

**BRAY/GHENT, LLC  
KU Contract No. K18006**

**BARGE MOORING, MANEUVERING, TOWING, SWITCHING,  
FLEETING, SURVEILLANCE AND CLEANING SERVICES  
AGREEMENT**

**BETWEEN**

**BRAY/GHENT, LLC**

**AND**

**KENTUCKY UTILITIES COMPANY**

**APRIL 1, 2017**

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**BARGE MOORING, MANEUVERING, TOWING, SWITCHING, FLEETING,  
SURVEILLANCE AND CLEANING SERVICES AGREEMENT**

This Barge Mooring, Maneuvering, Towing, Switching, Fleeting, Surveillance and Cleaning Services Agreement (this "Agreement"), dated as of April 1, 2017 (the "Effective Date"), is by and between KENTUCKY UTILITIES COMPANY (hereinafter referred to as "KU") a Kentucky corporation, whose address is 220 West Main Street, Louisville, Kentucky, 40202 and BRAY/GHENT, LLC, a Kentucky limited liability corporation, whose address is 50 E. RiverCenter Blvd., Suite 1180, Covington, Kentucky 41011 (hereinafter referred to as "Contractor").

**AGREEMENTS**

The parties hereto agree as follows:

**1.0 General.** Contractor shall perform the mooring, maneuvering, towing, switching, fleeting, surveillance, coal barge cleaning and other services described in Section 3.0 hereof (hereinafter referred to as the "Work") at KU's Ghent Station with respect to coal and limestone barges (collectively, the "Barges") for KU. KU shall compensate the Contractor for the Work in accordance with Section 5.0 hereof, except as otherwise provided herein.

**2.0 Term.** The term for Services, Work and Compensation under this Agreement shall commence on January 1, 2018 and shall continue through December 31, 2027, subject to any rights of early termination provided hereunder.

**3.0 Description of Work.** The Work shall include, but not be limited to, the following (notwithstanding the terms stated herein, Contractor is solely responsible for the knowledge of and compliance with all regulatory rules and procedures, which shall control in the



event of conflict with the terms set forth herein):

3.1 Barge Mooring, Maneuvering, Towing, Switching and Fleeting. Contractor shall perform the following Barge mooring, maneuvering, towing, switching, fleeting and other services as part of the Work:

- a. Maneuvering Barges as directed by KU at KU's Ghent Generating Station.
- b. Tying and securing Barges
- c. Monitoring the condition of Barges, lines and river levels as contemplated in this Section 3.0.
- d. Retying Barges as conditions dictate as contemplated in this Section 3.0.
- e. Maintaining navigational lighting on Barges.
- f. Switching and fleeting of Barges as directed by KU.
- g. Performing other miscellaneous mooring, maneuvering, towing, switching, fleeting and related services with respect to Barges at KU's Ghent Station as may be requested from time to time by KU.

3.2 Coal Barge Cleaning. Contractor shall provide coal barge cleaning services as part of the Work, unless notified written notice to the contrary is given by KU, in its discretion to Contractor. When applicable, Contractor shall provide the following services ("Services") in its performance of coal barge cleaning.

- a. Provide all equipment, labor, fuel and supplies to clean the unloaded coal barges in a timely manner so as not to holdup the tugs or incur additional demurrage charges.
- b. Provide a receiver barge to hold coal that is cleaned from coal barges that have been unloaded.

- c. Provide all safety supplies and equipment and insure that the equipment is used in compliance with all applicable regulations.
- d. Promptly notify KU of any damage caused to KU, Contractor, or third party equipment, facilities, or operations during or related to the performance of any work.
- e. Promptly notify KU of the completion of the cleaning of any unloaded coal barge.

3.3 Surveillance and Security. Contractor shall conduct Barge surveillance and provide for the security of Barges and the checking of lines under all river conditions, to prevent Barges from breakaway, including monitoring river levels and conditions, and retying Barges as needed. Contractor shall provide fleet lighting as required by the United States Coast Guard regulations. Contractor shall provide the lines and lights for maintaining the fleet (including a fleet of up to one hundred (100) Barges maximum to be held at one time).

Contractor shall be solely responsible for performing the Work set forth in this Section without any further notice or request from KU or any other party, except notice that a Barge has been moored at KU's dock in accordance with Section 3.11 below.

3.4 Fleeting Plan. In addition to any other requirements in connection with fleeting hereunder, Contractor shall comply with all of the provisions of KU's Department of the Army Permit for Ghent Generating Station. This permit sets forth minimum requirements for the Contractor and shall in no way be interpreted to limit any of Contractor's obligations under this Agreement. Contractor shall submit for KU's approval, a fleeting plan that at a minimum addresses the following: Barge receiving and departing procedures, Barge inspections, mooring hardware and line requirements and maintenance, Barge surveillance, breakaway Barges, loose

Barges, incident reporting, communications, emergency notification plan, and changing river conditions (such as rising river, falling river, high water, and icy conditions).

Contractor shall be responsible for monitoring river changes and taking the appropriate actions. Contractor's responsibility with respect to changing river conditions includes, but is limited to, the requirements of subsections 3.5, 3.6, 3.7 and 3.8 below.

3.5 Rising River. Barges that are on site without a towboat in attendance will be tied off to cell with a two (2) inch fleeting line and leaving line. When the river is going to rise more than two (2) feet in a twenty-four (24) hour period, Contractor shall watch the Barges and adjust tie lines, no fewer than four (4) times in a twenty-four (24) hour period and more if necessary or desirable.

3.6 Falling River. Barges that are on site without a towboat in attendance will be tied off to cell with a two (2) inch fleeting line and leaving line. When the river is falling at a rate of two (2) feet or more in a twenty-four (24) hour period, Contractor shall watch Barges and adjust tie lines, no fewer than four (4) times in a twenty-four (24) hour period and more if necessary or desirable.

3.7 High Water. Barges that are on site without a towboat in attendance will be tied off to cell with a two (2) inch fleeting and leaving line. Drift will be monitored by Contractor, KU personnel and KU contracted security service personnel during high water. However, it is Contractor's obligation to make adjustments when necessary or desirable. When high water conditions exist, Contractor shall watch Barges and adjust tie line, no fewer than four (4) times in a four (4) hour period and more if necessary or desirable.

