



STOLL  
KEENON  
OGDEN

2000 PNC PLAZA  
500 WEST JEFFERSON STREET  
LOUISVILLE, KY 40202-2828  
MAIN: (502) 333-6000  
FAX: (502) 333-6099

RECEIVED

JUN 06 2012

PUBLIC SERVICE  
COMMISSION

J. WADE HENDRICKS  
DIRECT DIAL: (502)560-4227  
DIRECT FAX: (502) 627-8727  
wade.hendricks@skofirm.com

June 6, 2012

**VIA HAND-DELIVERY**

Mr. Jeff DeRouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602-0615

RECEIVED

JUN 06 2012

PUBLIC SERVICE  
COMMISSION

**Re: Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and the Assumption of Obligations**

Dear Mr. DeRouen:

Enclosed for filing, please find the original and ten (10) copies of the Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and the Assumption of Obligations. Also enclosed are an original and ten (10) copies of Applicant's Petition for Confidential Protection and Motion for Deviation from Commission Rules. The confidential material which is the subject of the Petition and Motion is being filed under seal. An extra copy of both the Application and the Petition and Motion are enclosed to be filed stamped and returned to the undersigned.

Please do not hesitate to contact me should you have any questions or require additional information.

Very truly yours,

J. Wade Hendricks

JWH/dvg  
Enclosures

cc: Dennis G. Howard, II

400001 143117/830208.1

RECEIVED

JUN 06 2012

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

**In The Matter Of:**

THE APPLICATION OF KENTUCKY )  
UTILITIES COMPANY FOR )  
AN ORDER AUTHORIZING THE ) CASE NO. 2012-  
ISSUANCE OF SECURITIES AND THE )  
ASSUMPTION OF OBLIGATIONS )

APPLICATION

Kentucky Utilities Company (“KU” or the “Company”) hereby requests, pursuant to KRS 278.300, that the Commission authorize KU to incur debt in the form of First Mortgage Bonds in a principal amount not to exceed \$300,000,000. KU further requests authority to increase the amount of its multi-year revolving line of credit by up to an additional \$100,000,000. In support of its Application, KU states as follows:

1. The Company’s full name is Kentucky Utilities Company. The post office address of the Company is One Quality Street, Lexington, KY 40507. KU is a Kentucky and Virginia corporation, a utility as defined by KRS 278.010(3)(a) and, as of March 31, 2012, provides retail electric service to approximately 509,000 customers in seventy-seven counties in Kentucky. A description of KU’s properties is set out in Exhibit 1 to this Application. A certified copy of the Company’s Articles of Incorporation was filed with the Commission in Case No. 2010-00204 and is incorporated by reference herein pursuant to 807 KAR 5:001, Section 8(3).

2. KU obtains financing through numerous sources of capital, including the forms of debt that are the subject of this Application. KU does not assign specific financing to any particular project or use, and does not project-finance capital projects. All components of KU’s

capital structure are used to fund capital expenditures. Thus, the uses cited below are general reasons for KU's need for debt financing, rather than projects to which specific financing will be assigned.

### **FIRST MORTGAGE BOND DEBT**

3. KU requests, pursuant to KRS 278.300, that the Commission authorize it to incur additional long-term debt in the form of First Mortgage Bonds in a principal amount not to exceed \$300,000,000.

4. During 2012 and 2013, KU anticipates incurring up to approximately \$1.45 billion in construction costs. In Case No. 2011-00375<sup>1</sup> by Order dated May 3, 2012, the Commission granted KU a Certificate of Public Convenience and Necessity and a Site Compatibility Certificate to construct a new 640 MW combined cycle combustion turbine unit at the Cane Run Generating Station in Jefferson County, and to purchase three turbines in LaGrange, Kentucky. By Order dated December 15, 2011, in Case No. 2011-00161,<sup>2</sup> the Commission approved KU's 2011 Amended Environmental Compliance Plan and granted KU Certificates of Public Convenience and Necessity to Construct Particulate Matter Control Systems at the Company's Brown Unit 3 and at Ghent Units 1, 2, 3 and 4. By order dated December 23, 2009, in Case No. 2009-00197,<sup>3</sup> the Commission among other actions, granted KU a Certificate of Public Convenience and Necessity to construct a new landfill at the Company's Ghent Station in Carroll County, Kentucky. The facilities which were the subjects of Case Nos. 2011-00375, 2011-00161 and 2009-00197 are described in greater detail in Exhibit 4

---

<sup>1</sup> *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Site Compatibility Certificate for the Construction of a Combined cycle Combustion Turbine of the Cane Run Generating Station and the Purchase of Existing Simple Cycle Combustion Turbine Facilities From Bluegrass Generation Company, LLC in Lexington, Kentucky.*

<sup>2</sup> *Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge.*

<sup>3</sup> *Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge.*

and in the records of those cases. The costs of these projects are reflected in KU's capital budget which is attached as Exhibit 2.

5. The Company's Mortgage Indenture (the "Indenture") authorizes it to issue, from time to time, bonds ("First Mortgage Bonds") of one or more series, with each series having such date, maturity date(s), interest rate(s), and other terms as may be established by a supplemental indenture executed by the Company in connection with such series. All bonds issued under the Indenture would be equally and ratably secured by a first mortgage lien on substantially all of the Company's permanently fixed properties in Kentucky. A copy of the form of the Indenture has been previously filed with the Commission in Case No. 2010-00206.<sup>4</sup>

6. The First Mortgage Bonds may be sold at various times through the remainder of 2012 and 2013 in one or more underwritten public offerings, negotiated sales, or private placement transactions utilizing the proper documentation.

7. The First Mortgage Bonds of each series would be issued and secured by the Indenture as to be further supplemented and amended by a supplemental indenture creating the bonds of such series. Such supplemental indenture would set forth the terms and provisions of such series, including without limitation, the maturity date(s), interest rate(s), redemption provisions and other applicable terms. The First Mortgage Bonds of each series may be sold in one or more underwritten public offerings, negotiated sales, or private placement transactions utilizing the proper documentation. The price, maturity date(s), interest rate(s), and the redemption provisions, and other terms and provisions of each series of First Mortgage Bonds (including, in the event all or a portion of the First Mortgage Bonds bear a variable rate of interest, the method for determining the interest rates), would be determined on the basis of negotiations among KU and the underwriters or other purchasers of such First Mortgage Bonds.

---

<sup>4</sup> *Application of Kentucky Utilities Company for An Order Authorizing the Restructure and Refinancing of Unsecured Debt and the Assumption of Obligations and for Amendment of Existing Authority.*



The amount of compensation to be paid to underwriters or purchasers for their services would not exceed one percent (1%) of the principal amount of the First Mortgage Bonds of the series to be sold. Based upon past experience with similar financings, KU estimates that issuance costs, excluding underwriting fees, would be approximately \$600,000.

8. Because of the historical spread between long-term fixed interest rates and short-term rates, all or a portion of the bonds could be issued with an interest rate that fluctuates on a quarterly or semi-annual basis.

9. In connection with the issuance of First Mortgage Bonds, KU may enter into one or more interest rate hedging agreements (including an interest rate cap, swap, collar, or similar agreement, collectively, the "Hedging Facility") with a PPL affiliate company, or a bank or financial institution (the "Counterparty"). The Hedging Facility would be an interest rate agreement designed to allow KU to actively manage and limit its exposure to variable interest rates or to lower its overall borrowing costs on any fixed rate First Mortgage Bond. The estimated cost of the financing does not include the costs of any Hedging Facility which would be determined at the time of the hedge. However, based on current market conditions, the cost of a three-year hedge would be approximately 17 basis points (.17%). The Hedging Facility could also be used to lock in interest rates in advance of a debt issuance. Once again based on current market conditions, the Company could lock in current rates for six months for a cost of approximately 15 basis points (.15%).

10. The terms of each Hedging Facility will be negotiated by KU with the respective Counterparty and would be the most favorable terms that can be negotiated by the Company.

## **INCREASE IN AMOUNT OF MULTI-YEAR REVOLVING LINE OF CREDIT**

11. KU requests authority to increase the amount of its multi-year revolving line of credit by up to an additional \$100,000,000 or, in the alternative, to enter into similar additional facilities not to exceed that amount.

12. By Order dated September 30, 2010, in Case No. 2010-00206, the Commission authorized KU to enter into one or more multi-year revolving credit facilities (the “Revolving Line of Credit”) with one or more financial institutions in an aggregate amount not to exceed \$400,000,000. The Revolving Line of Credit replaced similar revolving credit facilities, originally authorized in Case No. 2007-00233, which by Order dated August 2, 2007, the Commission had found would, by allowing KU the ongoing ability to incur short-term debt from time to time, alleviate the time and cost of annually negotiating and renewing short-term debt arrangements.

13. KU subsequently entered into its Revolving Line of Credit with a termination date of December 31, 2014. Subsequently, in Case No. 2011-00307 KU requested, and by Order dated October 10, 2011, the Commission authorized, KU to extend the term of its revolving credit facilities through December 31, 2016. By doing so, KU was able to pay lower on-going commitment fees immediately and incur a lower upfront fee to extend the existing facility than if it waited until the term expired in 2014. The facility was amended in October 2011, and now matures on October 19, 2016. Amending the existing facility also significantly reduced the credit spread the Company pays when it borrows under the line of credit, and the commitment fee paid under the facility for undrawn amounts.

14. The Revolving Line of Credit provides KU with the opportunity to request that the maximum debt allowed under the credit facility be increased by \$100,000,000 to \$500,000,000. While the lenders are not obligated to increase the limit under the Revolving Line of Credit, KU believes that it is likely that the lenders will agree to do so. However, in the event

that the current lenders are unable or unwilling to increase the credit limit, KU proposes to obtain an additional revolving credit facility in the amount of \$100,000,000. KU anticipates that any new, additional revolving credit facility would be on similar terms as its current Revolving Line of Credit, including a term not to exceed five (5) years. Exhibit 3 shows the anticipated additional cost of increasing the credit limit under the existing credit facility, and alternatively, of entering into an additional revolving credit facility with a credit limit of \$100,000,000.

15. The additional credit under the revolving credit facility would be available for the same purposes for which existing credit is currently available. Loan proceeds could be used to provide short-term financing for KU's general funding needs, for example, general costs of operation, costs of KU's various construction programs or other general business purposes, until permanent or long-term financing can be arranged. In addition, the additional funds could be used to provide new or expanded liquidity or credit support for KU's other debt. For example, credit could be used to ensure that KU has readily available funds with which to repay commercial paper borrowings at their maturity.

16. No contracts have been made for the disposition of any of the securities which KU proposes to issue.

17. A redacted copy of a contract with respect to the projects noted in Paragraph 4 is attached as Exhibit 4. Filed concurrently with this Application is KU's Motion for Confidential Protection and for Deviation from Commission Rules.

18. KU shall, as soon as reasonably practicable after the issuance of each series of First Mortgage Bonds referred to herein, file with the Commission a statement setting forth the date or dates of issuance of the First Mortgage Bonds, the proceeds of such series of Bonds, the interest rates, costs or gains with any Hedging Facility and all fees and expenses associated with such issuance.

19. As soon as reasonably practicable after amendment of KU's Revolving Line of Credit to increase the debt allowed under such instrument, or, alternatively, entrance into a new and additional line of credit, KU shall file with the Commission a statement setting forth the date or dates of such action, as well as all fees and expenses.

20. Exhibit 5 to this Application contains the financial exhibit required by 807 KAR 5:001, Section 11(2)(a) and described by 807 KAR 5:001, Section 6. It also contains information required by 807 KAR 5:001, Section 11(2)(b).

21. Exhibit 6 to this Application is a certified copy of KU's Board of Directors' Resolution authorizing the issuance of the First Mortgage Bonds, the increase in the debt limit under the revolving credit facility, and the transactions related thereto as discussed in this Application.

22. Other requirements of the Commission's regulations concerning this Application, 807 KAR 5:001, Section 11, including (1)(b) regarding the amount and kind of bonds, etc., and 1(c) regarding the use to be made of the proceeds, have been supplied in the discussion above in Paragraphs 2 through 17 of this Application.

**THEREFORE**, Kentucky Utilities Company respectfully requests that the Commission enter its Order authorizing KU to issue securities in the form of First Mortgage Bonds in a total amount not to exceed \$300,000,000 and to increase the credit limit under its existing revolving line of credit by up to an additional \$100,000,000, or in the alternative, to enter into one or more new revolving credit facilities in addition to its existing credit facility provided that the total revolving credit limit increase, whether under the existing line of credit, under the new revolving credit facility or facilities or in combination of both, shall not exceed an additional \$100,000,000 all as set forth in this Application. KU further requests that the Order of the Commission specifically include provisions stating:

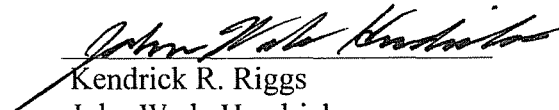
1. KU is authorized to issue long-term debt in the form of First Mortgage Bonds in one or more series at one or more times during the remainder of 2012 through 2013, in an aggregate principal amount not to exceed \$300,000,000 in the manner set forth in its Application.

2. KU is authorized to execute an amendment to its existing revolving line of credit increasing the total principal amount of debt under said line or in the alternative, to enter into one or more new additional revolving credit facilities with a term not to exceed five (5) years, such increases in the existing line of credit and/or new facilities to not exceed, in total a combined additional aggregate principal amount of \$100,000,000.

3. KU is authorized to execute, deliver and perform the obligations of KU under all such agreements and documents as set out in its Application, and to perform the transactions contemplated by such agreements.

Dated: June 6, 2012.

Respectfully submitted,



Kendrick R. Riggs  
John Wade Hendricks  
Barry L. Dunn  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
(502) 333-6000

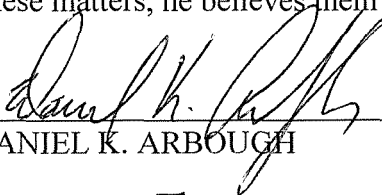
Allyson K. Sturgeon  
Senior Corporate Attorney  
LG&E and KU Energy LLC  
220 West Main Street  
Louisville, KY 40202  
(502) 627-2088  
Counsel for Kentucky Utilities Company

VERIFICATION

COMMONWEALTH OF KENTUCKY

COUNTY OF JEFFERSON

Daniel K. Arbough, being first duly sworn, deposes and says that he is Treasurer for Kentucky Utilities Company, that he has read the foregoing Application and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to these matters, he believes them to be true.

  
\_\_\_\_\_  
DANIEL K. ARBOUGH

Subscribed and sworn before me this 4<sup>th</sup> day of June, 2012.

My Commission Expires: August 31, 2015

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE

400001.143116/819186.4

KENTUCKY UTILITIES COMPANY  
(807 KAR 5:001, Section 11, Item 1 (a))

A DESCRIPTION OF APPLICANT'S PROPERTY, INCLUDING A  
STATEMENT OF THE NET ORIGINAL COST OF THE PROPERTY  
AND THE COST THEREOF TO APPLICANT

March 31, 2012

The applicant's generating, transmission and distribution systems described herein are calculated annually. As of December 31, 2011, the applicant owned 13 and operated 11 coal fired steam electric generating units having a total capacity of 3,355 Mw; a hydroelectric generating station having a total capacity of 24 Mw; and 17 gas/oil peaking units having a total capacity of 1,454 Mw.

The applicant's owned electric transmission system included 133 substations (55 of which are shared with the distribution system) with a total capacity of 13 million kVA and 4,078 miles of lines. The electric distribution system included 478 substations (55 of which are shared with the transmission system) with a transformer capacity of 7 million kVA, 14,112 miles of overhead lines, and 2,265 miles of underground conduit.

KU's service area includes an additional 11 miles of gas transmission pipeline providing gas supply to natural gas combustion turbine electrical generating units.

Other properties include office buildings, service centers, warehouses, garages and other structures and equipment.

The net original cost of the property and cost thereof to the applicant at March 31, 2012, was:

	<u>Utility Plant</u>
Original Cost	
Production Plant	\$ 4,189,773,098
Distribution Plant	1,434,552,256
Transmission Plant	667,945,984
General Plant	140,094,552
Intangible Plant	60,204,133
Construction Work in Progress	345,238,438
Total Plant at Original Cost	<u>\$ 6,837,808,461</u>
Less Reserve for Depreciation	<u>2,052,590,028</u> *
Net Original Cost	<u><u>\$ 4,785,218,433</u></u>

\* Excludes \$367,106,725 related to cost of removal reserves that is not included in the reserve in the Financial Statements and Additional Information, but instead is included as a regulatory liability.



	KU				
	(\$ millions) Projected				
	2012	2013	2014	2015	2016
Construction expenditures (a)					
Generating facilities (b)	\$ 129	\$ 177	\$ 217	\$ 173	\$ 65
Distribution facilities	78	95	86	103	100
Transmission facilities (c)	57	49	53	43	40
Environmental	379	453	411	233	51
Other	13	21	21	24	22
Total Construction Expenditures	<u>\$ 656</u>	<u>\$ 795</u>	<u>\$ 788</u>	<u>\$ 576</u>	<u>\$ 278</u>

- (a) Construction expenditures include AFUDC, which is not expected to be significant for the years 2012 through 2016.
- (b) Includes approximately \$500 million of currently estimable costs related to replacement generation units due to EPA regulations not recoverable through the ECR mechanism. KU expects to recover these costs over a period equivalent to the related depreciable lives of the assets through future rate proceedings.
- (c) Includes approximately \$30 million of currently estimable transmission costs related to replacement generation units. KU expects to recover these costs over a period equivalent to the related depreciable lives of the assets through future rate proceedings.

Estimated Cost of Increasing Current Credit Facility by \$100 Million

Costs: Upfront fees: \$ 50,000  
 Assumes Lenders are paid 5bp upfront fee to commit \$ 125,000  
 Annual Utilization Fee: \$100 million x 0.125%

Estimated Tax Rate 40.363%  
 Estimated Discount Rate 0.82%

	Undrawn	Upfront Cost Taxes	Total Cash Outlay (Aftertax)	Present Value
NPV		\$ 50,000	\$ 50,000	\$ 50,000
Year 0	Cost of Borrowing			
Year 1	125,000	\$ (57,180)	\$ 67,820	\$ 67,268
Year 2	125,000	\$ (57,180)	\$ 67,820	\$ 66,721
Year 3	125,000	\$ (57,180)	\$ 67,820	\$ 66,178
				\$ 250,168

Income Statement View	
Interest Expense	Undrawn
Amortization	\$ (125,000)
Income Before Taxes	\$ (16,667)
Taxes	\$ (141,667)
Net Income	\$ 57,180
	\$ (84,486)

Estimated Cost of Additional New \$100 Million Credit Facility

Costs:	
Upfront fees:	Assumes one time upfront fee of 25bps.
Estimated Legal fees	\$ 250,000
Total estimated upfront fees	<u>50,000</u>
	\$ 300,000
Annual Utilization Fee:	\$ 100 million x 0.125%
	\$ 125,000

Estimated Tax Rate 40.363%  
 Estimated Discount Rate 0.82%

	Undrawn	Upfront Cost	Taxes	Total Cash Outlay (Aftertax)	Present Value
NPV		\$ 300,000		\$ 300,000	\$ 300,000
Year 0	Cost of Borrowing Amortization			\$ 34,184	\$ 33,906
Year 1	\$ 125,000		\$ (90,816)	\$ 34,184	\$ 33,631
Year 2	\$ 125,000		\$ (90,816)	\$ 34,184	\$ 33,357
Year 3	\$ 125,000		\$ (90,816)	\$ 34,184	\$ 400,894

Income Statement View	
Interest Expense	Undrawn
Amortization	\$ (125,000)
Income Before Taxes	\$ (100,000)
Taxes	\$ (225,000)
Net Income	\$ 90,816
	\$ (134,184)

Engineering, Procurement and  
Construction Agreement

Between  
Kentucky Utilities Company,  
as Owner

and

TIC – The Industrial Company,  
as Contractor

12/30/11  
en

12/29/11  
R

**TABLE OF CONTENTS**

**ARTICLE 1 DEFINITIONS..... 1**

    1.1 Definitions..... 1

    1.2 Contract Interpretation..... 16

**ARTICLE 2 EFFECTIVENESS ..... 18**

    2.1 Effectiveness..... 18

    2.2 Commitments Prior to Mobilization..... 19

**ARTICLE 3 GENERAL PROVISIONS..... 19**

    3.1 Intent of Contract Documents..... 19

    3.2 Independent Contractor..... 19

    3.3 Subcontracting ..... 19

    3.4 Specified Equipment Subcontractors..... 20

    3.5 Certain Provisions in Subcontracts ..... 20

    3.6 Assignment of Subcontracts ..... 21

    3.7 Subcontracts..... 21

    3.8 Inclusion; Order of Precedence..... 21

**ARTICLE 4 CONTRACTOR’S RESPONSIBILITIES ..... 21**

    4.1 The Work ..... 21

    4.2 Sufficient Personnel ..... 22

    4.3 Labor Matters..... 23

    4.4 Discipline and Protection..... 23

    4.5 Supervision ..... 23

    4.6 Contractor’s Key Personnel ..... 23

    4.7 Design and Engineering..... 24

    4.8 Quality Control ..... 24

    4.9 Training..... 25

    4.10 Certain Contractor-Provided Items..... 25

    4.11 Equipment and Materials Subcontractor Presence ..... 25

    4.12 Current Records; As-Built Drawings..... 25

    4.13 Transportation Costs ..... 25

    4.14 Operating and Maintenance Manuals ..... 25

    4.15 Control of Work..... 26

    4.16 Emergency Response ..... 26

    4.17 Local Conditions..... 26

    4.18 Job Site Conditions ..... 27

    4.19 Witnessing and Inspection Rights..... 27

    4.20 Use of Site..... 28

    4.21 Compliance With Applicable Law..... 30

    4.22 Permits and Approvals..... 30

    4.23 Periodic Reports & Meetings..... 30

    4.24 Signage..... 31

    4.25 Spare Parts ..... 31

    4.26 Interference with Traffic..... 32

    4.27 Supplies and Facilities ..... 32

12/30/11  
RL

12/29/11  
R

4.28	Cutting and Patching.....	32
4.29	Cleaning Up.....	32
4.30	Waste Disposal.....	33
4.31	Water Control.....	33
4.32	Permit Assistance.....	33
4.33	Deliveries by Truck.....	33
4.34	Artifacts and Other Valuable Items .....	33
4.35	Release.....	33
4.36	Covering.....	34
4.37	Administrative Facilities.....	34
4.38	No First of a Kind .....	34
4.39	NERC Critical Infrastructure Security Management Controls .....	34
4.40	Documentation Requirements or Standards.....	35
<b>ARTICLE 5 OWNER RIGHTS, DUTIES &amp; OBLIGATIONS .....</b>		<b>35</b>
5.1	Key Personnel .....	35
5.2	Owner's Review.....	36
5.3	Owner-Provided Items .....	36
5.4	Right to Apply Monies.....	36
5.5	Access and Inspection.....	36
5.6	Owner Permits .....	36
5.7	Right to Carry Out the Work .....	36
5.8	Rights Not Limited .....	37
5.9	Operating Personnel.....	37
5.10	System Needs.....	37
5.11	Contractor's Personnel.....	37
<b>ARTICLE 6 PROJECT SCHEDULE.....</b>		<b>38</b>
6.1	Commencement .....	38
6.2	Turnover of the Systems .....	38
6.3	Tie-in and Mechanical Completion .....	39
6.4	Project Schedule Update.....	41
6.5	Performance Testing .....	41
6.6	Re-Setting of Ghent CCR Transport System .....	42
6.7	Commercial Operation.....	43
6.8	Possession and Control .....	43
6.9	Final Completion .....	43
6.10	Maintenance Outage .....	44
6.11	Contractor Requested Outage .....	44
<b>ARTICLE 7 LIQUIDATED DAMAGES &amp; LIABILITY LIMITATIONS .....</b>		<b>45</b>
7.1	Unit Outage Day Liquidated Damages.....	45
7.2	Commercial Operation Delay; Liquidated Damages.....	45
7.3	Work Scheduling and Liquidated Damages .....	45
7.4	Payment.....	46
7.5	Consequential Damages.....	46
7.6	Limitations of Liability .....	46

<b>ARTICLE 8 CONTRACTOR'S COMPENSATION.....</b>	<b>47</b>
8.1 Contract Price.....	47
8.2 Taxes.....	47
8.3 Progress Payments.....	49
8.4 Application For Payment.....	49
8.5 Payment of Substantiated Amount.....	49
8.6 Supporting Documentation.....	50
8.7 Withholding to Protect Owner from Loss.....	50
8.8 Final Payment.....	51
8.9 Disputed Applications For Payment.....	52
8.10 Payment of Subcontractors.....	52
8.11 Retainage and Withholding.....	52
8.12 Release of Retainage.....	53
8.13 Overpayment.....	53
8.14 Tax and Accounting Information.....	53
<b>ARTICLE 9 EXCUSABLE EVENTS.....</b>	<b>53</b>
9.1 Notice.....	53
9.2 Rights Limited.....	54
<b>ARTICLE 10 CONTRACT CHANGES.....</b>	<b>55</b>
10.1 Owner-Initiated Changes.....	55
10.2 Contractor Change Notice.....	57
10.3 Emergencies.....	57
10.4 Resolution.....	57
10.5 Contractor Caused Delays.....	57
<b>ARTICLE 11 TEST AND INSPECTIONS.....</b>	<b>57</b>
11.1 Testing.....	57
11.2 Witnessing Tests and Inspection.....	58
11.3 Defects During Performance Guarantee Tests.....	59
11.4 Retests.....	59
<b>ARTICLE 12 CORRECTION OF WORK.....</b>	<b>59</b>
12.1 Correction of Work.....	59
12.2 Urgent Repairs.....	60
12.3 Damage to Existing Facilities.....	60
<b>ARTICLE 13 WARRANTY.....</b>	<b>60</b>
13.1 Work Warranty.....	60
13.2 Warranty Period.....	60
13.3 Defects.....	61
13.4 Subcontractor Warranties.....	61
13.5 Primary Liability.....	62
13.6 Defect Limitations.....	62
13.7 Warranty Assistance.....	62
13.8 Reasonable Access.....	62
13.9 Root Cause Repairs.....	62
13.10 Exclusivity of Warranties and Remedies.....	62

12/29/11  
R

12/30/11  
at

<b>ARTICLE 14 PROTECTION OF PERSONS AND PROPERTY.....</b>	<b>63</b>
14.1 Safety Programs.....	63
14.2 Applicable Law.....	63
14.3 Safety Precautions.....	63
14.4 Community Relations.....	64
14.5 Security.....	64
14.6 Dangerous Materials.....	64
14.7 Safety Personnel.....	64
14.8 Loading.....	64
14.9 Notices to Owner.....	64
14.10 Code of Business Conduct.....	65
14.11 Hazards and Training.....	65
14.12 Drug and Alcohol.....	65
<b>ARTICLE 15 SEPARATE CONTRACTORS AND ACTIVITIES BY OWNER.....</b>	<b>66</b>
15.1 Separate Work.....	66
15.2 Integration.....	66
15.3 Coordination.....	66
15.4 Use of Job Site.....	66
15.5 Deficiency in Work of Owner and Separate Contractors.....	66
<b>ARTICLE 16 INTELLECTUAL PROPERTY.....</b>	<b>66</b>
16.1 Ownership/License.....	66
16.2 Indemnity Against Intellectual Property Infringement.....	67
16.3 Contractor's Responsibility for Litigation.....	68
16.4 Assistance.....	68
16.5 Injunction.....	68
16.6 Contractor's Continuing Obligation.....	68
16.7 Limitations and Conditions.....	68
16.8 Availability of Intellectual Property.....	69
<b>ARTICLE 17 REPRESENTATIONS AND WARRANTIES.....</b>	<b>69</b>
17.1 Contractor.....	69
17.2 Owner.....	70
<b>ARTICLE 18 CONFIDENTIAL INFORMATION.....</b>	<b>71</b>
18.1 Confidential Information.....	71
18.2 Import or Export of Technical Data.....	72
18.3 Third Party Proprietary Information.....	72
18.4 Public Relations.....	72
<b>ARTICLE 19 HAZARDOUS SUBSTANCES.....</b>	<b>72</b>
19.1 Hazardous Substances.....	72
<b>ARTICLE 20 INDEMNIFICATION.....</b>	<b>76</b>
20.1 Contractor's Indemnity.....	76
20.2 Owner's Indemnity.....	77
20.3 Defense of Claims or Actions.....	77
20.4 Liens.....	78

12/29/11  
R



<b>ARTICLE 21 INSURANCE.....</b>	<b>80</b>
<b>ARTICLE 22 TITLE &amp; RISK OF LOSS .....</b>	<b>80</b>
22.1 Transfer of Title .....	80
22.2 Title Warranty .....	80
22.3 Risk of Loss .....	80
22.4 Contractor Tools .....	81
<b>ARTICLE 23 DISPUTE RESOLUTION .....</b>	<b>81</b>
23.1 Resolution .....	81
23.2 Arbitration Proceedings .....	81
23.3 Continuation of Work .....	82
<b>ARTICLE 24 TERMINATION.....</b>	<b>83</b>
24.1 Termination for Convenience .....	83
24.2 Termination by Owner for Cause .....	84
24.3 Termination by Contractor for Cause .....	85
24.4 Suspension of the Work .....	86
<b>ARTICLE 25 MISCELLANEOUS PROVISIONS .....</b>	<b>87</b>
25.1 Governing Law .....	87
25.2 Entire Agreement .....	87
25.3 Successors and Assigns.....	87
25.4 Contractual Relationship.....	87
25.5 Notices .....	88
25.6 Rights Cumulative .....	89
25.7 Incorporation by Reference.....	89
25.8 No Waiver.....	89
25.9 Agreed Rate .....	89
25.10 Financing Cooperation.....	89
25.11 Audit .....	90
25.12 Survival .....	91
25.13 No Third Party Beneficiaries .....	91
25.14 Non-Recourse .....	91
25.15 Parent Guarantee .....	92
25.16 Provisions Required by Law.....	92
25.17 Severability .....	92
25.18 Joint Effort .....	92
25.19 Counterparts .....	92
25.20 Approvals Not To Relieve Contractor .....	92
25.21 Consultants.....	92
25.22 Equal Employment Opportunity .....	93
25.23 Minority, Women, Disadvantaged and Local Business Enterprises.....	93
25.24 Local Involvement; Reporting .....	93
25.25 Patent Limitations.....	94

12/29/11  
R

## EXHIBITS

Exhibit A	Technical Specification 172150.70.0100 dated June 7, 2011
Exhibit B	Contract Price and Milestone Payment Schedule
Exhibit C	Basis of Bid
Exhibit D	Project Schedule and Key Dates
Exhibit E	Acceptable Equipment and Materials Suppliers
Exhibit F	Forms
	F-1 Applications For Payment
	F-2 Certificates
	F-3 Change Orders
	F-4 Integrated Project Schedule
	F-5 Lien Waivers and General Release
	F-6 NOT USED
	F-7 Station Forms
	F-8 Parent Guarantee
	F-9 Second Tier Procurement Program
	F-10 Letter of Credit
Exhibit G	Guarantees and Performance Guarantee Test Protocol
Exhibit H	Health and Safety Requirements; Passport Program
Exhibit I	Insurance
Exhibit J	NOT USED
Exhibit K	Key Personnel
Exhibit L	NOT USED
Exhibit M	Meetings and Progress Reports
Exhibit N	NOT USED
Exhibit O	Owner Provided Items
Exhibit P	Permits
Exhibit Q	Reference Drawings
Exhibit R	Rates
Exhibit S	Site
Exhibit T	Options
Exhibit U	Training
Exhibit V	Operating and Maintenance Manuals
Exhibit W	Work Breakdown Structure
Exhibit X	Submittals, Review, and Hold Points
Exhibit Y	Ghent CCR Transport Equipment Contracts
Exhibit Z	Assignment and Assumption Agreements

## ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This Engineering, Procurement and Construction Agreement ("Agreement") is entered into as of the 30th day of December 2011 ("Effective Date") by and between Kentucky Utilities Company, a Kentucky corporation ("Owner"), and TIC – The Industrial Company, a Delaware corporation ("Contractor").

### RECITALS

WHEREAS, Owner desires to enter into an agreement with a qualified contractor to design, engineer, procure, construct, start-up, commission, and test the Ghent CCR Transport System (as hereinafter defined) on a lump-sum turnkey basis as set forth in this Agreement;

WHEREAS, Contractor represents that it is qualified to design, engineer, procure, construct, start-up, commission and test the Ghent CCR Transport System and desires to perform all work and services in connection therewith on a lump-sum turnkey basis in accordance with the requirements and provisions of this Agreement; and

WHEREAS, Contractor agrees to perform the Work as more specifically described in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

### **ARTICLE 1**

#### **DEFINITIONS**

**1.1 Definitions.** The following terms have the respective meanings specified in this Article 1 when capitalized and used in this Agreement or in any notice delivered under or in respect of this Agreement.

"Affiliate" means any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, Owner or Contractor.

"Agreed Rate" has the meaning set forth in Section 25.9.

"Agreement" has the meaning set forth in the first paragraph hereof and includes the body of this Agreement (the "Body of this Agreement") and all Exhibits herein referenced, as amended, modified or supplemented from time to time.

"Applicable Credits" has the meaning set forth in Section 25.11.3.

"Applicable Law" means any applicable statute, law (including common law), rule, treaty, regulation, code, ordinance, approval, interpretation, injunction, judgment, decree, writ, order or the like, when issued, enacted, or promulgated by a Governmental Authority and interpretations thereof by a Governmental Authority.

12/30/11  
aw

12/30/11  
R

**"Application For Payment"** means a written request by Contractor to Owner for payment, completed in the form required by **Exhibit F-1** together with the documentation required by **Section 8.6**.

**"Arbitration Range"** has the meaning set forth in **Section 23.1**.

**"As-Built Drawings"** means: (i) all drawings prepared in the performance of the Work that are "issued for construction" by Contractor and (ii) all of the drawings specified by Owner in **Exhibit Q**, in each case as modified and updated to accurately show the final actual design and construction of the Work upon Final Completion.

**"Business Day"** means any Day other than a Saturday, Sunday, or a holiday observed by the United States federal government, the Commonwealth of Kentucky, or the Owner.

**"CCR"** means Coal Combustion Residuals.

**"Certificate"** means the applicable Certificate of Model Demonstration, Tie-in, Mechanical Completion, Commercial Operation, or Final Completion, as the case may be.

