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**PRE-CLOSING COAL INVENTORY PURCHASE AGREEMENT**

by and between

**MILL CREEK CLEAN FUELS, LLC**

and

**LOUISVILLE GAS AND ELECTRIC COMPANY**

**January 16, 2019**

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## **PRE-CLOSING COAL INVENTORY PURCHASE AGREEMENT**

THIS PRE-CLOSING COAL INVENTORY PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of January 16, 2019 (the “Effective Date”), by and between Mill Creek Clean Fuels, LLC, a Colorado limited liability company (“Producer”), and Louisville Gas and Electric Company, a Kentucky corporation (“Generator”). Producer and Generator are also each referred to herein as a “Party” and collectively as the “Parties.”

### **RECITALS:**

WHEREAS, Generator owns and operates a four-unit coal-fired, steam-power, electric-generating plant and associated equipment, facilities and improvements known as the Mill Creek Generating Station (the “Power Plant”) on certain property located in southwest Jefferson County, Kentucky (more particularly described on Exhibit A, the “Site”);

WHEREAS, Producer intends to use certain portions of the Site for the operation and maintenance of a refined coal production facility (the “Facility”), upon the terms and subject to the conditions set forth in the License Agreement;

WHEREAS, Generator owns the Coal Inventory; and

WHEREAS, Generator desires to sell, transfer and assign to Producer, and Producer desires to purchase and acquire from Generator, the Coal Inventory pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS; CONSTRUCTION**

#### **SECTION 1.1 Definitions.**

The following terms, when used in this Agreement, have the following meanings:

“Affiliate” of a specified Person means any Person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such specified Person. As used in this definition of Affiliate, the term “control” of a specified Person including, with correlative meanings, the terms, “controlled by” and “under common control with,” means (a) the ownership, directly or indirectly, of 50 percent or more of the equity interest in a Person or (b) the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning given to such term in the introductory paragraph.

“Business Activity Tax” means any Taxes based upon a Party’s corporate franchise, capital, assets, profit, net income or general operations paid or payable by that Party.

“Business Day” means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in New York, New York are authorized by Law or governmental action to close.

“Claims” means any and all suits, actions, causes of action, legal proceedings, claims, losses, demands, liabilities, costs, damages, liquidated damages, expenses, fines and penalties, whether based on contract, warranty, guarantee, indemnity, tort (including negligence), strict liability, breach of statute or otherwise, including costs and expenses of any and all actions, suits, proceedings, investigations, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys’ and consultant fees and reasonable disbursements in connection therewith whether such costs, expenses, fees and disbursements relate to a Third Party claim or to a claim by an Indemnified Party directly against an Indemnifying Party.

“Coal Feedstock Purchase Agreement” means the Coal Feedstock Purchase Agreement, dated as of the Effective Date, by and between Producer and Generator.

“Coal Handling and Consulting Agreement” means the Coal Handling and Consulting Agreement, dated as of the Effective Date, by and between Producer and Generator.

“Coal Inventory” means [REDACTED] net Tons of coal owned by Generator that is stored in the Coal Yard.

“Coal Inventory Closing Date” means the Commercial Operations Date, as defined in the License Agreement.

“Coal Purchase Price” has the meaning given to such term in Section 3.3(a).

“Coal Yard” has the meaning given to such term in the Coal Handling and Consulting Agreement.

“Contract” means any agreement, lease, license, evidence of indebtedness, indenture, or other contract (including any design, construction, equipment or other warranty or guarantee under any of the foregoing).

“Effective Date” has the meaning given to such term in the introductory paragraph.

“Environmental Indemnity Agreement” means that certain Environmental Indemnity Agreement, dated as of the Effective Date, by and between Producer and Generator.

“Facility” has the meaning given to such term in the Recitals.

“Generator” has the meaning given to such term in the introductory paragraph.

“Generator Indemnified Parties” means Generator and its Affiliates, and their respective partners, members, shareholders, managers, officers, directors, employees, contractors, subcontractors, agents and representatives.

“Governmental Approvals” means any authorization, consent, concession, license, certificate, permit, waiver, privilege or approval from, or filing with, or notice to, any Governmental Body.

“Governmental Body” means the federal government of the United States, any state of the United States or political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any other governmental entity, instrumentality, agency, authority or commission.

“Indemnified Party” means any of the Producer Indemnified Parties or Generator Indemnified Parties, as applicable under Article IV.

“Indemnifying Party” means Generator or Producer, as applicable under Article IV.

“Indemnity Acceptance Date” has the meaning given to such term in Section 4.3(a).

“Knowledge” means, as to Generator, the actual knowledge, after due inquiry, of those persons identified on Schedule 1.1(a) and, as to Producer, the actual knowledge, after due inquiry, of those persons identified on Schedule 1.1(b); provided, however, that with respect to Tim Lenneman, no due inquiry is required.

“KPSC” has the meaning given to such term in Section 6.2(b).

“Law” means any law (including common law), statute, act, decree, ordinance, rule, directive (to the extent having the force of law), order, treaty, code or regulation (including any of the foregoing relating to health and safety matters) or any interpretation of any of the foregoing, as enacted, issued or promulgated by any Governmental Body, including all amendments, modifications, extensions, replacements or re-enactments thereof.

“Liabilities” means, as to any Person, all indebtedness, obligations and other liabilities of such Person (whether absolute, accrued, contingent, fixed or otherwise, and whether due or to become due).

“License Agreement” means that certain License and Services Agreement, dated as of the Effective Date, by and between Producer and Generator.

“Lien” means any mortgage, pledge, security interest, lien, levy, charge or other encumbrance of any kind whatsoever, or any conditional sale Contract, title retention Contract or other Contract giving effect to any of the foregoing.

“Notices” has the meaning given to such term in Section 6.5.

“Operator” means the Person designated as the Operator from time to time in writing by Producer to Generator in accordance with Section 4.2(a) of the License Agreement, which shall be Tinium Services, LLC, a Colorado limited liability company, as of the Effective Date.

“Party” and “Parties” have the meanings given to such terms in the introductory paragraph.

“Person” means any corporation, limited liability company, any form of partnership, any joint venture, trust, estate, Governmental Body, or other legal or commercial entity or any natural person.

“Power Plant” has the meaning given to such term in the Recitals.

“Producer” has the meaning given to such term in the introductory paragraph.

“Project Documents” means: (a) this Agreement, (b) the Coal Handling and Consulting Agreement, (c) the Refined Coal Supply Agreement, (d) the Coal Feedstock Purchase Agreement, (e) the License Agreement, (f) the Environmental Indemnity Agreement, (g) the Security Agreement of even date herewith between Producer and Generator, and (h) the other documents, agreements, certificates and instruments executed or entered into by and between Producer and Generator in connection with the transactions contemplated thereby.

“Producer Indemnified Parties” means Producer and its Affiliates, and their respective partners, members (and direct and indirect parents of such members), shareholders, managers, officers, directors, employees, contractors, subcontractors, agents and representatives.