3.8 Icy Conditions. When icy conditions exist, Contractor shall watch Barges and adjust tie lines, no fewer than four (4) times in a four (4) hour period and more if necessary or

desirable, and shall take whatever additional actions or precautions Contractor believes necessary or advisable with respect to such conditions. The term “icy conditions” for purposes of this Agreement shall mean a river condition in which there is any flowing ice within the river.

3.9 Regular Line Check. Contractor shall visually check all two (2) inch lock lines and fleeting lines monthly for damage, defects or other signs of wear or potential failure. Damaged or defective lines are to be replaced as soon as possible (KU will reimburse Contractor for the cost of the two (2) inch lock lines) following discovery whether such discovery occurs during the monthly check or during Contractor’s performance of the Work between such monthly checks.

3.10 KU Request for Service. Contractor shall respond to KU’s request for service promptly upon Contractor’s receipt of a request for service from KU under this Agreement.

3.11 Certain Contractor Notifications. KU shall notify Contractor at agreed telephone number or by radio, when towing, maneuvering or switching is required. KU or KU’s Barging transportation contractor shall notify Contractor at agreed telephone number when a Barge is moored at KU’s dock even if towing, maneuvering or switching is not required.

3.12 Work Log Notification. Contractor shall notify KU whenever its boat leaves its dock to perform Work for KU or returns to its dock so that KU can maintain an accurate log of the time.

3.13 Contractor’s Equipment. Contractor’s equipment (towboat and accessories) shall be capable of towing up to two (2) fully loaded, 1,500 ton Barges on the Ohio River, 365 days a year, under all river conditions.

3.14 Equipment List. Contractor shall provide to KU a list of equipment, indicating size, model, serial number, year of manufacture, relative condition (excellent, good, fair, poor), and ownership (owned, leased, rented, sub-contracted, or other).

3.15 Compliance with Law and KU Rules. Contractor shall at all times comply with all state, federal, and local laws, regulations and rules that apply to the Work, including without limitation, Marine OSHA, 29 CFR PART 1918 Safety and Health Regulation for long shoring, and those issued by the Coast Guard. Contractor shall also comply, at all times, with any rules of KU, including safety rules that apply to the Work.

Contractor may perform refueling operations while docked on KU property, unless written notice to the contrary is given by KU, in its discretion to Contractor. Regarding refueling operations, Contractor shall be solely responsible having all necessary permits or licenses relating thereto, conducting such activities in accordance with all applicable law and regulations, taking all precautions necessary to prevent spills or discharges to soil or water, and providing appropriate cleanup if such conditions occur.

3.16 Incident Reporting. Contractor shall report any incident (spill, Barge breakaway, or accident/injury) while performing the Work, via telephone immediately, and follow up with a written report to KU in not less than twenty-four (24) hours.

3.17 Dedicated Boat and Crew. Contractor shall dedicate, exclusively for the performance of this Work, one (1) boat with a pilot and at least two (2) deckhands for twenty-four (24) hours per day, three hundred and sixty-five (365) days per year at no additional cost to KU (the compensation for such dedication is included in the Base Rate set forth in Section 5.1 below). It is the Contractor's responsibility to staff the boat appropriately in order to perform the Work in a safe manner. In the event the river conditions or other circumstances make the temporary use of a second boat and crew (simultaneous with the use of the dedicated boat and crew) necessary or advisable to perform some particular portion of the Work, then, upon prior approval of KU, Contractor shall provide such second boat and crew temporarily to perform that

portion of the Work. The Contractor shall be compensated for the use of such second boat and crew on an hourly basis at the hourly rate set forth in subsection 5.3 below, as adjusted pursuant to subsection 5.4 below. The parties anticipate that the simultaneous use of two (2) boats will be necessary or advisable only on rare occasions, and that in instances where a second boat and crew is used simultaneously, Contractor shall limit the use of such second boat and crew for only so long as such simultaneous use is reasonably required.

3.18 Back-up Boat. In addition to the boats contemplated in subsection 3.17 above, Contractor shall provide a back-up boat to perform the Work hereunder in the event the dedicated boat is unable to perform the Work or is otherwise unavailable. In the event such back-up boat is required to perform the Work as contemplated in this subsection, such back-up boat and a crew shall be provided by Contractor at no additional cost to KU (the compensation for providing a back-up boat as contemplated in this subsection is included in the Base Rate set forth in Section 5.1 below, as adjusted pursuant to subsection 5.4 below). In the event a back-up boat is required, Contractor shall immediately provide notice of such requirement to KU (the "Back-up Boat Notice") and shall provide a back-up boat, pilot and at least two (2) deckhands.

Contractor is not required to designate and have on hand a specific back-up boat, but is required to provide a back-up boat through subcontracting or otherwise (notwithstanding anything in this subsection to the contrary, in the event Contractor obtains the back-up boat through subcontracting, such back-up boat will be provided at no additional cost to KU), and crew as soon as practicable, but in no event arriving at KU's Ghent Station (or arriving at the location of the required services if not at KU's Ghent Station, as applicable) no later than twelve (12) hours after Contractor was required to provide KU the Back-up Boat Notice, unless changing river conditions or other circumstances require the services of a back-up boat in less

than twelve (12) hours. Notwithstanding anything in this subsection to the contrary, in the event KU reasonably believes that the back-up boat will not arrive at the Ghent Station (or other location, if applicable) within twelve (12) hours after Contractor was required to provide KU the Back-up Boat Notice or sooner in the event of changing river conditions or other circumstances, then KU shall have the right, but not the obligation, to obtain a back-up boat (through contracting with a third (3<sup>rd</sup>) party or otherwise) at Contractor's expense.

**4.0 Performance Evaluation.** From time to time during the term hereof, KU may conduct a performance review to determine if the Work has been performed satisfactorily. In the event KU determines from any such performance review that, in KU's sole discretion, any performance is unsatisfactory, KU shall have the right to give Contractor written notice of any such unsatisfactory performance. Contractor shall have five (5) days to cure such unsatisfactory performance; provided however if such cure cannot be cured within such five (5) days, Contractor shall have such reasonable time as necessary (not to exceed 30 days) to cure so long as Contractor diligently undertakes such cure. If Contractor's performance is not cured to KU's satisfaction within such period, or if Contractor's diligent undertakings are not to KU's satisfaction, KU shall have the right to terminate the Agreement without further obligation or liability to Contractor.