**"Certificate of Commercial Operation"** will be in the form set forth in **Exhibit F-2**.

**"Certificate of Final Completion"** will be in the form set forth in **Exhibit F-2**.

**"Certificate of Mechanical Completion"** will be in the form set forth in **Exhibit F-2**.

**"Certificate of Model Demonstration"** will be in the form set forth in **Exhibit F-2**.

**"Certificate of Tie-in"** will be in the form set forth in **Exhibit F-2**.

**"Change in Law"** means an amendment, modification, or change of Applicable Law enacted, adopted, or promulgated after the Effective Date by a Governmental Authority. A change in Applicable Law with respect to any of the following will not constitute a Change in Law hereunder: (i) taxes or levies assessed on the basis of Contractor's net income or net profits; (ii) Contractor Taxes; or (iii) taxes, levies or withholdings that vary the compensation, benefits or amounts to be paid to, on behalf of or on account of Contractor's or its Subcontractors' employees; or (iv) changes in Applicable Law enacted, published or issued before the Effective Date whether or not such changes became effective after the Effective Date of this Agreement.

**"Change Order"** has the meaning set forth in **Section 10.1.3**.

**"Change Order Request"** has the meaning set forth in **Section 10.1.1**.

**"Change(s)"** has the meaning set forth in **Section 10.1.1**.

**"Claim Notice"** has the meaning set forth in **Section 20.3.1**.

**"Claims"** has the meaning set forth in **Section 20.1**.

12/29/11  
R

“**Climatic Conditions**” means hurricane, fifty (50) year or greater flood and other severe climatic conditions that are similarly unusual.

“**Codes and Standards**” means the most recent edition of the codes, standards, and guidelines applicable to the Work, including those listed in **Exhibit A**.

“**Commercial Operation**” will have been achieved when all of the following have occurred: (i) Mechanical Completion has occurred; (ii) the Work is complete except Punch List Items; (iii) all Performance Guarantee Tests have been successfully completed in accordance with this Agreement, and Contractor has completed making system adjustments identified during the start-up and testing process which are necessary to permit the Ghent CCR Transport System to operate as specified in the Technical Specification; (iv) all Performance Guarantees have been simultaneously achieved in a single Performance Guarantee Test; (v) all obligations of Contractor expressly required to have been performed as of the Commercial Operation Date have been properly discharged; (vi) the Ghent CCR Transport System and all Units are capable of being operated in the normal course of business up to individual full unit generating capacity; (vii) Owner has received from Contractor all Permits (including Permits (other than Owner Permits) necessary to allow transfer of care, custody, and control of the Ghent CCR Transport System to Owner), all of which shall be valid and in full force and effect; (viii) levels of Consumables associated with the Ghent CCR Transport System are fully charged; (ix) final versions of the Operating and Maintenance Manuals approved by Owner have been delivered; (x) currently marked drawings showing as-built conditions or the As-Built Drawings (current as of Commercial Operation) have been delivered; (xi) other submittals required to be submitted prior to or as of Commercial Operation; (xii) all Special Tools have been delivered to Owner; and (xiii) Owner has executed the Certificate of Commercial Operation.

“**Commercial Operation Date**” means the date on which Commercial Operation is achieved.

“**Component**” means any and all Systems, subsystems, subassemblies, Equipment, Materials, spare parts, and every item of whatever nature, including all documentation related thereto, connected with the Work performed or provided by Contractor or its Subcontractors under this Agreement that is permanently incorporated into the Ghent CCR Transport System, provided as part of the Work, and retained by Owner following Final Completion.

“**Computer Program(s)**” means a sequence of instructions, data, or equations in any form, and explanations thereof, intended to cause a computer, a control data processor or the like to perform any kind of operation, which is provided by Contractor or its Subcontractors under this Agreement.

“**Confidential Information**” has the meaning set forth in **Section 18.1**.

“**Connect**” means the provision by Contractor of all labor, Materials, Consumables, and Construction Aids to effect the connection of the Ghent CCR Transport System at the Terminal Points.

“**Construction Aids**” means all equipment (including construction equipment), apparatus, tools, supplies, construction tools, support services, field office equipment, supplies,

structures, apparatus, form lumber, protective fencing, and other goods and items that are required to construct, clean, commission, or test the Ghent CCR Transport System, but which are not incorporated into the Work and retained by Owner.

“**Consumables**” means items such as compressed air or gases, chemicals, oils, lubricants, cleaning materials, demineralized water, valve packing, lamps, light bulbs, gaskets, fuel filters and comparable items which, by normal industry practices, are considered consumables and are replaced on a regular basis, required for cleaning, preparing, or completing the Work or are required for the proper operation of the Equipment.

“**Contract Price**” has the meaning set forth in **Section 8.1**.

“**Contractor**” has the meaning set forth in the preamble of this Agreement.

“**Contractor Change Notice**” has the meaning set forth in **Section 10.2**.

“**Contractor Default**” has the meaning set forth in **Section 24.2.1**.

“**Contractor Indemnitees**” has the meaning set forth in **Section 20.2**.

“**Contractor Response**” has the meaning set forth in **Section 10.1.2**.

“**Contractor Taxes**” has the meaning set forth in **Section 8.2.1**.

“**Contractor’s Representative**” means the individual designated by Contractor pursuant to **Section 4.6**.

“**Day**” means a calendar day, including Saturdays, Sundays and legal holidays, except that, in the event that a payment obligation to be performed under this Agreement falls due on a calendar day that is not a Business Day, the payment obligation shall be deemed due on the next Business Day thereafter.

“**DBE**” means Disadvantaged Business Enterprise.

“**Defect**” (and derivative forms thereof, e.g., “**Defective**”) has the meaning set forth in **Section 13.3**.

“**Design**” (or any derivation thereof) means all design, calculation, and engineering products or services and the conduct thereof, including all preliminary and detailed design of and associated with the Work (including the manner in which the Ghent CCR Transport System is integrated into the Units).

“**Design Documents**” has the meaning set forth in **Section 4.7**.

“**Dispute**” has the meaning specified in **Section 23.1**.

“**Effective Date**” has the meaning set forth in the first paragraph of this Agreement.

12/30/11  
GL

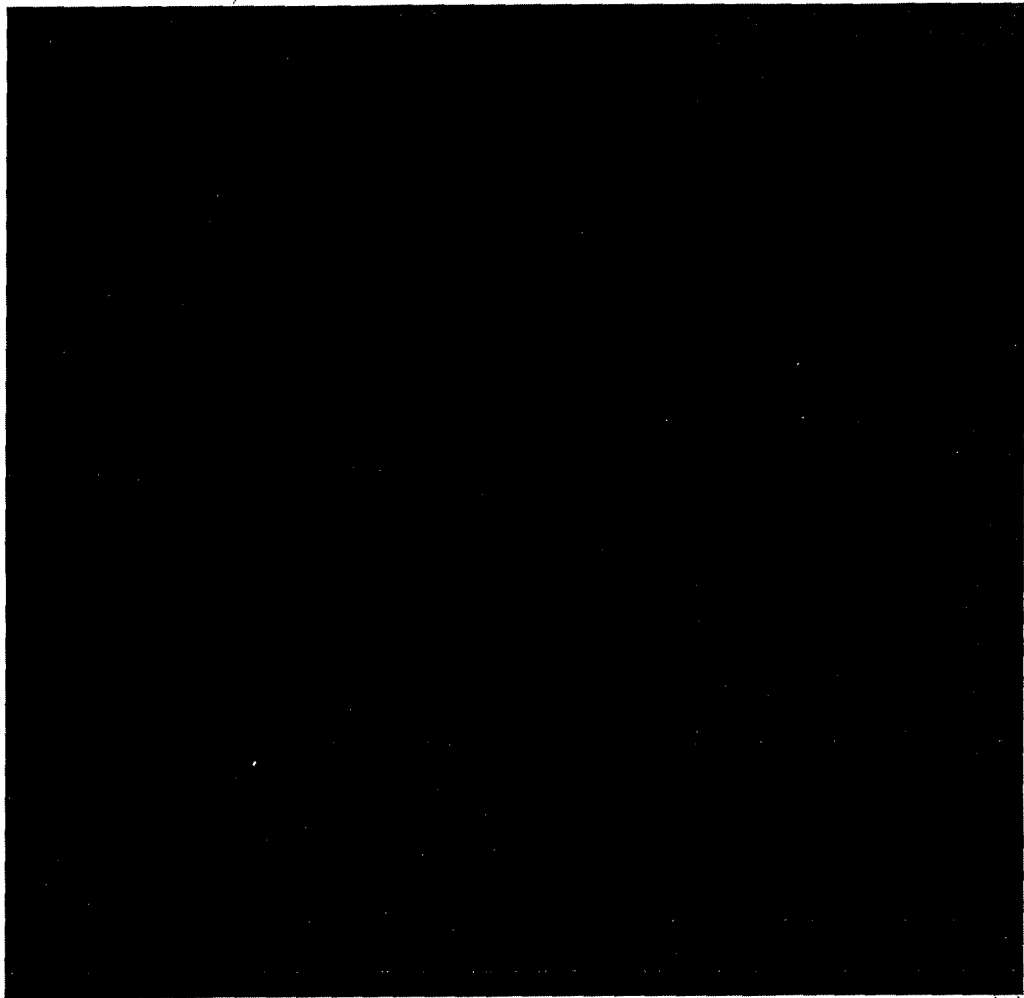
12/29/11  
A

**"Emergency Notification List"** means a list of Owner personnel, with associated contact information, that sets forth the individuals to be notified first in the event of an emergency involving public health or safety, including environmental harm, or material damage to property, as such list is amended by Owner and provided to Contractor from time to time.

**"Environmental Action"** has the meaning set forth in Section 19.1.1(ii).

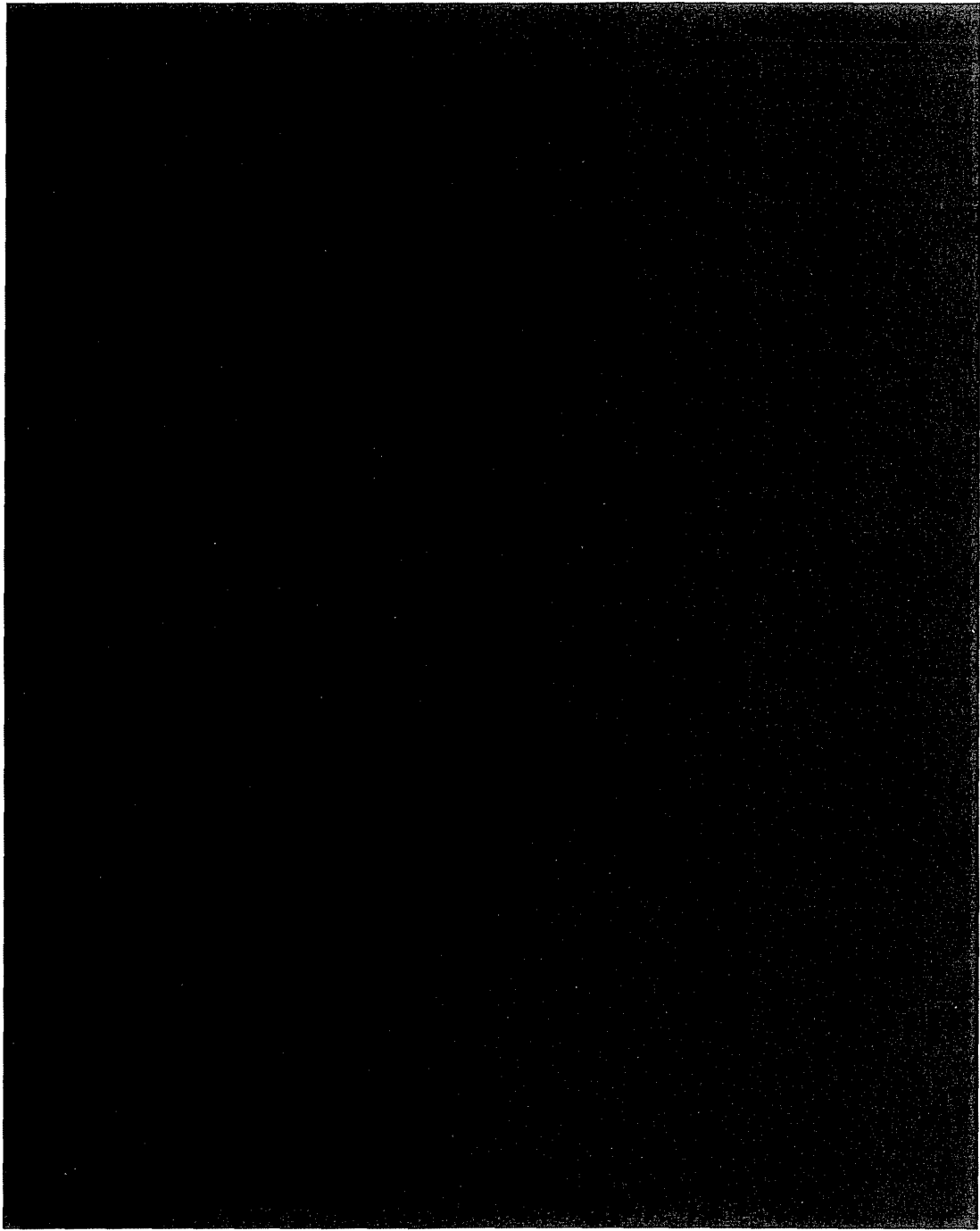
**"Equipment"** means any product, including without limitation any product or material supplied by a Ghent CCR Transport Equipment Supplier, that: (i) is to be incorporated into the Ghent CCR Transport System; (ii) is an assembly of operational and/or non-operational parts, whether motorized or manually operated; and (iii) requires service connections, such as wiring, piping, or other process connections.

**"Excusable Events"** means the following events to the extent that such event materially and adversely (x) affects the critical path of the Work, (y) results in an increase in Contractor's cost of performing the Work, or (z) otherwise materially and adversely affects Contractor's performance hereunder:



12/30/11  
GC

12/29/11  
R



**“Exhibits”** means all of the exhibits referenced in this Agreement.

**“Existing Facilities”** means structures, installations, roadways, walkways, natural features, and the Units, and auxiliary and support facilities located on the Ghent Generating Station Site, including all existing facilities used in connection with the generation of electricity; the transportation, handling or storage of Fuel; or the transmission of electricity.

**“Existing Facility Requirements”** has the meaning set forth in Section 4.20.

12/30/11  
ec

12/29/11  
R



**"Final Completion"** will be deemed to have occurred when all of the following have occurred in respect of the Work: (i) Commercial Operation has been achieved; (ii) all items identified on the Punch List have been completed; (iii) all As-Built Drawings, Information, Design Documents, Operating and Maintenance Manuals, submittals and other documents required to be delivered to Owner hereunder have been delivered; (iv) all liquidated damages for which Contractor is liable pursuant to Article 7 and other amounts owed by Contractor to Owner under this Agreement, if any, have been paid to Owner; (v) all Work has been completed other than Work and other obligations that require future performance (e.g., warranty Work); and (vi) Owner has issued the Certificate of Final Completion.

**"Final Completion Date"** means the date on which Contractor successfully achieves Final Completion.

**"Financing"** means any form of construction, interim, long-term debt, lease, tax-exempt, recourse, non-recourse, equity or other form of funding, or refinancing that Owner or an Affiliate of Owner obtains, utilizes or attempts to obtain or utilize in connection with such Owner's obligations hereunder.

**"Financing Parties"** means any Person that provides Financing, or credit support for Financing, any trustee(s) acting in connection therewith, and their respective successors and assigns.

**"Fly Ash Tie-in"** means, for each Unit, the Tie-In of the Fly Ash System to that Unit.

**"Fly Ash Tie-in Outage"** means, for each Unit, the scheduled outage for Fly Ash Tie-In for that Unit, during which time Contractor must complete Tie-in (the time and date for such outage and the period during which Contractor may perform Work is set forth in Exhibit D as such time and date may be adjusted pursuant to this Agreement).

**"Fly Ash Tie-in Start Date"** means the date set forth in Exhibit D when Contractor may commence the Work to achieve Fly Ash Tie-in for each of the Units as such date may be adjusted pursuant to this Agreement.

**"Force Majeure"** means any condition, event, or circumstance, including the examples set forth below, but only if, and to the extent: (i) such condition, event, or circumstance is not within the reasonable control of the Party affected; (ii) such condition, event or circumstance, despite the exercise of reasonable diligence, could not be prevented, avoided or removed by such Party; (iii) such condition, event, or circumstance has a material adverse effect on the ability of the affected Party to fulfill its obligations under this Agreement; (iv) the affected Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such condition, event, or circumstance on the affected Party's ability to fulfill its obligations under this Agreement and to mitigate the consequences thereof; and (v) such condition, event, or circumstance is not the result of any failure of such Party to perform any of its obligations under this Agreement. By way of example, such events, conditions and circumstances shall include war, rebellion, sabotage, civil strife, insurrection, public disorder, Climatic Conditions, earthquake, quarantine, acts of terrorism, industry-wide or national strikes,

12/30/11  
sc

12/29/11  
R

Handwritten mark

and Changes in Law. Notwithstanding the foregoing, Force Majeure shall not include the following events, conditions or circumstances:

- (i) late delivery of Equipment, Materials, Consumables, or Construction Aids required for the Work whether caused by congestion at a Subcontractor's plant or elsewhere, oversold market conditions, inefficiencies, transportation delays or other similar circumstances, except where such late delivery is caused by a Force Majeure event;
- (ii) shortages of supervisors, labor, Equipment, Materials, Consumables, or Construction Aids, except where such shortage is caused by a Force Majeure event;
- (iii) late performance as a consequence of any violation of Applicable Law or decisions of a Governmental Authority related to the conduct of Contractor's or any Subcontractor's business, including insolvency or any delay related to the economic, commercial or labor circumstances of Contractor, any Subcontractor or other business conducted by Contractor or any Subcontractor;
- (iv) breakdown, loss, or damage to or theft of Equipment, Materials, Consumables, or Construction Aids except where such breakdown, loss, or damage is directly due to the occurrence of an independent condition, event, or circumstance described in and meeting the conditions of the first full paragraph of this definition;
- (v) failure of a Party to pay amounts due and owing under this Agreement;
- (vi) strikes or other labor disturbances affecting Contractor or any of its Subcontractors, except as expressly set forth in the examples described in the first full paragraph of this definition and except with respect to strikes at the Ghent Generating Station that are not against Contractor or any of its Subcontractors but which result in Contractor or any of its Subcontractors being physically blocked from access to the Job Site;
- (vii) increased costs of the Work, general economic or industry conditions; or
- (viii) weather conditions other than Climatic Conditions.

**"Fuel"** means coal, fuel oil, or natural gas, as applicable.

**"Ghent CCR Transport Equipment Contracts"** means the agreements between Owner and each of the individual Ghent CCR Transport Equipment Supplier as listed on **Exhibit Y**.

**"Ghent CCR Transport Equipment Supplier"** means the equipment provider for one or more of the following four (4) major equipment packages:

12/30/11  
SL

12/29/11  
R

- FGD Dewatering System
- Pipe Conveyor
- Bottom Ash Dewatering System
- Fly Ash Conveying System.

“**Ghent CCR Transport System**” means the Ghent Coal Combustion Residual Transport System as specified in Exhibit A.

“**Ghent Generating Station Site**” means the site, as more particularly described in Exhibit S.

“**Governmental Authority**” means any federal, state, county, regional, city, parish or local government body, agency, authority, branch, department, arbitrator, court or any subdivision, instrumentality or agency thereof, having, or claiming, a regulatory interest in, or jurisdiction over, the Work (or any portion thereof), the Ghent CCR Transport System, the Units, the Job Site, this Agreement or one or more of the Parties.

“**Guaranteed Dust Emissions**” has the meaning assigned in Exhibit G.

“**Guaranteed Commercial Operation Date**” means [REDACTED] which date may be adjusted pursuant to the terms and conditions of this Agreement.

“**Guaranteed Final Completion Date**” means one hundred and eighty-three (183) Days following the Guaranteed Commercial Operation Date.

“**Guaranteed Sound Emissions**” has the meaning assigned in Exhibit G.

“**Guarantor**” means TIC Holdings, Inc.

“**Hazardous Substance**” means: (i) any chemicals, materials, substances, or wastes which are now or hereafter defined as or included in the definition of “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic substance,” “extremely hazardous substance,” “pollutant,” “contaminant,” or words of similar import under any Applicable Law; (ii) any petroleum, petroleum products (including crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas), or oil and gas exploration or production waste, polychlorinated biphenyls, asbestos-containing materials, mercury, urea formaldehyde insulation, radioactivity, and lead-based paints, or any other substance that has been contaminated, polluted or made toxic; and (iii) any other chemical, material, substances, waste, or mixture thereof which is prohibited, limited, or regulated pursuant to, or that could reasonably be expected to give rise to liability under, any Applicable Law.

“**Hazardous Substance Management Plan**” has the meaning set forth in Section 4.20(vii).

12/30/11  
SL

12/29/11  
R

**“Hold Point”** means an inspection point with respect to which Contractor or its Subcontractors may not proceed further with respect to the Work unless and until Owner has either (i) inspected the applicable Work and authorized Contractor (including its Subcontractors) to proceed, or (ii) waived such inspection in writing. Hold Points include those points designated in **Exhibit X**, and those reasonably designated by Owner from time to time by formal written notice to Contractor.

**“Improvements”** means inventions, ideas, designs, concepts, discoveries, techniques, works, processes, formulas, or modifications (whether or not patentable, copyrightable, or otherwise protectable as intellectual property) conceived, reduced to practice, developed or acquired by any Party during the term of this Agreement and related directly to the Ghent CCR Transport System. Improvements also include modifications and derivative works of any copyrightable works related to any of the foregoing.

**“Indemnified Parties”** has the meaning set forth in **Section 20.3.1**.

**“Indemnifying Parties”** has the meaning set forth in **Section 20.3.1**.

**“Information”** means all drawings; documents; manuals; training materials; Computer Programs; operating, maintenance, and other guidelines and procedures; and Design, Design Documents and other data, trade secrets, and information used or supplied by Contractor, whether directly itself or indirectly through Subcontractors, whether paper or electronic media or format, in performance of this Agreement which would be reasonably useful or necessary in Owner’s operation, maintenance, repair, personnel training, modification, or use of the Ghent CCR Transport System.

**“Insolvency Event”** means, with respect to the Person: (i) the Person’s (a) failure to generally pay its debts as they become due, (b) admission in writing of its inability to pay its debts as they become due or (c) making a general assignment for the benefit of creditors; (ii) any proceeding being instituted by or against the Person seeking: (a) to adjudicate it as bankrupt or insolvent, (b) liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors or (c) the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against the person, either such proceeding remains undismissed for a period of thirty (30) Days or any of the actions sought in such proceeding occur; or (iii) the Person’s taking any action to authorize any of the actions set forth above in this definition.

**“Intellectual Property”** means all patents, patent applications, copyrights, trade secrets and all other intellectual property rights.

**“Job Site”** means that portion of the Ghent Generating Station Site on which the Ghent CCR Transport System will be constructed, including areas for parking, storage, laydown, and administrative facilities, as more particularly described in **Exhibit S** hereto.

**“Landfill Site”** means the proposed location for Ghent Generating Station byproduct disposal. The location as set forth in **Exhibit S**.

12/30/11  
SL

12/29/11  
R

“**LC**” has the meaning set forth in **Section 25.23**.

“**Liabilities**” has the meaning set forth in **Section 20.1**.

“**Lien Indemnitees**” has the meaning set forth in **Section 20.4**.

“**Liens**” has the meaning specified in **Section 20.4**.

“**Local Hires**” means workers hired as a part of Contractor’s direct craft work force whose primary residences are located within: (i) Carroll County, (ii) the Commonwealth of Kentucky, or (iii) the Standard Metropolitan Statistical Area (as defined by the U.S. Census Bureau) for each of Louisville, Kentucky; Evansville, Indiana; or Cincinnati, Ohio.

“**Local Spend**” means expenditures with firms whose primary operations are within: (i) Carroll County, (ii) the Commonwealth of Kentucky, or (iii) the Standard Metropolitan Statistical Area (as defined by the U.S. Census Bureau) for each of Louisville, Kentucky; Evansville, Indiana; or Cincinnati, Ohio.

“**Major Subcontractor**” means a Subcontractor providing labor, Materials and/or Equipment in relation to the Work under this Agreement which has a value [REDACTED]

“**Marshaling Requirement**” has the meaning set forth in **Section 6.3.2**.

“**Materials**” means any products, supplies, bulks, materials, logic, or Computer Programs that are to be incorporated into the Ghent CCR Transport System or the Unit as part of the Work, whether or not substantially shaped, cut, worked, mixed, finished, refined or otherwise fabricated or processed, and which are not items of Equipment or Consumables.

“**MBE**” means Minority Business Enterprise.

“**MBE Spend**” means expenditures with MBEs certified by a recognized certification entity, including National Minority Supplier Development Council (NMSDC and their regional affiliates), Louisville Metropolitan Sewer District, Louisville Metro Human Relations Commission, Department of Transportation, Small Business Administration, and other states’ agencies as approved by Owner.

“**Mechanical Completion**” means when, with respect to the Work, all of the following have occurred: (i) all Equipment and Materials has been furnished and installed in accordance with **Exhibit A** and manufacturers’ requirements (and in a manner that does not void any warranty) and the terms of this Agreement and, as appropriate, checked for alignment, lubrication, rotation, and hydrostatic and pneumatic pressure integrity; (ii) Turnover Acknowledgement of all Systems has been achieved; (iii) all Systems have been installed, cleaned and statically tested and cold commissioning has been completed; (iv) all initial tests have been completed and all instruments have been calibrated; (v) all Tie-ins have occurred; (vi) and the Units as modified by the Ghent CCR Transport System are capable of safe operation; (vii) the Ghent CCR Transport System has been properly integrated into individual Units (physically and electronically) (viii) the Ghent CCR Transport System is ready to commence

12/30/11  
sc

12/29/11  
R

commissioning, testing and integrated operations without the use of temporary equipment or installations; (ix) an initial Punch List has been established and mutually agreed upon by Owner and Contractor; (x) the Performance Guarantee Test Procedures have been submitted to and accepted by Owner; (xi) the training required by **Section 4.9** has been completed; and (xii) Owner has executed the Certificate of Mechanical Completion.

**"Milestone Payment Schedule"** means the schedule of milestone values as set forth in **Exhibit B**, as it may be adjusted in accordance with this Agreement.

**"Modification"** means: (i) a written amendment to this Agreement signed by all Parties; (ii) a Change Order; or (iii) an Owner Authorization.

**"MSDSs"** has the meaning set forth in **Section 19.1.2**.

**"NERC"** means the North American Electric Reliability Corporation, a reliability organization responsible for the oversight of the regional reliability organizations established to ensure the reliability and stability of the regions.

**"NERC Requirements"** has the meaning set forth in **Section 4.39**.

**"Notice"** has the meaning set forth in **Section 23.2.1**.

**"Owner"** has the meaning set forth in the first paragraph of this Agreement.

**"Owner Authorization"** has the meaning set forth in **Section 10.1.4**.

**"Owner Default"** has the meaning set forth in **Section 24.3.1**.

**"Owner Engineer"** means a third party engineering firm selected by Owner.

**"Owner Indemnitees"** has the meaning set forth in **Section 20.1**.

**"Owner Permits"** means Permits for which Owner is responsible hereunder.

**"Owner Representative"** has the meaning set forth in **Section 5.1**.

**"Owner Response Period"** has the meaning set forth in **Section 10.1.3**.

**"Owner Review Period"** has the meaning set forth in **Section 6.2.2**.

**"Parent Guarantee"** means a guarantee in the form set forth in **Exhibit F-8**.

**"Party"** or **"Parties"** means either Owner, Contractor or both of them, as the context or the usage of such term may require.

**"Patent Rights"** mean any and all forms of patents issued or granted anywhere in the world arising from or related to the Work, all renewals and extensions thereof, and all applications for such patents which have not been abandoned or expired.

12/30/11  
en

12/29/11  
R

“**Performance Guarantees**” means the Guaranteed transfer rates for materials associated with the Ghent CCR Transport System, and the Guaranteed Sound Emissions and the Guaranteed Dust Emissions, all as set forth in **Exhibit G**.

“**Performance Guarantee Test Procedures**” means the final detailed procedures for conducting the Performance Guarantee Tests prepared by Contractor and approved, in writing, by Owner in accordance with **Exhibit G**.

“**Performance Guarantee Tests**” means the Guaranteed transfer rates for materials associated with the Ghent CCR Transport System and the Sound Emissions Tests, in each case, to determine whether the Performance Guarantees have been achieved.

“**Permits**” means any waiver, exemption, variance, franchise, permit, authorization, approval, identification number, inspection, certification, license, clearance or similar order, filing, registration, application of, from or to any Governmental Authority required to be obtained or maintained to perform the Work (including, for Owner’s occupancy of the Ghent CCR Transport System or any portion thereof), including those set forth in **Exhibit P**.

“**Person**” means any individual, company, corporation, firm, joint venture, partnership, association, limited liability entity, organization, trust, Governmental Authority or similar entity.

“**Pre-Existing Hazardous Substance**” means a Hazardous Substance existing on the Ghent Generating Station Site as of the Effective Date, which Hazardous Substance is of a nature or exists in an amount that requires special handling, disposal or remediation under Applicable Law. Hazardous Substances that are used or useful in the operation of the Existing Facilities that are labeled and in appropriate containers are not considered Pre-Existing Hazardous Substances under this Agreement.

“**Prime Rate**” means the per annum (365 or 366 Days, as appropriate) prime rate as published from time-to-time in the “Money Rates” table of *The Wall Street Journal*; **provided, however**, if more than one such prime rate is published, the average shall be used for purposes of this Agreement, unless an equivalent bank rate is agreed to by the Parties.

“**Professional Standards**” means those standards and practices used by, and the degree of skill and judgment exercised by, recognized United States national engineering and/or construction firms when performing first class quality services under similar conditions in connection with performing work related to operating coal-fired generation facilities similar to the Ghent Generating Station. “**Project Requirements**” means with respect to the Work or the Ghent CCR Transport System or any portion of either or both: (i) Applicable Law; (ii) Codes and Standards; (iii) the provisions of this Agreement; (iv) the requirements and warranties of Subcontractors, including Equipment and Materials Subcontractors; (v) the requirements of insurers providing insurance pursuant to **Article 21**; (vi) the Operating and Maintenance Manuals; and (vii) Professional Standards.

“**Project Schedule**” means the critical path method project schedule, including key dates and milestones for completion of the Work established in accordance with and as set forth in **Exhibit D**, as such Project Schedule may be adjusted pursuant to this Agreement.

12/29/11  
R

1

**"Prudent Utility Practices"** means the practices, methods, materials, supplies, equipment, and standards of safety, performance, and service that are commonly applied in the electric utility industry in the United States to operate and maintain generating facilities similar to the Units, including the use of, and adherence to, equipment, practices and methods, applicable industry codes, standards, and regulations that in the exercise of reasonable judgment and in light of the facts and circumstances known at the time the decision was made would be reasonably expected to accomplish the desired result while protecting the Ghent CCR Transport System, the Existing Facilities, the interconnection facilities, individuals, and the environment from damage, loss or injury. Prudent Utility Practices are not intended to be limited to the optimum practice or method to the exclusion of all others, but rather to be a spectrum of possible, but reasonable practices and methods having due regard for vendor warranty requirements, Applicable Law, and the operating and maintenance procedures of co-located generation and associated facilities.

**"Punch List" or "Punch List Items"** means and refers to a comprehensive list initially prepared prior to certification of Mechanical Completion which may be supplemented thereafter to identify those minor defects or deficiencies in the Work that require repair, completion, correction or re-execution, the non-completion of which do not interfere with the occupancy, use, commercial operation, safety, or reliability of the Ghent CCR Transport System.

**"Records"** has the meaning set forth in Section 25.11.1.

**"Response"** has the meaning set forth in Section 23.2.2.

**"Retainage"** has the meaning set forth in Section 8.11.

**"Retainage Amount"** has the meaning set forth in Section 8.11.

**"Sales Taxes"** has the meaning set forth in Section 8.2.1.

**"Scheduled Mechanical Completion Date"** means November 16, 2013, which date may be adjusted pursuant to the terms and conditions of this Agreement.

**"Senior Officer"** has the meaning set forth in Section 23.1.

**"Special Tools"** means tools that are described in the Technical Specification or are provided by a Subcontractor for the installation, checking, inspection, operation, repair, or maintenance of Equipment.

**"Specialty Supplier"** means any Subcontractor that provides Equipment or Materials that are to be made part of the Work and for which there are no replacements and/or services for all or any part of such Equipment or Materials that are readily available from multiple sources other than that Subcontractor.

**"Start-Up"** following the commencement of an outage (of any kind), means the time that the Unit is released to station operations.

12/30/11  
SL

12/29/11  
R



“**Subcontractor**” means and refers to a Person (at any tier other than Contractor) which has a contract, agreement or other arrangement to perform a portion of the Work, including the supply of services, Equipment, Materials, Consumables, and Construction Aids in connection with the Work.

“**Supplier Diversity Policy**” has the meaning set forth in **Section 25.23**.

“**System**” means a system or subsystem of the Ghent CCR Transport System set forth in the plan established pursuant to **Section 6.2**.

“**System Turnover Package**” means the collection of enumerated items of Information including diagnostic equipment tests that comprise a complete description of a System and its operating requirements in form and substance reasonably acceptable to Owner and established pursuant to **Section 6.2**.

“**Technical Specification**” means and refers to **Exhibit A** attached hereto, and documents specified therein that define generally the requirements and the conceptual Design, scope, and purpose of the Ghent CCR Transport System.

“**Terminal Point(s)**” means the points of connection including the interfaces and terminal points between the Ghent CCR Transport System and the Units specified in the Technical Specification.

“**Tie-in**” shall mean when the applicable Ghent CCR Transport System component is Connected to the applicable terminal points of the Ghent Generating Station; the following are the list of Tie-ins and when they will be deemed to have occurred:

Bottom Ash System will be deemed to be Tied-in when it is Connected with the Ghent Generating Station’s bottom ash sluicing system;

Gypsum System will be deemed to be Tied-in when it is Connected with the Ghent Generating Station’s 0-1 and 0-2 Gypsum Storage Tanks.

Each of the Fly Ash Unit subsystems will be deemed to be Tied-in when it is Connected to the outlet hopper of the electrostatic precipitator for the applicable Unit.

“**Tie-in Date**” means for each Tie-in, the date on which that Tie-in occurs.

“**Turnover Acknowledgment**” has the meaning set forth in **Section 6.2.2**.

“**Unit Outage Day**” has the meaning set forth in **Section 7.1**.

“**Unit**” means one of the four existing coal-fired units operating on the Ghent Generating Station Site that are commonly identified as Units 1, 2, 3, and 4. Unless the context indicates otherwise, the term “Units” refers to all four Units.

“**Warranty Period**” means the period described in **Section 13.2**, as it may be extended in accordance with this Agreement.

12/30/11  
sc

12/29/11  
R

“WBE” means Women Business Enterprise.

“WBE Spend” means expenditures with WBEs certified by recognized certification entity, including Women’s Business Enterprise National Council (WBENC and their regional affiliates), Louisville Metropolitan Sewer District, Louisville Metro Human Relations Commission, Department of Transportation, National Women Business Owners Corporation (NWBOC) (affiliate of NAWBO), and other states’ agencies as approved by Owner.