“Refined Coal Supply Agreement” means the Refined Coal Supply Agreement, dated as of the Effective Date, by and between Producer and Generator.

“Retained Liabilities” has the meaning given to such term in Section 3.2.

“Site” has the meaning given to such term in the Recitals. The description of the Site may not be modified without the prior written consent of each Party.

“Tax” means any present or future tax, levy, impost, duty, charge, surcharge, assessment or fee of any nature (including any interest, penalties and additions thereto) that is imposed by any Governmental Body, including any present or future tax, levy, impost, duty, charge, assessment or fee of any nature triggered by the severance, transportation, importation, receipt, refining, processing, or other exercise of dominion, control, or ownership rights over the Coal Inventory that is imposed without regard to the existence of a purchase, sale, or other transaction effecting the ownership or ultimate control of the Coal Inventory. For purposes of clarification and not limitation, Taxes include Transaction Taxes.

“Third Party” means any Person other than (a) a Party, (b) a party to any Project Document other than this Agreement, and (c) each Affiliate of each Person referenced in the immediately preceding clause (a) or (b).

“Third Party Supplier(s)” means the party(ies) that were under contract to Generator for the supply, handling and/or transportation of the Coal Inventory when it was supplied to Generator.

“Ton” means 2,000 pounds avoirdupois weight.

“Transaction Tax” means any sales, use, excise, value-added, gross receipts (in the nature of a sales tax), services, consumption and other similar transaction-based Taxes, however designated, that are properly levied by any Governmental Body upon or in respect of the benefits or transactions contemplated under this Agreement and required by any Law or by custom to be collected from the purchaser of goods or services (but excluding any Business Activity Tax).

## SECTION 1.2 Construction of Certain Terms and Phrases.

Unless the context of this Agreement otherwise requires: (a) words of either gender include the other gender; (b) words using the singular or plural also include the plural or singular, respectively; (c) the terms “hereof,” “herein,” “hereby,” “hereto” and similar words refer to this entire Agreement and not any particular Article, Section, Clause, Exhibit, Appendix or Schedule or any other subdivision of this Agreement; (d) references to “Article,” “Section,” “Clause,” “Exhibit,” “Appendix” or “Schedule” are to the Articles, Sections, Clauses, Exhibits, Appendices and Schedules, respectively, of this Agreement; (e) the words “include” or “including” shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases or words of like import; (f) the word “or” is not exclusive; and (g) references to “this Agreement” or any other agreement or document shall be construed as a reference to such agreement or document, including any Exhibits, Appendices, Attachments and Schedules thereto, as amended, modified or supplemented and in effect from time to time. Whenever this Agreement refers to a day or a number of days, such day or number shall refer to calendar days unless Business Days are specified. If a date specified herein for giving any notice or taking any action is not a Business Day, then the date for giving such notice or taking such action shall be the next day that is a Business Day. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under generally accepted accounting principles as promulgated by the Financial Accounting Standards Board and as in effect on the Effective Date.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

#### SECTION 2.1 Generator’s Representations.

Generator represents and warrants to Producer as of the Effective Date and as of the Coal Inventory Closing Date as follows:

(a) the execution and delivery of, and performance under, this Agreement by Generator have been duly authorized and do not, and will not, violate or conflict with any charter, bylaw, Law, Contract, Governmental Approval or obligation applying to Generator, the Coal Inventory or the Site, other than such violations or conflicts that would not reasonably be



expected to have a material adverse effect on Generator's ability to perform its obligations under this Agreement;

(b) this Agreement constitutes a legal, valid and binding obligation of Generator, enforceable against Generator in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization and similar Laws affecting the enforcement of creditors' rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending;

(c) no Governmental Approval from, notice to, consent, approval, authorization or order of any court or other Governmental Body or Third Party not already given or obtained and in full force and effect is required with respect to Generator in connection with its execution and delivery of, and performance under, this Agreement, other than such notices as may be required to be given to the KPSC under applicable Law, and other such Governmental Approvals, notices, consents, approvals, authorizations or orders the failure of which to file, obtain or give would not reasonably be expected to have a material adverse effect on its ability to perform under this Agreement;

(d) Generator is duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky and is authorized to do business in each jurisdiction necessary for it to perform its obligations under this Agreement, and Generator has the right, power and authority to enter into this Agreement and to perform its obligations hereunder;

(e) there is no pending or, to Generator's Knowledge, threatened action, suit, investigation, arbitration or other proceeding that would reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement;

(f) neither the execution, delivery or performance of this Agreement by Generator, nor the consummation by Generator of the transactions contemplated hereby, will result in the creation or imposition of any Lien, Claim, charge, restriction, equity or encumbrance of any kind whatsoever upon, or give to any Person other than Producer or its Affiliates any interest or right in or with respect to, the Coal Inventory or the assets of Producer or its Affiliates, or otherwise subject Producer or its Affiliates to any of the Liabilities of Generator, except for the Lien contemplated by the Project Documents to be granted by Producer to Generator; and

(g) Generator owns good, valid and marketable title to the Coal Inventory, free and clear of all Liens, except for any Liens in favor of Third Party Suppliers of the Coal Inventory, and, on the Coal Inventory Closing Date, good, valid and marketable title to the Coal Inventory, free and clear of all Liens, except for any Liens in favor of Third Party Suppliers of the Coal Inventory and the Lien contemplated by the Project Documents to be granted by Producer to Generator, shall pass to Producer.

## SECTION 2.2 Producer's Representations.

Producer represents and warrants to Generator as of the Effective Date hereof and as of the Coal Inventory Closing Date as follows:

(a) the execution and delivery of, and performance under, this Agreement by Producer have been duly authorized and do not, and will not, violate or conflict with any charter, bylaw, Law, Contract, Governmental Approval or obligation applying to Producer, other than such violations and conflicts that would not reasonably be expected to have a material adverse effect on Producer's ability to perform its obligations under this Agreement;

(b) this Agreement constitutes a legal, valid and binding obligation of Producer, enforceable against Producer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization and similar Laws affecting the enforcement of creditors' rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending;

(c) no Governmental Approval from, notice to, consent, approval, authorization or order of any court or other Governmental Body or Third Party not already given or obtained and in full force and effect is required with respect to Producer in connection with its execution and delivery of, and performance under, this Agreement, other than such Governmental Approvals, notices, consents, approvals, authorizations or orders the failure of which to file, obtain or give would not reasonably be expected to have a material adverse effect on its ability to perform under this Agreement;

(d) Producer is duly organized, validly existing and in good standing under the laws of the State of Colorado and is authorized to do business in each jurisdiction necessary for it to perform its obligations under this Agreement, and Producer has the right, power and authority to enter into this Agreement and to perform its obligations hereunder;

(e) there is no pending or, to Producer's Knowledge, threatened action, suit, investigation, arbitration or other proceeding that would reasonably be expected to have a material adverse effect on the ability of Producer to perform its obligations under this Agreement; and

(f) neither the execution, delivery or performance of this Agreement by Producer, nor the consummation by Producer of the transactions contemplated hereby, will result in the creation or imposition of any Lien, Claim, charge, restriction, equity or encumbrance of any kind whatsoever upon, or give to any Person other than Producer or its Affiliates any interest or right in or with respect to, the Coal Inventory or the assets of Generator or its Affiliates, except for the Lien contemplated by the Project Documents to be granted by Producer to Generator.