**5.0 Compensation.** The total compensation under this Section 5.0 is hereinafter referred to as the "Contract Price".

5.1 Barge Mooring, Maneuvering, Towing, Switching and Fleeting Reimbursement. KU shall pay to Contractor, as full compensation to Contractor for Contractor's full and complete performance of the Work, as defined in Section 3.1 Barge Mooring, Maneuvering, Towing, Switching and Fleeting, in any given month hereunder within the Ghent Station harbor for KU or

KU's third (3<sup>rd</sup>) party designee (including, without limitation, KU's Barge contractors), an amount equal to (i) \$102,781 per month, (the "Base Rate"), as such Base Rate may be adjusted from time to time as provided in subsection 5.4 below; plus the Fuel Reimbursement (as such term is defined in subsection 5.5 below); plus (if applicable) (ii) the Second Boat Reimbursement (as such term is defined in subsection 5.3 below), together with any Fuel Reimbursement (as such term is defined in subsection 5.5 below) for fuel actually consumed by Contractor's second boat used to perform a portion of the Work in accordance with the provisions of Section 3.17 above.

5.2 Barge Cleaning Reimbursement. KU shall pay to Contractor, as full compensation to Contractor for Contractor's full and complete performance of the Services as defined in Section 3.2 Coal Barge Cleaning, at the per ton rate of \$15.00 per ton for amounts of coal recovered from the unloaded coal barges in connection with the Services from time to time during the term hereof, and delivered to KU and unloaded by KU from the receiver barge. The amounts of coal recovered and delivered to KU shall be determined as such coal is unloaded from time to time by the weighing facilities and mechanisms customarily used at the Ghent Station operated by KU. Contractor may observe the weighing process.

With respect to each unloaded coal barge, Contractor shall begin cleaning only after authorization is received from KU to do so. KU retains the right in its sole discretion to determine that a particular coal barge should not be cleaned. Recovered coal will be loaded into a seaworthy receiver barge to be supplied by Contractor. Any costs associated with owning, leasing, mooring, operating or maintaining the receiver barge, will be paid by Contractor. Upon notice by Contractor that the receiver barge is ready to be unloaded, KU will give priority to unloading the receiver barge.

5.3 Second Boat Reimbursement. The term "Second Boat Reimbursement" shall mean, for any given month, an amount equal to the Hourly Base Rate (as hereinafter defined) times each



hour, or portion thereof, that Contractor provided a second boat and crew temporarily to perform a portion of the Work in accordance with the provisions of Section 3.17 above. For the purpose of this Agreement, the term "Hourly Base Rate" shall mean the Base Rate (as such Base Rate may have been adjusted pursuant to Section 5.4 below), on the date of service, divided by seven hundred and twenty (720).

5.4 Base Rate Adjustments. On January 1, 2018 and on each subsequent January 1st thereafter during the term of this Agreement (January 1, 2018 and each subsequent January 1<sup>st</sup> during the term hereof is herein called a "Base Rate Adjustment Date"), the Base Rate shall be adjusted by an amount to generally reflect increases or decreases in the first published PPI Industrial Commodities Index Less Fuels (WPU03T15M05) found in Table 8 of the Producers Price Index, published monthly by the U.S. Department of Labor, Bureau of Labor Statistics (hereinafter the "PPI"). The adjusted Base Rate shall be calculated by multiplying the Base Rate (\$102,781 per month) by a fraction, the denominator of which shall be 193.8 (the average basis index PPI for July, August and September 2016) and the numerator of which shall be the average PPI of the last three months published during a Calculation Period prior to a Base Rate Adjustment Date. The calculation of the fraction shall be carried out to four (4) decimal places.

"Base Rate Adjustment Date" shall mean January 1 of each calendar year during the term of the Agreement.

"Calculation Period" shall mean the three (3) months of September, October and November of the previous calendar year.

The date of the first such rate adjustment shall be January 1, 2018. The adjustment shall always be based on the original Base Rate multiplied by the fraction and not on adjusted rates and rounded to the nearest whole dollar.

For demonstration purposes, a sample calculation of a hypothetical Base Rate Adjustment Date is set forth in Exhibit A, such exhibit being attached hereto and made a part hereof.

5.5 Fuel Reimbursement. The term "Fuel Reimbursement" shall mean, for any given month, an amount equal to the cost incurred by Contractor for fuel actually consumed by Contractor's boat or boats reasonably and solely used in Contractor's performance of the Work hereunder during such month. The cost incurred by Contractor for fuel shall be Contractor's actual cost (including all taxes) without any markup. With its monthly invoice, Contractor shall provide copies of all fuel receipts as evidence of its actual fuel costs and the quantity used in performance of the Work and documentation from at least two (2) other fuel vendors verifying the lowest unit cost of the fuel purchased.

**6.0 Payment and Invoicing.**

6.1 Invoicing Address. Invoices shall be sent electronically to KU at the following address: [fuels.accounting@lge-ku.com](mailto:fuels.accounting@lge-ku.com), with a copy to:

KU Ghent Generating Station  
Kentucky Utilities Company  
U.S. 42  
Ghent, Kentucky 41045  
Attn: Plant General Manager

6.2 Invoicing and Payment Procedures. Contractor shall invoice KU by the fifteenth (15<sup>th</sup>) day of each month for Work performed on the first fifteen (15) days of such month and payment therefore shall be made via electronic wire transfer by the twenty-fifth (25<sup>th</sup>) day of such month or five (5) days from receipt of invoice whichever is later. Contractor shall invoice KU on the last day of each month for Work performed on the sixteenth (16<sup>th</sup>) day through the end of the preceding month and payment shall be made via electronic wire transfer by the tenth (10<sup>th</sup>) day of the month following the month of invoicing or five (5) days from receipt of invoice whichever is later.

**7.0 Force Majeure.**

7.1 Conditions of Force Majeure. Neither party shall be liable for any damages for any failure to perform, or for any delays or interruptions beyond such party's reasonable control in performing any of such party's obligations under this Agreement due to acts of God, fires, floods, earthquakes, riots, civil insurrection, acts of the public enemy, strikes, lockouts, acts or failures to act of civil or military authority, unless the time to perform is expressly guaranteed ("Force Majeure"). The affected party shall advise the other party immediately of any anticipated and actual failure, delay or interruption and the cause and estimated duration of such event.