“Work” means all of the work, services, Equipment, Materials, Consumables, and Construction Aids to be performed, provided, or installed by Contractor in accordance with this Agreement, including all Job Site preparation, Design, reconditioning, procurement, transportation, expediting, construction, training, start-up, commissioning, testing, clean-up and waste disposal, and other services or items that are necessary or appropriate to complete the Ghent CCR Transport System, effect Tie-in and Connect the Ghent CCR Transport System, achieve Final Completion and fulfill Contractor’s obligations during the Warranty Period in accordance with this Agreement. Work specifically includes any options exercised by Owner in accordance with Exhibit T.

**1.2 Contract Interpretation.** In this Agreement, unless the context otherwise requires:

- (i) the singular includes the plural and vice versa;
- (ii) reference to any Person includes such Person’s successors and assigns, to the extent that such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity;
- (iii) reference to any agreement (including this Agreement), document, insurance policy or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (iv) any accounting term used and not otherwise defined in the Agreement has the meaning assigned to such term in accordance with generally accepted accounting principles consistently applied;
- (v) “including” (and “include”) means: (a) including without limiting the generality of any description preceding such term and (b) with respect to any description following such term, means “including, without limitation” or “including, but not limited to”;
- (vi) reference to Applicable Law means Applicable Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time;
- (vii) when applied to Equipment and Materials or Systems, “furnish” “provide” or words of similar import means to secure, pay for, deliver to the Job Site

12/30/11  
CL

12/29/11  
R

(or other portions of the Ghent Generating Station Site, as appropriate), unload, inspect and uncrate, store per manufacturer's recommendations and any other services or activities appropriate to that portion of the Work;

- (viii) when applied to Equipment, Materials, or Systems, "install" or "installation" or words of similar import mean to assemble, place in position, incorporate, adjust, clean, make fit for use and any other services or activities appropriate to that portion of the Work;
- (ix) unless the context specifically requires otherwise, the terms "approval," "consent," "accept," "acceptance," "authorization," and terms of similar import shall be deemed to be followed by the phrase "which shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed";
- (x) the words "shall" and "will" have equal force and effect; the words "herein," "hereof," or "hereunder" or similar terms refer to this Agreement as a whole and not to any specific section or article;
- (xi) the table of contents and article, section and exhibit titles and similar headings are inserted for convenience only and are not be used for the purposes of construing or interpreting this Agreement;
- (xii) the Work is intended to be a term that encompasses all of the necessary performance obligations of Contractor. Any listing of types of work such as "construct," "erect," "check" or "align" is not meant to be exclusive in the context of this Agreement or exclude similar or other services or activities appropriate to that portion of the Work;
- (xiii) words and abbreviations not defined in this Agreement which have well known technical or design, engineering or construction industry meanings are used in this Agreement in accordance with such recognized meanings;
- (xiv) all documentation to be supplied under this Agreement shall be provided in the English language;
- (xv) all dimensions must be specified in the U.S. customary system;
- (xvi) this Agreement and all terms hereunder (including terms related to the reasonableness of the Owner's actions) shall be construed taking into consideration the Existing Facility Requirements; and
- (xvii) payments under this Agreement which are due must be made exclusively in United States dollars.

12/30/11  
SL

12/29/11  
R

## ARTICLE 2

### EFFECTIVENESS

#### 2.1 Effectiveness.

2.1.1 Effectiveness. This Agreement shall be effective and the Parties shall be bound by the conditions applicable to their conduct upon execution of this Agreement. Contractor shall commence the Work immediately upon the effectiveness of this Agreement.

2.1.2 Assignment. Contemporaneously with the execution of this Agreement, the Parties shall execute assignment agreements in the forms attached hereto as **Exhibit Z** under which, effective as of the Effective Date, Owner shall assign to Contractor all of its right, title, and interest in and to the Ghent CCR Transport Equipment Contracts and Contractor shall assume all of Owner's obligations under the Ghent CCR Transport Equipment Contracts. Owner hereby represents and warrants the following to Contractor, on and as of the Effective Date, which representations and warranties will survive the execution of this Agreement:

- (i) prior to the Effective Date, there has been no breach or default of any provision of Ghent CCR Transport Equipment Contracts for which it is responsible;
- (ii) prior to the Effective Date, to the best of Owner's knowledge, there has been no breach or default of any provision of any of the Ghent CCR Transport Equipment Contracts by any of the Ghent CCR Transport Equipment Suppliers;
- (iii) prior to the Effective Date, no amounts have become due under the terms of the Ghent CCR Transport Equipment Contracts that Owner has not paid;
- (iv) prior to the Effective Date, it has provided Contractor with a true and correct copy of the Ghent CCR Transport Equipment Contracts together with any amendment and any change order to the Ghent CCR Transport Equipment Contracts; and
- (v) prior to the Effective Date, it has not received from the counterparty to the Ghent CCR Transport Equipment Contracts any letter of credit, parent company guarantee or other security instrument required to be provided by such counterparty under the Ghent CCR Transport Equipment Contracts that has not been assigned to Contractor.

From and after the Effective Date, Owner has no authority to authorize the counterparty to the Ghent CCR Transport Equipment Contracts to make a change to or under the Ghent CCR Transport Equipment Contracts. Notwithstanding the foregoing, Contractor will not amend or otherwise restrict any right granted to "Owner" under the Ghent CCR

12/30/11  
m

12/29/11  
R

Transport Equipment Contracts and Owner may exercise its rights thereunder, including any required enforcement thereof. Owner shall use reasonable efforts to coordinate the exercise of its rights with Contractor.

## 2.2 Commitments Prior to Mobilization.

- (i) Contractor hereby confirms that as of the execution of this Agreement there exist no grounds on which a claim by Contractor pursuant to **Article 9** or **Section 10.2** may be based;
- (ii) Simultaneously with the execution of this Agreement, Contractor shall deliver the Parent Guarantee (as applicable) required by **Section 25.15**;
- (iii) Prior to on-site mobilization, Contractor shall provide to Owner copies of insurance policies and certificates required to be obtained by Contractor in accordance with **Article 21**;
- (iv) Prior to on-site mobilization, Contractor shall confirm through receipt of notice from Owner that Owner shall have received all Owner Permits, set forth in **Exhibit P**, as are necessary to commence construction, on terms and conditions acceptable to Owner, which permits, approvals or licenses have become final and are not subject to rehearing or appeal;
- (v) Prior to on-site mobilization, Contractor shall deliver the Project Schedule in no less than a Level 3 Primavera® 5.0 format, with a fully logic-tied schedule showing engineering, procurement, and construction developed and resource-loaded;
- (vi) Prior to on-site mobilization, Contractor shall provide Owner with all necessary information from to allow Owner to have submitted all necessary filings to Governmental Authorities that are required prior to the commencement of construction; and

## ARTICLE 3

### GENERAL PROVISIONS

**3.1 Intent of Contract Documents.** It is the intent of the Parties that this Agreement be a lump-sum, turnkey contract with a fixed Contract Price and Project Schedule which will not be increased or lengthened, except in accordance with **Article 10**.

**3.2 Independent Contractor.** Contractor will perform and execute the provisions of this Agreement as an independent contractor to Owner. Contractor is not and may not act as an agent of Owner for any purpose or reason whatsoever.

**3.3 Subcontracting.** Subject to **Section 3.4**, Contractor may have portions of the Work performed by Subcontractors, including entities related to or affiliated with Contractor; provided, however, Contractor may not subcontract all or substantially all of the Work. No

contractual relationship will exist between Owner and any Subcontractor with respect to the Work to be performed hereunder, except pursuant to Sections 3.5, 3.6 and 13.4. Notwithstanding whether any provision of this Agreement specifically refers to Contractor's Subcontractors, Contractor will be fully responsible for all acts, omissions, failures or faults of any Subcontractor as fully as if they were the acts, omissions, failures or faults of Contractor and will require its Subcontractors to provide or perform their portion of the Work in a manner applicable to the performance of Contractor's obligations under this Agreement. If any Subcontractor fails to perform any portion of the Work as such Work is required to be performed in accordance with this Agreement, Contractor is responsible therefor and hereby binds itself to promptly and diligently correct such failure in accordance with this Agreement, at no cost or expense to Owner. The exercise of the right to subcontract will not in any way increase the cost, expense, or liability of Owner hereunder. Contractor shall require any Subcontractor to perform its portion of the Work: (i) under Contractor's supervision and (ii) in accordance with the requirements of this Agreement to the extent applicable to Subcontractor's scope of Work.

**3.4 Specified Equipment Subcontractors.** For those items of Equipment specified in Exhibit E, Contractor will only use the services of, or procure Equipment from, those Subcontractors listed under the headings specified in Exhibit E. Contractor will be responsible for the negotiation of the terms and conditions of any purchase orders or subcontracts entered into with such identified Subcontractors (including cost, performance guarantees and equipment warranties), and, subject to Section 8.2.4, it will enter into written purchase orders and/or subcontracts in its own name directly with such Subcontractors, it being the intent of the Parties that such Subcontractors will be subcontractors of Contractor and not of Owner. Operability, maintainability, reliability, quality, and compatibility with Equipment, Materials, and Consumables utilized in the Existing Facilities must be material selection factors in Contractor's procurement decisions. Contractor will undertake to include MBEs, WBEs, DBEs, and LCs to the maximum practicable extent on bid lists for portions of the Work. Contractor agrees that before submitting specifications for bids to Major Subcontractors it will give Owner a reasonable opportunity to comment on such specifications and Owner agrees that if they wish to comment, Owner will submit such comments within the time period specified for that item in Exhibit X and if not so specified, within fifteen (15) Business Days after delivery of the specifications to Owner. Notwithstanding Owner's right to review and comment in accordance with this Section 3.4, no such review or comment will relieve Contractor or otherwise serve as a defense to Contractor's full performance of its obligations hereunder.

**3.5 Certain Provisions in Subcontracts.** All subcontracts or other arrangements with a Major Subcontractor must contain provisions, which Contractor may not waive, release, modify, or impair: (i) giving Contractor an unrestricted right, without the consent of the Subcontractor, to assign and thereafter reassign the relevant subcontract and any or all benefits, interests, rights and causes of action arising under it to Owner and/or its designees (and such assignment right will be assigned as part of such assignment); (ii) complying with the provisions of Section 20.4; (iii) authorizing either Owner or Contractor to enforce guarantees and warranties; (iv) requiring Subcontractors that will have a presence on the Ghent Generating Station Site to comply with the plan provided for in Section 14.1 of this Agreement; (v) indemnifying Owner on the terms and conditions set forth in Section 20.1; (vi) incorporating Section 16.3; and (vii) causing Subcontractors of Equipment or Materials, upon the request of Owner, to segregate such Equipment or Materials at their fabrication facilities and identify

12/30/11  
AL

12/29/11  
L

Owner's property as such in a manner acceptable to Owner. As a condition of subcontracting with a Specialty Supplier, Contractor shall require each Specialty Supplier to sign the LG&E and KU Services Company standard General Services Agreement for work, equipment, or materials related to the Ghent CCR Transport System but not part of the Work. Contractor shall notify Owner when it enters into any subcontract(s) or other arrangements with a Major Subcontractor and shall promptly provide Owner with an electronic copy (redacted as to price) of such subcontracts and all change orders and amendments thereto. Copies (redacted as to price) of other subcontracts shall be available to Owner upon request.

**3.6 Assignment of Subcontracts.** Contractor shall, if so requested by Owner after termination of Contractor pursuant to **Article 24** or the expiration of the Warranty Period as it may be extended, assign: (i) any subcontract with a Subcontractor and/or (ii) the benefits of any remaining Subcontractor warranty to Owner, its Affiliates, or an operator of the Ghent CCR Transport System, which assignment must not require the consent of the Subcontractor.

**3.7 Subcontracts.** All subcontracts with Subcontractors shall provide that title will be transferred in the name of Owner in accordance with **Section 22.1**. Each such subcontract shall limit recourse exclusively to Contractor, except upon the assignment of such subcontract in accordance with **Section 3.6**. Subcontracts shall allow for suspension of all or a portion of the Work to be performed thereunder and shall be terminable for convenience pursuant to a termination payment schedule.

**3.8 Inclusion; Order of Precedence.** The Body of this Agreement and the Exhibits hereto are to be considered complementary and what is required by one will be binding as if required by all. Contractor has included within the Contract Price the cost to complete the Work in its entirety and to fulfill its other obligations hereunder. In addition, the Work includes all that should be properly included and all that would be customarily included within the general scope and magnitude of the Work in order to achieve the Performance Guarantees. The failure to specifically list a requirement in one document, once such requirement is specifically listed in another, does not imply the inapplicability of such requirement and Contractor shall provide or perform, as appropriate, as part of this Agreement all Work or items required to conform to the Technical Specification, the other Exhibits and the standards herein contained. In the event of a conflict between the Body of this Agreement and the Exhibits, the Body of this Agreement governs. In the event of a conflict in an Exhibit or between or among Exhibits, the requirement most favorable to Owner will take precedence, except as may be otherwise determined by Owner. Each Modification will take precedence over that part of this Agreement (including, as applicable, any prior Modification) which it supersedes.

#### ARTICLE 4

#### CONTRACTOR'S RESPONSIBILITIES

##### 4.1 The Work.

4.1.1 Performance of the Work. Contractor hereby covenants and agrees that it shall continuously and diligently provide, perform, install, and complete the Work and its other obligations hereunder in accordance with Project Requirements and the Project

Schedule. Contractor further covenants and agrees that it shall provide and pay for all Equipment, Materials, Consumables (other than Consumables to be provided by Owner pursuant to **Section 5.3**), Construction Aids, and other items or services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including all installation, construction services, Design, drafting and procurement, all administration, reporting, expediting, inspection, testing, training, scheduling, and coordination; all start-up, commissioning and testing services; all labor (skilled and unskilled); all insurance (as set forth in **Exhibit I**); Permits and inspections required to be supplied by Contractor under this Agreement; all tools, machinery, storage, and transportation and all other facilities and services necessary to provide and complete the retrofitting of the Unit with the Ghent CCR Transport System in accordance with **Exhibit A** and this Agreement, it being understood that to the extent **Exhibit A** does not expressly delineate an aspect of the Work, the Parties intend that the Ghent CCR Transport System be designed, equipped, and integrated into the Unit consistent with Professional Standards. Contractor shall order, expedite, receive, furnish, handle, inspect, store, maintain and install Equipment, Materials, and Consumables in accordance with vendor/manufacturer requirements and, in the absence thereof, in accordance with Professional Standards. Contractor will perform all managerial, supervisory, and administrative services that may be necessary to ensure the proper and timely completion of all such activities which form a part of the Work. As such, Contractor agrees that Contractor shall be ultimately responsible for the proper and timely completion of the entirety of the Work in accordance with this Agreement, whether performed by Contractor or by any Subcontractor.

**4.2 Sufficient Personnel.** Contractor shall, at all times during the term of this Agreement, employ a sufficient number of qualified supervisory personnel, craft persons, and other persons, so that the Work and the other obligations to be performed by Contractor hereunder are completed in an efficient, prompt, economical, and professional manner. Contractor shall be responsible for all overtime or other premium time Work, except as expressly approved by Owner pursuant to **Article 10**. Without in any way limiting the foregoing, such personnel must include sufficient qualified buyers, inspectors, and expeditors necessary to provide Equipment, Materials, and Consumables in a timely manner consistent with the Project Schedule. Whenever required by Applicable Law, licensed (in the applicable jurisdiction) professional engineers will perform the Design services required to perform the Work. Other portions of the Work shall be performed by properly licensed personnel as required by Applicable Law and Professional Standards. Contractor shall also provide all construction and technical services, supervision, and craft personnel as required for system adjustments during start-up, commissioning and testing. During start-up, testing or the operation of the Work until Commercial Operation, Contractor shall maintain qualified personnel on the Job Site twenty-four (24) hours a Day to advise Owner's operators regarding operation and maintenance of the Ghent CCR Transport System. Design Documents must be stamped by a Kentucky Registered Professional Engineer as required by Applicable Law.

12/29/11  
A



### 4.3 Labor Matters.

4.3.1 Labor Peace. With respect to its and its Subcontractors' employees, Contractor shall be responsible for labor peace on the Job Site and for maintaining good labor relations with local labor organizations. Contractor shall at all times exert its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, or strikes when reasonably possible and practical under the circumstances. Contractor shall advise Owner promptly, in writing, of any actual, anticipated, or threatened labor dispute that might affect the completion of the Work by Contractor or by any of its Subcontractors in accordance with the Project Schedule.

4.3.2 Verification of Employment Eligibility. Contractor shall comply with the Immigration Reform and Control Act of 1986.

4.4 **Discipline and Protection.** Contractor shall enforce strict discipline and good order among Contractor's employees, Subcontractors' employees, and any other Persons carrying out portions of the Work on the Ghent Generating Station Site and provide for the protection and maintenance of the Work and of all Persons and property related thereto. Contractor shall at all times take all necessary precautions to prevent any unlawful or disorderly conduct by or amongst its employees and those employees of Subcontractors and for the preservation of peace and protection of individuals and property at, or in the vicinity of, the Ghent Generating Station Site. Contractor shall not permit the employment of unfit individuals or individuals not skilled in tasks assigned to them. Contractor understands that importance of maintaining good relations with the community in which the Existing Facilities are located and shall emphasize the importance of good community relations to its employees and other Persons under its supervision on the Job Site.

4.5 **Supervision.** Contractor shall supervise, coordinate, and direct the Work, using Contractor's best skill, judgment, and attention. Contractor is responsible for the conduct of Persons under its supervision.

4.6 **Contractor's Key Personnel.** Exhibit K contains a list of Contractor's key personnel who will be responsible for supervising the performance of Contractor's obligations hereunder. Such list includes the designation of Contractor's principal representative (the "**Contractor's Representative**"), who will be Contractor's authorized representative having the responsibility and authority to direct and manage the Work, administer this Agreement, serve as Contractor's primary point of contact from and with Owner and be authorized to make decisions related to the Work and bind Contractor. Contractor recognizes that a good working relationship must exist between its key personnel and Owner. Owner has the right to request replacement of key personnel upon reasonable notice after having given Contractor a reasonable opportunity (not to exceed ten (10) Days) to rectify the situation leading to such request. Upon the expiration of such period, if Owner remains unsatisfied, Contractor shall promptly effect such replacement. Any replacement of key personnel will be subject to the prior written approval of Owner. Contractor's Representative shall act as Contractor's liaison with Owner.

#### 4.7 Design and Engineering.

4.7.1 Design Requirements. As engineer of record, Contractor has full Design responsibility for the performance of the Work. Contractor shall engage all supervisors, engineers, designers, draftsmen, Subcontractors, and others necessary for the Design of the Ghent CCR Transport System (including modification of the drawings of Existing Facilities as appropriate) and the preparation of all drawings, specifications, calculations, plans, reports and other Design documentation (including all media) for the Work, setting forth in detail the requirements for the construction of the Ghent CCR Transport System in accordance with this Agreement (collectively the "**Design Documents**"). Contractor shall Design the Ghent CCR Transport System in accordance with Project Requirements. During performance of the Work, Contractor shall upload to and maintain the Design Documents on a web-based database as and when such Design Documents (or iterations thereof) are completed or revised and Owner shall have unlimited access (including download capability) to the Design Documents on such web-based database. Contractor will provide hard-copy Design Document upon request.

4.7.2 Reviews and Holds. Design Documents will be available to Owner electronically in an agreed format and in hard copy. Owner will be entitled, but not obligated, to review and comment upon the Design Documents and other required submittals in accordance with **Exhibit X** prior to Contractor commencing with any subsequent phase of the Work related to such Design Documents or submittals. Contractor shall give due consideration to Owner's comments in the final version of the Design Documents or submittals. Design Documents that are required to be certified or under seal must be certified or sealed by professional engineers, licensed and qualified to perform engineering services in the applicable jurisdictions. In no event will any review, comment, or approval of Owner, or acceptance or acknowledgment of any of the Work, in any way, relieve Contractor of any of its guarantees or obligations hereunder, including its full responsibility for errors and omissions, confirming all quantities, selection of fabrication processes, construction techniques, the accuracy of the dimensions, details and the quality of its instruments of service prepared in connection with the Ghent CCR Transport System as well as its responsibility for the quality, integrity, safety, and timely performance of the Work.

4.8 Quality Control. Contractor shall develop, implement and maintain a quality assurance plan for the Work which must include: Ghent CCR Transport System quality assurance; management and control of the Design, engineering, construction, procurement, and supply services; and management and control of Subcontractors and their subcontracts. Such plan must be designed to meet Project Requirements, include procedures for effective implementation, and must be submitted to Owner within thirty (30) Days of the Effective Date for Owner's review and approval. Contractor shall diligently revise the plan as necessary to obtain Owner's approval. Contractor shall also require Major Subcontractors to establish, implement, and maintain comparable quality control and safety programs with respect to their respective portions of the Work. Compliance with the quality assurance plan will not relieve Contractor of any duty, obligation or responsibility under this Agreement.

12/29/11  
R

12/30/11  
GL

**4.9 Training.** Contractor shall develop and implement a program to adequately instruct and train personnel made available by Owner in accordance with the provisions of **Exhibit U**. Notwithstanding any other provision of this Agreement, training materials do not constitute Confidential Information. Contractor grants Owner the right to record all training sessions and replay or otherwise provide such recordings for retraining or training of others. Contractor shall provide technical assistance to Owner's operating personnel in connection with the development of training procedures.

**4.10 Certain Contractor-Provided Items.** Contractor shall provide and pay for all utilities and associated fees (not provided or paid for by Owner pursuant to **Section 5.3**) required prior to Commercial Operation, including telephone service, Internet service, water, Consumables, sanitary facilities, power, and waste and sewage disposal, including sanitary sewage, and wastewater disposal. Contractor's responsibility for payment shall include all rental, consultation, removal, usage, and other costs or fees. Contractor shall provide its own information technology and telecommunications, cable, or satellite communications. Contractor shall be responsible for providing a first fill of all Consumables as well as refills and replacements during the period prior to Commercial Operation. Contractor shall "top off" Consumables, as appropriate, promptly after Performance Guarantee Tests that occur prior to or as a condition of Commercial Operation. Contractor shall use its best efforts to use the same products for Consumables that are used by Owner in the Existing Facilities.

**4.11 Equipment and Materials Subcontractor Presence.** Contractor shall be responsible for notifying and paying for any Equipment Subcontractor representative that it deems necessary to be present: (i) at any of the training sessions; (ii) for erection supervision; (iii) for commissioning; or (iv) during the Performance Guarantee Tests.

**4.12 Current Records; As-Built Drawings.** Contractor (and its Subcontractors) shall maintain in good order at the Job Site at least one (1) record copy of the Design Documents, marked currently to record changes made during construction, a copy of this Agreement and Modifications thereto, one record copy of approved shop drawings, product dates, samples and other submittals required by Contractor, all of which will be available to Owner for inspection and use at all times. Prior to and as a condition of Final Completion, the As-Built Drawings shall be delivered by Contractor to Owner, as well as a set of reproducible record drawings (in native and other formats requested by Owner) showing all changes made during construction to the Design Documents and to the drawings of the Existing Facilities. From and after Contractor's mobilization to the Job Site, Contractor shall prepare and display for Owner's benefit on the Job Site a visual depiction, in a storyboard format reasonably acceptable to Owner, of the Work to be performed during the current month and the following month.

**4.13 Transportation Costs.** Contractor shall arrange and pay for all transportation, freight, storage, and transfer costs (including duties and similar charges) of every kind and nature in connection with the Work.

**4.14 Operating and Maintenance Manuals.** Contractor shall prepare and provide to Owner the Operating and Maintenance Manuals in accordance with the requirements of **Exhibit V**.

**4.15 Control of Work.** Consistent with the terms of this Agreement, Contractor shall be responsible for all Design and construction means, methods, techniques, sequences, procedures, quality assurance, and quality control programs in connection with the performance of the Work.

**4.16 Emergency Response.** Contractor is responsible for developing an emergency response plan for use in connection with emergency situations that may occur on the Ghent Generating Station Site and arise out of its performance of (or failure to perform) the Work. If such an emergency situation occurs, Contractor may not rely on the services of emergency response teams of Owner and shall put its emergency response plan into effect and take such other actions as are necessary to stabilize and ameliorate the situation. Immediately upon the occurrence of an emergency endangering public health or safety, including environmental harm, or material damage to property, Contractor shall: (i) implement its emergency response plan; (ii) without limiting its other reporting obligations hereunder, immediately orally notify an individual on the Emergency Notification List; and (iii) cooperate with Owner by providing information, documentation, and reports as may be appropriate such that both Parties can (a) fulfill all reporting obligations required by Applicable Law and (b) implement procedures appropriate to avoiding a repetition of such occurrence.

**4.17 Local Conditions.** Information on the Ghent Generating Station Site, Job Site and for all Units furnished by Owner in specifications, drawings or otherwise is made without representation or warranty of any nature by Owner, is not guaranteed by Owner, and is furnished solely for the convenience of the Contractor. Contractor represents that it has taken steps necessary to examine and ascertain the nature and location of all conditions relevant to the Work and its surroundings which a prudent contractor should have examined or ascertained upon reasonable investigation, and that it has investigated and satisfied itself as to the general and local conditions that can affect the Job Site, the Ghent Generating Station Site, the performance of the Work, or the construction and operation of the Ghent CCR Transport System, including: (i) conditions bearing upon access, egress, transportation, waste, and water disposal, handling, laydown, parking, and storage; (ii) the availability, nature, and conditions of labor, water, electric power, the Internet, other utilities, and roads; (iii) uncertainties of weather or other physical conditions at the Job Site, the Ghent Generating Station Site and the proximate area; (iv) the character of Construction Aids, Equipment and Materials or other facilities needed preliminary to and during the performance of the Work; (v) the condition of the Existing Facilities; and (vi) the proximity of the Existing Facilities, local residences and businesses. Contractor has conducted a transportation survey to assess the circumstances affecting delivery of Equipment, Materials, Consumables, and Construction Aids to the Job Site. Contractor acknowledges that craft and other individuals that are to be present on the Ghent Generating Station Site for the performance of all or any portion of the Work will be required to park at a remote location on the Ghent Generating Station Site. Contractor shall provide transportation within the Ghent Generating Station Site for such individuals as necessary. Contractor assumes the risk of such conditions and the conditions of the Job Site and other portions of the Ghent Generating Station Site on which Work is to be performed as more particularly described in **Section 4.18**. Any failure by Contractor to take the actions described in this **Section 4.17** or **Section 4.18** will not relieve Contractor from responsibility for estimating properly the difficulty, time and cost of successfully performing the Work, or for proceeding to successfully perform the Work, without additional expense to Owner. Contractor shall only be entitled to adjustments to Contract Price

12/30/11  
SL

12/21/11  
R

and Schedule to the extent provided with respect to Excusable Events and Contract Changes as provided in **Articles 9 and 10**.

**4.18 Job Site Conditions.** Contractor has inspected the Job Site, the other portions of the Ghent Generating Station Site on which Work is to occur, the Existing Facilities and surrounding locations, has had an opportunity to conduct such tests as it may desire, and has reviewed information provided by or on behalf of Owner, copies of which are attached hereto in **Exhibits S and Q**, relating to both the surface and subsurface conditions, to the extent it deems necessary for its purposes, and is familiar with the conditions thereof related to the performance of the Work. Contractor is aware of the karstic character of Ghent Generating Station Site and the Job Site. Contractor further understands the scope of construction activity that is and will be undertaken on the Ghent Generating Station Site during the term of this Agreement and has taken the inherent constraints associated therewith into account in the Project Schedule. Information provided to Contractor concerning the Job Site, other portions of the Ghent Generating Station Site, the Existing Facilities or surrounding areas, including the information provided in **Exhibit S and Q**, specifications, Design documentation or otherwise is made without representation or warranty of any kind or nature. Such information is not warranted by Owner to be accurate, complete, or otherwise suitable or sufficient for Contractor's purposes and is provided solely as a convenience to Contractor. Any reliance thereon by Contractor is at its sole risk. Geotechnical, topographical, geological, seismic, hydrographical, hydrological, or other natural physical conditions related to the Ghent Generating Station Site or the Job Site, including conditions relating to foundation Design or construction, Job Site preparation, Design, construction or any other portion of the Work will neither be deemed nor constitute the basis of an Excusable Event except to the extent actual subsurface conditions are encountered by Contractor that deviate from the information or descriptions of the Ghent Generating Station Site or Job Site provided by Owner in **Exhibit S and Q**, the observations of Contractor, or the results of any investigation, test result, or information and conditions reasonably inferable therefrom. Notwithstanding the foregoing, the discovery of Pre-Existing Hazardous Substances at the Job Site will be handled as provided in **Article 19**.

**4.19 Witnessing and Inspection Rights.** Owner and its employees, agents, representatives, and invitees are hereby granted access by Contractor to the Work (including the Design Documents) at all times so as to enable them to witness and inspect the Work, including inspection at the point of fabrication, sub-assembly, preparation for shipment or elsewhere. Contractor shall cooperate with Owner in scheduling visits to Subcontractor factories or sub-assembly locations for such Persons for purposes of inspecting the Work. Owner has the right to reject any portion of the Work that does not comply with Project Requirements. Contractor shall also afford Owner with the opportunity to witness the events set forth in **Exhibit A , Exhibit X** (Submittals Reviews and Hold Points), and such other events as to which Owner gives Contractor notice. Contractor shall provide written notice to Owner of all events Owner is entitled to witness pursuant to the terms of its agreements with Major Subcontractors promptly upon execution of such agreements. Contractor shall provide Owner with reasonable notice (but not less than fifteen (15) Days in each instance) of the schedule of the occurrence of all such events and with reasonable advance notice of any rescheduling of all such events. Contractor shall cause such events to appear on the Project Schedule.

**4.20 Use of Site.** Contractor will have access to the Job Site as provided in **Section 5.5.1.** Access to other portions of the Ghent Generating Station Site on which Work is to be performed, will be on an as-needed basis as requested by Contractor sufficiently in advance of such needs to allow Owner to schedule such activities without adversely impacting the operations of any of the Existing Facilities. Contractor shall be entitled to utilize the internal roadways of the Ghent Generating Station Site as indicated in **Exhibit S.** Such use is not exclusive and must not interfere with the ongoing operations of the Existing Facilities or other construction activities affecting Existing Facilities other than the Unit. Any use of such roadways that could result in such interference shall be subject to the prior written approval of Owner. The Existing Facility is a baseload generating station serving the needs of ratepayers and other customers and supporting the electrical transmission grid. It is critical that the operation of the Existing Facility not be interfered with or otherwise impaired or put at risk except to the extent absolutely necessary for the performance of the Work (the preceding two sentences outline the "Existing Facility Requirements"). Even if such interference, impairment or risk is absolutely necessary, Contractor shall be required to coordinate its applicable activities with Owner so that Owner can act to anticipate difficulties that may thereby arise (and Contractor shall comply with Owners reasonable instruction such as requiring such activities take place at such times and in such a manner so as to reduce the impact and/or risk). Contractor shall confine its operations at the Job Site to areas permitted by Applicable Law and this Agreement and, with respect to the Existing Facilities or other areas of the Ghent Generating Station Site where Work is to be performed, the reasonable instructions of Owner. Notwithstanding anything in this Agreement to the contrary, Contractor may not interfere with the conduct of the Existing Facilities (including deliveries thereto) or any business operating adjacent to or in close proximity to the Job Site or the Ghent Generating Station Site, except to the extent necessary to perform the Work. Contractor shall coordinate the performance of the Work with the requirements and business operations of the Existing Facilities and construction activities related thereto. Contractor shall prepare a Job Site coordination plan to be delivered to Owner no later than fifteen (15) Days prior to Contractor's mobilization to the Job Site, setting forth the procedures and guidelines to be implemented by Contractor, its Subcontractors, and Owner to maximize site coordination and minimize the likelihood of interference and any adverse effect therefrom on the operations of the Existing Facilities. Owner will be entitled to review and comment on such plan and any such comments shall be incorporated into the final version of such plan. Contractor shall also implement and enforce rules necessary for safe, efficient, and proper prosecution of the Work. At a minimum, Contractor, its Subcontractors, and their respective employees and invitees shall be subject to and shall strictly comply with the health, safety, and environmental protection procedures and regulations established by Owner, including the procedures and regulations set forth in **Exhibit H,** as they may be reasonably changed from time to time in the sole discretion of Owner. Failure to strictly comply with the requirements of **Exhibit H** shall be grounds for removal from the Job Site, the Ghent Generating Station Site or the Existing Facilities, at the sole discretion of Owner, and any adverse consequence thereof shall be borne by Contractor. In addition, Contractor shall:

- (i) use, and shall cause all Subcontractors and their respective employees to use, only such gate(s) for access to the Job Site, as identified in **Exhibit S,** except as otherwise designated by Owner. All Equipment, Materials, Consumables, and Construction Aids must be received, stored and routed, and all waste and demolition debris shall be routed and stockpiled in strict

12/29/11  
R

12/30/11  
SL

accordance with the Job Site coordination plan prepared by Contractor and approved by Owner, as described above;

- (ii) be responsible for the security of the Work and the Job Site until Commercial Operation, it being acknowledged by Contractor that neither Contractor nor its Subcontractors are entitled to rely on any security measures or procedures in place at the Ghent Generating Station Site for the protection of individuals or property;
- (iii) at least fifteen (15) Days prior to Contractor's mobilization to the Job Site, Contractor shall develop and provide to Owner a temporary facilities plan. Within fifteen (15) Days of its receipt of the plan, Owner will provide its comments to Contractor. Contractor shall incorporate Owner's comments into a final version of such plan and revise the plan, as necessary, and issue the final version within fifteen (15) Days of receipt of Owner's comments. Thereafter, Contractor shall implement the provisions of the plan, confine temporary structures, machinery, and other property of Contractor (and its Subcontractors), and the storage of Equipment, Materials, Consumables, and Construction Aids to the laydown or other areas more specifically identified in **Exhibit S**, or otherwise provided in the plan, permitted by Applicable Law, by this Agreement and by Owner. Temporary structures shall be neat in appearance, must not constitute a fire or any other safety hazard and must be properly maintained;
- (iv) obtain approval from the Owner Representative prior to performing any Work on the Ghent Generating Station Site that is not wholly within the Job Site. Contractor understands that it must consult with the Owner Representative to assure that operation of the Existing Facilities will not be interrupted by the Work to be performed and that decisions made by the Owner Representative hereunder will be based upon the operating and maintenance requirements of the Existing Facilities. Contractor further understands that certain activities associated with the Work will require advance notice or approval of Owner, including submission and approval of forms completed by Contractor. The forms to be submitted by Contractor are set forth in **Exhibit F-7** and must be completed and submitted to the Owner Representative a reasonable time prior to the time Contractor needs to conduct the subject activity;
- (v) except as expressly permitted with the prior written consent of Owner, not deliver any Equipment and Materials or perform any Work that would be considered "heavy construction" except during the hours of 6 a.m. to 7 p.m. Business Days. Contractor will not schedule deliveries during hours that school bus transportation is scheduled to utilize roads in the general vicinity of the Ghent Generating Station Site. Compliance with all applicable sound regulations or restrictions imposed by Applicable Law to which the construction activity is subject shall be strictly followed by Contractor;

12/29/11  
R

12/30/11  
SL

- (vi) at least fifteen (15) Days prior to Contractor's mobilization to the Job Site, Contractor shall provide to Owner a construction environmental control plan in connection with the Work for the purpose of properly managing the sediment control, erosion, fugitive dust, storm water runoff, noise, and other adverse environmental impacts of construction, all in conformance with the Project Requirements. Within fifteen (15) Business Days of receipt of the plan, Owner shall provide comments to Contractor and Contractor shall incorporate Owner's comments into the final version of such plan. Thereafter, Contractor shall implement the provisions of the plan;
- (vii) within sixty (60) Days of Contractor's mobilization to the Job Site (but in any case at least fifteen (15) Days prior to bringing any Hazardous Substances onto the Job Site), Contractor shall provide to Owner a Hazardous Substances management plan ("**Hazardous Substances Management Plan**") that it will vigilantly implement during performance of the Work on any portion of the Ghent Generating Station Site. Such plan, at a minimum, must incorporate the Ghent Generating Station policies and procedures and require Contractor to cooperate and coordinate with Owner. Within fifteen (15) Business Days of receipt of the plan, Owner shall provide comments to Contractor and Contractor shall incorporate Owner's comments into the final version of such plan. Thereafter, Contractor shall implement the provisions of the plan;

**4.21 Compliance With Applicable Law.** Contractor shall comply, and shall cause its Subcontractors to comply, with Applicable Law in effect from time to time relating to the Work, and shall give all applicable notices pertaining thereto. Contractor shall ensure that the Ghent CCR Transport System, as designed, engineered, and constructed, complies and, when fully integrated into the Unit and operated in accordance with Prudent Utility Practices, will be capable of complying with Applicable Law, except with regard to any emissions or noise limitations, as to which Contractor's sole obligation shall be to comply with the Performance Guarantees set forth in **Exhibit G**.