### **ARTICLE III**

#### **PURCHASE AND SALE OF COAL INVENTORY**

##### **SECTION 3.1 Transfer of Coal Inventory.**

(a) Subject to the terms and conditions set forth herein, Generator hereby agrees to sell, assign, transfer and deliver to Producer, and Producer hereby agrees to purchase and accept from Generator, effective as of the Coal Inventory Closing Date, all of Generator's right, title and interest in and to the Coal Inventory, free and clear of all Liens, except for any Liens in favor

of Third Party Suppliers of the Coal Inventory and the Lien contemplated by the Project Documents to be granted by Producer to Generator.

(b) Generator represents, acknowledges and agrees that the Coal Inventory is Coal as defined in, and for purposes of, the Coal Feedstock Purchase Agreement. If the Coal Inventory does not meet the Coal Specifications, Producer shall be entitled to reject the same. If the Coal Inventory is not rejected by Producer, Producer shall be deemed to have accepted the Coal Inventory as Coal as defined in, and for purposes of, the Coal Feedstock Purchase Agreement. The Coal Inventory shall be located solely at the Coal Yard.

(c) Title and risk of loss to the Coal Inventory will transfer to Producer at the Coal stockpile in the Coal Yard.

(d) **EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE COAL INVENTORY SOLD PURSUANT TO THIS AGREEMENT IS SOLD “AS IS” AND WITH ALL FAULTS. GENERATOR MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE COAL INVENTORY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

### SECTION 3.2 Retained Liabilities.

Except as specifically provided herein, Producer shall not assume by virtue of this Agreement or the transactions contemplated hereby or otherwise, and shall have no liability for, any Liabilities of Generator, including those related to the Coal Inventory arising during, or attributable to periods before, the Coal Inventory Closing Date, including any sales or use tax or any personal property tax, if any, or any amounts due and payable to any Third Party Suppliers or other payment liability or obligation with respect to the Coal Inventory that has not yet become due and payable (the “Retained Liabilities”). Generator shall, to the extent permitted by Law, indemnify Producer for, and hold harmless Producer in respect of, all Retained Liabilities.

### SECTION 3.3 Purchase Price and Payment.

(a) The purchase price for the Coal Inventory shall be an amount equal to the product of (i) [REDACTED] times (ii) the weighted average Fully Loaded Cost (on a per Ton basis) of Generator’s inventory of Coal in stockpile in the Coal Yard, calculated as of the end of the day on January 10, 2019, as determined in accordance with the weighted average cost method of accounting for Coal regularly used by Generator in keeping its financial books, which shall be communicated in writing by an authorized representative of Generator to Producer on or prior to the Coal Inventory Closing Date (the “Coal Purchase Price”). For purposes of this Agreement, “Fully Loaded Cost” means the amount paid by Generator in respect of its inventory of Coal in the stockpile in the Coal Yard, including purchase price, quality adjustments, transportation costs and all other costs associated with such Coal, all as determined in accordance with the weighted average cost method of accounting for Coal regularly used by Generator in keeping its financial books.

(b) Producer shall pay to Generator, contemporaneously with Producer’s purchase of the Coal Inventory (and in no case later than one (1) Business Day after the Coal Inventory

Closing Date), the Coal Purchase Price in cash in immediately available funds by wire transfer into an account of Generator (as designated in writing by Generator).

#### SECTION 3.4 Books and Records; Audit Rights.

Generator and Producer shall each retain and maintain (and Producer agrees to cause its Operator to retain and maintain) books and records (updated promptly and consistently) in accordance with good accounting practices in connection with the transactions contemplated in the Project Documents, throughout the Term and until the later of (a) two (2) years after the termination of the other Project Documents and (b) the date on which the audit of Producer's federal income tax return for the applicable calendar year has been closed by the Internal Revenue Service and is no longer subject to appeal or the applicable statute of limitations for the Internal Revenue Service to audit such tax return has expired, including any extension of the statute of limitations agreed to by Producer or any of its members. Each of Generator and Producer shall have the right (and Producer shall cause its Operator to afford Generator the right), at no additional expense but bearing its own costs, to inspect, copy and audit such books and records of the other Party at any reasonable time(s) upon reasonable prior written notice to the other Party during that retention period, and each Party shall (and Producer agrees to cause its Operator to) reasonably cooperate with such audit-related inquiries of the other Party. Each Party shall remain entitled to conduct an audit notwithstanding the payment of any amount pursuant to this Agreement.

#### SECTION 3.5 Taxes.

(a) Except to the extent that Producer has provided a resale certificate, exemption certificate, direct pay permit or other such appropriate documentation of exemption or explanation of non-taxability sufficient to confirm the exempt status of Producer or the relevant transaction involving Producer under this Agreement for each jurisdiction in which the purchase, sale and/or delivery of any benefit takes place pursuant to this Agreement, so as to eliminate Generator's obligation to charge, collect and remit any relevant Transaction Tax, Generator shall add to each invoice issued hereunder, and collect from Producer, any applicable Transaction Tax.

(b) Generator shall be responsible for, and pay, all Taxes (other than the Business Activity Tax, including Producer's Business Activity Tax) levied or imposed by any Governmental Body on or in respect of the purchase, possession, use, ownership, storage or transportation of the Coal Inventory delivered hereunder prior to the sale and transfer of the Coal Inventory to Producer at the Coal stockpile in the Coal Yard.

(c) Producer shall be responsible for, and pay, all Taxes (other than the Business Activity Tax, including Generator's Business Activity Tax) levied or imposed by any Governmental Body on or in respect of the purchase, possession, use, ownership, storage or transportation of the Coal Inventory delivered hereunder coincident with, or subsequent to, the sale and transfer of the Coal Inventory to Producer at the Coal stockpile in the Coal Yard.

(d) If Generator or Producer is contacted with respect to an audit, investigation, claim, action, or proceeding relating to the requirement to collect, remit, or pay over any Taxes that are the responsibility of another Party hereunder, the Party so contacted shall provide written

notice of such contact to the other Party and the Party responsible for such Taxes hereunder shall (i) indemnify and hold the contacted Party harmless against such Taxes and assume responsibility for the defense of such audit, investigation, claim, action, or proceeding (in which case the contacted Party and the responsible Party shall reasonably cooperate and consult with one another (including providing reasonably requested information) and keep each other reasonably informed with respect to such defense); or (ii) promptly advance to or reimburse the contacted Party for such Taxes collected, remitted or paid.