7.2 Effect of Force Majeure. Any such failure, delay or interruption, even though existing on the date of the Agreement or on the date of the start of the Work, shall require Contractor, if Contractor is the party claiming Force Majeure, to promptly (within two (2) days) submit a recovery plan detailing the manner in which the delay shall be remedied, the revised schedule and any added expenses. Force Majeure shall apply only to the affected part of the Work, and not to the Work as a whole or any other unaffected part thereof. Contractor shall diligently proceed with the unaffected part of the Work notwithstanding the occurrence of Force Majeure. If the Force Majeure event extends beyond five (5) days, KU has the right to discontinue any or all of the Work and may terminate this Agreement in whole or part.

**8.0 Indemnification.** Contractor will release, indemnify, defend, and hold harmless KU, its parents and affiliates and its and their respective officers, directors, employees and agents from and against any and all claims, demands, causes of action, damages, fines, penalties, liability, loss and expense (including, but not limited to, court costs and attorneys' fees) ("Claims") which arise directly or indirectly out of or in connection with: (i) Contractor's

performance or failure to perform under this Contract, (ii) the Barges, or (iii) the cargo in the Barges. With respect to all Barges, the Contractor's indemnity obligations shall apply to all periods from the time that the Barges are delivered to Contractor or moored at KU's dock by KU's barging carrier until the time that the Barges are delivered back to KU's barging carrier. The foregoing indemnity shall include, without limitation, any and all Claims related to pollution or damage or harm to the environment caused by Contractor or related to the violation by Contractor of any federal, state or local environmental law, rule or regulation, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9601 *et seq.*, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 *et seq.*, Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*, and the Toxic Substances Control Act (TSCA), 15 U.S.C. Section 2601 *et seq.*

Notwithstanding the foregoing, the indemnification in this Section 8.0 shall not apply (1) if Contractor did not receive notice that the Barges have been moored at KU's dock as applicable, or (2) to the extent that the claim, liability, loss or expense is due to the negligence of KU's barging carrier in the handling, transportation, delivery, and/or mooring of the Barges by KU's barging carrier and the Contractor shall be unable to rectify the situation resulting from the negligence of KU's barging carrier provided that the Contractor shall have acted timely and diligently in the performance of its duties under this Contract in its attempt to rectify the situation, or (3) to the extent the claim, liability, loss or expense is due to the negligence or willful misconduct of any dock owner (other than KU) of a dock where a Barge has been moored provided that, if the Barge was delivered to such dock by the Contractor, the Barge was properly moored at such dock by the Contractor on delivery and the Contractor otherwise shall have acted timely and diligently in the performance of

its duties under this Contract with respect to such Barge or Barges, or (4) to the extent the claim, liability, loss or expense is solely due to the negligence or willful misconduct of KU or its employees.

In addition to and without limiting Contractor's other indemnification obligations set forth in this Section, Contractor will indemnify, defend, and hold harmless KU its parents and affiliates and its and their respective officers, directors, employees and agents, from and against any and all Claims, which arise at any time in connection with any acts or omissions of the Contractor to the extent that they are due to the negligence, willful misconduct, breach, default or failure in performance of this Agreement, of Contractor.

KU will release, indemnify, defend, and hold harmless Contractor and its officers, directors, employees and agents from and against Claims which arise directly or indirectly out of or in connection with KU's performance or failure to perform under this Contract, but only to the extent that the Claim is due to the negligence or willful misconduct of KU or its employees.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR PROVIDED FOR UNDER ANY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE, EITHER IN CONTRACT, IN TORT OR OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO THE OTHER PARTY IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY SUCH OTHER PARTY.**

**9.0 Insurance.** Before any part of the Work is commenced, Contractor shall, at Contractor's sole cost, cause to be issued and maintained during the entire progress of the Work not

less than the insurance coverage set forth below:

<u>Types of Insurance</u>	<u>Limits (in \$ Millions)</u>
Marine Liabilities (including P&I, Collision/Towers Liability, Landing Owners Legal, and Ship repairers Legal Liability) written on an occurrence basis	5.0
Excess Marine Liabilities	5.0
Employer's Liability	Each Accident 1.0 Disease – Policy Limits 1.0 Disease – Each Employee 1.0
Worker's Compensation	Statutory

**10. Inspecting, Testing and Auditing.** Contractor shall maintain all records and accounts pertaining to payments, fuel purchases, etc. related to this Agreement for a period lasting through the term of this Agreement and for two (2) years thereafter. KU shall have the right at no additional expense to KU to audit, copy and inspect such records and accounts pertaining only to this Agreement at any reasonable time upon reasonable notice during the term of this Agreement and for two (2) years thereafter.

10.1 Right of Inspecting and Testing. KU reserves the right, but shall not be obligated, to appoint representatives to follow the progress of the Work with authority to suspend any Work not in compliance with the Agreement. Acceptance or approval by KU's representative shall not be deemed to constitute final acceptance by the Company, nor shall the Company's inspection relieve the Contractor of responsibility for proper performance of the Work. Inspection by KU's representative shall not be deemed to be supervision by KU of the Contractor, its agents, servants, or employees, but shall be only for the purpose of assuring that the Work complies with the

Agreement.

10.2 Right of Auditing. Contractor shall maintain complete records relating to any cost based (i.e. Work not covered by firm prices) components billed under the Agreement or relating to the quantity of units billed under any unit price provisions of this Agreement (all the foregoing hereinafter referred to as "Records") which shall be open to inspection and subject to audit and reproduction during normal working hours, by KU or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments, time sheets, or claims based on Contractor's actual costs incurred in the performance of Work under the Agreement. For the purpose of evaluating or verifying such actual or claimed costs, KU or its authorized representative shall have access to said Records at any time, including any time after final payment by KU to Contractor pursuant to the Agreement. All information obtained in the course of such audits shall be held in confidence except pursuant to judicial and administrative order.

10.3 Access for Auditing. KU or its authorized representative shall have access, during normal working hours, to all necessary Contractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this Section 10. KU shall give Contractor reasonable notice of intended audits.