**4.22 Permits and Approvals.** Contractor shall secure and pay for any and all Permits necessary for the proper execution and completion of the Work, except Owner Permits. Contractor shall maintain and comply with all Permits and monitor and keep accurate records of the status of all Permits. Permits obtained by Contractor shall be maintained on the Job Site and copies shall be available to Owner on request.

**4.23 Periodic Reports & Meetings.**

**4.23.1 Monthly Status Report.** Within ten (10) Days after the end of each calendar month after the Effective Date, Contractor shall prepare and submit to Owner a status report, covering the previous calendar month, that will be prepared in a manner, level of detail, and format acceptable to Owner and that must include: (i) a detailed description of the progress of the Work, including a critical path chart illustrating the progress which has been made together with a comparison against the Project Schedule;

12/27/11  
R

12/30/11  
92



(ii) a statement of any significant issues and trends, including Change Orders that remain unresolved and Contractor's recommendations for resolution of the same; (iii) an updated report as to Contractor's adherence to the Project Schedule; (iv) a summary of any significant events that are scheduled or expected to occur in connection with the Ghent CCR Transport System during the following thirty (30) Days; (v) a report on safety program performance and results for the previous month, including statistics, lost time accidents, OSHA recordables and near misses, as well as root causes and corrective actions; (vi) the monthly report required pursuant to **Section 25.24.3**, and (vii) such additional information reasonably requested by Owner. Contractor shall also comply with the requirements of **Exhibit M**.

4.23.2 Attendance and Participation. Until Final Completion, Contractor shall attend and participate in meetings on a daily, weekly, and monthly basis between Contractor and Owner for the purpose of discussing the status of the Work and anticipating and resolving problems. Such meetings may also include other Persons at the invitation of Owner, such as consultants of Owner; **provided** such Persons execute reasonable and customary agreements to maintain Work-related information on a confidential basis. Other Persons shall be permitted to attend with the prior consent of Owner. Contractor shall prepare and distribute notes of monthly meetings. Publication or distribution of notes of such meetings shall neither constitute a notice pursuant to **Section 25.5** for any purpose under this Agreement nor a permitted basis to assert claims under this Agreement. No implication whatsoever shall be drawn as consequence of a failure by any Party to comment upon or object to meeting notes prepared or distributed by the other Party.

4.24 **Signage**. Contractor shall not display, install, erect, or maintain any advertising or other signage at the Ghent Generating Station Site without Owner's prior written approval, except as may be required by Applicable Law.

4.25 **Spare Parts**. Contractor shall provide and properly store and maintain in strict accordance with manufacturer's requirements all spare parts, including start-up and commissioning spare parts prior to Commercial Operation, in accordance with Project Requirements. Spare parts must be equivalent or better to and interchangeable with the original parts they are intended to replace. Such spare parts must be of the same material, of identical manufacture, and must present the same properties as the corresponding parts of the Equipment (except to the extent upgraded by the manufacturer thereof). Spare parts must be properly treated and packed for prolonged storage, considering Job Site ambient conditions. All boxes and packing must be labeled, marked and numbered for identification and a detailed packing list shall be provided by Contractor. Spare parts are to be delivered to storage locations specified by Owner. Contractor shall implement all necessary precautions for proper storage. Contractor shall provide spare parts information in a manner fully compatible for downloading into the spare parts monitoring software maintained by Owner. Contractor shall give Owner the right to purchase, at no more than Contractor's out-of-pocket cost, any surplus items on the Job Site upon Final Completion. Contractor shall be entitled to use any spare parts that are acquired by Owner and are then available on the Job Site; **provided** that Contractor shall place an order to replace the spare parts it uses immediately and any such parts shall be replaced DDP Job Site (Incoterms 2000) as soon as possible at Contractor's expense. Contractor must provide to Owner

a list of strategic and other spare parts that Contractor and its Subcontractors recommend be purchased to maintain reliable Ghent CCR Transport System operations. The spare parts list shall identify the price of each such part (which shall be valid for no less than twelve (12) months), the OEM and other vendors, the OEM's part name and the OEM's part number, expected useful life and typical delivery lead times.

Contractor agrees to purchase additional spare parts requested by Owner that are not included in the Technical Specification. The actual cost of such spare parts will be charged to Owner. Contractor will cooperate with Owner to determine the best pricing for obtaining spare parts.

**4.26 Interference with Traffic.** Contractor shall carry out the Work so as not to damage or interfere with access to, use, or occupation of, public or private roads, footpaths, or other properties, whether in the possession of Owner or of any other Person. Contractor shall communicate with, and ascertain the requirements of, all Governmental Authorities in relation to access to and egress from the Ghent Generating Station Site (and the Job Site) and shall comply with those requirements. Contractor shall be deemed to have satisfied itself as to and shall be fully responsible for the routing for deliveries of Equipment, Materials, Consumables, and Construction Aids, including delivery of heavy, large, or oversize loads to the Ghent Generating Station Site or the Job Site, as appropriate.

**4.27 Supplies and Facilities.** Contractor shall make available on the Job Site (i) an adequate supply of potable water and (ii) sanitary facilities, for the benefit of those working on the Job Site.

**4.28 Cutting and Patching.** Contractor shall be responsible for all cutting, repairing, fitting, or patching which is required to complete or repair the Work or to make its parts fit together properly. It is the intent of this Agreement that all areas requiring cutting, fitting, repairing, or patching will be restored to a completely finished equivalent-to-new condition.

**4.29 Cleaning Up.** Contractor shall, at all times during the term of this Agreement, keep the Job Site, other portions of the Ghent Generating Station Site and surrounding streets (whether public or private), properties, waterways, sidewalks, and other areas free from accumulations of waste materials, rubbish, dirt, debris and other garbage, liquid and non-liquid materials whether spilled, dropped, left behind, discharged, blown out, or leaked during performance of the Work. Contractor shall maintain its working, storage, laydown, and parking areas in a clean and non-hazardous condition, and shall employ adequate dust control measures. Contractor must provide adequate tire washing facilities for trucks leaving the Job Site. Contractor shall properly maintain Equipment and Systems containing any Hazardous Substances. Contractor shall repair (if necessary) roads and other infrastructure (internal, public or private) on or in the vicinity of the Job Site and the Ghent Generating Station Site that are adversely affected by Contractor (and its Subcontractors) and their employees, agent and representatives' construction activities or traffic related to the Work, as needed. Hazardous Substances, including chemicals used by Contractor or its Subcontractors, must be properly handled and must be properly disposed of off the Ghent Generating Station Site. Prior to Final Completion with respect to the entire Job Site (including laydown, parking, and construction areas) Contractor shall remove all tools, trailers, surplus, waste materials, and rubbish, and shall clean all glass (inside and out), remove all paint spots and other smears, stains or scuff marks,

clean all plumbing and lighting fixtures, wash all concrete, tile, and finished floors, and otherwise leave the Job Site and the Ghent Generating Station Site where Work was performed neat and clean. If Contractor fails to take the actions required by this **Section 4.29**, Owner may do so (or cause it to be done) and the cost thereof will be charged to Contractor.

**4.30 Waste Disposal.** Contractor is responsible for disposal of all wastes generated by it or its Subcontractors during the performance of the Work, including Hazardous Substances, waste water, sanitary wastes, demolition debris, construction debris, spoil, surplus excavation material, office wastes, and wastes related to preparation, commissioning, testing, and start-up of Systems or Equipment. All such wastes must be handled, stored, or disposed of in accordance with Applicable Law in a suitable off-site location. All costs related to such waste disposal are the responsibility of Contractor.

**4.31 Water Control.** Contractor shall carry out all dewatering, storm water control drainage, pumping, and disposal required to keep the Work dry during performance of the Work. Contractor shall not: (i) place Hazardous Substances (including site soils or water that may be contaminated), waste materials, trash, or rubbish; or (ii) discharge contaminated water, into any area that will pollute a natural stream or body of water. No discharge of contaminated water may be permitted to cause soil contamination (whether documented or undocumented) in violation of any Applicable Law.

**4.32 Permit Assistance.** Contractor, at its expense, will reasonably assist and support Owner's efforts to obtain Owner Permits, or to otherwise satisfy the conditions thereof. By way of example, such assistance includes providing customary information and documentation, and Design data. Contractor shall provide all drawings, documents and other information, stamped as appropriate, that are necessary for Owner to properly and timely complete and defend all Permit-related hearings and actions.

**4.33 Deliveries by Truck.** Contractor shall provide Owner with reasonable advance notice of any delivery of Equipment or Materials that is to arrive: (i) by truck and is oversized or is extraordinary in any other material way or (ii) by rail.

**4.34 Artifacts and Other Valuable Items.** If Contractor should discover any artifact, fossil or other items of historical, religious, monetary, geological, archeological or other value, it shall immediately cease Work in the immediate vicinity thereof, notify Owner and take reasonable actions to preserve and protect such items from damage or theft. All such items are the property of Owner and Owner shall provide Contractor with direction on how to proceed.

**4.35 Release.** Except to the extent expressly provided otherwise in this Agreement: (i) Contractor is responsible for making all investigations and determinations necessary or desirable for it to enter into this Agreement, (ii) Contractor hereby releases Owner from any and all liability in any way arising out of any information, document, statement or report related to the Existing Facilities, the Job Site or the Ghent Generating Station Site, and (iii) Contractor expressly disclaims any right to any Change Order or other adjustment of the terms of this Agreement based on its reliance on information, actions or omissions of Owner with respect to any information, document, statement or report related to the Existing Facilities, the Job Site or the Ghent Generating Station Site provided by Owner.

**4.36 Covering.** No portion of the Work (including foundations) may be covered or otherwise be made inaccessible for inspection without (i) conducting (and passing) any test or inspection required pursuant to this Agreement and (ii) allowing Owner to inspect such Work if a hold point has been established in relation to such Work as required by Exhibit X. If any Work is covered or made inaccessible for inspection in violation of the previous sentence, Contractor shall uncover (or make accessible) such Work and pay the costs resulting therefrom, including recovery or reinstallation costs. There will be no adjustment to the Project Schedule in connection therewith. If a portion of the Work has been covered or made inaccessible for inspection that Owner has not specifically requested to observe, Owner may request to see such Work and Contractor shall uncover it or make it accessible for inspection. If such Work is in accordance with this Agreement, costs resulting therefrom, including recovering or reinstallation costs, will be borne by Owner, and, if applicable, the Project Schedule will be equitably adjusted. If such Work is not in accordance with this Agreement, Contractor shall pay all such costs and will not be permitted any adjustment to the Project Schedule.

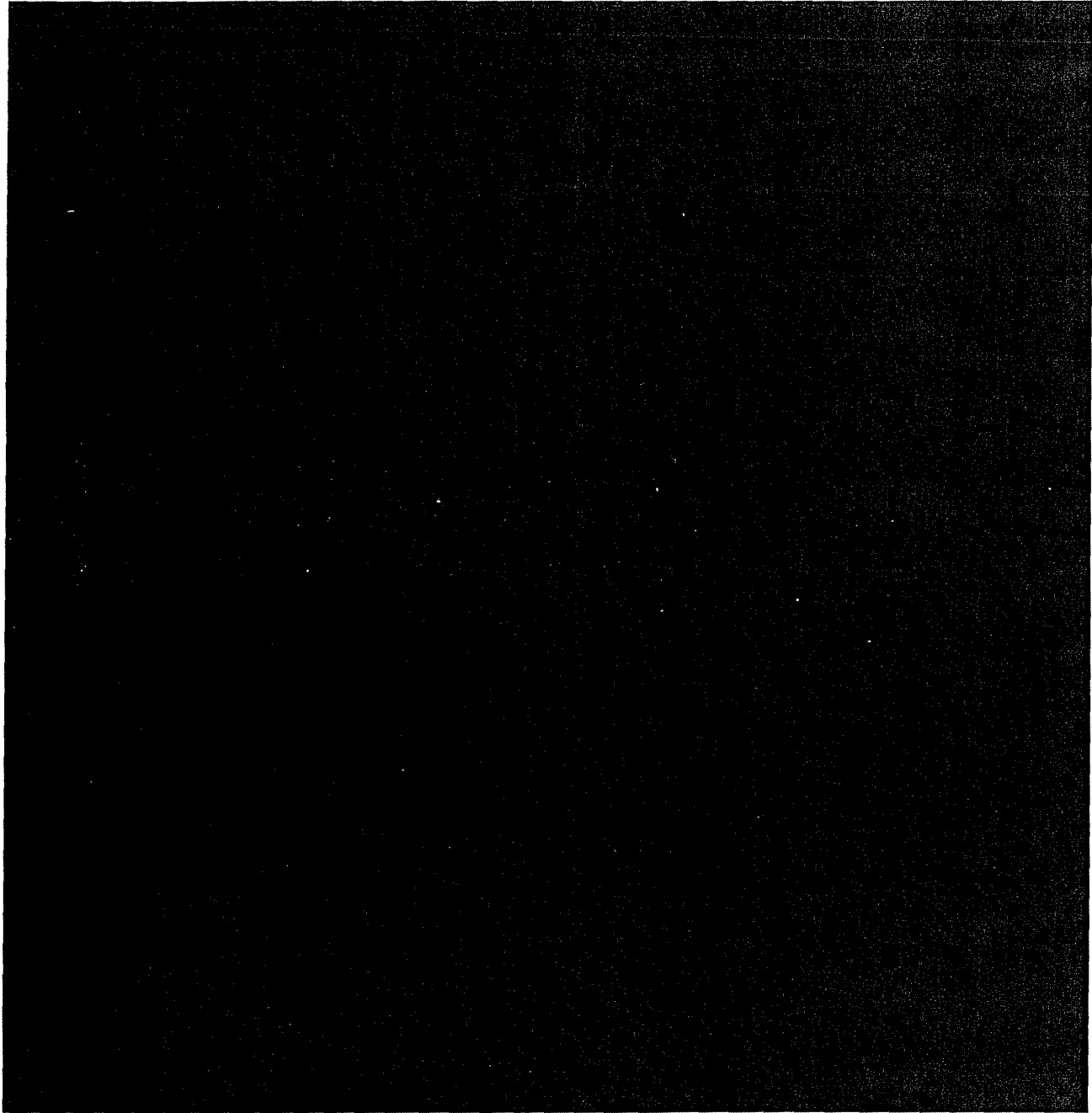
**4.37 Administrative Facilities.** Contractor shall provide adequate furnished office facilities for Owner's personnel in Contractor's offices in Lenexa, Kansas during the Design and procurement phase of the Work. Contractor shall provide temporary office facilities for itself and the Ghent CCR Transport Equipment Supplier on the Ghent Generating Station Site. Such facilities, together with office equipment, sanitary facilities, and communications services are to be provided in accordance with the Technical Specification.

**4.38 No First of a Kind.** Without Owner's consent, Equipment will not include prototype equipment, meaning any equipment or component thereof that is at that stage in the evolutionary developmental process where the design, functionality, environmental suitability, material composition, scale, reliability, maintainability, and other operational characteristics of the equipment or any component thereof has not been substantiated by at least two (2) full operating years of commercial experience.



12/30/11  
gr

12/24/11  
R



ARTICLE 5

OWNER RIGHTS, DUTIES & OBLIGATIONS

5.1 **Key Personnel.** Owner shall designate, from time to time, one or more individuals who will act on Owner's behalf, in connection with the Work, together with the scope of their authority. Among such designees there must be appointed a principal representative of Owner (the "Owner Representative"), who will be Owner's authorized representative, and who will receive and initiate all communications from and with Contractor and who will be authorized to render decisions related to the Work and bind Owner.

12/29/11  
R

12/30/11  
SR

**5.2 Owner's Review.** Owner will be entitled to review, comment on, evaluate, or approve the Design Documents and other submittals as provided in **Exhibit X**. Contractor shall consider Owner's comments in good faith, **provided, however**, Owner will not have any responsibility or liability for the accuracy or completeness of such documents, for any defects, deficiencies, or inadequacies therein or for any failure of such documents to comply with the requirements set forth in this Agreement, the responsibility for all of the foregoing matters being the sole obligation of Contractor. Contractor shall advise Owner in writing of the disposition of each of the comments.

**5.3 Owner-Provided Items.** Owner, at its expense, shall provide: (i) a location for Contractor to connect to and obtain construction power. Items to be provided by Owner prior to Commercial Operation, including items necessary for start-up, are specifically identified, limited in quantity, and scheduled as set forth in **Exhibit O**. Additional quantities shall be made available by Owner, subject to availability, at Contractor's expense.

**5.4 Right to Apply Monies.** Owner shall have the right to deduct from any funds or monies due or to become due to Contractor (or draw on the Retainage) any amounts actually due to Owner from Contractor as a result of any losses, expenses, damages, obligations, or liabilities for which Contractor is responsible pursuant to the terms and provisions of this Agreement.

**5.5 Access and Inspection.**

**5.5.1 Access to Site.** Owner shall provide reasonable non-exclusive access to the Job Site (as shown in **Exhibit S**), other portions of the Ghent Generating Station Site, and the Existing Facilities on which Work is to be performed to Contractor and its Subcontractors, subject to Applicable Law, applicable Ghent Generating Station Site regulations, and the terms of this Agreement.

**5.5.2 No Relief.** No inspection or review of, or failure to inspect or review, the Work or any portion thereof by Owner or any other Person on behalf of Owner will relieve Contractor of its obligation to properly execute and complete the Work. Inspection by Owner will not be deemed to be supervision or direction by Owner, and is only for the purpose of attempting to confirm for Owner's purposes that the Work conforms to the requirements of this Agreement.

**5.6 Owner Permits.** Owner is responsible for obtaining Owner Permits.

**5.7 Right to Carry Out the Work.** If Contractor defaults under this Agreement or neglects to carry out the Work in accordance with this Agreement and fails within a seven (7) Day period after receipt of written notice from Owner to take steps to commence and continue curing such default or neglect with diligence and promptness, Owner, without prejudice to any other rights or remedies Owner may have under this Agreement, including declaring Contractor in default, and with or without terminating this Agreement, may correct such deficiencies at Contractor's expense (including Owner's internal, general, and administrative expenses) and Owner shall have the right to: (i) deduct an amount equal to the amounts incurred by Owner in so doing from amounts due or to become due to Contractor; (ii) draw such amounts on the Retainage; and/or (iii) obtain reimbursement of such amounts from Contractor.

**5.8 Rights Not Limited.** The rights and remedies provided in this **Article 5** are in addition to, and not in limitation of, any other rights or remedies otherwise available to Owner under this Agreement.

**5.9 Operating Personnel.** At such time as Contractor has achieved Mechanical Completion (except for the Tie-ins), it may commence the Tie-ins (in the order designated in Article 6). Upon the first Tie-in, the commissioning of the Ghent CCR Transport System shall commence and shall continue until commissioning is completed after the final Tie-in. Owner shall operate the Units (as improved by the Ghent CCR Transport System) from and after Mechanical Completion with its normal complement of personnel. Contractor shall communicate with supervisory personnel identified by Owner to convey any directions with which it wants Owner to comply with respect to the operation of the Ghent CCR Transport System during commissioning, hot testing, and the Performance Guarantee Tests. Owner shall undertake to operate Ghent CCR Transport System in accordance with such directions to the extent such directions are consistent with Good Utility Practices and comply with Applicable Law. If Contractor directs Owner's operation of the Ghent CCR Transport System and such direction is responsible for damage to any of the Units or the Ghent CCR Transport System, Contractor shall: (i) reimburse Owner on demand for correction of such damage within any of the Units (subject to **Section 12.3** as to damage to the Units and as to those portions of the Ghent CCR Transport System to which care, custody, and control and risk of loss has passed to Owner); (ii) correct damage within the Ghent CCR Transport System (subject to **Section 12.3** as to damage to those portions of the Ghent CCR Transport System to which care, custody and control and risk of loss has not passed to Owner); and (iii) pay liquidated damages for each Unit Outage Day in accordance with **Section 7.1**. Contractor understands that each of the Units is a critical generating resource for Owner and consequently Contractor will exert maximum efforts to give directions that are consistent with Owner's requirement to maximize Unit operations on an unrestricted basis. If Contractor desires or needs to have additional technical personnel and/or special monitoring or measuring equipment for any tests, then Contractor shall furnish such personnel or equipment at no cost to Owner.

**5.10 System Needs.** Each of the Units is a critical generating resource for Owner and must be continually available for full operation, including after each Tie-in commences (excluding, with respect to the Fly Ash Tie-in for each Unit, during the scheduled time for the Fly Ash Tie-in Outage for that Unit) but prior to Commercial Operation. Thus, Contractor shall plan and implement its Work in such a fashion to ensure that the Units can be so continually operated and will prepare (and, if necessary, implement) contingency arrangements so that the Units can be so operated and the CCR from the Units can be properly transported to their permanent disposal location on the Ghent Generating Station Site.

**5.11 Contractor's Personnel.** Owner has the right to object to any representative or Person employed or engaged by Contractor that engages in misconduct, is believed by Owner to lack competence for the tasks assigned, or is negligent while on the Job Site or the Ghent Generating Station Site. Contractor shall remove such Person from the Job Site or the Ghent Generating Station Site, as applicable upon receipt of Owner's notice. Any cost for replacement Persons will be at Contractor's expense. The rights of Owner under this **Section 5.11** are in addition to the rights of Owner with respect to the personnel pursuant to **Section 4.6**.

ARTICLE 6

PROJECT SCHEDULE

6.1 **Commencement.** Contractor shall immediately commence performance of the Work in its entirety in accordance with the requirements of this Agreement and continuously and diligently fulfill its obligations under this Agreement.

6.2 **Turnover of the System.** [REDACTED] Contractor shall provide a detailed written turnover and start-up plan to Owner for its review and comment. Such plan must include: a complete listing of the Systems along with a scheduled turnover date for each such System and a schedule of documents to be included in the System Turnover Package that will accompany the System being turned over. Each System Turnover Package must be properly completed and include sufficient checkout and operation information to clearly indicate that the System has been completely checked out, including: instrumentation checkout and calibration data sheets, hydrostatic test reports, factory test reports, chemical cleaning and lubrication records, non-destructive testing records, operating manuals, marked-up P&IDs reflecting as-built conditions, and electrical test data sheets, including megger test reports and vendor field reports. The data provided in each System Turnover Package must be complete and compatible for insertion into Owner's hold card system. [REDACTED] review such plan and provide written comments to Contractor. Contractor will promptly address such comments and resubmit the plan until such time as Owner approves the plan. Owner and Contractor will mutually agree on the final turnover and start-up plan prior to its implementation. Thereafter, Contractor's turnover of Systems will be accomplished as follows:

6.2.1 **Ready for Turnover.** When Contractor deems that it has achieved completion of construction of a System or, in the case of any System that is a modification, expansion or improvement of a portion of the Unit, completion of such modification, expansion, or improvement, in accordance with this Agreement, including static integrity tests, alignment, electrical continuity tests, lubrication, and demonstration of readiness for operation as appropriate (but exclusive of Punch List Items, final vendor reports, manuals, and other information not necessary for start-up), Contractor shall notify the Owner Representative, in writing, that the System is ready for turnover to Owner, which notice must be accompanied by the applicable System Turnover Package meeting the requirements of this Agreement.

6.2.2 **Turnover Acknowledgment.** Owner will agree that the System is ready for turnover in writing ("Turnover Acknowledgment") [REDACTED] by Owner Representative of notification from Contractor (the "Owner Review Period"), unless Owner reasonably believes that: (i) the System Turnover Package does not comply with the requirements of this Agreement or (ii) the System: (a) contains deficiencies, defects, or non-conformities that preclude safe testing, safe commissioning, or safe operation; (b) has not been prepared, flushed, or cleaned as necessary or appropriate; (c) requires Work that has not been completed and which does not constitute a Punch List

12/30/11  
gr

12/29/11  
R



Item; or (d) materially differs from the System required under this Agreement. Owner and Contractor must develop a Punch List and endeavor to ensure that the Punch List contains all deficiencies and incomplete items of Work with respect to the System submitted for Turnover Acknowledgment. Notwithstanding the foregoing, if the turnover of a System by Contractor is not made in accordance with the agreed upon turnover Project Schedule and as a result Owner is unable to accept or reject such System within the Owner Review Period, Owner and Contractor will mutually agree upon a reasonable extension of the Owner Review Period for the affected Systems, which extension will reflect the nature of the affected System. Turnover Acknowledgment and the provision of operating personnel neither constitutes acceptance of any System, Owner's acceptance of care, custody, or control of such System, nor any transfer of control to Owner, including responsibility for commissioning, start-up, testing, operations, or maintenance.

6.2.3 Deficiencies. If Owner reasonably believes that any of the circumstances set forth in clauses (i) and (ii) of Section 6.2.2 exist with respect to a System submitted for Turnover Acknowledgment, Owner will so notify Contractor in writing during the Owner Review Period, stating the deficiencies noticed or the incomplete items of Work, as applicable. When Contractor deems it has remedied such deficiencies or completed such items of Work, as applicable, Contractor will then again notify Owner Representative as provided in Section 6.2.1. This procedure will be repeated until Owner issues the Turnover Acknowledgment for such System. Nothing contained herein will prevent Owner from identifying any Defects, deficiencies, incomplete Work, or Punch List Items if discovered after Turnover Acknowledgment of any System.

### 6.3 Tie-in and Mechanical Completion.

6.3.1 Sequence. Contractor shall not commence making any Tie-in until (i) the entire Ghent CCR Transport System has achieved Mechanical Completion and is ready to commence commissioning (except for Work required to be performed as part of the Tie-ins), (ii) Contractor has given Owner a certificate to that effect, and (iii) Owner has signed a certificate that Tie-ins may commence. Contractor will then perform the Tie-ins in the following sequence: (i) Bottom Ash System (which Tie-in will be performed without a Unit outage), (ii) Gypsum System (which Tie-in will be performed without a Unit outage), and (iii) the four Fly Ash Unit subsystems during the respective Unit Fly Ash Tie-in Outages for such Tie-ins.

6.3.1 Achievement. Contractor shall achieve each of the Fly Ash Tie-Ins prior to the scheduled end of the applicable Fly Ash Tie-in Outage.

6.3.2 Tie-in. If timely completion of the Marshalling Requirement by Contractor for a Tie-in is in jeopardy in the reasonable judgment of Contractor or Owner, Contractor shall promptly prepare and implement, in good faith, a detailed recovery plan such that the performance of the Work can progress in accordance with the Project Schedule. Owner is obligated to issue a Certificate of Tie-in [REDACTED] receipt of Contractor's notice of the completion of a Tie-in if Contractor has satisfied the requirements of Tie-in; provided, however, that if such certificate is given, the Tie-in completion date shall relate back to the date of submission of Contractor's notice of

completion for which the certificate is given. If Contractor fails to complete a Fly Ash Tie-in within the Fly Ash Tie-in Outage and the affected Unit cannot be placed in service and operate as a consequence of Contractor's failure to complete the Tie-in, liquidated damages will be assessed against Contractor, which liquidated damages will be calculated as if they had been incurred under Section 7.1, for each Day, or part thereof (without proration), from and after the first Day following the Fly Ash Tie-in Outage until the Day that the Fly Ash Tie-in has been completed. Contractor's Tie-in Work must, however, be coordinated with the Work to be performed by Owner during such outage. If Contractor requires additional time to complete the Tie-in Work and requires that the Unit be out of service in order to complete such Tie-in Work, at Contractor's request, Owner will schedule the required number of Days for Contractor to complete the Work and Contractor will be assessed liquidated damages for each such Day, as if such liquidated damages were incurred under Section 7.1. Contractor may not commence Work to accomplish Tie-in unless its workforces, its Subcontractors' workforces, Equipment, Materials, Consumables, and Construction Aids necessary for the performance of such Work, have been fully marshaled and are present at the Job Site prior to the commencement of the outage during which such Work will be performed (the "Marshaling Requirement"). Contractor will withdraw from the Unit so as not to delay Start-up as planned by Owner. Contractor is obligated to achieve the Tie-in notwithstanding the occurrence of an event of Force Majeure (other than an event of Force Majeure occurring after it has met the Marshaling Requirement) and without adjustment of the terms of this Agreement on account thereof. Contractor recognizes that the date of the scheduled Fly Ash Tie-in Outage is not subject to change except in Owner's sole discretion.

6.3.3 Mechanical Completion. If timely achievement of Mechanical Completion is in jeopardy in the reasonable judgment of Contractor or Owner or if it is not timely achieved, Contractor shall promptly prepare and implement, in good faith, a detailed recovery plan and accelerate the Work such that the performance of the Work can progress in accordance with the Project Schedule. [REDACTED] after receipt by Owner of written notice from Contractor certifying that Contractor has satisfied the requirements for Mechanical Completion (other than issuance of the Certificate therefore by Owner), Owner shall determine whether the applicable requirements have been achieved and shall either issue the Certificate of Mechanical Completion or give notice to Contractor in writing of Defects in the Work (other than Punch List Items), of which Owner then has knowledge. Owner is obligated to issue the Certificate of Mechanical Completion [REDACTED] if Contractor has satisfied the requirements of Mechanical Completion (other than issuance of the Certificate therefor by Owner). Upon receipt of a written notice of the reasons why Contractor has not achieved Mechanical Completion from Owner, Contractor shall promptly perform corrective measures to eliminate any Defects or deficiencies in the Work and shall thereafter provide another written notice to Owner containing the applicable certification set forth above. Owner shall, [REDACTED] and after each subsequent written notice as may be required, determine whether the applicable requirements have been achieved and either issue the Certificate of Mechanical Completion or advise Contractor of any Defects or

12/30/11  
SL

12/29/11  
R

deficiencies (other than Punch List Items) remaining in the Work that prevent achievement of Mechanical Completion.

**6.4 Project Schedule Update.** Without altering, revising, or otherwise changing the scheduled Tie-in Dates, the Scheduled Mechanical Completion Date, the Guaranteed Commercial Operation Date, or the Guaranteed Final Completion Date, Contractor shall submit, on a monthly basis, with the monthly status report submitted pursuant to **Section 4.23(i)**, electronic and updated hard copy of a total project integrated Project Schedule, including critical path activities interconnected by schedule logistics, in Level 3 Primavera® 5.0 format (fully logic-tied and resource loaded) and meeting the requirements set forth in **Exhibit F-4**, to Owner for Owner's review and comment. All extensions of the Project Schedule to which Contractor is entitled shall be determined by the impact of the delay giving rise to the change in Project Schedule on the critical path. The difference or "margin" between the planned date for Commercial Operation and the Guaranteed Commercial Operation Date belongs to Contractor. Contractor shall "own the float" to the extent of retaining its right to finish early.

**6.5 Performance Testing.**

**6.5.1 Performance Guarantee Tests.** At such time as Mechanical Completion and all Tie-ins have been achieved and Contractor believes that the Ghent CCR Transport System is ready for the performance of the Performance Guarantee Tests, Contractor shall so notify Owner in writing of the date on which it desires to have the Performance Guarantee Tests conducted.

Contractor will be entitled to reschedule commencement of the Performance Guarantee Tests

**6.5.2 Performance Guarantee Tests.** Performance Guarantee Tests shall be scheduled with due regard for minimizing the operating expenses of and maximizing revenues to be derived from Unit operations during such tests. The Performance Guarantee Tests must be conducted by a third party contractor as required by **Exhibit G** and passed simultaneously while the Units, as improved by the Ghent CCR Transport System, are in compliance with the terms of this Agreement and producing CCR at or near their maximum rates (the Performance Tests will utilize additional CCR held in the Existing Facility and/or stored in the Ghent CCR Transport System to achieve the design limits for the Ghent CCR Transport System as set forth in this Agreement). Such tests must be conducted: (i) in the presence of Owner; (ii) in accordance with **Section 5.9, Section 6.5.4 and Article 11**; and (iii) in accordance with the requirements of **Exhibit G** and the Performance Guarantee Test Procedures.

**6.5.3 Equipment.** No auxiliary, standby, or temporary Equipment may be used during the performance of the Performance Guarantee Tests, unless otherwise approved in writing by Owner. All Equipment and Systems of the Ghent CCR Transport System must be operational.

**6.5.4 Testing.** Contractor's directions issued to Owner pursuant to **Section 5.9** must be consistent with Prudent Utility Practices and Applicable Law, including operation of all Systems and Equipment within the manufacturers' specifications,

12/30/11  
su

12/29/11  
R

recommendations, and warranty requirements, without over-stressing or over-pressurizing any such systems. Test technicians collecting data and providing other testing-related services may not operate any Equipment during any Performance Guarantee Test.