(e) Generator and Producer shall each expend commercially reasonable efforts to cooperate with the other to determine Producer's liability for Transaction Taxes accurately, and minimize such liability to the extent legally permissible including Producer registering for Transaction Tax purposes where appropriate; provided, however, that the failure of either Party to register for Transaction Tax purposes, or hold a Transaction Tax license or Transaction Tax permit shall not alter the responsibility for Transaction Taxes set forth herein; provided, further, that each Party shall on request confirm in writing to the other which Transaction Tax registrations it holds and be liable for any cost or penalties arising directly from the failure to hold any such registration so confirmed.

(f) Producer and Generator shall each provide and make available to the other any resale certificates, information regarding out-of-state sales or use of coal, materials or services, and any other exemption certificates, direct pay permits, or information reasonably related to Taxes and requested by the other Party.

#### SECTION 3.6 Coal Inventory Closing Date.

(a) The purchase and sale of the Coal Inventory pursuant to Section 3.1 shall occur on the Coal Inventory Closing Date.

### ARTICLE IV

#### INDEMNIFICATION

##### SECTION 4.1 Generator's Indemnification.

Without prejudice to Section 4.2, and subject to Section 4.4, Section 4.5, Section 4.6, Section 4.7 and Section 6.8, Generator shall indemnify, defend and hold harmless the Producer Indemnified Parties from and against any and all Claims resulting from or arising out of any breach by Generator of any of Generator's representations, warranties, covenants or agreements in this Agreement which (if curable) is not cured in accordance with this Agreement, in each case whether caused by Generator or its Affiliate, employee, contractor or agent.

##### SECTION 4.2 Producer's Indemnification.

Without prejudice to Section 4.1, and subject to Section 4.4, Section 4.5, Section 4.6, Section 4.7 and Section 6.8, Producer shall indemnify, defend and hold harmless the Generator Indemnified Parties from and against any and all Claims resulting from or arising out of any breach of any of Producer's representations, warranties, covenants or agreements in this Agreement which (if curable) is not cured in accordance with this Agreement, in either case

whether caused by Producer or Operator or an employee, agent or contractor of either of them (other than Generator in its role as Coal Consultant under the Coal Handling and Consulting Agreement).

#### SECTION 4.3 Indemnification Procedures.

(a) In the event an Indemnified Party becomes aware of a Claim against or incurred by it that the Indemnified Party reasonably believes is covered by the provisions of this Article IV, written notice shall be given promptly by the Indemnified Party to the Indemnifying Party containing detail reasonably sufficient for the Indemnifying Party to identify the nature and basis of the Claim. Provided that the Indemnifying Party admits in writing to the Indemnified Party within thirty (30) days after receipt of such notice (the "Indemnity Acceptance Date") that the Indemnifying Party is responsible for indemnifying the Indemnified Party for such Claim in accordance with the provisions of this Article IV, the Indemnifying Party shall have the right to contest and defend by all appropriate legal proceedings such Claim and to control the contest and defense and all settlements of such Claim (provided, however, that the Indemnifying Party will not, without the prior written consent of the Indemnified Party, enter into any settlement that would restrict or impose future conditions on the Indemnified Party or its operations or would create an obligation or liability (other than for the payment of money) on the Indemnified Party's part) and to select lead counsel reasonably satisfactory to the Indemnified Party to defend any and all such Claims at the sole cost and expense of the Indemnifying Party; provided, however, that the Indemnifying Party must conduct the defense of the claim actively and diligently thereafter in order to preserve its rights in this regard. The Indemnified Party may select counsel to participate with the Indemnifying Party's counsel in any such defense, in which event the Indemnified Party's counsel shall be its own cost and expense; provided, however, that if the Indemnified Party shall have been advised in good faith in writing by its counsel that there may be one or more legal defenses available to it that are different from or in addition to those available to the Indemnifying Party, or that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such Claim, the reasonable fees and expenses of such separate counsel shall be borne by the Indemnifying Party and the Indemnified Party and the Indemnifying Party shall share control of the defense, compromise and/or settlement of such Claim. Further, if the Indemnifying Party does not admit in writing to the Indemnified Party on or prior to the Indemnity Acceptance Date that the Indemnifying Party is responsible for indemnifying the Indemnified Party for such Claim in accordance with the provisions of this Article IV, the Indemnified Party may assume the investigation and defense of such Claim, including employing legal counsel of its choice, at the Indemnifying Party's expense; provided, however, that the Indemnified Party will not, without the prior written consent of the Indemnifying Party, enter into any settlement that would restrict or impose future conditions on the Indemnifying Party or its operations or would create any obligation or liability (other than for the payment of money) on the Indemnifying Party's part. In connection with any such Claim, or the defense or contesting thereof, the Parties shall reasonably cooperate with each other and their respective legal counsel and provide access to relevant books and records in their possession.

(b) The Indemnified Party shall notify the Indemnifying Party in writing of any matter potentially indemnifiable under this Agreement as soon as reasonably practicable after the Indemnified Party becomes aware of a potentially indemnifiable event; provided, however, that

the failure to provide the notice in a timely manner shall not reduce the Indemnifying Party's obligations except to the extent of any increase in the amount of the applicable Claim or any material prejudice suffered by the Indemnifying Party or the Indemnified Party as a result of such Indemnified Party's failure to provide timely written notice.

(c) The Indemnifying Party shall pay to the Indemnified Party all reasonable costs and expenses incurred by such Indemnified Party in the enforcement of this Article IV.

#### SECTION 4.4 No Imputed Liability.

(a) For purposes of Section 4.1 and Section 4.2, all acts and omissions of Generator or any of the Generator Indemnified Parties, on the one hand, or of Producer or any of the Producer Indemnified Parties, on the other hand, shall be deemed solely acts and omissions of such Persons, whether committed in the course of providing services for or on behalf of another Party under one or more Project Documents, or otherwise, and in no event will any such acts or omissions be imputed to, or deemed to be acts or omissions of, the other Party, any of its Indemnified Parties or any contractors, subcontractors, agents or invitees thereof.

(b) Notwithstanding any other provision of this Agreement or the other Project Documents, no member, shareholder, officer, director, agent or employee of a Party shall have any personal liability hereunder solely by reason of that relationship with such Party, and no Affiliate of a Party, or any member, shareholder, officer, director, agent or employee of such Affiliate shall have any liability hereunder solely by reason of that relationship with such Party or Affiliate; provided, however, that, for purposes of clarification and not limitation, this Section 4.4(b) shall not release, excuse or otherwise exempt any such Person from any liability arising from any contract to which such Person is a party or arising under applicable Law as a result of such Person's acts or omissions.

#### SECTION 4.5 Environmental Matters.

Notwithstanding any other provision of this Agreement to the contrary, the remedies contained in this Article IV shall not be applicable to any Claim arising out of, or any matter governed by, Environmental Law or pertaining to Hazardous Material, as those terms are defined in the Environmental Indemnity Agreement, and the Parties acknowledge and agree that any indemnification or other remedies as to such environmental matters are governed solely and exclusively by the Environmental Indemnity Agreement; provided, however, that solely in the event of the termination or rejection of the Environmental Indemnity Agreement in a bankruptcy or similar proceeding, Article III of the Environmental Indemnity Agreement and the definitions in the Environmental Indemnity Agreement used in such Article III are hereby incorporated in this Agreement by this reference and made a part hereof as to each of the Parties hereto, and shall continue as a part of this Agreement notwithstanding any termination or rejection of that separate Environmental Indemnity Agreement.