**11.0 Safety, Drug and Alcohol Testing**

11.1 Contractor agrees to protect its own and its subcontractors' employees and be responsible for their Work and to protect KU's facilities; property, employees and third parties from damage or injury. Contractor agrees to strictly abide by and observe all applicable laws, regulations and orders pertaining to health and safety, including but not limited to all standards of the Occupational Safety & Health Administration (OSHA) and United States Coast Guard which

are applicable to the Work being performed, as well as all rules and regulations that may be issued by KU from time to time, which are incorporated herein by reference. KU shall have the right but not the obligation to review Contractor's compliance with safety and cleanup measures. In the event Contractor fails to keep the work area clean, KU shall have the right to perform such cleanup on behalf of, at the risk of and at the expense of Contractor.

11.2 The Contractor shall furnish adequate numbers of trained, qualified and experienced personnel and appropriate safety and other equipment in first-class condition, suitable for performance of the Work. Such personnel shall be skilled and properly trained to perform the Work and recognize all hazards associated with the Work. Contractor shall accept all equipment, structures, and property of KU as found, and acknowledges it has inspected the property; has determined the hazards incident to working thereon or thereabouts and has adopted suitable precautions and methods for the protection and safety of its employees and the property.

11.3 No person will perform any of the Work while under the influence of drugs or alcohol. No alcohol may be consumed within four (4) hours of the start of any person's performance of the Work or any time during the Workday. A person shall be deemed under the influence of alcohol if a level of .02 or more blood alcohol is found. In addition to the requirements of the drug testing program, as set forth in KU's rules and regulations, all persons who will perform any of the Work will be subject to drug and alcohol testing under either of the following circumstances: (i) where the person's performance either contributed to an accident or cannot be completely discounted as a contributing factor to an accident which involves off-site medical treatment of any person; and (ii) where KU determines in its sole discretion that there is reasonable cause to believe such person is using drugs or alcohol or may otherwise be unfit for duty. Such persons will not be permitted to perform any Work until the test results are established. Contractor shall be solely responsible



for administering and conducting drug and alcohol testing, as set forth herein, at Contractor's sole expense.

**12.0 Status of Contractor.** KU does not reserve any right to control the methods or manner of performance of the Work by Contractor. Contractor, in doing the Work herein called for, shall not act as an agent or employee of KU, but shall be and act as an independent contractor, and shall be free to perform the Work by such methods and in such manner as Contractor may choose, doing everything necessary to perform such Work properly, lawfully and safely, having supervision over and responsibility for the safety and actions of its employees and the suitability of its equipment. KU may at all times have the right to have its representatives inspect the Work, solely in order to assure that all Work complies with the requirements of the Agreement. Contractor's employees and subcontractors shall not be deemed to be employees of KU. Contractor agrees that if any portion of Contractor's Work is subcontracted, all such subcontractors shall be bound by and observe the conditions of this Agreement to the same extent as required of Contractor. In such event, KU strongly encourages the use of Minority Business Enterprises, Women Business Enterprises and Disadvantaged Business Enterprises, as defined under federal law and as certified by a certifying agency that KU recognizes as proper.

**13.0 Labor Harmony and Equal Employment Opportunity.**

13.1 Contractor agrees that all labor employed by Contractor, its agents, or subcontractors for Work on the premises of KU shall be in harmony with all other labor being used by KU or other contractors working on KU's premises. Contractor agrees to give KU immediate notice of any threatened or actual labor dispute and will provide assistance as determined necessary by KU

to resolve any such dispute. Contractor shall and shall cause its agents, or subcontractors to remove from KU's premises any person objected to by KU in association with the Work.

13.2 To the extent applicable, Contractor shall comply with all of the following provisions, which are incorporated herein by reference: (i) Equal Opportunity regulations set forth in 41 CFR §60-1.4(a) and (c), prohibiting employment discrimination against any employee or applicant because of race, color, religion, sex or national origin; (ii) Vietnam Era Veterans Readjustment Assistance Act regulations set forth in 41 CFR §60-250.4 relating to the employment and advancement of disabled veterans and Vietnam era veterans; (iii) Rehabilitation Act regulations set forth in 41 CFR §60-741.4 relating to the employment and advancement of qualified disabled employees and applicants for employment; (iv) the clause known as "Utilization of Small Business concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" set forth in 15 USC §637(d)(3); and (v) the subcontracting plan requirement set forth in 15 USC §637(d).

#### **14.0 Environmental**

14.1 As required under the OSHA Hazard Communication Standard (29 CFR 1910.1200) and certain state and local laws, Contractor or its subcontractors shall provide Material Safety Data Sheets (MSDS) covering all hazardous chemicals and materials furnished under or otherwise associated with the Work under this Agreement. Contractor shall and shall cause its subcontractors to provide KU with either copies of the applicable MSDS or copies of a document certifying that no MSDS are required under any federal, state, or local law, regulation, statute, or ordinance in effect at the worksite. **No asbestos or lead containing materials are permitted at any worksite.** Contractor shall be and shall cause its subcontractors to be responsible for determining if any chemical or material furnished, used, applied, or stored under this Agreement falls within the

purview or meaning of the provisions of any applicable federal, state, or local law, regulation, statute or ordinance.

14.2 Contractor shall and shall cause its subcontractors to label hazardous chemicals and materials and train its employees in the safe usage and handling of such materials as required under all applicable federal, state, or local laws, regulations, statutes, or ordinances.

14.3 Contractor shall be and shall cause its subcontractors to be responsible for the management of all hazardous chemicals and materials brought onto the Work site and shall prevent the accidental discharge of such hazardous chemicals and materials into the environment. All hazardous chemicals and materials shall be handled and stored according to Contractor's written Spill Prevention Control and Countermeasures Plan or Best Management Practices Plan as defined under the provisions of the Clean Water Act, as amended. In all cases, secondary containment shall be provided for the storage of hazardous chemicals and materials. The prompt and proper clean-up and disposal of all spills, leaks or drips caused by Contractor or its subcontractors of its hazardous chemicals and materials shall be Contractor's responsibility. All waste material hauled from the work area by Contractor must be disposed of in accordance with local, state and federal regulations at a Company-approved location. Contractor shall be responsible for the storage, removal, and disposal of any excess or unused quantities of chemicals and materials which Contractor causes to be brought to the Work site.

14.4 Contractor shall and shall cause its subcontractors to segregate waste by type and identify to KU the constituents of such wastes. Contractor shall handle, store, and dispose of such wastes in accordance with all applicable laws.