**6.5.5 Retesting.** If Contractor fails to successfully perform any of the Performance Guarantee Tests, the defects, deficiencies, and other conditions which so prevent performing such tests successfully must be immediately thereafter corrected or remedied in accordance with **Section 12.1**. Upon completion of such corrective or remedial actions, Contractor may cause the Performance Guarantee Tests to be re-performed [REDACTED] prior written notice to Owner; provided, that if Contractor completes such corrective or remedial actions promptly after the end of the failed Performance Guarantee Tests, Contractor may request a re-performance on [REDACTED] notice to Owner and Owner shall not unreasonably deny such a request (e.g., Owner may deny the request if Owner's relevant personnel and advisors cannot reasonably be available to observe the testing through the projected conclusion of the re-performance) so long as Contractor establishes to Owner's reasonable satisfaction that Contractor has successfully determined the defects, deficiencies, and other conditions which prevented performing such tests successfully and has completed the necessary corrective or remedial actions. The Performance Guarantee Tests will be repeated until the Performance Guarantee Tests have been successfully conducted by Contractor but will in no way excuse Contractor from the timely achievement of the Guaranteed Commercial Operation Date. The results of all inspections and tests will be provided to Owner together with gross and reduced data and other information reasonably requested by Owner. The Performance Guarantee Tests will be conducted in accordance with this **Section 6.5**, **Section 5.9**, and **Exhibit G** for the purpose of demonstrating the achievement of Commercial Operation or Final Completion, as the case may be.

**6.5.6 Excused Delays.** If the Performance Guarantee Tests (or retest) cannot commence as of the date established pursuant to this **Section 6.5** (or if the Performance Tests or retest are interrupted) because Owner cannot operate the Units at the capacity required for the Performance Tests (unless such inability is caused by the Work, the Contractor or a Subcontractor) (a "Unit Derate or Outage Delay"), then the Guaranteed Commercial Operation Date will be extended by one day for each day until the end of the Unit Derate or Outage Delay. If after Mechanical Completion in connection with the Performance Guarantee Tests (or retest) Contractor requires and requests an outage pursuant to (i) of the last sentence of Section 6.11 and Owner delays providing such outage beyond a reasonable period of time, then the Guaranteed Commercial Operation Date will be extended by one day for each day of such delay.

**6.6 Re-Setting of Ghent CCR Transport System .** During those periods after Commercial Operation, Contractor shall perform whatever Work is necessary, including re-setting of Equipment and repairs of damage or modifications caused by testing, to return the Ghent CCR Transport System or relevant portion thereof to the normal operating control settings and configurations; provided, however, Contractor is not entitled to require that the Unit be taken out of service or operate on a restricted basis.

**6.7 Commercial Operation.** Contractor shall successfully achieve Commercial Operation on or before the Guaranteed Commercial Operation Date. At such time as Contractor, in good faith, believes that it has completed the requirements necessary for the achievement of Commercial Operation, including the passage of the Performance Guarantee Tests required therefor, it shall give written notice of its belief to Owner. Such notice shall be accompanied by a preliminary Performance Guarantee Test report as soon as reasonably practicable but in no event [REDACTED] or as soon thereafter as such reports are first available to Contractor) providing a summary of the Performance Guarantee Tests on which it is based and including all raw data taken during such Performance Guarantee Tests. A final Performance Guarantee Test report must be delivered to Owner [REDACTED] and such report will otherwise be in accordance with Exhibit G. Contractor shall include sufficient results of testing in the preliminary Performance Guarantee Test report to allow Owner to reasonably determine that there is a high probability that the final Performance Guarantee Test results will confirm that the applicable conditions of Commercial Operation have been achieved. As soon as practicable, but in any event [REDACTED] after receipt of notice by Owner, Owner shall either issue the Certificate of Commercial Operation or reject Contractor's notice, in which case it shall state its reasons for rejection. Such procedure shall be repeated until Contractor submits a notice demonstrating that it has fulfilled the requirements necessary to achieve Commercial Operation. Owner is obligated to issue the Certificate Commercial Operation [REDACTED] [REDACTED] period set forth above if Contractor has satisfied the requirements of Commercial Operation. If such certificate is given, the actual date of Commercial Operation shall relate back to the date Contractor submitted its written notice of achievement of Commercial Operation to Owner for which the certificate is given.

**6.8 Possession and Control.** On Commercial Operation, Owner shall take and thereafter be responsible for the care, custody, control, operation, and maintenance of the Ghent CCR Transport System. Following transfer of possession and control of the Ghent CCR Transport System to Owner, Contractor (and its Subcontractors) will have reasonable access to the Ghent CCR Transport System to complete any Work still remaining to be performed hereunder; provided, however, Contractor, Subcontractors and Owner will be required to complete any and all Work required to achieve Commercial Operation or Final Completion in a manner consistent with the operational requirements of the Units (as improved by the Ghent CCR Transport System ) as directed by Owner. In no event will Owner be required to take any of the Units out of service or otherwise adversely affect any of the Units' operations, except as set forth in this Section 6.8.

**6.9 Final Completion.** Contractor shall successfully perform all of the Work and obligations (except obligations requiring future performance, e.g., warranty obligations) and shall achieve Final Completion on or before the Guaranteed Final Completion Date. At such time as Contractor, in good faith, believes that the requirements of Final Completion have been met, Contractor shall give notice to Owner, together with reasonable substantiating documentation thereof, including all gross and reduced data from Performance Guarantee Tests conducted by Contractor. Final laboratory results are not required to be provided with such notice. [REDACTED] of such notice from Contractor, Owner will determine whether the requirements of Final Completion have been achieved, subject to confirmation by reference to the final laboratory results. If Owner agrees with Contractor's

12/30/11  
SL

12/29/11  
A

notice, upon receipt of final laboratory results that confirm that Final Completion has been achieved, Owner, [REDACTED] of the later of receipt of Contractor's notice or such final laboratory results, shall issue the Certificate of Final Completion. If, however, Owner believes that Final Completion has not been achieved, Owner shall give notice to Contractor to that effect, with reasons for such belief, [REDACTED] period, and, upon receipt of such notice from Owner, Contractor shall promptly take corrective action to fulfill the requirements of Final Completion. Contractor shall thereafter provide another notice to Owner when it believes that Final Completion has been achieved and the above-described procedures will be repeated until Final Completion is achieved. Owner is obligated to issue the Certificate of Final Completion [REDACTED] of receipt of Contractor's notice if Contractor has satisfied the requirements of Final Completion. Nothing in this Section 6.9 shall relieve Contractor of its obligation to achieve Final Completion by the Guaranteed Final Completion Date.

**6.10 Maintenance Outage.** Owner will inform Contractor as soon as practical if a maintenance outage is scheduled for the Unit. With Owner's permission, Contractor may use the period established by Owner for such maintenance outage to perform Work, including Tie-in. Owner may change the schedule for commencement of a maintenance outage without notice. If Contractor causes Owner to extend a maintenance outage beyond the scheduled duration, then each Day of such extension will constitute a Unit Outage Day and Contractor shall compensate Owner for any such extension at the rate established for liquidated damages pursuant to Section 7.1.

**6.11 Contractor Requested Outage.** In addition to an outage scheduled as part of the Tie-in Work, Contractor may request permission to perform Work during a forced outage of the Unit. If the Unit experiences a forced outage, Contractor may give Notice that it wishes to use a portion of such forced outage to perform Work. Owner, to the extent practicable, will specify the dates, times, and restrictions on Contractor's access to the Unit for the performance of such Work. Contractor may also request access to Existing Facilities off the Job Site at other times. Such request for access at other times shall be made in writing and provide [REDACTED]. [REDACTED] Owner may in its sole discretion grant such requested additional access to the Existing Facilities. Owner will specify in writing the dates, times, and restrictions on Contractor's access prior to providing such access to Contractor. Not later [REDACTED] to the start of any such additional outage, Owner has the additional right to change the dates and times during which Contractor will have such access. If (i) Contractor's request for additional outage time cannot be accommodated during a scheduled or forced outage and the Unit must be taken out of service or operated on a restricted basis or (ii) Contractor fails to properly withdraw from the outage on schedule and thereby causes a delay in Start-Up, as applicable, then liquidated damages pursuant to Section 7.1 will apply.

ARTICLE 7

LIQUIDATED DAMAGES & LIABILITY  
LIMITATIONS

**7.1 Unit Outage Day Liquidated Damages.** The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages that Owner would incur should Contractor fail to achieve a Fly Ash Tie-in during the applicable Fly Ash Tie-in Outage or, during the performance of the Work, cause a Unit to remain (or be taken or forced) out of service or operate on a restricted basis for all or a portion of a Day (each a "Unit Outage Day," for example, if two Units are forced out of service for all of one Day, that would constitute two Unit Outage Days). Accordingly, the Parties hereby agree that if Contractor fails to commence and complete the Tie-in during a Fly Ash Tie-in Outage, extends an outage as set forth in Section 5.9, or otherwise is liable for liquidated damages pursuant to this Section 7.1, including as set forth in Section 6.10, Section 6.11, Section 7.3 or this Section 7.1, then Contractor shall pay Owner, as Owner's sole and exclusive remedy and Contractor's sole and exclusive liability for such failure, as liquidated damages, and not as a penalty, [REDACTED] for each whole Unit Outage Day (pro rated for partial Unit Outage Days and for operations on a restricted basis). Contractor shall not be liable for liquidated damages under this Section 7.1 to the extent that any applicable Unit Outage Day (or portion thereof) results from Owner's failure to exercise commercially reasonable efforts (but not including the performance of any Work to be performed by Contractor) in accordance with Prudent Utility Practices (i) to return the applicable Unit to service as soon as practicable and (ii) to maintain it in service.

**7.2 Commercial Operation Delay; Liquidated Damages.** The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages that Owner would incur should Contractor fail to achieve Commercial Operation by the Guaranteed Commercial Operation Date. Accordingly, the Parties hereby agree that if Contractor fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date, then Contractor shall pay to Owner, as Owner's sole and exclusive remedy and Contractor's sole and exclusive liability for such delay, as liquidated damages, and not as a penalty, [REDACTED] [REDACTED] (pro rated for partial Days) [REDACTED] that Commercial Operation is delayed beyond the Guaranteed Commercial Operation Date, and [REDACTED] [REDACTED] for each whole Day (pro rated for partial Days) thereafter until Commercial Operation is achieved. It is agreed by the Parties that the liquidated damages set forth in this Section 7.2 relate solely to Contractor's failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date.

**7.3 Work Scheduling and Liquidated Damages.** Contractor acknowledges that time is of the essence in this Agreement and that Owner intends to place the Work in commercial service on or prior to the Guaranteed Commercial Operation Date. Accordingly, upon achievement of Commercial Operation, Contractor shall be required to complete any and all Work required to achieve Final Completion, in a manner consistent with the operational requirements of the Units as directed by Owner. Contractor is not entitled to require Owner to take any of the Units (or all or any portion of the Ghent CCR Transport System) out of service or

12/30/11  
SL

12/29/11  
R

otherwise adversely affect any of the Unit operations. Accordingly, Contractor shall schedule and coordinate with Owner any Work, including performance testing, required to achieve Final Completion to avoid adverse impacts on Owner's ability to operate any of the Units. If the Units or any portion thereof must remain or be taken out of service or the nature of the Work to be performed will otherwise prevent Owner from operating any of the Units as it requires, Owner must first agree to take the Units out of service or to permit such Work to be performed and Contractor shall be required to pay to Owner, as liquidated damages, the sum established in **Section 7.1** for each Day of portion thereof for which any of the Units remain or are taken out of service or operated on a restricted basis after the Guaranteed Commercial Operation Date. If the Ghent CCR Transport System or any portion thereof must remain or be taken out of service or the nature of the Work to be performed will otherwise prevent Owner from operating any portion of the Ghent CCR Transport System as it requires, Owner must first agree to take the portion of the Ghent CCR Transport System out of service or to permit such Work to be performed and Contractor shall be required to plan and implement its Work in such a fashion to ensure that the Units can be continually operated on an unrestricted basis and will prepare (and, if necessary, implement) contingency arrangements so that the Units can be so operated and the CCR from the Units can be properly transported to their permanent disposal location on the Ghent Generating Station Site.

**7.4 Payment.** The liquidated damages specified in this Agreement are due and payable by Contractor to Owner on the first Business Day of the month following the month in which they were incurred.

**7.5 Consequential Damages.** Neither Owner nor Contractor (or any Subcontractor) will be liable for any consequential, special, incidental, or indirect damages, sustained by the other Party or any of such other Party's respective parents or Affiliates.

**7.6 Limitations of Liability.**

**7.6.1 Liquidated Damages Limit.** Contractor's maximum aggregate liability for liquidated damages arising under this Agreement will in no event [REDACTED].

**7.6.2 Overall Limit.** Contractor's overall cumulative liability for damages to Owner arising under or in relation to this Agreement will in no event exceed an amount [REDACTED] of the Contract Price; **provided, however,** such limitation of liability shall not apply to, and no credit shall be issued against such limitations for:

- (i) Contractor's indemnity obligations as set forth in **Sections 8.8.2 and 22.2 and Articles 16 and 20** (provided, that for Article 20, only third party claims shall not apply to such limitation); and
- (ii) Claims which arise or result from fraudulent acts, violations of Applicable Law, gross negligence or willful misconduct of Contractor, its Subcontractors or others for whom Contractor is responsible.



- (iii) any cost or expense arising from Contractor's failure to achieve Mechanical Completion.

## ARTICLE 8

### CONTRACTOR'S COMPENSATION

**8.1 Contract Price.** Owner shall pay Contractor for the due, proper, and complete performance of the Work as required hereunder and for the due performance of all other obligations and duties imposed upon Contractor pursuant to this Agreement [REDACTED]

[REDACTED] subject to (i) a reduction by the aggregate amounts, if any, paid by the Owner under the Ghent CCR Equipment Contracts, (ii) adjustments in the event of any options exercised by Owner in accordance with Exhibit T, and (iii) other additions and deductions by Change Order as provided in this Agreement (the "Contract Price"). Contractor shall receive the Contract Price as full compensation for the performance of the Work and its other obligations hereunder whether or not Contractor has properly estimated or anticipated the costs required to fully perform its obligations under this Agreement. The Parties agree that as of the Effective Date, Owner will have made progress payments to the Ghent CCR Transport Equipment Suppliers under the Ghent CCR Transport Equipment Contracts, which amounts, upon Owner's assignment of the Ghent CCR Transport Equipment Contracts to Contractor, will have been made for the benefit of Contractor. Accordingly, notwithstanding anything to the contrary herein, Owner shall be entitled to deduct the aggregate amount of its payments to the Ghent CCR Transport Equipment Suppliers under the Ghent CCR Transport Equipment Contracts from the first amounts due and owing to the Contractor hereunder.

### 8.2 Taxes.

**8.2.1 Tax Cooperation and Information.** Contractor shall pay all payroll and other related employment compensation taxes for Contractor's employees; federal, state and other taxes that may be assessed on Contractor's net income, net worth, license, privilege, or gross receipts (other than taxes that are designated as sales or use taxes) arising from the Agreement; taxes, duties, excise fees, and other costs associated with the importation or exportation of Equipment, Materials, Consumables, Construction Aids, or services; other fees, royalties and assessments of any nature in connection with the Work, contributions and taxes for which Contractor is liable under Sections 8.2.3 and 8.2.6, and engineering and business license costs (collectively, the "Contractor Taxes"). Sales or use taxes required under Applicable Laws to be (i) collected by Contractor from Owner, or (ii) paid by Contractor or any Subcontractor (and for which no exemption is available) in connection with purchases or sales of Equipment, Materials or Consumables required for performance of the Work, (collectively "Sales Taxes") including sales or use taxes on Equipment, Materials, and Consumables provided by Contractor, shall be administered by Contractor in accordance with Sections 8.2.4 below and 8.2.6 below. The Contract Price includes Contractor Taxes and excludes Sales Taxes (other than those included in Contractor Taxes). Contractor shall be reimbursed for the full amount of Sales Taxes (other than those included in Contractor Taxes) properly paid by Contractor or its Subcontractors in accordance with this Agreement on a monthly basis at the time

Contractor receives payments pursuant to **Section 8.5**, subject to the documentation requirements of **Section 8.6**.

8.2.2 Subcontractors. Excluding any Sales Taxes that are determined by a Governmental Authority not to be eligible for exemption under Applicable Laws, Owner will not have any responsibility whatsoever with respect to taxes assessed against, paid, or deemed to be paid by Subcontractors.

8.2.3 Taxes Related to Employment of Persons. Contractor accepts full and exclusive liability for the payment of any and all contributions or taxes that are measured by wages, salaries, or other remunerations paid to Persons employed by Contractor or its Subcontractors for the Work, or which arise by virtue of their employment, and which now or hereafter are imposed by any Governmental Authority. Such contributions or taxes shall include those for unemployment insurance, social security insurance, workers' compensation, old age retirement benefits and other payroll taxes of any kind. Contractor shall comply with Applicable Law relating to such subjects and shall fully reimburse Owner for any of such taxes or contributions that Owner may be required to pay.

8.2.4 Sales and Use Taxes. Certain items of Equipment, Materials and Consumables purchased in the performance of the Work may be exempt from Sales Taxes in accordance with KRS 139.470 and KRS 139.480 and any successor provisions or similar provisions. Owner is responsible for notifying Contractor in a timely manner as to the nature of items that are exempt from Sales Taxes and, upon Contractor's request, Owner will promptly provide Contractor with tax exemption certificates which, when properly utilized by Contractor, will allow Contractor to purchase such items from Subcontractors without payment of Sales Taxes. Contractor shall present any such certificate to the Subcontractor on a timely basis as needed to qualify for the applicable exemption.

8.2.5 Indemnity and Assessment. Owner shall defend and indemnify and hold Contractor harmless from and against any and all claims for, and resulting liability for Sales Taxes and related penalties and interest, and any dispute resolution costs and attorneys' fees that may be asserted on all items which Contractor purchased under resale or other exemption certificates provided by Owner and for which Sales Taxes are later assessed, **provided** that any resulting liability is not caused by the act or omission of Contractor. With Contractor's consent, Owner, at its own expense, will have the right to direct the basis on which any tax assessment will be paid or contested and to control any contest leading to the settlement of assessed taxes. Notwithstanding anything to the contrary herein, Owner retains the right to choose the attorneys who will represent Contractor or Owner's interests regarding any tax assessments and/or litigation. Contractor shall cooperate with Owner in connection with any audit or contest.

8.2.6 Other Taxes. Contractor shall be responsible for any taxes on Construction Aids used in the performance of the Work. Owner shall be responsible for property taxes, if any, on Equipment, Materials and Consumables purchased by Contractor on behalf of Owner from and after delivery to the Job Site.

12/29/11  
R

8.2.7 Tax and Accounting Information. Contractor shall provide assistance as reasonably requested by Owner or its tax consultant(s), in confirming eligibility and qualification for exemptions from Sales Taxes (and any other exemptions) to the relevant Governmental Authorities. From time to time during the term of this Agreement and within thirty (30) Days of a request therefor, Contractor shall provide Owner with information, including regarding quantities, descriptions, costs, and allocations of property acquired in connection with the Work as reasonably requested by Owner in connection with the preparation of Owner's tax returns, Owner's defense of its tax treatment of such items, for the purpose of satisfying regulatory requirements or as otherwise required in connection with calculating, obtaining exemption from, or rebate of, Sales Tax. Contractor agrees to participate in any Sales Taxes exemption or other exemption or rebate programs identified by Owner, to complete and deliver the applicable documentation to obtain tax-exemption for purchases made by Contractor, including for Equipment and Materials, and to pass any Sales Tax savings or rebates through to Owner.

8.3 **Progress Payments.** Owner shall pay Contractor for the Work in monthly installments based upon the full and verified progress not to exceed amounts established in the Milestone Payment Schedule (based on completed Work) set forth in **Exhibit B**. Notwithstanding anything herein to the contrary, in no event may Contractor submit an Application For Payment that would exceed the aggregate payment amount specified for such month in **Exhibit B**. The Parties will adjust the payment Project Schedule set forth in **Exhibit D** as may be necessary and agreeable to prorate any change in the Contract Price over the installments yet to be made. If there is a substantial change in the Project Schedule, a corresponding change in the Milestone Payment Schedule set forth in **Exhibit B** will be made.

8.4 **Application For Payment.** [REDACTED] Day of each calendar month, Contractor shall furnish Owner with an Application For Payment for Work completed through the last Day of the previous calendar month, accompanied by the substantiating data required by **Section 8.6**. Prior to delivery of the Full Notice to Proceed to Contractor and Contractor's written acknowledgement thereof, the aggregate compensation for which Contractor may submit a monthly Application For Payment will not exceed the limit for such month as set forth in **Exhibit B**.

8.5 **Payment of Substantiated Amount.** Owner shall pay Contractor the amount of each Application For Payment which has been substantiated by Owner, less Retainage and other amounts properly withheld hereunder. Owner shall make such payment [REDACTED] after receipt of the complete Application For Payment, subject to the provisions of this **Article 8**. If Owner fails to make a payment in respect of an Application For Payment when due or improperly withholds amounts due to Contractor, interest will accrue on such overdue amounts at the Agreed Rate from the date such amount was due to have been paid to and until (but not including) the date it is paid. Contractor understands and agrees that Owner's payment determination under this **Article 8** may be made in conjunction with the Financing Parties and that approval of the Financing Parties may be required prior to making payment in accordance with this **Article 8**, subject to payment being due [REDACTED] after receipt of the completed Application For Payment. Payments made to Contractor in respect of Work

performed by Subcontractors constitute trust funds for such Subcontractors and shall not be commingled by Contractor with other funds of Contractor or its Affiliates.

**8.6 Supporting Documentation.** Each Application For Payment submitted by Contractor must be accompanied by the following, all in form and substance satisfactory to Owner:

- (i) a duly executed or acknowledged Contractor's certification stating that:
  - (a) all Subcontractors have been paid amounts properly due under their respective subcontracts and identifying all Major Subcontractors with whom Contractor has entered into subcontracts;
  - (b) the applicable Work has been performed in accordance with and complies with this Agreement;
  - (c) it has reviewed all financial information contained in the invoice and it is true, correct and complete; and
  - (d) no Liens or Claims have been filed or commenced in connection with the Work;
- (ii) a detailed description of the Work performed during the period as to which the Application for Payment relates; photographic and other documentation of the status and completion of the Work; reasonable documentation demonstrating achievement of milestones and otherwise demonstrating the earned value of the Work;
- (iii) duly executed partial or final lien waivers, as appropriate, in the forms set forth in **Exhibit F-5** from Contractor and from all Major Subcontractors that are to receive payment. The final Application For Payment must be accompanied by final and full waivers of claims and Liens from Contractor and, to the extent not previously provided, Major Subcontractors entitled to receive payment in connection with the performance of the Work;
- (iv) a copy of the status report pursuant to **Section 4.23.1** for the previous month;
- (v) a copy of all invoices pursuant to which Contractor has paid sales or use taxes for which it seeks reimbursement; and
- (vi) such other information, documents, and other materials: (a) reasonably required by Owner or this Agreement or (b) as may be required by the laws or customs of the jurisdiction in which the Job Site is located in order to protect the owners of the Ghent Generating Station Site from Liens or other liabilities.

**8.7 Withholding to Protect Owner from Loss.** Owner may, without prejudice to other rights of Owner hereunder, withhold payment on an Application For Payment or any other amount due to Contractor or a portion thereof (or draw on the Retainage if sufficient funds to withhold are not then available) to the extent such payment is disputed by Owner or because of:

12/29/11  
R

- (i) Contractor's failure to carry out the Work in accordance with this Agreement or any material breach of this Agreement;
- (ii) other amounts due to Owner from Contractor under this Agreement, including liquidated damages then due and owing;
- (iii) the existence of defective, deficient or nonconforming Work not yet corrected by Contractor whether or not payment for such Work pursuant to **Section 8.5** has been previously made, Contractor may invoice Owner for such amounts withheld in the next regular Application For Payment made after correction or completion of such Work;
- (iv) an amount equal to [REDACTED] of the cost for a third party to complete outstanding Punch List Items. Amounts withheld for completion of Punch List Items may be invoiced by Contractor in the Application For Payment immediately following satisfactory completion of such Punch List Items; or
- (v) Liens filed or Claims commenced by any Person that has performed a portion of the Work unless Contractor has furnished an acceptable bond (as determined in accordance with this Agreement) to protect Owner therefrom.

**8.8 Final Payment.**

8.8.1 Reconciliation. As a condition of final payment hereunder, Contractor shall have submitted a statement summarizing and reconciling all previous Applications For Payment, payments by Owner, Change Orders, and the Retainage. Subject to the provisions of this Agreement, [REDACTED] Owner shall pay Contractor all remaining amounts due. Notwithstanding anything to the contrary contained herein, the final payment will not become due and payable until: (i) a Certificate of Final Completion has been executed by Owner; (ii) Owner has received all warranties, Operating and Maintenance Manuals, schematics, Design Documents, performance testing data, As-Built Drawings and such other items as are required by this Agreement; (iii) all Permits or other approvals required of Contractor have been submitted to Owner; and (iv) the conditions of **Section 8.8.2** and **8.8.3** have been properly completed. The receipt of final payment constitutes a waiver by Contractor of all claims against Owner (and its property) not previously made in writing by Contractor, except that nothing herein may be construed to imply a waiver of any right to any amount which is the subject of a written protest in accordance with **Article 23** at the time final payment is made. Owner shall make final payment to Contractor [REDACTED] or have otherwise occurred.

8.8.2 Release. As a condition of final payment and surrender of the Retainage, Contractor shall submit to Owner a release and an affidavit, in the form set forth **Exhibit E-5**, that releases all claims of Contractor under the Agreement except for claims

12/30/11  
SL

12/29/11  
L

specifically identified in the release and represents that all indebtedness connected with the Work for which Owner or its property might in any way be responsible has been paid, waived or otherwise satisfied; but if any such indebtedness has not been satisfied, except for claims specifically identified in the release, Contractor may satisfy this obligation if it furnishes a bond reasonably satisfactory to Owner to indemnify Owner against any such item of responsibility or obligation. If any Claim of any kind or nature whatsoever is filed in respect of the Work and such Claim or any Lien arises from or is alleged to arise from any failure of Contractor or any Subcontractor to pay the indebtedness connected with the Work, Contractor shall indemnify, defend and hold Owner harmless for amounts that Owner must pay, in defending or discharging such Claim or Lien, including all costs, reasonable attorneys' fees, charges and interest. This provision will survive any expiration or termination of this Agreement.

8.8.3 Satisfaction of Obligation. Notwithstanding any provision to the contrary in this Agreement, Owner and Contractor acknowledge and agree that Contractor will not be entitled to final payment of the Contract Price or release of the Retainage unless and until Contractor has achieved Final Completion.

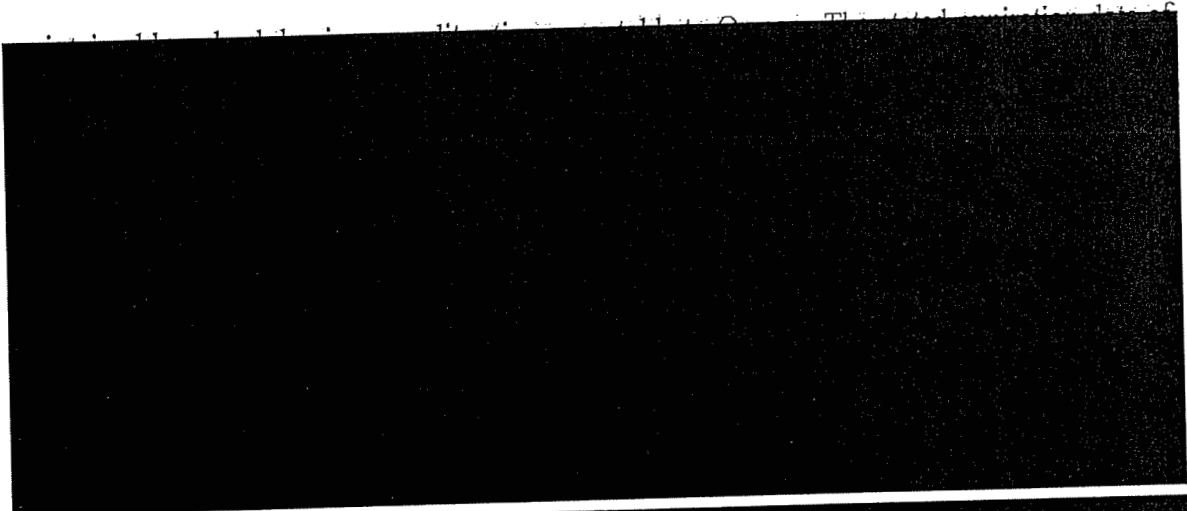
8.9 **Disputed Applications For Payment.** If there is any dispute about any amount which is requested by Contractor or which is claimed by Owner to be due and payable by Contractor, the amount not in dispute will be promptly paid in accordance with the provisions hereof, and any deduction of a disputed amount that is not specifically agreed to by Contractor or Owner, as applicable, and which is then determined by arbitration, litigation, or by mutual agreement, to have been improperly withheld will be promptly paid by Owner or Contractor, as applicable, together with interest from the date such amount otherwise would have been payable to the date of payment at the Agreed Rate.

8.10 **Payment of Subcontractors.** Contractor shall promptly pay each Subcontractor when due the amount to which such Subcontractor is entitled. Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its sub-subcontractors on the same basis. Owner has no obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by Applicable Law, in which event Contractor shall immediately reimburse Owner therefor, with interest thereon at the Agreed Rate.

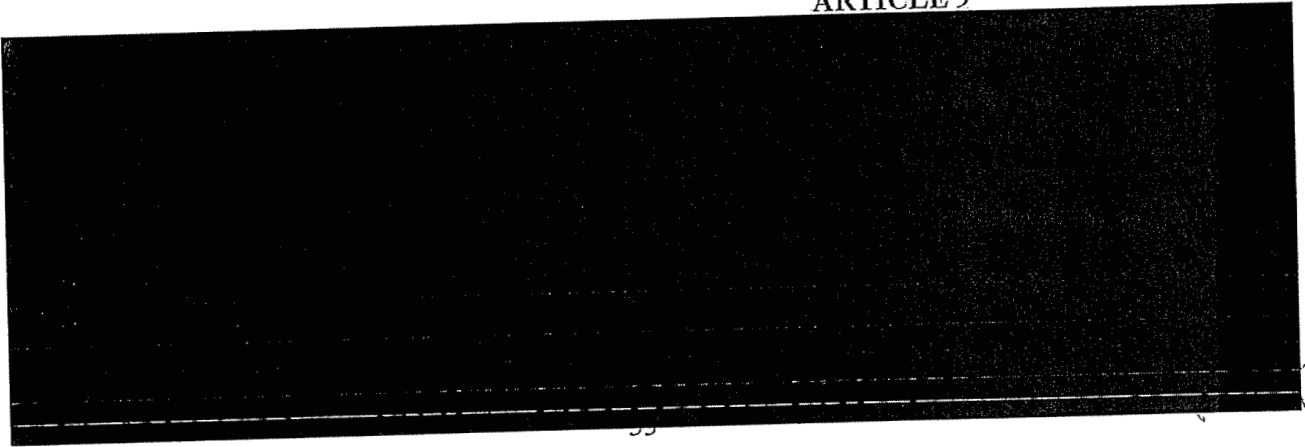


12/29/11  
R

12/30/11  
m

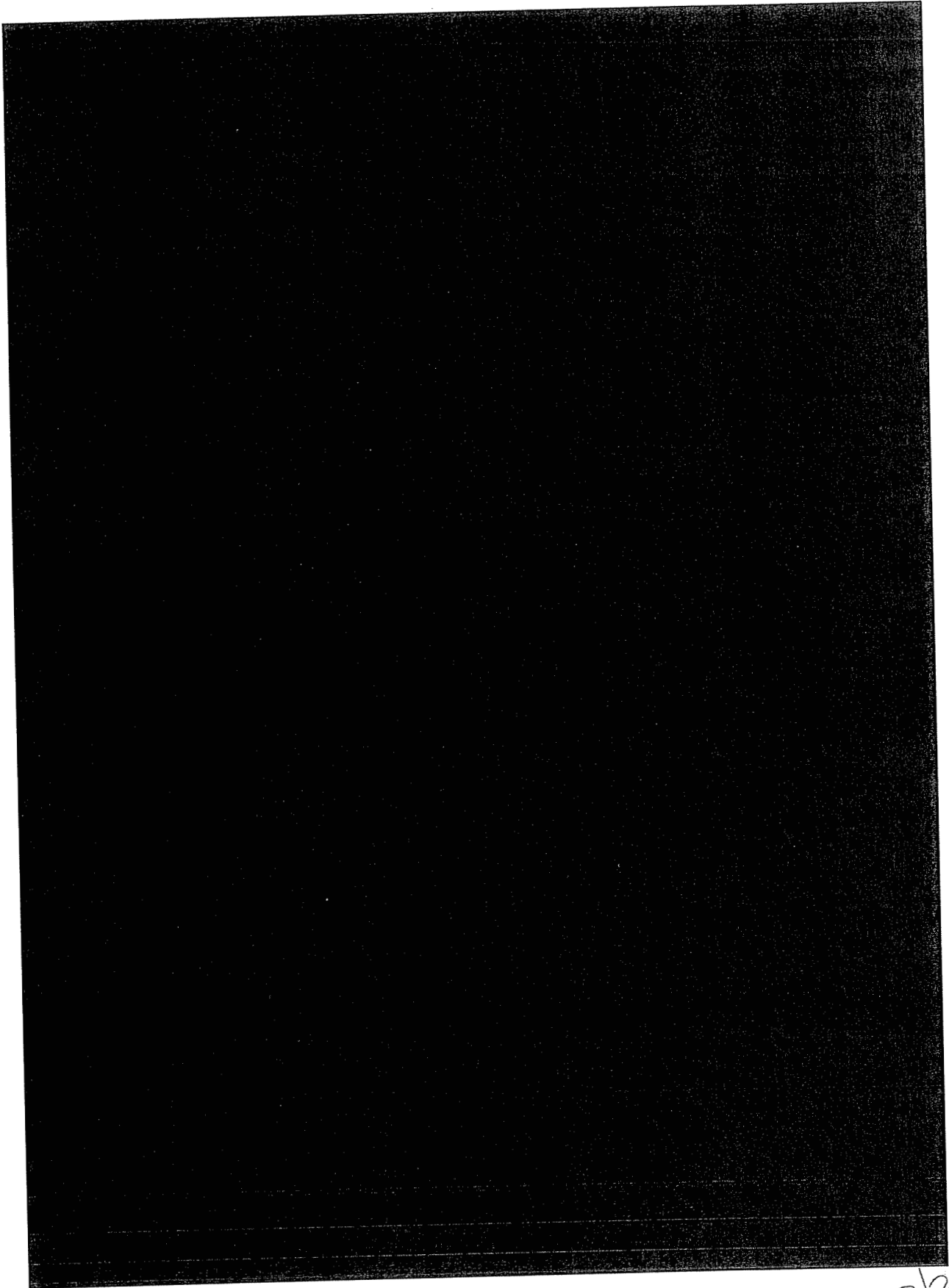


ARTICLE 9



1230/11  
ca

2



12/30/11  
SL

12/29/11  
R





ARTICLE 10

CONTRACT CHANGES

10.1 Owner-Initiated Changes.

10.1.1 Change Order Requests. Owner may, from time to time, without invalidating this Agreement, order changes in (including additions to or deletions of) the Work or changes in the time for or sequence of completion of all or any portion of the Work ("Changes"), by notification in writing to Contractor (such notice, which will be substantially in the form of Exhibit F-3 hereto, a "Change Order Request"), and the Contract Price, Project Schedule, or other applicable provision of this Agreement will be adjusted accordingly in a Change Order. Each Change Order Request will be accompanied by a description of the Changes requested.