#### SECTION 4.6 Offset.

In the event that either Generator, on the one hand, or Producer, on the other hand, is obligated to indemnify and hold harmless the Producer Indemnified Parties under Section 4.1 or the Generator Indemnified Parties under Section 4.2, respectively, the amount owing to the

Indemnified Party shall be the actual amount of the Claim, net of any amounts actually recovered by the Indemnified Parties (and legally and contractually permitted to be retained by them) under indemnification, contribution or similar agreements or arrangements with Third Parties or under insurance policies of such Indemnified Parties with respect to such Claim (net of any deductibles, out-of-pocket costs and expenses and self-insured retentions incurred in connection with the realization or receipt of such amounts), subject to any further limitations set forth in this Agreement. Each Indemnified Party agrees to use commercially reasonable efforts to obtain recovery from any of the sources of proceeds referenced in the immediately preceding sentence, although the applicable Indemnified Party does not have to seek such recovery prior to making and pursuing a claim for indemnification under this Agreement or any other Project Document. If the amount to be netted hereunder from any payment required under Section 4.1 or 4.2 (as applicable) is recovered or otherwise received after payment of any amount otherwise required to be paid under Section 4.1 or 4.2, the applicable Indemnified Party shall repay to the applicable Indemnifying Party, promptly after such recovery or other receipt, any amount that the applicable Indemnifying Party would not have had to pay pursuant to Section 4.1 or 4.2 had such recovery or other receipt occurred at the time of such payment.

#### SECTION 4.7 Mitigation.

Each Indemnified Party shall use, and cause its Affiliates to use, commercially reasonable efforts to mitigate any Claim it reasonably expects to be an indemnifiable Claim under this Agreement upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Claim (or such additional costs as required by applicable Law); provided, that such costs incurred shall be recoverable from the relevant Indemnifying Party as a part of the Claim.

### ARTICLE V

#### DISPUTE RESOLUTION

##### SECTION 5.1 Dispute Resolution.

(a) The Parties hereto agree: (i) to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner; and (ii) to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such dispute.

(b) During resolution of any dispute under this Article IV, the Parties shall continue to perform all of their respective obligations under this Agreement without interruption or slow down until such dispute is resolved, except to the extent a Party is prevented from performing due to the nature of the dispute or permitted to suspend or otherwise modify performance under a Project Document.



## ARTICLE VI

### MISCELLANEOUS

#### SECTION 6.1 Confidentiality.

Except as otherwise provided below, during the Term of this Agreement and for a period of two (2) years thereafter, each Party shall hold, and shall cause its Affiliates, agents, contractors, advisors (including counsel and consultants), any lender, potential lender, investor or potential investor to hold, in strict confidence from any other Person (other than any such Affiliate, agent or advisor or any lender, potential lender, investor or potential investor as permitted hereby) all documents and information of or concerning the other Party or any of its Affiliates furnished to it, or its Affiliates, agents or advisors (including counsel and consultants), by or on behalf of the other Party in connection with this Agreement, any other Project Document or the transactions contemplated hereby or thereby, and neither Party nor their Affiliates or any agent, advisor, lender, potential lender, investor or potential investor shall disclose any such information unless, subject to Section 6.2, the disclosing Party is required to disclose any such information by judicial or administrative process (including in connection with obtaining from Governmental Bodies the necessary approvals of this Agreement and the transactions contemplated hereby) or by other requirements of Law. For purposes of this Section 6.1, the identity of the members of Producer and their direct and indirect parents shall be confidential information. Each Party may disclose such documents or information to its Affiliates, agents and advisors and any lender or potential lender or any investor or potential investor; provided, however, that prior to providing the information, such Party shall inform such agent, advisor, lender, potential lender, investor or potential investor that the information is confidential and that by receiving such information, such Person is agreeing to be bound by the confidentiality provisions of this Agreement. Each Party agrees to be responsible for any breach of the confidentiality obligations in this Agreement by any Person to whom it provides such information. Each Party may disclose such documents or information in an action or proceeding brought by either Party in pursuit of its rights or in the exercise of its remedies hereunder. Notwithstanding the foregoing, this Section 6.1 shall not apply to such documents or information that were (a) previously known by the Party receiving such documents or information without breach of any confidentiality requirement or obligation, (b) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through operation of Law, or by no fault of such receiving Party, or (c) later acquired by such receiving Party from another source if such receiving Party is not aware that such source is under an obligation to the disclosing Party to keep such documents and information confidential. Notwithstanding the foregoing, the Parties (and each employee, representative or other agent of the Parties) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to either Party relating to such tax treatment and tax structure.

#### SECTION 6.2 Required Disclosure.

(a) Any Party reasonably determining in good faith that it is required by Law or in the course of administrative or judicial proceedings to disclose information that is otherwise

required to be maintained in confidence pursuant to Section 6.1 may make disclosure notwithstanding the provisions of Section 6.1; provided, however, that the Party making the disclosure shall, if and to the extent allowed by such Law or proceeding, (i) give reasonable prior written notice to the other Party of the requirement and the terms thereof to allow such Party at its cost and expense to obtain proprietary or confidential treatment of such information by the Person to whom the information is disclosed and, to the extent such remedies are available, to seek protective orders limiting the dissemination and use of the information and (ii) cooperate to the maximum extent reasonably practicable to minimize the disclosure of the information. This Agreement does not alter the rights of either Party to object to the Law or proceedings requiring the disclosure.

(b) Notwithstanding any of the provisions of Section 6.1 or 6.2(a) to the contrary, Generator may file a copy of this Agreement with the Kentucky Public Service Commission (“KPSC”) to the extent required by Law. Prior to filing this Agreement with the KPSC, Generator shall seek confidential treatment of and KPSC approval to redact the financial terms of this Agreement, and such other terms as Generator reasonably believes may be redacted under applicable Law. Generator may also file with the KPSC any other information regarding this Agreement as is required by applicable Law, provided that Generator shall give reasonable prior written notice to Producer of such information it intends to provide and the reason therefore, and shall seek confidential treatment of such information if allowed under applicable Law.

(c) Other than as required to make the representations and warranties set forth in Article II true and correct, nothing contained herein shall require either Party to disclose to the other Party any information that is privileged or bound by a duty of confidentiality to a Person, or determined by such Party, in its reasonable discretion, to contain trade secrets.

### SECTION 6.3 Compliance with Laws and Governmental Approvals.

In connection with the performance of this Agreement, each Party agrees to comply in all material respects with all Laws, and each Party agrees that it or its agent will use commercially reasonable efforts to acquire and maintain, in a timely manner, all material Governmental Approvals required by Law or Governmental Bodies to exercise its rights or perform its obligations under this Agreement and, in the case of Producer, to use and operate the Facility on the Site.