14.5 The obligations set forth in this Section 14 shall survive termination or expiration of this Agreement.

**15.0 Warranties.** Contractor warrants that:

(a) the Work will conform to any instructions, specifications, drawings, schedules or as otherwise defined in a purchase order; and any materials supplied in connection therewith shall be in serviceable condition and free from defect;

(b) the Work will be suitable for the purposes specified by the Company;

(c) the Work is not and shall not be subject to any encumbrance, lien, security interest, copyright or trademark claims, infringements or other defects in title; and

(d) any labor or services required hereunder shall be performed in a competent, diligent manner in accordance with the highest professionally accepted standards.

**16.0 Assignment of Agreement; Subcontracting.** Contractor shall not by operation of law or otherwise assign, sublease or subcontract any part of the Work or this Agreement without first obtaining KU's written approval. Such approval, if given, shall not relieve Contractor from full responsibility for the fulfillment of all obligations under this Agreement.

**17.0 Termination**

17.1 Termination for Contractor's Breach. If the Work to be done under this Agreement shall be abandoned by Contractor, if this Agreement or any portion thereof shall be assigned by operation of law or otherwise, if the Work or any portion thereof is sublet by Contractor without the permission of KU, if Contractor is placed in bankruptcy, or if a receiver be appointed for its properties, if Contractor shall make an assignment for the benefit of creditors, if at any time the necessary progress of Work is not being maintained or if Contractor has violated or is violating any of the terms or conditions of this Agreement, or has executed this Agreement in bad faith, KU

may, without prejudice to any other rights or remedies it may have as a result thereof, give the Contractor written notice of such occurrence (each such above mentioned occurrence is herein deemed to be a material breach hereof) and if such breach is curable, permit Contractor five (5) days to cure such breach to the satisfaction of KU; provided however if such cure cannot be cured within such five (5) days, Contractor shall have such reasonable time as necessary (not to exceed 30 days) to cure so long as Contractor diligently undertakes such cure. If such breach is not curable, or if Contractor does not cure such breach within the cure period (or does not diligently undertake such cure), KU shall notify Contractor to discontinue any or all of the Work and may terminate this Agreement in whole or part. In the event that Section 365(a) of the Bankruptcy Code, or some successor law gives Contractor as debtor-in-possession the right to either accept or reject this Agreement, then Contractor agrees to file an appropriate motion with the Bankruptcy Court to either accept or reject this Agreement within twenty (20) days of the entry of the Order for Relief in the bankruptcy proceeding. Contractor and KU acknowledge and agree that said twenty (20) day period is reasonable under the circumstances. Contractor and KU also agree that if KU has not received notice that Contractor has filed a motion with the Bankruptcy Court to accept or reject this Agreement within said twenty (20) day period, then KU may file a motion with the Bankruptcy Court asking that this Agreement be accepted or rejected, and Contractor shall not oppose such motion.

17.2 Effect of Termination for Contractor's Breach: From the effective date of such termination notice, Contractor shall vacate the site, whereupon KU shall have the right but not the obligation to take possession of the Work wherever located, and Contractor shall cooperate with KU and cause Contractor's subcontractors to cooperate with KU so that KU can effect such possession. The expenses of completing the Work in excess of the unpaid portion of the

Agreement Price, together with any damages suffered by KU, shall be paid by the Contractor and KU shall have the right to set off such amounts from amounts due to Contractor. The Contractor shall not be entitled to any unpaid portion of the Contract Price. KU shall not be required to obtain the lowest figures for completing the Work but may make such expenditures as in its sole judgment shall best accomplish such completion.

**18.0 Notices.** All notices and communications respecting this Agreement shall be in writing, shall be identified by Contract Number and shall be sent by U.S. Mail to:

KU's address: Kentucky Utilities Company  
220 West Main Street  
Louisville, Kentucky 40202  
Attn: Manager KU/KU Fuels

Contractor's address: Bray/Ghent, LLC  
50 E. RiverCenter Blvd, Suite 1180  
Covington, Kentucky 41011

**19.0 Miscellaneous.**

19.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the Work and supersedes all prior or contemporaneous oral or written agreements, negotiations, understandings, and statements pertaining to the Work or the Agreement. This Agreement may not be modified or amended without the prior written consent of all parties.

19.2 Obligations Only on Parties. This Agreement is the obligation of KU and Contractor only and shall not be deemed binding on any parent, subsidiary, shareholder, director, or affiliated entity of either party.

19.3 Amendments. Except as otherwise provided herein, this Agreement may not be amended, supplemented or otherwise modified except by written instrument signed by both parties hereto.

19.4 Severability. If any provision of this Agreement shall be held invalid under law, such invalidity shall not affect any other provision or provisions hereof which are otherwise valid.

19.5 State Law Governing Agreement. This Agreement shall be governed by, and construed in accordance with, the laws of the state where the Work is performed.

19.6 Enforcement of Rights. KU shall have the right to recover from Contractor all expenses, including but not limited to fees for inside or outside counsel hired by KU to enforce KU's rights hereunder, but only to the extent that KU is successful in any action to enforce its rights hereunder.

Contractor shall have the right to recover from KU all expenses, including but not limited to fees for inside or outside counsel hired by Contractor to enforce Contractor's rights hereunder, but only to the extent that Contractor is successful in any action to enforce its rights hereunder.

19.7 Waiver. No waiver by KU of any provision herein or of a breach of any provision shall constitute a waiver of any other breach or of any other provision.

19.8 Headings. The headings of Articles, Sections, paragraphs and other parts of this Agreement are for convenience only and do not define, limit or construe the contents thereof.

19.9 Governmental Imposition. If Contractor determines that any enacted Government Imposition, as defined below, effective October 18, 2016 or later, would have a significant adverse effect on Contractor's performance under this Agreement, Contractor shall notify KU in writing noting such adverse effect. The Parties shall have sixty (60) days from the date KU receives such written notification to negotiate any changes or amendments to this Agreement that may be necessary or appropriate to allow Contractor to realize the original benefit of its bargain with KU. If the Parties fail to reach such agreement, after the sixty (60) day period Contractor or KU shall have the right upon subsequent written notice to terminate the Agreement after one

hundred and twenty (120) days after receipt of such subsequent written notice. Each Party shall bear its own cost relating to the termination of the contract. For purposes of this section, "Government Imposition" shall mean any changes in laws, rules or regulations which adversely affects Contractor's cost or ability to economically operate under this Agreement, including but not limited to, new or increased taxes (excluding income taxes), tolls, levies or user fees, new or increased equipment requirements, compliance with Homeland Security regulations, environmental or manning requirements, or any interventionary action on the part of a governmental agency or bureau having jurisdiction.