10.1.2 Contractor Response. Contractor shall, within fifteen (15) Days after receipt of a Change Order Request (unless such time period is extended by mutual agreement of Contractor and Owner or as otherwise herein provided), provide Owner for its review and approval, with a written description of any adjustment to the Contract Price, the Project Schedule or any other effect on the Work or the terms of this Agreement resulting from the Changes set forth in the Change Order Request. Any adjustment arising out of a Change will be negotiated by Owner and Contractor on a completely open-book basis and all such adjustments as to Contract Price shall be made on a basis consistent with the basis of the Contract Price build-up set forth in Exhibit C. Contractor, among other things, shall provide Owner with an itemization or estimate of: (i) total job hours (home office and construction by craft) and associated salaries, wages, premiums and benefits; (ii) estimated quantities, qualities (as required) and direct costs of Equipment and Materials; (iii) any bids received from any Subcontractors actually contacted by Contractor in connection with such Changes; (iv) all other direct costs associated with the performance of the Work, including travel and living, reproduction, printing, consultants, Subcontractors, costs of Contractor-owned equipment at Contractor's usual and customary rates; (v) applicable contingencies for the foregoing cost items appropriate and customary for the degree of uncertainty in the estimate; and (vi) the impact, if any, on the Project Schedule (the "Contractor Response"). Itemized proposals are also required for Subcontractor costs.

12/29/11  
R

12/30/11  
sc

Contractor and Owner shall use their respective good faith efforts to agree on a lump sum, fixed-price for such Change. If Owner and Contractor cannot agree on the price for such Change, Owner may, at its option, direct Contractor to proceed on an open-book time and materials basis with no contingency (with all items of cost covered by Exhibit R being charged at the amounts and rates set forth on Exhibit R),

**10.1.3 Owner's Response.** Owner shall, within twenty (20) Days after receipt of Contractor Response (the "Owner Response Period"): (i) notify Contractor as to whether it agrees or disagrees with such Contractor Response, and of Owner's position regarding the effect of the Changes and the Change Order Request on the Contract Price, Project Schedule, or other applicable provision of this Agreement and (ii) embody the agreed upon changes in the Work, the Contract Price, or the Project Schedule in a document substantially in the form of Exhibit F-3 to be executed by the Parties (a "Change Order"). During the Owner Response Period, the Owner Representative and the Contractor's Representative shall make themselves available and shall use reasonable efforts to meet or otherwise confer to discuss the Change Order Request, Contractor Response and the estimates therein contained, and to answer any questions or clarify any information provided with respect thereto. Owner or the Owner Representative may request the Contractor's Representative to provide additional reasonable information or further information and data to the extent Contractor has failed to provide such information and data required to be provided or if there are errors, mistakes, or omissions in any information or data previously provided as part of the estimates contained in the Contractor Response. If Contractor fails to provide data or information required to be provided as part of the Contractor Response or fails to correct any errors or mistakes in such information or data, which prevents Owner from properly analyzing such data, or information, the Owner Response Period will be extended by that period of time commencing on the date Contractor receives notice of such failure, error, or mistake and ending on the date the correct data and information is received by Owner.

**10.1.4 Owner Authorization.** Contractor is not required to perform any Change until a Change Order has been issued therefor or Owner has expressly authorized or directed Contractor in writing to perform a Change prior to such approval, which it is entitled to do. If Owner so authorizes or directs Contractor to proceed with the Change set forth in a Change Order Request prior to issuing a Change Order therefor (the "Owner Authorization"), Owner shall, as part of such Owner Authorization: (i) acknowledge in writing to Contractor that it will issue a Change Order therefor, upon agreement on the effect of the Changes on the Contract Price and Project Schedule and (ii) agree to pay Contractor in accordance with the invoicing procedures contained herein any undisputed portion of Contractor's proposed change in the Contract Price resulting from such Changes. Upon receiving such Change Order or such Owner Authorization, Contractor shall perform the approved or authorized Changes in accordance with and subject to all of the terms of this Agreement. Contractor may not suspend, in whole or in part, performance of the Work during any dispute over any Changes set forth in the Change Order Request or an Owner Authorization or during the review and negotiation of any Change Order based thereon (or any adjustment to the Contract Price or Project

12/29/11  
R

12/30/11  
SL

Schedule to be set forth therein) unless directed to do so by Owner. Notwithstanding anything to the contrary herein, if directed pursuant to an Owner Authorization issued in accordance with the provisions hereof to proceed with Work as to which a dispute exists about whether such Work is in or out of the scope of Work required of Contractor hereunder, pending resolution of such dispute, Contractor shall (without waiving any rights or remedies with respect to such Change or dispute) proceed with such Work.

**10.2 Contractor Change Notice.** If Contractor wishes to make a claim for an adjustment of the Contract Price, an adjustment of the Project Schedule, or Change in any other applicable provision under this Agreement (on account of the occurrence of an Excusable Event), Contractor must give notice ("Contractor Change Notice") in accordance with Article 9. This Contractor Change Notice must be given by Contractor before proceeding to execute any additional Work, except in an emergency endangering life or property in which case Contractor may act to prevent threatened damage, injury, or loss. Contractor shall document and otherwise support any Contractor Change Notice on the same basis and within the thirty (30) and sixty (60) Day periods specified in Article 9. Owner shall respond to all such Contractor Change Notices within twenty (20) Days after receipt of final documentation from Contractor, setting forth Owner's position, and, if appropriate, issuing a Change Order or Owner Authorization based thereon. All Contractor Change Notices must include sufficient documentation for Owner to be able to make a well-informed decision.

**10.3 Emergencies.** Any request for a Change claimed by Contractor on account of a need to take action in light of an imminent threat to the health and safety of individuals or property will be determined by the Parties based upon the facts of each such incident.

**10.4 Resolution.** In the event of a failure to agree to any adjustment of this Agreement, including, to the Contract Price or Project Schedule as required by the terms of this Agreement as a result of a Change Order Request or a Contractor Change Notice, either Party may demand resolution of such issues in accordance with Article 23.

**10.5 Contractor Caused Delays.** To the extent any delay or suspension is caused by Contractor or any of its Subcontractors, no adjustment will be made to the Contract Price, Project Schedule or other provision of this Agreement.

## ARTICLE 11

### TEST AND INSPECTIONS

**11.1 Testing.** Contractor shall conduct, arrange, or obtain (at its sole expense) all inspections, tests, including the Performance Guarantee Tests required to be performed to meet its obligations under this Agreement (including all certification testing and associated reports required by Applicable Law or applicable Codes and Standards that must be conducted by a qualified independent party), tests that are necessary for the proper execution and completion of the Work. Except as provided in Section 6.12, Contractor shall provide for or arrange for all testing personnel (excluding operating personnel to be provided by Owner in accordance with Section 5.9). The Performance Guarantee Tests must be conducted: (i) within sixty (60) Days after completion of hot commissioning on a date selected by the Parties; (ii) when all Systems

are operating as designed (without temporary equipment); (iii) when the Ghent CCR Transport System is operating in full automatic mode; (iv) when commencing performance testing is consistent with Good Utility Practices; and (v) pursuant to the Performance Guarantee Test Procedures and in strict accordance with Applicable Law (except, that with respect to noise or emission standards or limitations, the Performance Guarantee Tests shall be conducted instead in strict accordance with the sound and emission standards set forth in **Exhibit G**). A draft of the proposed Performance Guarantee Test Procedures shall be prepared by Contractor and delivered to Owner not less than one hundred twenty (120) Days prior to the Scheduled Mechanical Completion Date. Owner shall review such draft and provide written comments to Contractor with thirty (30) Days of receipt of the draft Performance Guarantee Test Procedures. Contractor and Owner shall cooperate and diligently work to complete an agreed final version of the Performance Guarantee Test Procedures no later than thirty (30) Days prior to the Scheduled Mechanical Completion Date. Contractor and Owner shall cooperate and in good faith finalize Performance Guarantee Test Procedures in accordance with **Exhibit G**.

**11.2 Witnessing Tests and Inspection.** Contractor shall perform all inspection, pre-Performance Testing, expediting, quality surveillances, and traffic services as necessary for the performance of the Work. Contractor's responsibilities under this **Section 11.2** include inspecting and testing such Work, including Equipment and Materials, as is customarily inspected or tested in accordance with Professional Standards, including inspecting work in progress at intervals appropriate to the stage of construction, fabrication, or shipment off of the Job Site as necessary to ensure that such Work is proceeding in accordance with this Agreement and the Project Schedule. All third party inspections, tests, or approvals must be performed by qualified organizations acceptable to Contractor and Owner. If Applicable Law requires any Work to specifically be inspected, tested, or approved, Contractor shall assume full responsibility therefor and furnish to Owner the required certificates of inspection, testing, or approval. Not later than sixty (60) Days prior to the first expected delivery of Equipment or Materials to the Ghent Generating Station Site, Contractor will supply to Owner a quality surveillance plan for all Equipment and Materials that will be inspected by Contractor. A chart, accompanying each monthly progress report delivered by Contractor shall specify the date, time, and location of factory tests, inspections, and witness points of which Contractor is then aware of and intends to witness with respect to Equipment and Materials or other work to be provided or performed by its Subcontractors in the forty five (45) Day period following the Month in which each such progress report is delivered to Owner. If and when Contractor obtains new information about such factory tests, inspections, or witness points or other factory tests, inspections, or witness points that was not available to it when the monthly status report was delivered, it will promptly advise Owner and update such information as necessary to allow Owner a reasonable opportunity to attend such event. Contractor shall give reasonable notice of changes to such dates, times, and locations to allow Owner to make arrangements to attend, it being understood that tests, inspections, or witness points to be performed outside the United States will require additional notice. Owner and its invitees have the right, but not the obligation, to attend any inspections, tests, or approvals of the Work. In no event shall Contractor's obligation to provide notice regarding certain tests, inspections, or approvals or Owner's and its designees' right to attend tests, inspections, or approvals limit, delay, or modify Contractor's obligation to perform all tests, inspections, or obtain approvals required by this Agreement. Successful completion of factory or other off-Job Site tests is a precondition to shipment of such Equipment to the Job Site or other Contractor storage facility, unless otherwise agreed by Owner. Contractor shall

thereafter implement such plan and reperform and demonstrate that such test has been passed. Should Contractor fail to give proper notice under this **Section 11.2**, at Owner's option, Contractor shall reperform or reinspect any such test or inspection as to which Contractor failed to give proper notice if Owner has reviewed the test results (which are to be provided to Owner within seven (7) Days of such failure or as soon thereafter as test results are available to Contractor) and gives notice to Contractor questioning the validity, accuracy, or completeness thereof. Attendance by Owner at any such test or inspection despite the lack of proper notice will waive Owner's right to cause Contractor to so retest or reinspect.

**11.3 Defects During Performance Guarantee Tests.** Without limiting the requirements of **Section 6.12**, after completion of any Performance Guarantee Test or any retest, Owner and Contractor shall consult concerning the results of such test and Owner shall advise Contractor in writing of any defects, deficiencies, or needed adjustments in the Work that they have discovered or observed during the performance thereof. If Contractor is notified of such defects, deficiencies, or adjustments, Contractor shall immediately commence and promptly: (i) complete corrective measures to rectify such defects or deficiencies and any other defects or deficiencies of which it is aware (including, replacement of any defective parts) and (ii) make any necessary adjustments, in each case, at Contractor's expense. As soon as reasonably practicable but in no event more than twenty-four (24) hours after the completion of such Performance Guarantee Tests (or as soon thereafter as such reports are first available to Contractor) following the applicable test or inspection, Contractor shall forward copies of all test or inspection results together with such other information Owner reasonably requires in relation thereto.

**11.4 Retests.** Prior to any retest of the Ghent CCR Transport System, Contractor shall give reasonable notice advising Owner that all Defects and deficiencies have been corrected and all necessary adjustments have been made. Such notice must identify the date upon which the Ghent CCR Transport System will be ready for such retesting. Within five (5) Days, Owner shall review the adjustments or corrections made by Contractor and will determine whether a retest is warranted. Following a favorable determination by Owner, except as provided in **Section 6.12**, Contractor shall promptly reperform the retest. After each such retest, Owner and Contractor shall consult concerning the results thereof, and Owner shall advise Contractor in writing of any additional or remaining defects or deficiencies that must be corrected by Contractor. If the Performance Guarantee Tests are not successfully completed, they must continue to be repeated in accordance with this Agreement.

## ARTICLE 12

### CORRECTION OF WORK

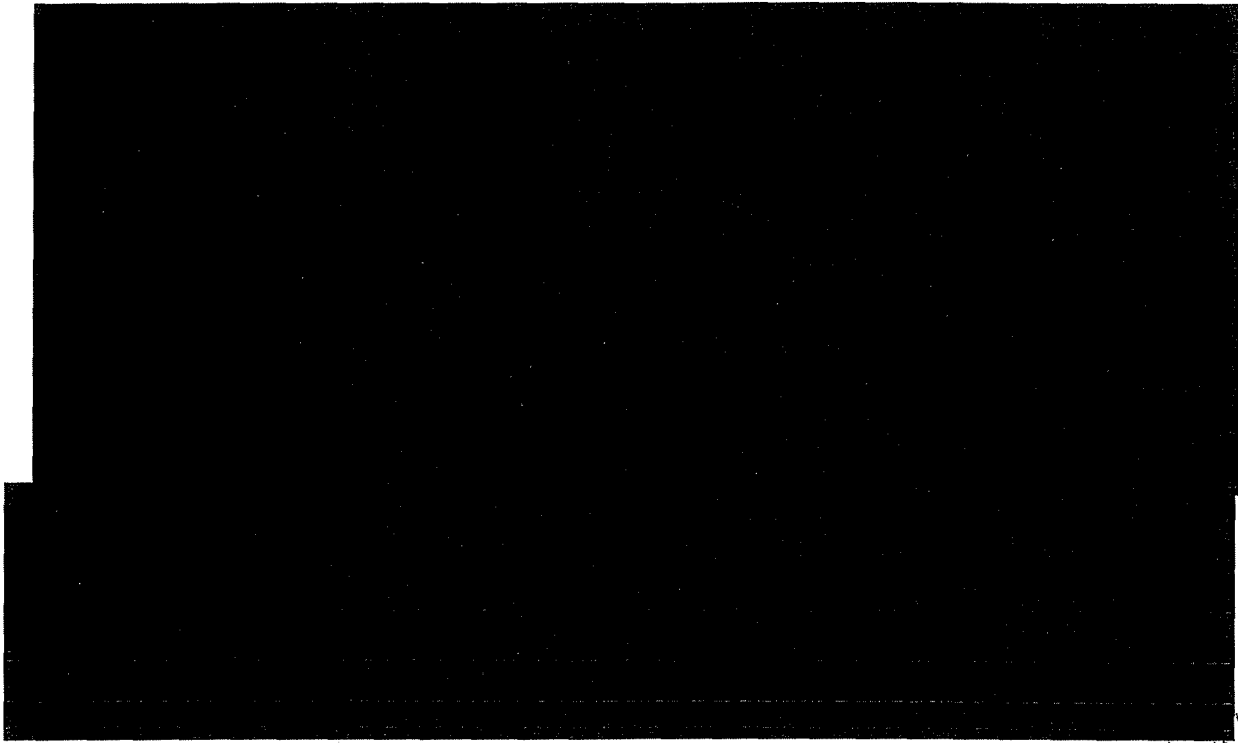
**12.1 Correction of Work.** Prior to the Commercial Operation Date, Contractor shall, at the earliest practical opportunity, correct, repair, or replace any portion of the Work that is defective or does not conform to the requirements of this Agreement, without regard to the stage of completion of the Work or the time or manner of discovery of the defect or nonconformance. If other portions of the Work are adversely affected by or are damaged by such defective or non-conforming Work, Contractor shall, at its sole cost and expense and at the earliest practical opportunity, correct, repair or replace such affected or damaged Work. Contractor shall bear the

cost of correcting such defective or nonconforming Work, including additional testing and inspections and compensation for any Design or engineering services and expenses made necessary thereby.

**12.2 Urgent Repairs.** If by reason of any accident, failure, or event occurring to, in, or in connection with the Work or any part thereof either during the execution of the Work or during any period of warranty hereunder, any remedial or other work or repair is in the opinion of Owner urgently necessary and Contractor is unable or unwilling at once to do such work or repair, Owner may, with its own forces or other contractors, do such work or repair. If the work or repair so done is Work which Contractor was liable to do at its own expense under this Agreement, all costs and expenses incurred by Owner in so doing less any insurance proceeds received as a result of such event shall be paid by Contractor to Owner on demand. Owner, as soon after the occurrence of any such emergency as may be reasonably practicable, shall notify Contractor thereof in writing.

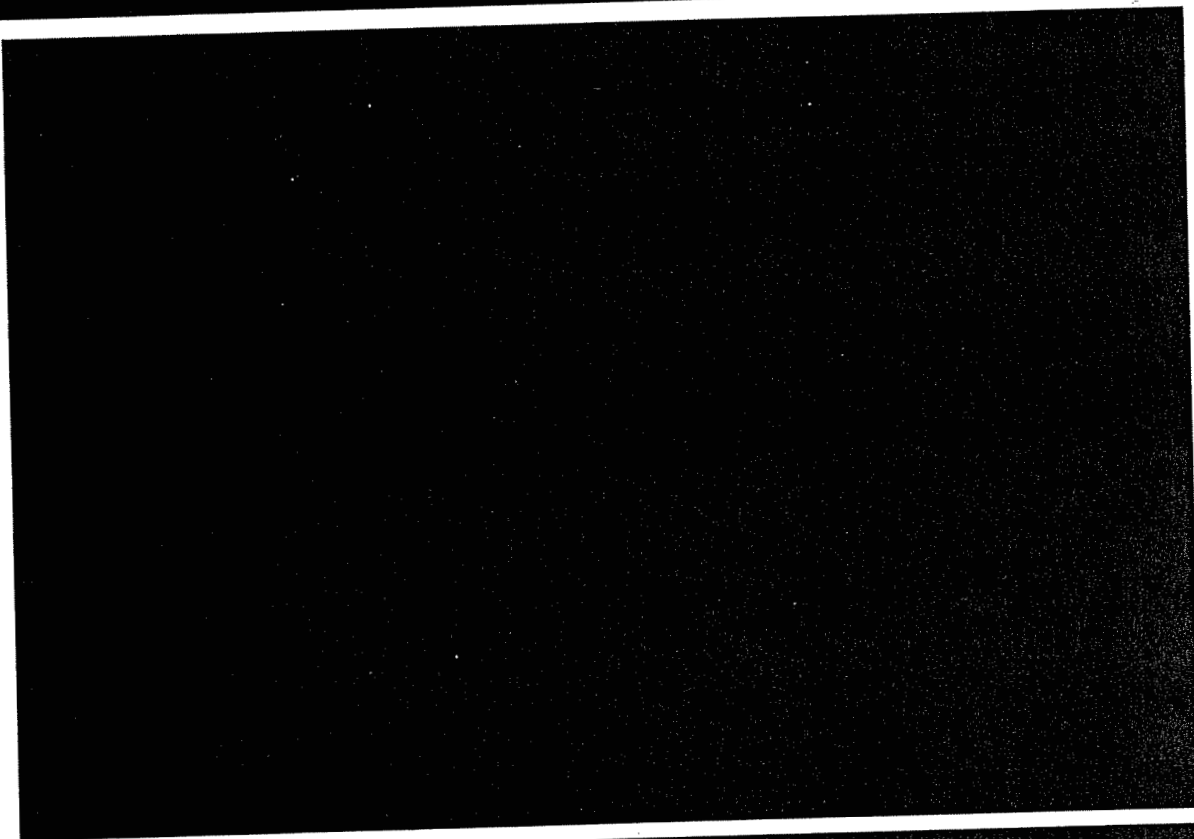
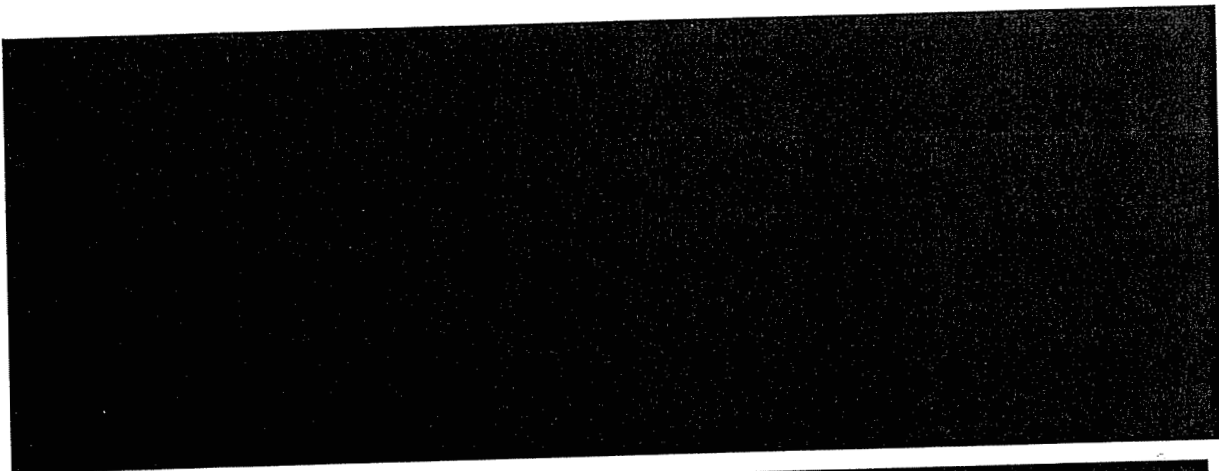
**12.3 Damage to Existing Facilities.** To the extent that Contractor or its Subcontractors cause any physical damage or loss to any equipment, structure, or portion of the Work (including Ghent CCR Transport System) as to which care, custody, and control and risk of loss has passed to Owner or to the Existing Facilities (but not Work for which care, custody, and control and risk of loss has not yet passed to Owner) in the course of the performance of the Work,

Owner otherwise releases Contractor from liability for such damage or loss. Payments to be made by Contractor under this Section 12.3 shall be made to Owner within fifteen (15) Business Days of Owner's demand therefor.



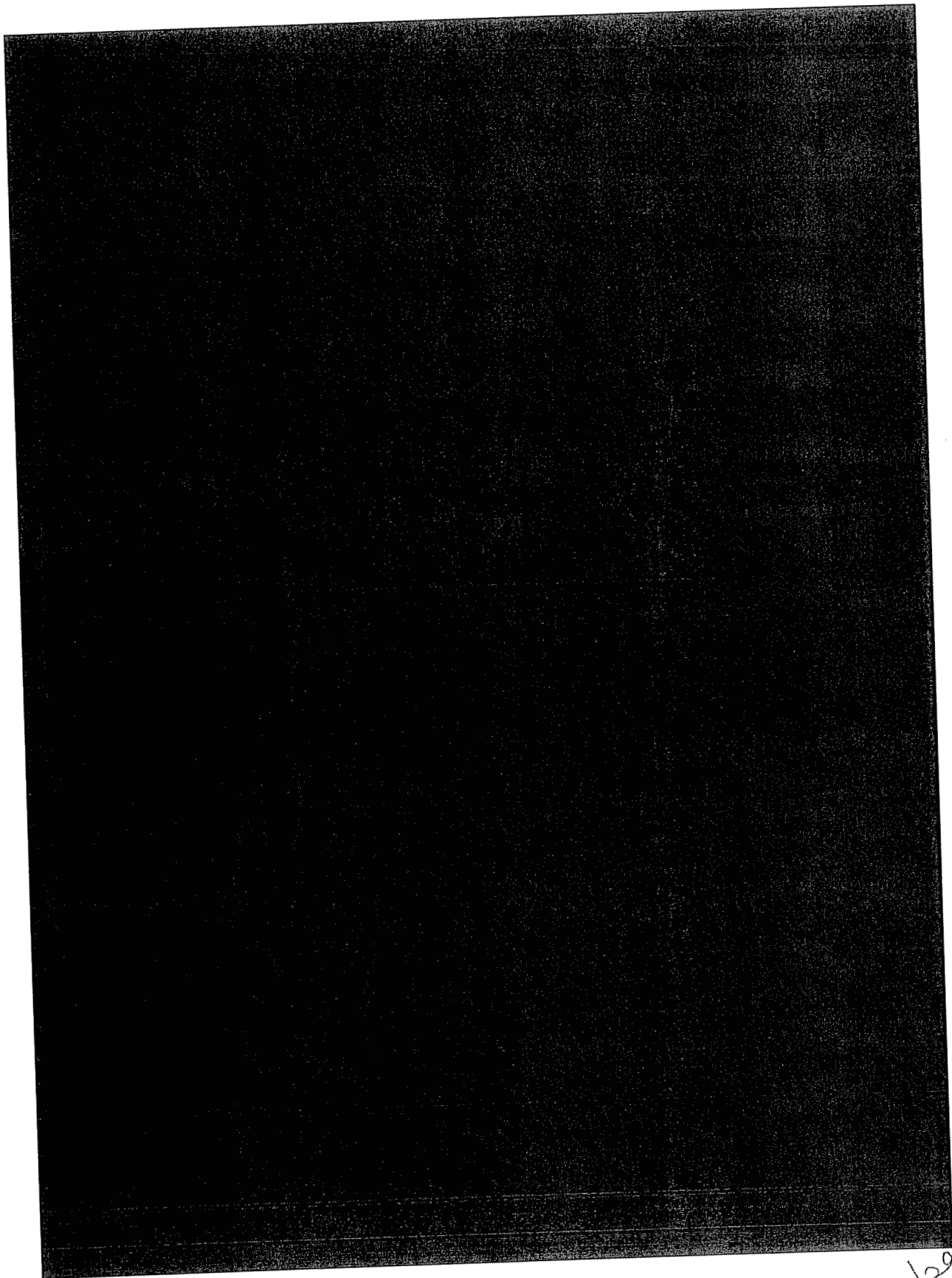
12/30/11  
SL

12/29/11  
R



12/30/11  
SL

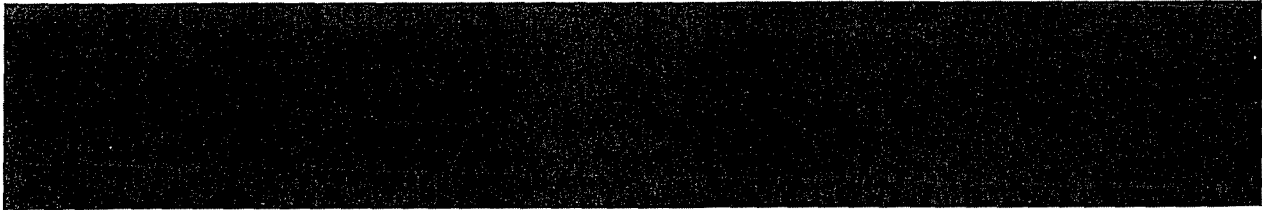
12/22  
A



12/30/11  
m

12/29/11  
R





ARTICLE 14

PROTECTION OF PERSONS AND PROPERTY

**14.1 Safety Programs.** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this Agreement, including a fitness for duty policy and other appropriate precautions and programs for areas in and around the Ghent Generating Station Site. Within one hundred twenty (120) Days of the Effective Date, Contractor shall prepare and deliver to Owner a plan to ensure proper health, safety, and environmentally sound practices are employed and enforced in the performance of the Work. At a minimum, such plan shall require Contractor to comply, and shall cause all Subcontractors to comply, with those rules, regulations and procedures set forth in **Exhibit H**. The efficacy or implementation of such plan will not relieve Contractor of its obligations under this Agreement. If Owner becomes aware of any Work or the performance of any Work, that it reasonably believes constitutes a threat to the health or safety of persons, property, or the environment, then, without limiting any other rights of Owner hereunder, Owner may (but will not be obligated to) immediately suspend the performance of the Work and thereafter promptly advise Contractor of the cause therefor. Such suspension may be maintained until such cause is removed. All costs related to such suspension and any other adverse impact on Contractor or the Work attributable thereto shall be the responsibility of Contractor and no relief under this Contract shall be provided. Owner, in its reasonable opinion, may exclude from the Ghent Generating Station Site any individual whose conduct is prejudicial to safety, health, protection of persons, property, or the environment, or is found or suspected to be in violation or in disregard of the requirements of this Article, this Agreement, or Applicable Law.

**14.2 Applicable Law.** Contractor shall give notices and comply with Applicable Law bearing on the safety of Persons, property and the environment or their protection from damage, injury or loss, including all standards of the U.S. Occupational Safety & Health Administration applicable to the Work.

**14.3 Safety Precautions.** Contractor shall take all reasonable precautions for safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- (i) employees and Subcontractors or other individuals performing the Work and all other Persons who may be affected thereby, including other individuals on the Ghent Generating Station Site;
- (ii) the Work and Equipment, Materials, Consumables, and Construction Aids, whether in storage on or off of the Job Site, under the care, custody or control of Contractor or Subcontractors; and

12/29/11  
R

12/29/11  
R

- (iii) other property at the Ghent Generating Station Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, waterways, roadways, structures and utilities, it being agreed that Contractor will be liable for the cost of damages incurred by Owner and caused by Contractor or its Subcontractors.

**14.4 Community Relations.** Contractor recognizes the introduction of Contractor's workforce (and those of its Subcontractors) has the potential to disrupt the local community. Contractor will proactively alert those individuals for whom it is responsible on the Ghent Generating Station Site to exercise due caution entering and leaving the Ghent Generating Station Site and to otherwise conduct themselves in a manner consistent with good community relations.

**14.5 Security.** Contractor shall take all precautions and measures as may be necessary to secure the Job Site and other portions of the Ghent Generating Station Site on which Work is being performed at all hours, including evenings, holidays and non-work hours. Contractor is not entitled to rely on security provided by Owner. Contractor shall coordinate its Job Site security functions with Owner's existing security functions so as not to detract from, or impose upon, existing security measures at the Ghent Generating Station Site. Contractor shall erect, maintain, or undertake, as required by existing conditions and the performance of this Agreement, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying Owner and users of adjacent sites and utilities. Such precautions may include the provision of security guards and/or fencing.

**14.6 Dangerous Materials.** When use or storage of dangerous materials or equipment or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities only under the supervision of properly qualified personnel. Explosives shall not be used on the Job Site or the Ghent Generating Station Site, without the prior written consent of Owner.

**14.7 Safety Personnel.** Contractor shall assign at least one full-time Job Site safety officer who shall be responsible for introducing, administering, and monitoring procedures to promote safe working conditions on the Job Site (and other areas of the Ghent Generating Station Site where Work is to be performed) and compliance with Applicable Law. Contractor shall provide an appropriate medical facility at the Job Site.

**14.8 Loading.** Contractor must not load or permit any part of the construction, the Job Site or other portions of the Ghent Generating Station Site to be loaded so as to endanger the safety of Persons or property.

**14.9 Notices to Owner.** Contractor shall immediately (and in each case, but in no event later than a period of time equal to one-half the amount of time Owner has to report any incident to a Governmental Authority) notify Owner by telephone or messenger of any and all potential lost time accidents, recordable injuries (as defined under OSHA), and any property damage arising out of or in connection with the Work. Contractor shall provide Owner with a

written report, giving of full details and statements of any witnesses within twenty-four (24) hours of the occurrence of the event.

**14.10 Code of Business Conduct.** Contractor hereby acknowledges receipt of the PPL Corporation Standards of Integrity and agrees to comply therewith as it may be amended from time to time.

**14.11 Hazards and Training.** 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. Without limiting the foregoing, Contractor shall participate in any safety orientation of Owner (or any Owner Affiliate) familiarization initiatives related to safety and shall strictly comply with any monitoring initiatives as determined by Owner. Contractor acknowledges that it has inspected all equipment, structures, and property of Owner to determine the existence of 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.

**14.12 Drug and Alcohol.** No individual will perform any of the Work while under the influence of any illegal or controlled substance or alcohol. No alcohol may be consumed four (4) hours prior to any individual's performance of the Work or anytime during the workday. An individual will be deemed under the influence of alcohol if a level of .02 percent blood alcohol or greater is found. In addition to the requirements of the drug and alcohol testing program set forth in **Exhibit H**, Contractor shall: (i) institute a random drug and alcohol testing program covering all individuals that will perform any of the Work; (ii) promptly, upon the written request of Owner, perform drug and/or alcohol tests on all individuals that will perform any of the Work; and (iii) perform drug and alcohol tests on any individual that will perform any of the Work under either of the following circumstances: (a) where the individual'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 individual or (b) where Owner determines in its sole discretion that there is reasonable cause to believe such individual is using drugs or alcohol or may otherwise be unfit for duty. Individuals tested in accordance with **clause (a) or (b)** above 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. As applicable and in addition to any other requirements under this Agreement, Contractor shall develop and strictly comply with any and all alcohol and drug testing requirements required by Applicable Law. Notwithstanding anything to the contrary herein, if the rules and regulations of Owner pertaining to the Ghent Generating Station Site are at any time more stringent than the requirements of this Agreement, Contractor will comply and cause its Subcontractors to comply with such more stringent rules and regulations.

**14.13 Dust Emissions.** During execution of the Work, the Contractor shall ensure that no visible dust and no fugitive dust be allowed to leave the Job Site.

**ARTICLE 15**

12/29/11  
R

12/30/11  
SC

**SEPARATE CONTRACTORS AND  
ACTIVITIES BY OWNER**

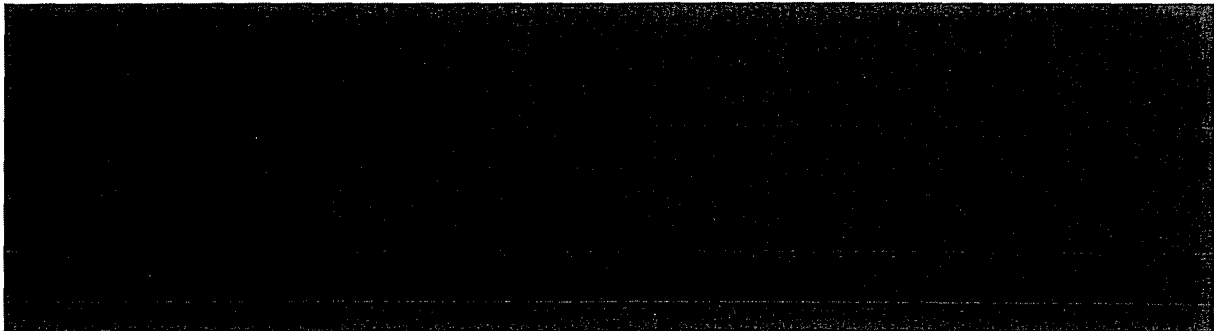
**15.1 Separate Work.** Owner reserves the right to perform either with its own forces or through other contractors and subcontractors construction or operations related to the Ghent CCR Transport System or any other construction or other work at the Job Site or the Ghent Generating Station Site.