### SECTION 6.4 Entire Agreement; Integration; Successors and Assigns.

This Agreement, together with the other Project Documents, together and cumulatively represent and constitute the entire, final, complete and integrated agreement and understanding between the Parties with respect to the subject matter herein and therein and the transactions contemplated hereby and thereby, and any and all other or previous understandings, proposals, negotiations, agreements, commitments and representations, whether oral or written, are merged herein and are superseded hereby. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

SECTION 6.5 Notices.

All notices, requests, demands, consents and waivers (collectively, “Notices”) hereunder shall be in writing and (a) delivered in person or by courier or (b) mailed certified first class mail, postage prepaid, return receipt requested, to the appropriate Party at the following addresses:

If to Generator, to:                      Louisville Gas and Electric Company  
220 West Main Street  
Louisville, Kentucky 40202  
Attn: Corporate Fuels and Byproducts Dept.

With a copy (which shall not constitute notice) to:

Louisville Gas and Electric Company  
220 West Main Street  
Louisville, Kentucky 40202  
Attn: General Counsel

If to Producer, to:                      Mill Creek Clean Fuels, LLC  
c/o Tinnuum Group, LLC  
5251 DTC Parkway, Suite 825  
Greenwood Village, CO 80111  
Attention: General Counsel

With a copy (which shall not constitute notice) to:

Davis Graham & Stubbs LLP  
1550 Seventeenth Street, Suite 500  
Denver, CO 80202  
Attention: Brian Boonstra/Randy Hubbard

And with a copy (which shall not constitute notice) to:

Sherman & Howard L.L.C.  
633 Seventeenth Street, Suite 3000  
Denver, CO 80202  
Attention: Joanne Norris

or such other address as either Party may designate to the other Party by notice given as provided herein. Such Notices shall be effective and deemed received (i) if delivered in person or by courier, upon receipt by the intended recipient or an employee that routinely accepts packages or letters from couriers or other persons for delivery to personnel at the address identified above (as confirmed by, if delivered by courier, the records of such courier), or (ii) if mailed, upon the date of delivery as shown by the return receipt therefor.

## SECTION 6.6 Assignment.

Neither this Agreement, nor any of the rights and obligations hereunder, may be assigned, transferred or delegated by either Party, in whole or in part, whether by operation of Law or otherwise, without the express prior written consent of the other Party, which consent may be withheld in the sole discretion of such other Party, except that either Party may assign this Agreement to an Affiliate without the prior written consent of the other Party, provided, however, that (a) any assignment by Generator to an Affiliate is to an Affiliate that owns the Site and owns and operates the Power Plant and has agreed with Producer and Generator to assume all of Generator's rights, interests and obligations under all Project Documents, whether arising before or after the date of such assignment, (b) any assignment by Producer to an Affiliate is to an Affiliate that owns or leases all of the Facility, and has agreed with Producer and Generator to assume all of Producer's rights, interests and obligations under all Project Documents, whether arising before or after the date of such assignment, and (c) any assignment to an Affiliate shall not release the assignor from any obligations under this Agreement unless otherwise expressly consented to by the non-assigning Party.

## SECTION 6.7 Waiver; Invalidity.

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by such waiving Party. The failure or delay of either Party to require performance by the other Party of any provision of this Agreement shall not affect its right to require performance of such provision unless and until such performance has been waived by such Party in writing in accordance with the terms hereof. No waiver by either Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. The invalidity or unenforceability of any provision of this Agreement shall be determined only by a court of competent jurisdiction. The Parties hereby agree to use good faith efforts to negotiate an equitable adjustment to any provisions of this Agreement determined to be invalid or unenforceable with a view toward effecting the purposes of this Agreement, and the validity or enforceability of the remaining provisions of this Agreement shall not be affected thereby.

## SECTION 6.8 Limitations of Liability; Remedies.

(a) **PRODUCER'S AGGREGATE INDEMNIFICATION OBLIGATIONS ARISING OUT OF ALL OF THE PROJECT DOCUMENTS, EXCEPT THE ENVIRONMENTAL INDEMNITY AGREEMENT, COLLECTIVELY SHALL NOT EXCEED [REDACTED] GENERATOR'S AGGREGATE INDEMNIFICATION OBLIGATIONS ARISING OUT OF ALL OF THE PROJECT DOCUMENTS, EXCEPT THE ENVIRONMENTAL INDEMNITY AGREEMENT, COLLECTIVELY SHALL NOT EXCEED [REDACTED]**

(b) **NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ITS AFFILIATES FOR CONSEQUENTIAL OR INDIRECT LOSS OR DAMAGE, LOSS OF PROFIT, LOSS OF GOODWILL OR ANY SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES**

RESULTING FROM ANY VIOLATION OF OR DEFAULT UNDER THIS AGREEMENT, INCLUDING BUSINESS INTERRUPTION DAMAGES, DAMAGES SUFFERED AS THE RESULT OF THE LOSS OF USE OF THE POWER PLANT OR THE FACILITY, COST OF PURCHASED OR REPLACEMENT POWER, DAMAGES SUFFERED BY CUSTOMERS OF SUCH PARTY FOR SERVICE INTERRUPTIONS, OR LOSS OF GOODWILL, LOSS OF USE OF EQUIPMENT AND COSTS OF REPLACEMENT OF PRODUCTS, IN EACH CASE, BY STATUTE, IN TORT OR CONTRACT, IN EQUITY, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, EXCEPT THAT THE FOREGOING SHALL NOT LIMIT AN INDEMNIFIED PARTY'S RIGHT TO INDEMNIFICATION, IF ANY, FOR ANY SUCH DAMAGES THAT RESULT FROM THE INDEMNIFYING PARTY'S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR, PROVIDED SUCH DAMAGES ARE NOT PRECLUDED BY THE LIMITATIONS IN SECTION 6.8(C), THAT THE INDEMNIFIED PARTY IS LEGALLY REQUIRED TO PAY TO A THIRD PARTY AS A RESULT OF A CLAIM.

(c) NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO ANY PERSON UNDER THIS AGREEMENT OR UNDER ANY CIRCUMSTANCES IN ANY FASHION FOR ANY CLAIM CAUSED BY OR RESULTING OR ARISING FROM OR IN CONNECTION WITH ANY LOSS OR REDUCTION OF TAX CREDITS OR BENEFITS (INCLUDING ANY OBLIGATION TO REFUND ANY TAX CREDITS OR BENEFITS), REGARDLESS OF SUCH PARTY'S RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT.

