President
c/o Environmental Power Corp.
200 State Street, 13th Floor
Boston, Mass. 02109
Tel: (617) 720-5550
Fax: (617) 720-4546

WITH A COPY TO:

Hunton and Williams
200 Park Avenue
43rd Floor
New York, N.Y. 10166-0136
Attention: Edward B. Koehler
Tel: (212) 309-1000
Fax: (212) 309-1100

AND:

Callister, Duncan and Nebeker
Suite 800 Kennecott Building
Salt Lake City, Utah 84133
Attention: Fred W. Finlinson
Tel: (801) 530-7353
Fax: (801) 364-9127

TO OPERATOR:

Sunnyside Coal Company
Attn: Robert Burnham
1113 Spruce Street
Boulder, Colorado 80302
Tel: (303) 938-1506
Fax: (303) 449-0281

WITH A COPY TO:

Forrest E. Cook, Esq.
Hutchinson, Black and Cook
1215 Spruce Street
Boulder, Colorado 80302
Tel: (303) 442-6514
Fax: (303) 442-6593

AND:

Sunnyside Coal Company
Attn: Joe Fielder
P. O. Box 99
Highway 123 Whitmore Canyon
Sunnyside, Utah 84539
Tel: (801) 888-4421
Fax: (801) 888-2581

Unless otherwise provided herein, any notice given by U.S. mail shall be deemed given seventy-two (72) hours after the same is deposited in the mail with sufficient postage attached. Unless otherwise provided, twenty (20) days shall be deemed sufficient notice.

12.2 Governing Law. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Utah.

12.3 Entire Agreement. This Agreement sets forth the entire agreement between the Owner and the Operator with respect to the subject matter hereof and supersedes all prior negotiations and dealings; provided, however, that this Agreement shall in no event be construed as limiting or superseding the reservation of rights contained in the Deed. No change in, addition to or modification of any of the provisions of this Agreement shall be binding upon either party unless in writing, signed by an authorized representative of each party.

12.4 No Waiver. No waiver by either party of any breach of the other party of any of the provisions of this Agreement shall be construed as a waiver of any subsequent breach, whether of the same or of a different provision in this Agreement.

12.5 Successors Bound. It is understood and agreed by and between the parties hereto that all the terms and conditions herein contained shall extend to, inure to the benefit of, and

bind the parties hereto and their respective successors and assigns, subject to the provisions of Sections 3.1.

12.6 Assignment. Except as expressly provided for herein, neither party shall have the right to assign this Agreement to a third person or entity without first receiving the express written consent of the other party, which shall not be unreasonably withheld; provided, however, that this Section 12.6 shall not prevent Owner from assigning this Agreement to secure borrowings by or preexisting indebtedness of Owner, nor shall it prevent Owner from assigning this Agreement in connection with any sale and leaseback or other type of financing of the Plant. Any attempted assignment inconsistent with this Section 12.6 shall be null and void.

12.7 Severability. The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of the remainder of this Agreement. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance thereof shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision.

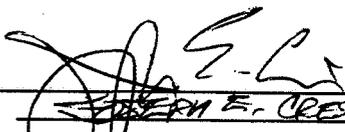
12.8 Captions. The captions contained in the Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

12.9 Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which shall be an original but all of which shall be one and the same instrument.

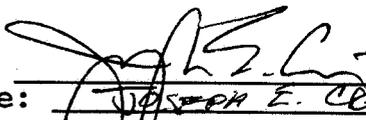
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first set forth above.

SUNNYSIDE COGENERATION ASSOCIATES
a Utah joint venture

By: KAISER SYSTEMS INC.

By: 
Name: JOSEPH E. CRESU
Title: PRESIDENT

By: KAISER POWER OF SUNNYSIDE, INC.

By: 
Name: JOSEPH E. CRESU
Title: PRESIDENT

SUNNYSIDE COAL COMPANY

By: 
Name: Robert M. Burnham
Title: President