19.10 Guaranty. In conjunction with the execution of this Agreement, Contractor shall furnish to KU a guaranty from Carlisle & Bray Enterprises, LLC, a Kentucky limited liability company, in form reasonably satisfactory to KU.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement intending it to be binding as of the dates written below and to be performed as set out herein.

**KENTUCKY UTILITIES COMPANY      BRAY/GHENT, LLC**

By: Dal M. M. [Signature] <sup>Att</sup> <sub>APP</sub>

V.P. – Energy Supply and Analysis

Date: 4-12-17

By: [Signature]

Title: CEO

Date: 4/5/17

EXHIBIT A

Sample Base Rate Adjustment Amount Calculation  
For Base Rate Adjustment Date of January 1, 2018

Jul 16/Aug 16/Sep 16 Base Rate PPI  
#WPU03T15M05:

	Jul 16(P)	193.5
	Aug 16(P)	193.8
	Sep 16(P)	<u>194.0</u>
Base Rate PPI (Arithmetic Average)		193.8

Sample January 1, 2018 Calculation:

	Sep 17(P)	194.9 (Hypothetical)
	Oct 17(P)	195.9 (Hypothetical)
	Nov 17(P)	<u>196.9</u> (Hypothetical)
Calculation Period Average PPI		195.9(Arithmetic Average)

Adjustment Factor: Calculation Period Average PPI ÷ Base Rate PPI =  $195.9 \div 193.8 = 1.0108$   
(Hypothetical)

Base Monthly Rate: \$102,781 per month X 1.0108 = \$103,891 per month (Hypothetical),  
effective January 1, 2018

## GUARANTY

**This Guaranty** (the "Guaranty") is made by Carlisle & Bray Enterprises, LLC (the "Guarantor"), a Kentucky limited liability company, in favor of **Kentucky Utilities Company** (the "Beneficiary") in consideration of the Beneficiary entering into agreement(s) with Bray/Ghent, LLC (the "Counterparty").

1. **Guaranty:** Guarantor does hereby unconditionally and absolutely guarantee to Beneficiary the full and faithful payment by Counterparty of any amounts due to the Beneficiary under and pursuant to that certain Barge Mooring, Maneuvering, Towing, Switching, Fleeting, Surveillance and Cleaning Services Agreement (KU Contract No. K18006) dated as of April 1, 2017 and any amendments thereto, to be entered into from time to time by the Counterparty with Beneficiary (as amended, the "Agreement") including amounts related to damages or indemnification due to default, breach or termination of the Agreement and including obligations that would exist under the Agreement but for operation of any applicable provision of Title 11 (bankruptcy) of the United States Code or similar laws affecting creditor rights, or under applicable law or by agreement of Counterparty (the payment obligations described above are referred to herein collectively as the "Guaranteed Obligations").

**This Guaranty shall replace, supersede and render null and void any existing guaranties currently in force with respect to the Agreement.**

2. **Guaranty Absolute:** The Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Agreement, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of Beneficiary with respect thereto. The obligations of the Guarantor under this Guaranty are independent of, but related to, the Counterparty's obligations under the Agreement and a separate action or actions may be brought and prosecuted against the Guarantor to enforce this Guaranty, irrespective of whether any action is brought against one or more of the parties constituting Counterparty or whether one or more of the parties constituting Counterparty is joined in any such action or actions. The liability of the Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and the Guarantor hereby irrevocably waives any defenses it may now or hereafter have in any way relating to, any or all of the following:

- (a) any lack of validity or enforceability of the Agreement or any agreement or instrument relating thereto;
- (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations under the Agreement, any modification, extension or waiver of any of the terms of the Agreement, or any other amendment or waiver of or any consent to departure from any term of the Agreement;
- (c) any taking, exchange, release or non-perfection or the taking or

failure to take any other action with respect to any collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(d) any requirement that Beneficiary proceed against one or more of the parties constituting Counterparty, any other person or entity, any collateral or any manner of application of any collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any collateral for all or any of the Guaranteed Obligations;

(e) any change, restructuring or termination of the corporate structure or existence of one or more of the parties constituting Counterparty or any of its Subsidiaries;

(f) any lack or failure of notice or any failure of Beneficiary to disclose to one or more of the parties constituting Counterparty or the Guarantor any information relating to the financial condition, operations, properties or prospects of one or more of the parties constituting Counterparty or the Guarantor, or relating to the Agreement, as the case may be, now or in the future known to Beneficiary (the Guarantor waiving any duty on the part of Beneficiary to disclose such information); or

(g) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by Beneficiary that might otherwise constitute a defense available to, or a discharge of, one or more of the parties constituting Counterparty, the Guarantor or any other guarantor or surety.

Notwithstanding any provision to the contrary contained herein, Guarantor's liability hereunder shall be and is specifically limited as expressly set forth in Section 1 above, and in no event shall Guarantor be subject hereunder to consequential, incidental, indirect, special, exemplary, equitable, loss of profits, punitive, tort, or any other damages, costs, or attorney's fees, except to the extent specifically provided in the Agreement.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by Beneficiary or any other Person upon the insolvency, bankruptcy or reorganization of one or more of the parties constituting Counterparty or the Guarantor or otherwise, all as though such payments had not been made. The obligations of the Guarantor under this Guaranty shall at all times rank at least *pari passu* in right of payment with all other unsecured and unsubordinated indebtedness (actual or contingent) of the Guarantor, except as may be required by law. This Guaranty shall continue to be effective if one or more of the parties constituting Counterparty merges or consolidates with or into another entity,

loses its separate legal identity or ceases to exist.

This Guaranty is a continuing guaranty of the payment (and not of collection) by each of the parties constituting Counterparty of its obligations under the Agreement. In no event shall Guarantor's liability to Beneficiary exceed Counterparty's liability under the Agreement, notwithstanding the effect of the insolvency, bankruptcy or reorganization of Counterparty. The Guarantor agrees that its obligations under this Guaranty shall not be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of one or more parties constituting Counterparty (or the estate in bankruptcy of one or more parties constituting Counterparty) resulting from the operation of any present or future provision of the federal bankruptcy law or other similar statute.