(d) THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE SOLE AND EXCLUSIVE REMEDIES OF THE PARTIES WITH RESPECT TO THIS AGREEMENT OR ANY CLAIMS RELATING TO THIS AGREEMENT AND THE TRANSACTIONS PROVIDED FOR HEREIN OR CONTEMPLATED HEREBY SHALL BE LIMITED TO THE PARTIES' RESPECTIVE RIGHT, TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT, TO SEEK SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF WITH RESPECT TO THIS AGREEMENT OR ANY PROVISION HEREOF, AND THE INDEMNIFICATION RIGHTS SET FORTH IN ARTICLE IV OR ELSEWHERE IN THIS AGREEMENT, IN ALL CASES SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 6.8; PROVIDED THAT THE FOREGOING SHALL NOT LIMIT ANY OTHER REMEDIES THAT MAY BE AVAILABLE TO A PARTY UNDER ANY OTHER PROJECT DOCUMENT. THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHT TO CLAIM OR SEEK ANY OTHER RIGHTS OR REMEDIES THAT OTHERWISE WOULD HAVE BEEN AVAILABLE AT LAW OR IN EQUITY WITH RESPECT THERETO, INCLUDING ANY CLAIMS FOR BREACH OF CONTRACT.

(e) NOTWITHSTANDING THE FOREGOING, PROVIDED SUCH DAMAGES ARE NOT PRECLUDED BY THE LIMITATIONS IN SECTION 6.8(C), THIS SECTION 6.8 SHALL NOT LIMIT THE RIGHTS OF EITHER PARTY TO SEEK INDEMNIFICATION, CONTRIBUTION OR REIMBURSEMENT FOR CLAIMS MADE

**AGAINST SUCH PARTY BY PERSONS NOT A PARTY OR AN AFFILIATE OF A PARTY HEREUNDER.**

**(f) IN ADDITION, TO THE EXTENT ANY PROCEEDS RECEIVED BY AN INDEMNIFYING PARTY FROM INSURANCE POLICIES EFFECTED AND MAINTAINED IN ACCORDANCE WITH THIS AGREEMENT ARE RECEIVED IN CONNECTION WITH OR ARE PAYABLE TOWARD ANY LOSS THAT WOULD OTHERWISE BE EXCLUDED PURSUANT TO THIS SECTION 6.8, SUCH LOSS SHALL BE RECOVERABLE BY THE INDEMNIFIED PARTY, BUT ONLY TO THE EXTENT (AND IN THE AMOUNT) SUCH PROCEEDS ARE PAID TO SUCH INDEMNIFYING PARTY.**

**(g) EXCEPT AS MAY BE EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT WITH RESPECT TO ANY INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT OR ANY OTHER PROJECT DOCUMENT, THE PROVISIONS OF THIS SECTION 6.8 SHALL APPLY TO ALL CLAIMS BASED ON OR ARISING UNDER THIS AGREEMENT, WHETHER IN CONTRACT, EQUITY, TORT OR OTHERWISE, REGARDLESS OF FAULT, GROSS OR OTHER NEGLIGENCE (IN WHOLE OR IN PART), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY AND SHALL EXTEND TO ALL INDEMNIFIED PARTIES HAVING RIGHTS UNDER THIS AGREEMENT AND THE SUCCESSORS AND ASSIGNS OF THE PARTIES HERETO AND SUCH INDEMNIFIED PARTIES.**

**(h) FOR PURPOSES OF CLARIFICATION AND NOT OF LIMITATION, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH ELSEWHERE IN THIS SECTION 6.8 (IT BEING UNDERSTOOD THAT THIS SUBSECTION (H) SHALL CONTROL AND HAVE PRIORITY OVER ANY OTHER PROVISION OF THIS SECTION 6.8), THE LIMITATIONS ON LIABILITY AND EXCLUSIVE REMEDY PROVISIONS SET FORTH IN THIS SECTION 6.8 SHALL NOT APPLY TO ANY CLAIMS PAID OR PAYABLE WITH RESPECT TO (I) ANY FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNIFYING PARTY, (II) ANY INDEMNIFICATION OBLIGATIONS WITH RESPECT TO CLAIMS ARISING FROM ANY ENVIRONMENTAL MATTERS, OR (III) ANY FAILURE OF AN INDEMNIFYING PARTY TO SATISFY ITS REGULAR PAYMENT OBLIGATIONS UNDER ANY PROJECT DOCUMENT.**

**(i) A Party shall not be liable for damages in respect of the same underlying damages under more than one provision of this Agreement or any of the other Project Documents.**

**(j) Each of Generator and Producer shall be excused from the non-performance of any of its obligations under this Agreement (other than payment obligations for amounts incurred prior to the other Party's or its Affiliates' failure to perform) to the extent that such non-performance is directly caused by the other Party's or such other Party's representatives' or Affiliates' breach of, or failure to perform in accordance with, its obligations under this Agreement or any other Project Document.**

#### SECTION 6.9 Headings.

The headings contained in this Agreement are solely for the convenience of the Parties and shall not be used or relied upon in any manner in the construction or interpretation of this Agreement.

#### SECTION 6.10 Counterparts.

The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one and the same instrument, and, thereafter, each counterpart shall be deemed an original instrument as against the Party who has signed it.

SECTION 6.11 Applicable Law. This Agreement, including the interpretation, construction, validity and enforceability hereof, and the transactions contemplated herein, and all disputes between the Parties under or related to this Agreement or the facts and circumstances leading to its execution or performance, whether in contract, tort or otherwise will be governed by the laws of the State of New York without regard to the conflict of laws rules thereof. IN ADDITION, EACH PARTY, KNOWINGLY AND INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY, WAIVES TRIAL BY JURY IN AND AS TO ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY CLAIM, COUNTERCLAIM, CROSS CLAIM OR THIRD PARTY CLAIM THEREIN.

#### SECTION 6.12 Amendment.

No modification or amendment of any provisions of this Agreement shall be valid unless it is in writing and signed by the Parties.

#### SECTION 6.13 No Third Party Beneficiary.

The terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third party beneficiary rights upon any other Person; provided, however, that the members of Producer and their direct and indirect parents shall be third party beneficiaries under this Agreement as their respective interests may appear, including Sections 3.4, 6.1 and 6.2, and each Generator Indemnified Party and each Producer Indemnified Party is intended to be a third party beneficiary of this Agreement as expressly provided in Article IV hereof.

#### SECTION 6.14 Further Assurances.

On the terms and subject to the conditions of this Agreement, at any time or from time to time, each of Producer and Generator, without further compensation, shall execute and deliver such other instruments of sale, assignment, assumption, transfer, delivery and confirmation, provide such materials and information and take such other actions as either Party may reasonably deem necessary in order to give effect to the rights of Producer and Generator hereunder.

#### SECTION 6.15 Survival.

(a) Neither Party shall be released of or from any obligations accrued or incurred prior to the Coal Inventory Closing Date or, subject to Section 6.8, waive any rights or remedies with respect to a breach of this Agreement, all of which shall survive the Coal Inventory Closing Date.