**15.2 Integration.** Contractor shall use reasonable best efforts to arrange the performance of the Work so that the Work and the work of Owner's forces or any of its separate contractors are properly integrated, joined in an acceptable manner and performed in the proper sequence without any disruption or damage to the Work, the work or business operations of Owner or any work of Owner's forces or its separate contractors.

**15.3 Coordination.** Contractor shall provide for coordination of the activities of Contractor's, and its Subcontractors' forces with the activities of Owner's forces and each of its separate contractors and Owner, as applicable in accordance with the coordination plan established pursuant to **Section 4.20**.

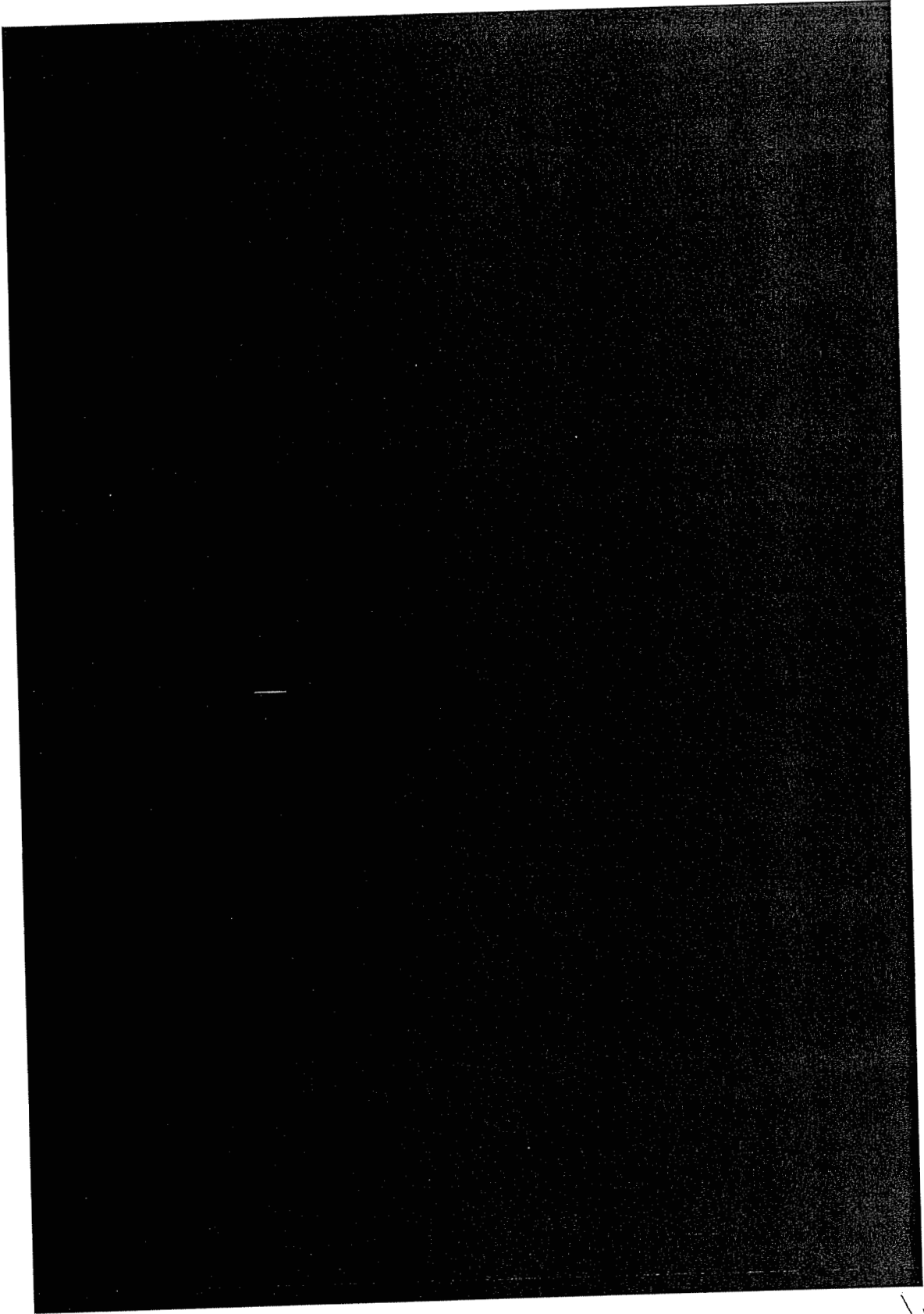
**15.4 Use of Job Site.** Contractor shall afford all separate contractors reasonable opportunity for storage of their materials and equipment and for performance of their work on the Job Site. Owner shall direct all separate contractors to cooperate with Contractor and to avoid actions that could unreasonably interfere with the activities of Contractor.

**15.5 Deficiency in Work of Owner and Separate Contractors.** Without otherwise limiting Contractor's obligations under this Agreement, if part of Contractor's Work depends for proper execution or results upon construction or operations by Owner or another separate contractor of Owner, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Owner any discrepancies or defects in such other construction or operations that would render it unsuitable for proper execution and results by Contractor. The Parties shall resolve in good faith any such discrepancies or defects or any disagreements relating thereto, and Owner shall correct or cause the separate contractor to correct its defects and deficiencies. Failure of Contractor to promptly report discrepancies or defects of which it has or upon reasonable investigation should have had knowledge shall constitute an acknowledgment by Contractor to Owner that Owner or separate contractor's completed or partially completed construction or operations are fit and proper to receive Contractor's Work, except as to discrepancies and defects not then reasonably discoverable.



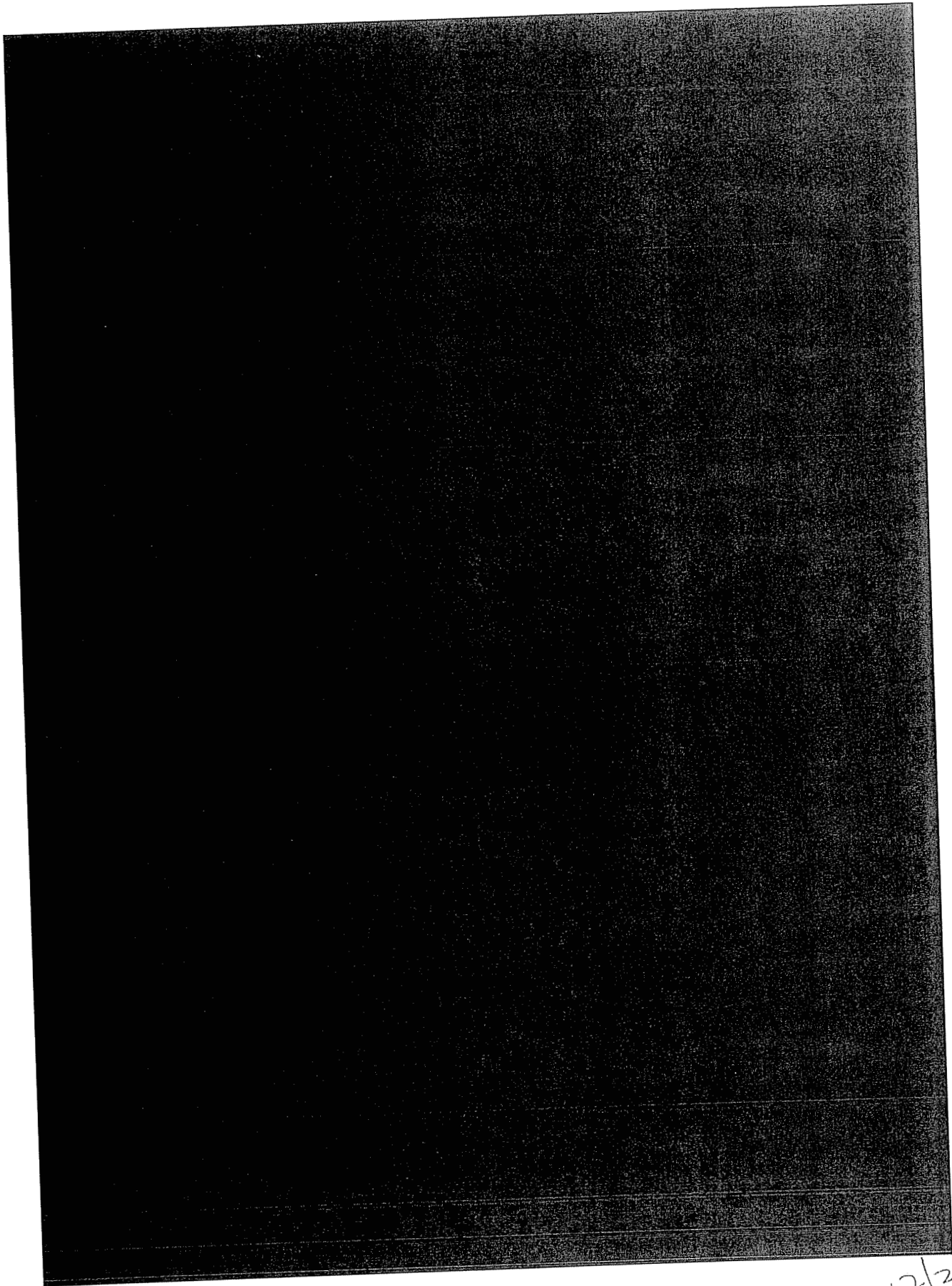
12/30/11  
su

12/29/11  
R



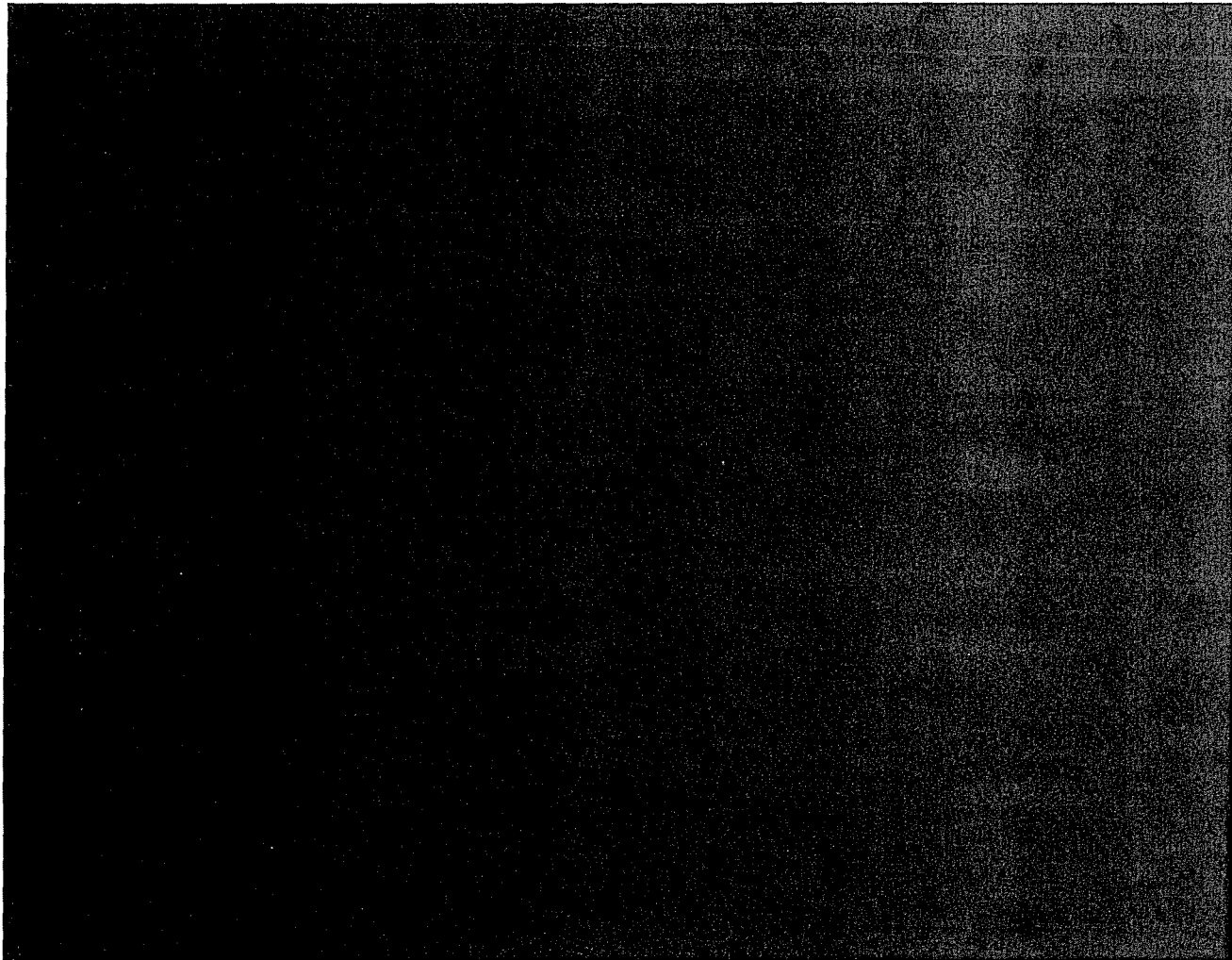
12/29/11  
R

11/08/21  
22



11/05/21  
m

12/29/11  
R



ARTICLE 17

REPRESENTATIONS AND WARRANTIES

**17.1 Contractor.** Contractor hereby represents and warrants the following to Owner, on and as of the Effective Date, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

- (i) it is able to furnish the tools, Equipment, Materials, Consumables and Construction Aids, labor, supervision and demolition, Design and construction services required to complete the Work and perform its obligations hereunder, and has sufficient experience and competence to do so;
- (ii) it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;

12/29/11  
R

12/30/11  
m

- (iii) it is authorized to do business in the Commonwealth of Kentucky and properly licensed by all Governmental Authorities having jurisdiction over Contractor or the Work;
- (iv) Contractor is well acquainted with the Ghent Generating Station Site, including the general and local conditions, as well as other conditions that may influence the performance of the Work, including the requirements of Applicable Law, the other construction activities that will be performed on the Ghent Generating Station Site during performance of the Work, the condition of Existing Facilities on the Ghent Generating Station Site that will be utilized, integrated into, interconnected with or modified in the performance of the Work and building standards and trade practices affecting the Work;
- (v) no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending against or, to the knowledge of Contractor, threatened against or affecting Contractor or any of its properties, rights, revenues assets or the Work (a) which could reasonably be expected to have a material adverse effect on the properties, business, prospects, operations or financial condition of Contractor or (b) which could reasonably be expected to have a material adverse effect on the ability of Contractor to perform its obligations under this Agreement;
- (vi) this Agreement has been duly authorized, executed, and delivered by it and constitutes the legal, valid, and binding agreement of Contractor, enforceable against Contractor in accordance with its terms; and
- (vii) the Guarantee has been duly authorized, executed and delivered by Guarantor and constitutes the legal, valid and binding agreement of Guarantor, enforceable against Guarantor in accordance with its terms.

**17.2 Owner.** Owner hereby represents and warrants the following to Contractor, on and as of the Effective Date, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

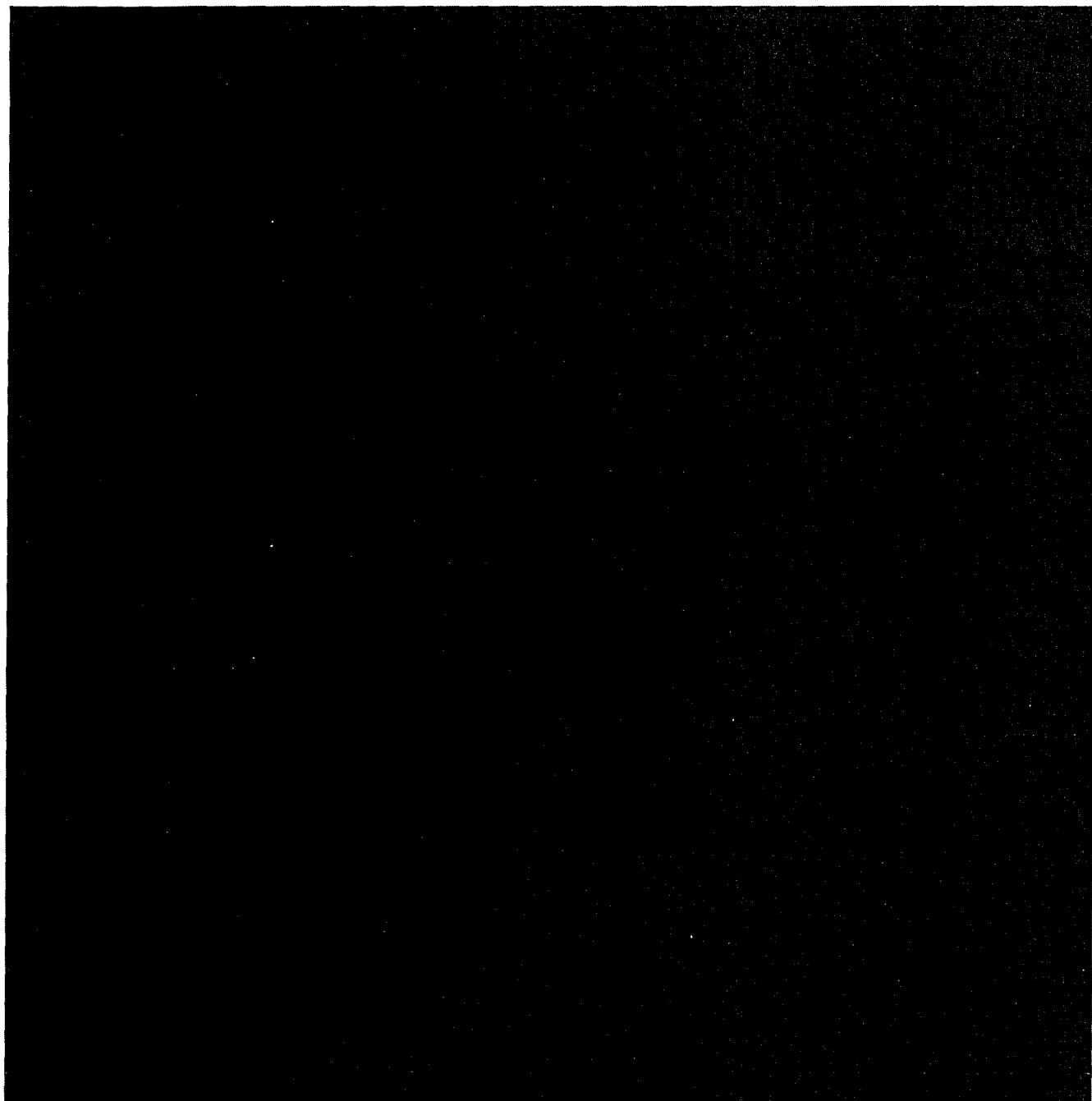
- (i) it is duly organized, validly existing and in good standing under the laws of the state of its formation and is duly qualified to do business in the Commonwealth of Kentucky;
- (ii) no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending against or, to its knowledge, threatened against or affecting it or any of its properties, rights, revenues, assets: (a) which could reasonably be expected to have a material adverse effect on the properties, business, prospects, operations or financial condition of it or (b) which could reasonably be expected to have a

12/29/11  
R



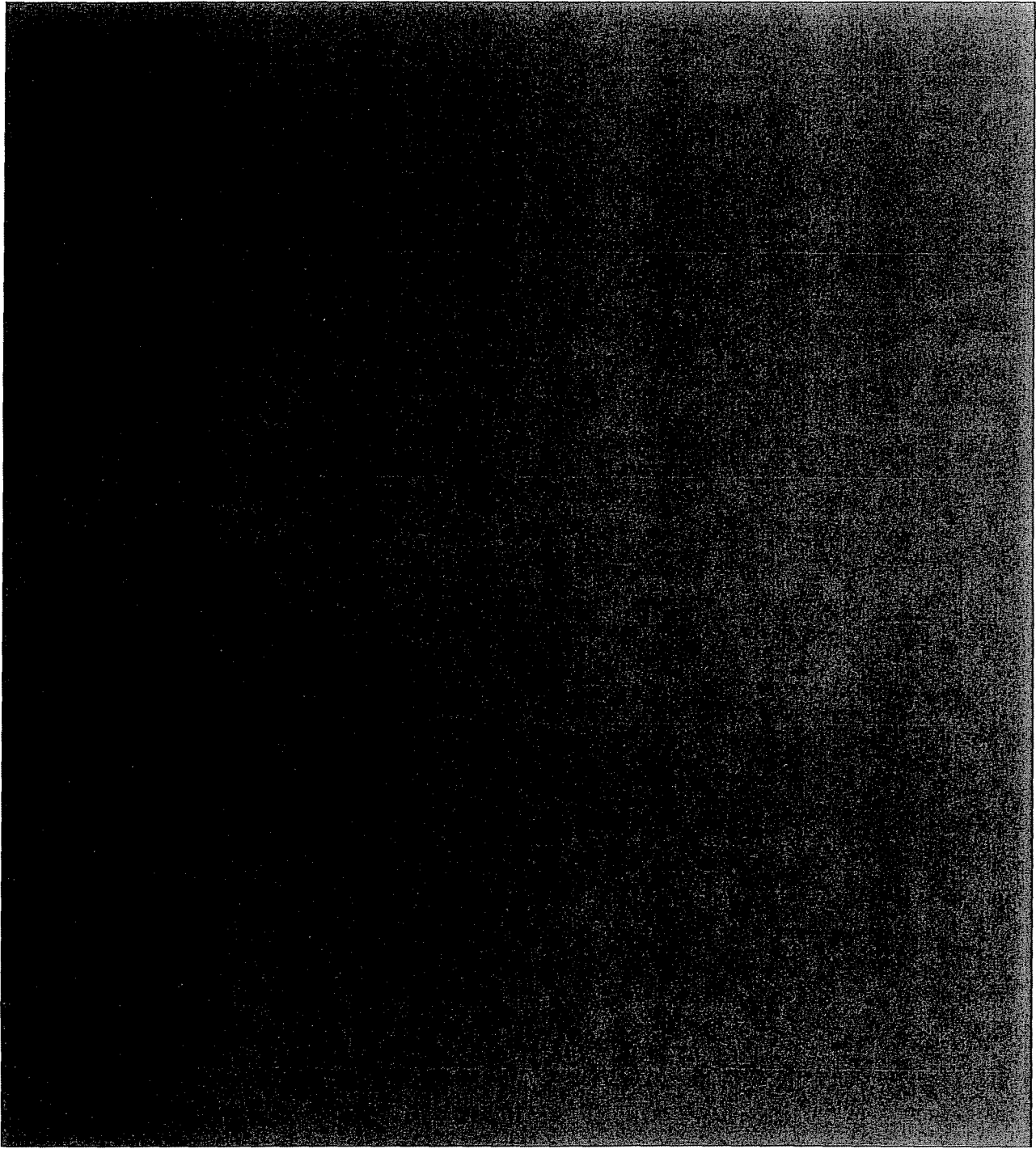
material adverse effect on its ability to perform its obligations under this Agreement; and

- (iii) this Agreement has been duly authorized, executed, and delivered by it and constitutes the legal, valid, and binding agreement of it, enforceable against it in accordance with its terms.



12/30/11  
22

12/29/11  
R



ARTICLE 19

HAZARDOUS SUBSTANCES

19.1 Hazardous Substances.

19.1.1 Encountering Hazardous Substances. In order to give the Owner an opportunity to discover and, as appropriate remediate, any Pre-Existing Hazardous Substances, Contractor shall give Owner at least 30 days and no more than 60 days

12/29/11  
R

12/30/11  
SL

advance written notice before it commences disturbing any areas of the Job Site it has not previously disturbed. If, in the course of performance of the Work, Contractor either spills, leaks, or releases (including threatened releases) Hazardous Substances into the environment or encounters Hazardous Substances (or a substance it reasonably believes is a Hazardous Substance) on the Job Site, except as contemplated by **Section 19.1.3**, or any portion of the Ghent Generating Station Site on which Work must occur, in such quantities or at such levels that may require investigation or remediation pursuant to Applicable Law, Contractor shall immediately suspend the Work in the area affected (except as provided below) and immediately orally report the condition to an individual on the Emergency Notification List and to the Owner Representative followed as soon as reasonably possible by a written notice to the Owner Representative. In any such event, the obligations and duties of the Parties are as follows:

- (i) Owner may direct Contractor to take appropriate immediate mitigating action;
- (ii) to the extent such condition involves: (a) a Hazardous Substance introduced to the Job Site or the Ghent Generating Station Site by Contractor, its Subcontractors or any Person for whom either may be responsible; (b) a Hazardous Substance contained in or packed with Equipment; (c) the negligent or intentional spill, leak, release, or threatened release by Contractor, its Subcontractors or any Person for whom either may be responsible of a Hazardous Substance used by Owner in the operation or maintenance of the Existing Facilities or the Ghent CCR Transport System or a portion thereof; **provided** that such Hazardous Substance was properly contained and labeled (or other adequate warning had been given of its existence); (d) a Contractor responsibility as provided in **Section 19.1.3**; or (e) the negligent or intentional exacerbation (or any exacerbation if Contractor failed to give the required notice under the first sentence of this Section 19.1.1) by Contractor of a Pre-Existing Hazardous Substance, then any investigation, response, removal, cleanup, or other remedial action required (1) to restore the status quo ante and (2) by Applicable Law or any Governmental Authorities (collectively, "**Environmental Action**") shall be performed by Contractor;
- (iii) if the condition does not involve a Hazardous Substance in such quantities and/or at such levels that may require investigation or remediation pursuant to Applicable Law, Contractor shall, promptly after receiving written notice from Owner authorizing Contractor to recommence activities in the subject area, resume the portion of the Work that had been suspended;
- (iv) if such condition involves a Pre-Existing Hazardous Substance, except to the extent as provided in **clause (ii)** above, then any Environmental Action shall be performed by Owner at its expense. Owner shall handle, remove and dispose of such materials in compliance with Applicable Law; and

- (v) except as otherwise required by Applicable Law, any Environmental Action, notification and other communication with third parties, including Governmental Authorities, and reports and documentation related to such Environmental Action shall be undertaken by Owner.

Contractor shall use diligent efforts to avoid any adverse effect on, or impediment to, the efforts undertaken by Owner, its agents, or independent contractors in connection with any Environmental Action or other remedial work Owner deems appropriate at the Job Site or the Ghent Generating Station Site during the term of this Agreement. The Parties acknowledge and agree that Contractor shall not commence or continue any construction activities on any portion of the Job Site or the Ghent Generating Station Site on, in, or under which Environmental Actions or other remedial actions are to be (or are being) performed until such actions are to the point where construction activities will not interfere with such actions, as evidenced by appropriate certifications from the applicable environmental engineer or remediation contractor and any required approvals of any applicable Governmental Authorities. Contractor agrees to use good faith diligent efforts to continue the unaffected portions of the Work and to adjust and schedule its activities at the Job Site or the Ghent Generating Station Site so as to minimize, to the extent reasonably practicable, any adverse effect on the cost and progress of the Work resulting from the performance of any remedial actions.

19.1.2 Contractor Obligations. Contractor shall not generate, dispose, bring, transport, or store (and shall prohibit Subcontractors from generating, disposing, bringing, transporting, or storing) Hazardous Substances to or on the Job Site or the Ghent Generating Station Site, and shall not utilize (and shall prohibit Subcontractors from utilizing) any construction materials or equipment (whether or not totally enclosed) containing asbestos, polychlorinated biphenyls, benzene, lead or urea formaldehyde; **provided, however,** that Contractor (and Subcontractors) may use and store (if properly containerized and labeled) in quantities reasonably necessary to perform the Work the following, but only in accordance with Applicable Law: gasoline, diesel fuel, fuel oil(s), gravel(s), lube oil(s), greases, sealant(s), combustible gases, form oil(s), solvent(s), adhesives, and all other materials, that are normally used or consumed in or during construction or testing of the work and its constituent Systems and Components. Contractor shall not bring or store any other Hazardous Substances to the Ghent Generating Station Site without the specific prior written authorization from Owner. Contractor shall provide Owner with Material Safety Data Sheets in English, ("MSDSs") properly completed covering any Hazardous Substance brought to the Ghent Generating Station Site and furnished by Contractor (or its Subcontractors). Contractor shall maintain on the Job Site, at all times, complete records and inventories, including MSDSs of materials described in this **Section 19.1.2** that are being used by it or its Subcontractors, or any Persons for whose actions it is responsible on the Ghent Generating Station Site. Contractor shall be responsible for the management, prompt removal, cleanup and off-site disposal of Hazardous Substances brought to or generated at the Ghent Generating Station Site by Contractor, any Subcontractor or any Person for whose actions Contractor or any Subcontractor is responsible, including Hazardous Substances contained or packed in Equipment, except to the extent such Hazardous Substances are spilled, leaked, or released (including threatened releases) by Owner (or

12/30/11  
SL

12/29/11  
R

any of its subcontractors) provided Contractor or any Subcontractor has utilized reasonable efforts to properly label and store such Hazardous Substances. In this regard, Contractor shall comply, and shall cause its Subcontractors to comply, with all Applicable Law and the Hazardous Substances Management Plan. Contractor shall have ownership of, and title to, all contaminated media introduced or created in performing its obligations under Section 19.1.1(ii) and this Section 19.1.2, and shall have sole responsibility in responding to such conditions including complying with reporting obligations, providing for access restrictions and warnings, manifesting and any other obligations under Applicable Law.

Owner shall determine whether reporting is required under Applicable Law and shall initiate the reporting of conditions on the Job Site if required. Unless Owner provides written authorization, Contractor acknowledges and agrees that it shall not report, or cause any other person to report, any information regarding environmental conditions to any Governmental Authority, except, as required by Applicable Law. Contractor shall use its best efforts to afford Owner an opportunity to present all objections and defenses Owner or Contractor may have prior to the making of such report by Contractor. Contractor retains its obligation to report to Owner any conditions created by activities of Contractor, its Subcontractors, or other Persons whose actions Contractor or any Subcontractor is responsible in the course of activities pursuant to this Agreement. Contractor shall be responsible for emergency notification to Owner, in accordance with Section 4.16, as well as additional immediate and follow-up reporting with respect to any spill or release of a Hazardous Substance into the environment at the Job Site or the Ghent Generating Station Site that occurs after the Effective Date arising out of its performance of the Work.

19.1.3 Hazardous Substances Identified by Contractor. Contractor acknowledges that the process of integrating the Ghent CCR Transport System into each of the Units requires the identification and removal of asbestos, lead paint, and possibly other Hazardous Substances from Unit structures that will be affected by the Work. Remediation of such Hazardous Substances will be the responsibility of Owner, but will be subject to the conditions set forth in this Section 19.1.3. Contractor shall perform such inspections of each of the Units as necessary prior to commencing any Work to integrate any portions of the Ghent CCR Transport System into the Unit or its structures. Contractor shall identify each specific area where Hazardous Substances (i) are or may be present; (ii) would be disturbed by performance of the Work involved in integrating the Ghent CCR Transport System into the each of the Units; and (iii) that need to be removed. Contractor shall carefully outline each specific area where remediation is to occur with brightly-colored spray paint. Contractor shall confine the marking of areas to the minimum area necessary to allow the Work to safely proceed. Such marking must clearly and distinctly identify and define the precise areas to be remediated. Contractor shall give Owner reasonable advance notice that it will be marking such areas and shall deliver a written notice to Owner when it has finished marking and is ready for Owner to commence remediation. Owner will have no less than thirty (30) Days to complete such remediation. Upon completion of such remediation, Owner will notify Contractor that it may proceed with the planned Work for such areas. If, during the course of its Work in such areas, Contractor discovers additional areas where Hazardous Substances require

12/30/11

12/29/11  
A

removal that it did not mark as required hereunder, Contractor shall mark such areas as provided in this **Section 19.1.3** and provide written notice to Owner to remove Hazardous Substances in such areas. Owner will use commercially reasonable efforts to remediate such additional areas as soon as possible but in every case within a reasonable period of time. The cost of all such remediations will be borne by Owner; **provided, however**, if Owner is requested by Contractor to: (a) accelerate any remediation work to be performed by Owner under this **Section 19.1.3** or (b) remediate additional areas that Contractor did not mark at the time it marked other areas within the same general vicinity, Contractor shall be responsible for any incremental costs incurred on account of such acceleration or having to remobilize a third party contractor to perform such additional remediation. Notwithstanding anything in this Agreement to the contrary, Contractor is not entitled to any adjustment of this Agreement, by Change Order or otherwise, on account of Hazardous Substances (all of which constitute Pre-Existing Hazardous Substances) identified or required to be identified by Contractor in accordance with this **Section 19.1.3**.

19.1.4 Labeling. Contractor and its Subcontractors shall properly store, label and dispose of Hazardous Substances brought to the Ghent Generating Station Site by Contractor, its Subcontractors, and others for whom they are responsible, and train their employees in the safe usage and handling of Hazardous Substances, including any training that is required either by the Hazardous Substances Management Plan or Applicable Law.

## ARTICLE 20

### INDEMNIFICATION

**20.1 Contractor's Indemnity.** To the fullest extent permitted by Applicable Law, Contractor shall indemnify, defend, and hold harmless Owner, Owner Engineer, and their respective successors, assigns, officers, directors, members, employees, agents, Affiliates, and representatives (collectively, the "**Owner Indemnitee(s)**"), from and against any and all claims, causes of action, proceedings, demands or suits (collectively, "**Claims**") and any and all judgments, liabilities, losses, expenses, damages, fines or penalties, including court costs, reasonable attorneys' fees and costs (whether incurred as the result of a third party claim or a claim to enforce any indemnity obligation of Contractor), and pre- and post-judgment interest (collectively "**Liabilities**"), to the extent arising from or in connection with: (i) Claims of third parties arising from the intentional wrongful acts or the negligent acts or omissions of Contractor, its Subcontractors, agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be responsible, in connection with the Work or its other obligations under this Agreement without regard to the legal theory underlying such Claims or Liabilities, including strict liability; (ii) Claims by any Governmental Authority arising from violations of Applicable Law by Contractor, its Subcontractors, agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be responsible, and rectification of the causes of such violations; (iii) Claims by any Governmental Authority for taxes that are the responsibility of Contractor or any of its Subcontractors or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor or any of its Subcontractors or any of their respective agents or employees under this Agreement;

provided, however, this indemnity shall not apply to the extent any such Claims or Liabilities arise or result from the negligent or intentionally wrongful acts or omissions of Owner, its subcontractors, and their respective employees, representatives, and agents. This indemnification, defense, and hold harmless obligation shall survive the termination or expiration of this Agreement until the expiration of the applicable statutes of limitation therefor. In claims against any Owner Indemnitee under this **Section 20.1** by an employee of Contractor, a Subcontractor, anyone employed by them or anyone for whose acts they may be liable, the indemnification obligation under this **Section 20.1** is not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor, a Subcontractor or any other above referenced Person under compensation acts, disability benefit acts, or other employee benefit acts.