- 3. Waivers and Acknowledgments:** The Guarantor hereby waives presentment, protest, acceleration, dishonor, promptness, diligence, filing of claims with a court in the event of insolvency or bankruptcy of the one or more parties constituting Counterparty, notice of acceptance of this Guaranty and any other notice with respect to any of the Guaranteed Obligations and this Guaranty and any requirement that Beneficiary protect, secure, perfect or insure any lien or any property subject thereto or exhaust any right or take any action against one or more of the parties constituting Counterparty or any other Person or entity, or any collateral. The Guarantor hereby waives any right to revoke this Guaranty, and acknowledges that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

No delay of Beneficiary in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder nor shall any single or partial exercise by Beneficiary of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to Beneficiary or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Beneficiary from time to time.

- 4. Expenses:** Guarantor agrees to pay on demand any and all reasonable out-of-pocket costs, including reasonable legal fees and expenses, and other reasonable expenses incurred by Beneficiary in enforcing Guarantor's obligations under this Guaranty.
- 5. Subrogation:** The Guarantor will not exercise any right that it may now or hereafter acquire against Counterparty that arise from the existence, payment, performance or enforcement of the Guarantor's Obligations under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of Beneficiary against Counterparty or any collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from Counterparty, directly or indirectly, in cash or other

property or by setoff or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the obligations of Counterparty under the Agreement and all other amounts payable under this Guaranty shall have been performed or paid in full in cash (and not subject to disgorgement in bankruptcy or otherwise). If any amount shall be paid to the Guarantor in violation of the preceding sentence at any time prior to the later of the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Guaranty, the Guarantor shall hold such amount as agent for the benefit of Beneficiary, which amount shall forthwith be paid to Beneficiary to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Agreement, or to be held as collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (i) the Guarantor shall make payment to Beneficiary of all or any part of the Guaranteed Obligations and (ii) all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall be paid in full in cash, Beneficiary will, at the Guarantor's request and expense, execute and deliver to the Guarantor appropriate documents, without recourse and without representation or warranty by Beneficiary, of all of Beneficiary's rights and benefits under the Agreement. In the event Guarantor performs part or all of Counterparty's obligations, Guarantor shall be entitled to Counterparty's rights and benefits under the Agreement and shall be subrogated to Counterparty's rights to Beneficiary with respect to such of Counterparty's obligations so performed by Guarantor.

6. **Reservation of Defenses:** Guarantor agrees that except as expressly set forth herein, it will remain bound upon this Guarantee notwithstanding any defenses which, pursuant to the laws of suretyship, would otherwise relieve a guarantor of its obligations under a guaranty. Guarantor does reserve the right to assert defenses which Counterparty may have to payment of any Guaranteed Obligation other than defenses arising from the bankruptcy or insolvency of Counterparty and other defenses expressly waived hereby.
7. **Notices:** All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be designated by written notice, from time to time, to the other party, and (b) be effective upon receipt, when mailed by U.S. mail, registered or certified, return receipt requested, postage prepaid, or personally delivered. Notices shall be sent to the following addresses:

**If to Guarantor:**  
Carlisle & Bray Enterprises, LLC  
Attn: Mr. Scott Bray  
50 E. RiverCenter Blvd  
Suite 1180  
Covington, Kentucky 41011  
Phone: 859-746-2666; Fax: 859-746-7427



**If to Beneficiary:**

Kentucky Utilities Company  
220 West Main Street  
Louisville, Kentucky 40202  
Attn: Director Corporate Fuels and By-Products  
Phone: 502-627-2774; Fax: 502-627-3243

8. **Demand and Payment:** Any demand by Beneficiary for performance or payment hereunder shall be in writing, signed by a duly authorized officer of Beneficiary and delivered to the Guarantor pursuant to Section 7 hereof, and shall (a) reference this Guaranty, (b) specifically identify Beneficiary, the Guaranteed Obligations to be paid and the amount of such Guaranteed Obligations and (c) if applicable, set forth payment instructions. There are no other requirements of notice, presentment or demand. Guarantor shall pay, or cause to be paid, such Guaranteed Obligations within thirty (30) business days of receipt of such demand.

9. **Representations and Warranties of Guarantor:** Guarantor represents and warrants that:

(a) it is a limited liability company duly organized and validly existing under the laws of the State of Kentucky and has the power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws effecting creditors' rights generally and by general principles of equity.

10. **Miscellaneous:**

Default. Guarantor represents and warrants that to its best information, knowledge and belief, no default(s) of the Agreement are known to exist as of the date of this Guaranty. In the event Counterparty defaults in the performance of any Guaranteed Obligations under the Agreement, Beneficiary shall give written notice to Guarantor. Promptly thereafter, Guarantor shall have the right to perform or cause to be performed such obligation of Counterparty as required by the Agreement.

Assignment. The Guarantor shall not assign this Guaranty without the express written consent of the Beneficiary and any purported assignment absent such

consent is void. The Beneficiary shall be entitled to assign its rights under this Agreement in its sole discretion.

Severability. If any provision or portion of a provision of this Agreement is declared void and/or unenforceable, such provision or portion shall be deemed severed from this Agreement which shall otherwise remain in full force and effect.

Amendments. No amendment of this Guaranty shall be effective unless in writing and signed by Guarantor, Counterparty and Beneficiary. No waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless such waiver or consent shall be in writing and signed by Beneficiary. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

Successors and Assigns. This Guaranty shall be binding upon Guarantor, its successors and permitted assigns and inure to the benefit of and be enforceable by Beneficiary, its successors and assigns.

Prior Agreements. The Guaranty embodies the entire agreement and understanding between Guarantor and Beneficiary and supersedes all prior agreements and understandings relating to the subject matter hereof.

Headings. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

11. **Limitation by Law:** All rights, remedies and powers provided in this Guaranty may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Guaranty are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Guaranty invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.
12. **Governing Law:** This Guaranty shall in all respects be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to principles of conflicts of laws.

**IN WITNESS WHEREOF,** Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized officer effective as of this 5 day of April, 2017 ("Effective Date").

Guarantor: CARLISLE & BRAY ENTERPRISES, LLC

By:  \_\_\_\_\_

Name: Scott Bray

Title: CFO