(b) The applicable rights and/or obligations of each Party pursuant to Article I (to the extent relevant to the meaning or interpretation of any provision of this Agreement that is to survive pursuant to this Section 6.15), Article II, Sections 3.1(c), 3.2, 3.4, and 3.5, Article IV, and Sections 6.1, 6.2, 6.5, 6.8, 6.11, 6.13, 6.15, 6.17 and 6.19 shall survive the Coal Inventory Closing Date.

#### SECTION 6.16 No Partnership.

Neither Party, as a result of entering into this Agreement, has in any way or for any purpose become a partner, agent, representative or fiduciary of the other Party, whether in the conduct of such Party's business or otherwise, or joint venturer or a member of a joint enterprise with the other Party.

#### SECTION 6.17 No Publicity.

Neither Generator nor Producer may use the other Party's name or logo in any of its or its Affiliates' marketing materials, or issue any press release or other public announcement of this Agreement (or any terms hereof) or the relationships created hereby, in either case without first obtaining the written permission of the other Party.

#### SECTION 6.18 Payment Method.

Any payments or other amounts due from one Party to the other Party under this Agreement shall be paid in immediately available funds, by electronically transferred funds, to the account of that other Party, based upon the account information (account name, ABA # and account #) provided in writing by that other Party from time to time using a form reasonably acceptable to the Parties.

#### SECTION 6.19 Equitable Remedies.

Each Party recognizes that the other Party may not have an adequate remedy at law and may be irreparably harmed in the event that this Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, each Party shall be entitled to injunctive relief to prevent breaches of this Agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy expressly permitted in this Agreement.

[The remainder of this page is intentionally left blank; signature page follows.]



IN WITNESS WHEREOF, the Parties have executed this Pre-Closing Coal Inventory Purchase Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

Generator:

Louisville Gas and Electric Company

By: David S. Siclar  
Name: David S. Siclar  
Title: VP Energy Supply & Analysis

APF  
btl

Producer:

Mill Creek Clean Fuels, LLC

By: [REDACTED] a Colorado limited liability company, its manager

By: [REDACTED] a Colorado limited liability company, its manager

By: Tinnuum Group, LLC, a Colorado limited liability company, its manager

By: \_\_\_\_\_  
Name: Ron Eller  
Title: President and Chief Executive Officer

IN WITNESS WHEREOF, the Parties have executed this Pre-Closing Coal Inventory Purchase Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

Generator:

Louisville Gas and Electric Company

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

Producer:

Mill Creek Clean Fuels, LLC

By: [REDACTED] a Colorado limited liability company, its manager

By: [REDACTED] a Colorado limited liability company, its manager

By: Tinnuum Group, LLC, a Colorado limited liability company, its manager


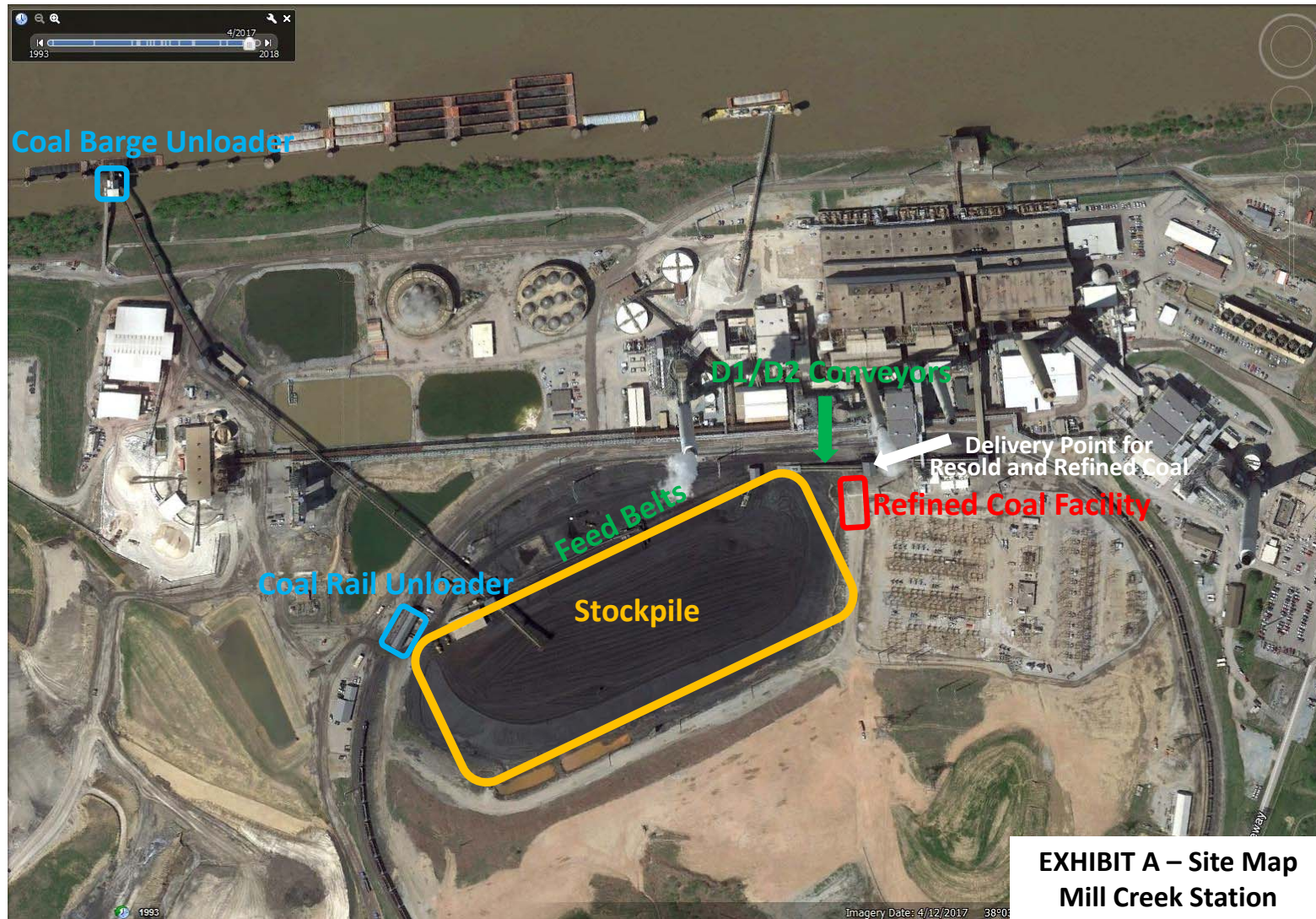
By:  \_\_\_\_\_  
Name: Ron Eller  
Title: President and Chief Executive Officer

EXHIBIT A

SITE

See attached.



SCHEDULE 1.1(a)

GENERATOR KNOWLEDGE

Ralph Bowling  
Joe Didelot  
David Sinclair  
Caryl Pfeiffer  
Timothy Smith  
Gary Revlett  
Robert Conroy

SCHEDULE 1.1(b)

PRODUCER KNOWLEDGE

Ron Eller  
Rick Dowd  
Jim Zerefos  
Jim Walter  
Bryan Johnson  
Tim Lenneman