**20.2 Owner's Indemnity.** To the fullest extent permitted by Applicable Law, Owner shall indemnify, defend, and hold harmless Contractor, its Affiliates and their respective successors, assigns, officers, directors, employees, agents, and representatives (the "**Contractor Indemnitee(s)**"), from and against any and all Claims and Liabilities to the extent, arising from or in connection with Claims of third parties relating to the performance by Owner of its duties and obligations under this Agreement; **provided, however,** this indemnity shall not apply to the extent any such Claims or Liabilities arise or result from the negligent or intentionally wrongful acts or omissions of Contractor, its Subcontractors or any party for whom either may be liable. This indemnification, defense, and hold harmless obligation shall survive the termination or expiration of this Agreement until the expiration of the applicable statutes of limitation therefor. In claims against any Contractor Indemnitee under this **Section 20.2** by an employee of Owner, anyone employed by it or anyone for whose acts it may be liable, the indemnification obligation under this **Section 20.2** is not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Owner or any other above referenced Person under compensation acts, disability benefit acts, or other employee benefit acts.

**20.3 Defense of Claims or Actions.**

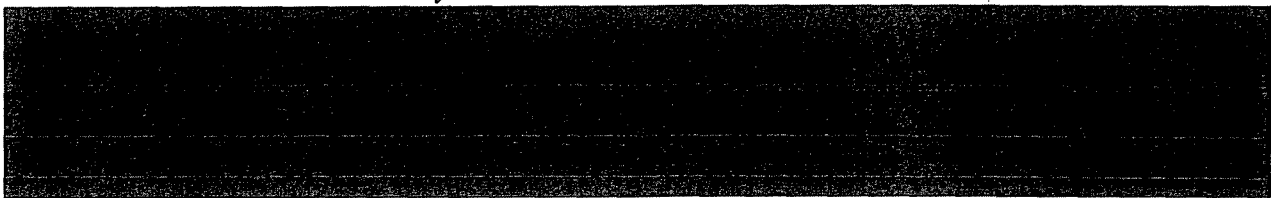
**20.3.1 Notice.** If any Claim is made or brought by any third party with respect to which an Owner Indemnitee or a Contractor Indemnitee entitled to indemnity under any indemnification provision of this Agreement, (individually, an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") believes it is entitled to indemnification, the Indemnified Party shall give written notice of such Claim (a "**Claim Notice**") and a copy of the Claim, process and any legal pleading with respect thereto (if and to the extent available to the Indemnified Party) to the party that is required to provide indemnification under this Agreement (individually, an "**Indemnifying Party**" and collectively, the "**Indemnifying Parties**") promptly, but in each case within ten (10) Days of being served or otherwise informed of such Claim, process or legal pleading. Failure to give such notice in a timely manner will not diminish the indemnification obligations of the Indemnifying Parties under this Agreement except to the extent the failure or delay in giving such notice results in actual and material prejudice to the Indemnifying Party. Any Party seeking indemnification hereunder shall deliver to the Party from which indemnification is sought a detailed description (including the nature of the Claim and the amount thereof) of each Claim.

20.3.2 Assumption of Defense. The Indemnifying Parties shall have the right to assume the defense of any such Claim. If the Indemnifying Parties wish to assume the defense of such Claim, such assumption shall be evidenced by written notice to the Indemnified Parties. After such notice, the Indemnifying Parties shall engage independent legal counsel of reputable standing selected by such Indemnifying Parties and reasonably acceptable to the Indemnified Parties, to assume the defense and may contest, pay, subject to **Section 20.3.5**, settle or compromise any such Claim on such terms and conditions as the Indemnifying Parties may determine. If the Indemnifying Parties assume the defense of any such Claim, the Indemnified Parties shall have the right to employ their own counsel, at their own expense; provided, however, if the Indemnified Parties have reasonably concluded and specifically notified the Indemnifying Parties that there may be specific defenses available to the Indemnified Parties which are in conflict with those available to the Indemnifying Parties, then the Indemnified Parties will be entitled to retain independent counsel at the Indemnifying Party's expense to assume the defense of the Indemnified Parties.

20.3.3 Independent Counsel. If the Indemnifying Parties do not agree in writing to assume the defense of such Claim, the Indemnified Parties may engage independent counsel of reputable standing selected by them to assume the defense and may contest, pay, settle or compromise any such Claim on such terms and conditions as the Indemnified Parties may determine; **provided, however**, that the Indemnified Parties shall not settle or compromise any Claim without the prior consent of the Indemnifying Parties if such Indemnifying Parties acknowledge in writing their liability for any Liabilities incurred or required to be paid in respect of such Claim and provide adequate assurances of their ability to satisfy any such Liabilities.

20.3.4 Cooperation. The Indemnified Parties and the Indemnifying Parties shall cooperate in good faith in connection with any common defense.

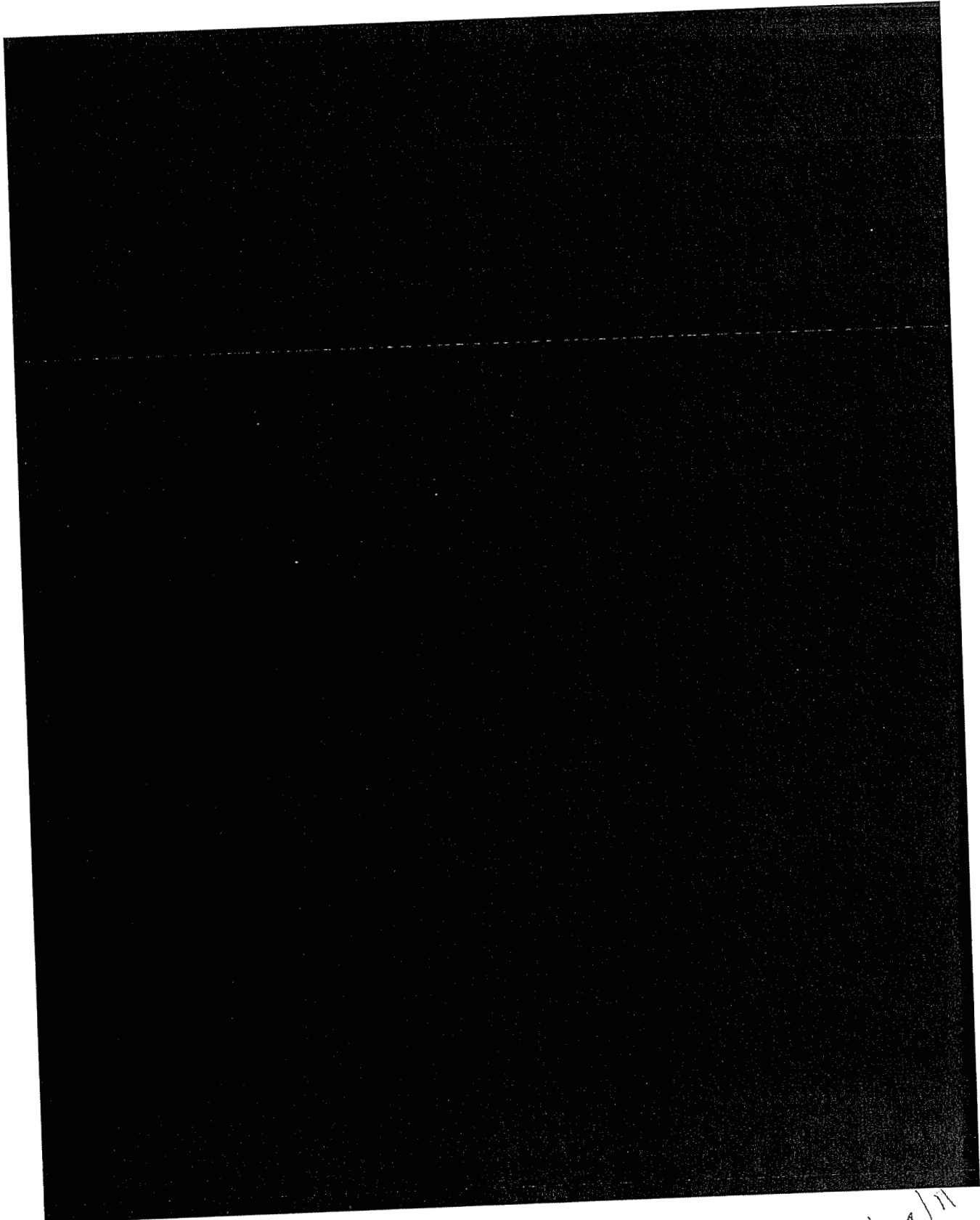
20.3.5 Settlement. The Indemnifying Parties shall not, except with the consent of the Indemnified Parties, enter into any settlement or consent to entry of any judgment that: (i) does not include as an unconditional term thereof the giving by the Person or Persons asserting such Claim to all Indemnified Parties of an unconditional release from all liability with respect to such Claim; (ii) includes a statement as to an admission of fault, culpability or failure to act by or on behalf of any Indemnified Party; or (iii) imposes any conditions, future obligations or limitations on any of the Indemnified Parties; **provided, however**, that for settlements with any Governmental Authority, the consent of the Indemnified Parties shall not be unreasonably withheld or delayed and in making such determination, the Indemnified Party shall exercise its reasonable business judgment (without taking into account the indemnity afforded hereby) consistent with usual and customary settlement terms, conditions and practices for the applicable Governmental Authority.



12/20/11  
R

12/20/11  
22





12/30/11

12/29/11  
R

## ARTICLE 21

### INSURANCE

Contractor (and its Subcontractors) shall provide and maintain the insurance specified in Exhibit I in accordance with the terms and provisions thereof.

## ARTICLE 22

### TITLE & RISK OF LOSS

**22.1 Transfer of Title.** Transfer of title to the Work (or any portion thereof) will pass to Owner upon the earlier of delivery to Owner or the Job Site, incorporation into the Work or the Unit, or upon payment of the amount properly due under an Application For Payment covering such Work, notwithstanding any amount retained and other amounts withheld by Owner in accordance with the terms of this Agreement; provided, that Contractor shall cause title to be transferred to Owner at shipment of the Work to Owner or the Job Site to the extent that Owner reasonably requests. The transfer of title does not relieve Contractor of its obligation to provide and pay for all transportation and storage in connection with the Work. Contractor shall transfer title to Owner to the Work, including Equipment and Materials, free and clear of all Liens except for those Liens that have been created by Owner. Passage of title will not affect the allocation of risk of loss. Subject to Article 16, title to documents, submittals, reports, Design Documents (whether hard copy, electronic or other medium) shall pass to Owner on receipt.

**22.2 Title Warranty.** Contractor warrants that upon passage of title of the Work in accordance with Section 22.1, Owner will have good and indefeasible title to such Work, and not be subject to any Lien or other defect in title. If any Work is replaced under Article 12 or 13, Owner's title shall vest in the replacement Work upon the earliest of payment therefor, its arrival at the Job Site or incorporation into the Ghent CCR Transport System or the Existing Facilities. In the event of any nonconformity with this warranty, Contractor, at its own expense, upon written notice of such failure, shall indemnify and hold Owner harmless from the consequences of and defend the title to such Work and, if necessary, shall promptly replace such Work and any other affected portion of the Work, and such obligation shall survive the expiration, cancellation or termination of this Agreement.

**22.3 Risk of Loss.** Except as otherwise provided herein, care, custody and control of the Work and the risk of loss or damage to the Work will pass to Owner on Commercial Operation, and Owner hereby releases Contractor from bearing such risk with respect to such Work after such date. With respect to Work performed or provided from and after Commercial Operation, risk of loss shall pass to Owner on the earliest to occur of delivery, installation or completion. Owner shall assume care, custody, and control of the Work and the risk of physical loss or damage thereto from and after such date, except as provided above. Contractor shall replace, repair, or reconstruct the Ghent CCR Transport System, including Equipment and Materials intended for the use of or necessary to the completion of the Work and furnished by Contractor, its Subcontractors or any other Person that is lost, damaged, or destroyed prior to transfer of care, custody, and control and risk of loss of the Work to Owner. Contractor shall be responsible to assure safe delivery of all Equipment, Materials, and other items to the Job Site.

12/29/11  
R

12/30/11  
RL

**22.4 Contractor Tools.** Risk of loss or damage to the equipment, tools, and Construction Aids of Contractor, its employees or Subcontractors and their employees will at all times remain with Contractor, Subcontractors and their respective employees. Contractor hereby releases Owner and will require its Subcontractors to release Owner from and against any liability for loss or damage in respect thereof. If any casualty to such equipment, tools, or Construction Aids occurs, the loss as a consequence thereof will not be the responsibility of Owner hereunder. Construction equipment brought to the Ghent Generating Station Site or the Job Site or used thereon by Contractor or Subcontractors must be adequately insured against casualty.

## ARTICLE 23

### DISPUTE RESOLUTION

**23.1 Resolution.** An authorized representative of a Party may submit a claim, dispute or other controversy arising out of, or relating to, this Agreement which an authorized representative of a Party does not believe can be resolved by the Parties' authorized representatives (hereinafter collectively referred to as a "Dispute") to a Senior Officer from each Party for resolution by mutual agreement between the Senior Officers. Any agreed determination by the Senior Officers shall be final and binding upon the Parties. However, if the Senior Officers do not arrive at a mutual decision as to the Dispute within thirty (30) Days (or such longer time as the Parties agree) after notice to each Party of the Dispute, such Dispute will, if aggregate amount claimed [REDACTED] be settled by arbitration in accordance with the terms and provisions set forth in Section 23.2 hereof. If the Dispute is not in the Arbitration Range, either Party may pursue any other available remedy at law or in equity. For purposes of this Agreement, the term "Senior Officer" means the chief executive officer, president or any senior vice president of a Party.

### 23.2 Arbitration Proceedings.

**23.2.1 Demand for Arbitration.** All arbitration proceedings shall take place in Louisville, Jefferson County, Kentucky and shall be conducted in accordance with Construction Industry Rules then in effect of the American Arbitration Association. Notice of the demand for arbitration shall be filed with the other Party and shall be made within a reasonable time after such Party is permitted to arbitrate the Dispute as provided herein ("Notice"). The Notice shall specify the name and address of an arbitrator designated by such Party, the nature of the dispute and the amount involved. No demand for arbitration may be made or permitted after the date when the institution of legal or equitable proceedings based on such Dispute would be barred by the applicable Kentucky statute of limitations.

**23.2.2 Selection of Arbitrator.** Within twenty-one (21) Days after receipt of the Notice, the Party that received such Notice shall respond (the "Response") by written notice specifying the name and address of the arbitrator designated by it. If a Party fails to deliver its response within such twenty-one (21) Day period, the arbitrator specified in the Notice shall be the sole arbitrator of the dispute. Within fourteen (14) Days after

12/29/11  
R

12/30/11  
R

receipt of the Response, the two arbitrators shall appoint a third arbitrator. Such third arbitrator shall have prior judicial experience. All arbitrators shall be in all cases neutral Persons with no financial or personal interest in the result of the arbitration or any present professional relationship with the Parties or their counsel. The arbitrators shall endeavor to conduct the arbitration proceedings expeditiously in order to be able to render a decision within thirty (30) Days of selection of the third arbitrator. The decision of the third arbitrator shall control if no majority decision can be reached.

23.2.3 Consolidation. No arbitration arising under this Agreement shall include, by consolidation, joinder or any other manner, any Person not a Party to this Agreement, unless: (i) such Person is substantially involved in a common question of fact or law; (ii) the presence of such Person is required if complete relief is to be accorded in the arbitration; and (iii) such Person has consented to such inclusion.

23.2.4 Binding Nature. The agreement herein among the Parties to arbitrate under certain circumstances will be specifically enforceable in any court of competent jurisdiction. In rendering their decision and award, the arbitrators may not add to, subtract from, or otherwise modify the provisions of this Agreement and must apply the substantive law of the Commonwealth of Kentucky. Any decision rendered by the arbitrator(s) pursuant to any arbitration must be in writing, must explain the basis on which the decision or award is based, must be delivered to both Parties and must be final and binding upon the Parties, and judgment may be entered upon it in accordance with Applicable Law in any court of competent jurisdiction.

23.2.5 Costs and Expenses. The arbitrators, at their discretion, in egregious cases, shall have the authority to award the prevailing Party recovery of all or any portion of the costs of the arbitration, including reasonable attorneys' fees and charges.

23.2.6 Discovery. The Parties have the right to conduct reasonable discovery. The right to conduct discovery shall be granted by the arbitrators in their sole discretion with a view to avoiding surprise and providing reasonable access to necessary information or to information likely to be presented during the course of the arbitration.

23.2.7 Cross Examination. Direct testimony may be admitted by sworn affidavit; provided that the opposing Party is given the right to cross examine any witness whose testimony is so admitted.

23.2.8 Arbitration Notices. Communications under this Article 23 may be given in the manner provided in Section 25.5.

23.3 Continuation of Work. Pending final resolution of any Dispute, Contractor shall proceed diligently with the performance of its duties and obligations under this Agreement, and Owner shall continue to make undisputed payments in accordance with such Agreement.

12/29/11  
R

12/30/11  
rc

ARTICLE 24

TERMINATION

24.1 Termination for Convenience.

24.1.1 Termination. Owner may terminate this Agreement, in whole or in part, without cause upon written notice to Contractor, specifying the extent to which this Agreement is terminated and the date on which such termination is to be effective. If this Agreement is so terminated, Contractor shall cease performance of the Work (or terminated portion thereof) on the date specified in such notice. Upon such termination, Contractor and its Subcontractors shall place no further subcontracts, including lease and rental agreements, or purchase orders, for Equipment, Materials, Consumables, facilities, or services, including craft labor, except as may be necessary for completion of the portion of the Work not terminated by Owner. Upon request by Owner, Contractor shall promptly provide Owner a listing of all subcontracts, including lease and rental agreements, and purchase orders, which pertain to the performance of the terminated Work, and shall furnish Owner with complete copies thereof. Contractor shall, at Owner's request, preserve and protect the Equipment, Materials, and Consumables purchased for or committed to the terminated Work (whether completed or in progress and whether delivered to the Job Site or on order), the facilities on the Job Site, and Work in progress and completed Work (whether at the Job Site or at other locations), pending Owner's instructions. With respect to the terminated Work, Contractor shall promptly make every reasonable effort to cancel associated subcontracts, lease and rental agreements, and purchase orders upon terms satisfactory to Owner, or Contractor shall take such other action with respect to same as may be directed by Owner. If this Agreement is so terminated, Contractor, as its sole and exclusive remedy hereunder, shall be entitled to an amount equal to: (i) the amounts set forth in **Exhibit B** for milestones properly completed by Contractor; (ii) with respect to any partially completed milestone, amounts determined by multiplying the percentage of properly completed Work with respect to such milestone by the respective value of such milestone as set forth in **Exhibit B**; (iii) reimbursement for: (a) all cancellation charges necessarily incurred by Contractor in relation to its Subcontractors; (b) an amount equal to other reasonable termination related actual costs necessarily incurred by Contractor; and (c) and reasonably incurred actual costs of demobilization, less: (1) amounts previously paid to Contractor with respect to the Work and (2) amounts properly withheld under this Agreement. In no event shall the amount required to be paid to Contractor hereunder as a consequence of termination together with amounts that Owner has previously paid to Contractor under this Agreement exceed the Contract Price. Contractor shall calculate amounts due pursuant to this **Section 24.1**, which amounts are subject to audit by Owner on a completely open-book basis.

24.1.2 Assumption. Notwithstanding anything to the contrary herein, Owner, in lieu of the payment of any cancellation charge in relation to Contractor's Subcontractors pursuant to **Section 24.1.1**, may, upon request, assume all of Contractor's obligations under any purchase order or other agreement with a Subcontractor. Contractor, upon Owner's request, shall promptly provide Owner with (i) a copy of any purchase order or

12/29/11  
N

12/30/11  
SL

other agreement with a Subcontractor and (ii) an estoppel certificate stating all known unsatisfied Liabilities under any such purchase order or other agreement. Thereafter, upon Owner's request, Contractor shall assign all of its right, title and interest in any such purchase order or other agreement with a Subcontractor to Owner. Such assignments shall be in form and substance reasonably satisfactory to the Parties, and at no additional cost to, Owner. Such agreements shall be in full force and effect upon such assignment. Contractor covenants that a provision substantially similar to this **Section 24.1.2** shall be inserted in each such agreement with a Subcontractor to preserve the rights of Owner under this **Section 24.1.2**.

24.1.3 Mitigation. If any cancellation payment is due to Contractor from Owner, Contractor shall use its reasonable best efforts to minimize the amount of such cancellation payment.

## 24.2 Termination by Owner for Cause.

24.2.1 Default by Contractor. The occurrence of any one or more of the following, and, with respect to **clauses (ii), (iv), (vi) or (vii)**, the continuation of the same for thirty (30) Days after Contractor's receipt of written notice thereof from Owner, will constitute a default by Contractor under this Agreement (a "**Contractor Default**"); **provided** that with respect to **clauses (ii), (iv), (vi) or (vii)**, if such Contractor Default cannot reasonably be cured within such thirty (30) Day period, such cure period shall extend for a total of ninety (90) Days, so long as Contractor diligently pursues a cure throughout such period:

- (i) Contractor or Guarantor experiences an Insolvency Event;
- (ii) the material breach of any representation or warranty made by Contractor herein;
- (iii) Contractor attempts to assign, convey or transfer this Agreement or any interest or right herein without Owner's prior written consent, except as otherwise permitted by this Agreement;
- (iv) Contractor fails to materially observe or perform any other covenant, agreement, obligation, duty or provision of this Agreement;
- (v) the interest of Contractor passes to any Person otherwise than as permitted herein;
- (vi) Contractor fails to make prompt payment to Subcontractors of amounts due for labor, Equipment, Materials, Consumables, or Construction Aids, or unreasonably disregards laws or ordinances or the lawful requirements of any competent authority or the instructions of Owner consistent with this Agreement;
- (vii) Contractor fails, neglects, refuses or is unable at any time during the course of the Work, except in the event of an Excusable Event, to provide

ample Equipment, Materials, Consumables, or Construction Aids, or labor to perform Work in accordance with the Project Schedule or to provide a recovery plan to satisfaction of Owner, including failure to successfully complete the Performance Guarantee Tests;

- (viii) Contractor fails to comply with **Article 21** (Insurance) or the Parent Guarantee, for any reason, ceases to be valid or enforceable in any way;
- (ix) Contractor fails to achieve Commercial Operation within ninety (90) Days of the Guaranteed Commercial Operation Date; or
- (x) Final Completion does not occur on or before the Guaranteed Final Completion Date.

24.2.2 Owner's Remedies. Upon the occurrence of a Contractor Default, Owner may, without prejudice to any other right or remedy Owner may have under this Agreement: (i) terminate this Agreement; (ii) take possession of the Job Site and of all Equipment, Materials, Consumables, and Information owned or held by Contractor; (iii) finish the Work by whatever method Owner may deem expedient; and (iv) draw on the Retainage or withhold amounts due to Contractor to make payments therefor. If the unpaid balance of the Contract Price exceeds the cost of finishing the Work, then Contractor will be paid for all Work properly performed by Contractor to the date of termination (which amount will in no event exceed the difference between the unpaid portion of the Contract Price and Owner's cost of completing the Work). However, if the cost of finishing the Work (including the cost of arranging for completion of the Work and performing such Work on an accelerated basis to preserve as nearly as possible adherence to the Project Schedule) and performing Contractor's other obligations under this Agreement exceeds the unpaid balance of the Contract Price, Contractor shall immediately pay the difference to Owner on demand upon receipt of an invoice from Owner. Owner will be entitled to withhold further payments to Contractor until the Work has been completed and a determination that Contractor is entitled to further payments. Any amounts not paid hereunder when due will bear interest at the Agreed Rate. Owner may in its discretion employ such other Persons to finish the Work by whatever method or means as Owner in its sole discretion may deem expeditious; **provided** that the balance of Work and obligations will be completed utilizing reasonable methods of construction management and construction consistent with the Project Schedule, as adjusted. If this Agreement is terminated pursuant to this **Section 24.2.2** and is later determined that no Contractor Default had occurred, such termination shall be deemed to be a termination pursuant to **Section 24.1.1**.

### 24.3 Termination by Contractor for Cause.

24.3.1 Default by Owner. The occurrence of any one of more of the following matters, and, with respect to **clauses (ii) or (iii)**, the continuation of the same for thirty (30) Days after Owner's receipt of written notice thereof from Contractor, will constitute a default by Owner under this Agreement (an "**Owner Default**"); **provided** that with respect to **clauses (ii) or (iii)**, if such Owner's Default cannot reasonably be cured within

such thirty (30) Day period, such cure period shall extend for a total of ninety (90) Days, so long as Owner diligently pursues a cure throughout such period:

- (i) Owner experiences an Insolvency Event.
- (ii) the breach of any material representation or warranty made by Owner herein;
- (iii) Owner fails to observe or perform any material covenant, agreement, obligation, duty or provision of this Agreement, including timely payment, but excluding any such failure that is compensable pursuant to **Article 9** hereof.

**24.3.2 Contractor's Remedies.** Upon the occurrence of an Owner's Default, but subject to **Section 23.3**, Contractor may suspend its performance of the Work (for a maximum of fifteen (15) Days in the aggregate) or terminate this Agreement. If this Agreement is so terminated by Contractor for an Owner Default, Contractor, as its sole and exclusive remedy hereunder, shall be entitled to receive an amount calculated in accordance with **Section 24.1**.

**24.4 Suspension of the Work.** Owner may, without cause, order Contractor to suspend the Work or extend the Project Schedule in whole or in part for such period of time as Owner may determine. Any such suspension or extension will commence as soon as reasonably possible, but no later than the second (2nd) Business Day after Contractor's receipt of written notice thereof from Owner. Such suspension or extension shall continue for the period specified in Owner's notice to Contractor. Contractor will resume any suspended Work within three (3) Business Days of Owner's written notice directing the same. Without limiting Owner's rights under **Section 24.1**, should a suspension of the entire Work which is ordered by Owner pursuant to this **Section 24.4** (but excluding any suspension caused by a Force Majeure) continue for three hundred sixty (360) or more consecutive Days, either Party may thereafter terminate this Agreement by written notice to the other Party and the rights and remedies of Contractor will be the same as those which are expressed in **Section 24.1** hereof in the event of termination for convenience by Owner. In the case of any suspension of the entire Work under this **Section 24.4**, except to the extent an acceleration of the Work is authorized by Owner, the Project Schedule will be extended by a period equal to the suspension period, and adjusted by Owner, in consultation with Contractor, to account for same. In the case of any suspension or extension of a portion of the Work under this **Section 24.4**, the Project Schedule shall be extended only to the extent the suspension or extension can be shown on the Project Schedule to affect the critical path. This analysis will be based on the most current Project Schedule in effect on the Day of suspension and take into account the critical path for completing the entire Work and the non-critical path activities suspended or extended. Owner shall pay Contractor in accordance with the terms of payment set forth in this Agreement for the Work completed prior to the time of any suspension and for the direct reasonable costs that result from Contractor's compliance with the suspension notice. Owner shall pay Contractor the direct reasonable costs (including escalation) associated with the restart of suspended Work under this **Section 24.4** and shall resume payments to Contractor in accordance with the terms of payment under this Agreement thirty (30) Days after the restart of the Work. It is a precondition to all claims by Contractor for



extension or compensation under this Section 24.4, that the same be made within ninety (90) Days after the suspension period has ended, or said claim is barred.

## ARTICLE 25

### MISCELLANEOUS PROVISIONS

**25.1 Governing Law.** This Agreement is governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky without reference to the conflict of laws rules thereof. Each of the Parties hereby agrees that any legal proceedings that may arise under this Agreement shall be brought in the United States District Court for the Western District of Kentucky, located in Louisville (and if such court does not have jurisdiction over a matter at controversy between the Parties, any state court located in Louisville, Kentucky). Accordingly, each of the Parties hereby submits to the jurisdiction of the United States District Court for the Western District of Kentucky, located in Louisville (and if such court does not have jurisdiction over a matter at controversy between the Parties, any state court located in Louisville, Kentucky) for purposes of all legal proceedings that may arise under this Agreement. Each of the Parties irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may have or hereafter have to the personal jurisdiction of such court or the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Each of the Parties to this Agreement hereby consents to process being served in any such proceeding by the mailing of a copy thereof by certified mail, postage prepaid, to its address specified in Section 25.5 (as it may be changed or provided herein). EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, ANY OF THE TRANSACTION AGREEMENTS OR ANY OTHER DOCUMENTS ENTERED INTO IN CONNECTION THEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OF THE PARTIES THERETO.

**25.2 Entire Agreement.** This Agreement represents the entire agreement between Owner and Contractor with respect to the subject matter hereof, and upon issuance of the Full Notice to Proceed by Owner shall supersede all prior negotiations, binding documents, representations or agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument signed by Owner and Contractor as appropriate.

**25.3 Successors and Assigns.** Contractor may not assign, convey, or transfer this Agreement, or any part thereof, without Owner's prior written consent. This Agreement is binding upon, and inures to the benefit of, the successors and permitted assigns of the Parties. Owner may assign, novate or declare any trust of the whole of any part of this Agreement and any benefit, interest, right or cause of action arising under this Agreement to an Affiliate or to a third party with comparable technical and financial abilities.

**25.4 Contractual Relationship.** Nothing contained in this Agreement may be construed as creating a contractual relationship of any kind: (i) between Owner and any Subcontractor (except as provided in Section 3.6 and Section 13.4 hereof) or (ii) between any

12/29/11  
Z

12/30/11  
sr

Persons other than Owner and Contractor. Contractor is an independent contractor and all of its agents and employees shall be subject solely to the control, supervision, and authority of Contractor. Owner and Contractor disclaim any intention to create a partnership or joint venture. Contractor may not act for or have any power or authority assume any obligation or responsibility on behalf of Owner.

**25.5 Notices.** All notices pertaining to this Agreement must be in writing, signed by a duly authorized representative of the Party giving such notice and will be deemed given when received by personal delivery, recognized express courier, or electronic mail (immediately followed by recognized express courier) to the other Party at the address designated below:

If to Owner:

Kentucky Utilities Company  
820 W. Broadway  
Louisville, KY 40202  
Attn: Scott Straight  
Telephone: 502-627-2701  
E-mail: [scott.straight@lge-ku.com](mailto:scott.straight@lge-ku.com) ; and

820 W. Broadway  
Louisville, KY 40202  
Attn: Joe Clements  
Telephone: 502-627-2760  
E-mail: [joe.clements@lge-ku.com](mailto:joe.clements@lge-ku.com) ; and

820 W. Broadway  
Louisville, KY 40202  
Attn: Ronald Gregory  
Telephone: 502-627-4531  
E-mail: [ronald.gregory@lge-ku.com](mailto:ronald.gregory@lge-ku.com) ; and

220 W. Main St.  
Louisville, KY 40232  
Attn: General Counsel  
Telephone: 502-627-3450  
E-mail: [john.mccall@lge-ku.com](mailto:john.mccall@lge-ku.com)

If to Contractor:

TIC – The Industrial Company  
785 Greens Parkway – Suite 125  
Houston, TX 77067  
Attn: Troy White, Project Sponsor  
Telephone: 832-232-5763  
E-mail: [troy.white@ticus.com](mailto:troy.white@ticus.com); and

12/30/11  
SL

12/29/11  
R

TIC – The Industrial Company  
785 Greens Parkway – Suite 125  
Houston, TX 77067  
Attn: Vicki Sheppard  
Telephone: 832-323-5721  
E-mail: Vicki.sheppard@ticus.com; and

TIC – The Industrial Company  
188 Inverness Drive West – Suite 700  
Englewood, CO 80112  
Attn: Pat Barney, General Counsel  
Telephone: 303-325-9663  
E-mail: pat.barney@ticus.com

Addresses may be changed by a Party effective upon receipt of notice of such address change.

**25.6 Rights Cumulative.** Except as otherwise expressly provided or limited in this Agreement: (i) rights and remedies available to Owner or Contractor as set forth in this Agreement are cumulative with and in addition to, and not in limitation of, any other rights or remedies available to such Parties at law or in equity and (ii) any specific right or remedy conferred upon or reserved to Owner or Contractor in any provision of this Agreement will not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof. Notwithstanding the foregoing, the rights and remedies of Owner remain subject to the liability limitations set forth in **Section 7.6**.

**25.7 Incorporation by Reference.** The recitals set forth on the first page of this Agreement are hereby incorporated into this Agreement by this reference and expressly made a part of this Agreement.

**25.8 No Waiver.** No course of dealing or failure of Owner or Contractor to enforce strictly any term, right or condition of this Agreement may be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Agreement will operate as a waiver of any other term, right or condition.

**25.9 Agreed Rate.** Unpaid amounts will bear interest at an annual (365 or 366 Days, as appropriate) rate equal to the lesser of: (i) two percent (2%) in excess of the Prime Rate and (ii) the maximum rate permitted by Applicable Law (the “**Agreed Rate**”).

**25.10 Financing Cooperation.** Contractor shall provide such reasonable assistance and cooperation to Owner as may be necessary for Owner to secure Financing for the Ghent CCR Transport System, including developing and providing information regarding the Ghent CCR Transport System reasonably available to Contractor; making presentations to potential Financing Parties, their consultants and representatives; and responding to any questions or requirements asked or imposed by any Financing Parties. Contractor hereby consents to the collateral assignment of this Agreement to the Financing Parties. All obligations of the Parties are expressly subject to the execution of final agreements required to close the Financing for the Ghent CCR Transport System contemplated by this Agreement except Owner’s obligation to pay

for Work performed and costs incurred. Contractor also agrees to enter into a consent to collateral assignment with the Financing Parties regarding this Agreement, which consent will contain such provisions as are typically provided to the Financing Parties, including giving the Financing Parties financial information of Contractor reasonably satisfactory to Financing Parties, copies of certain notices delivered to Owner hereunder, and affording the Financing Parties an independent right to cure any Owner's Defaults hereunder. Contractor shall also provide customary inside counsel legal opinions as required by the Financing Parties.

#### 25.11 Audit.

25.11.1 Access to Records. Contractor (and its Subcontractors) shall maintain: (i) complete and accurate financial books and records to allow compliance with **Sections 8.2, Section 20.4**, or which relate to any cost-based (*i.e.*, Work not covered by lump-sum prices), components of the Work billed under this Agreement or relating to the quantity of units billed under any unit pricing agreed to by the Parties; and (ii) complete and accurate books and records relating to Contractor's obligations with respect Hazardous Substances, health and safety, environmental management, emergency response, testing and inspection of Equipment and Materials, NERC Requirements, Performance Guarantee Tests, and the requirements of **Sections 25.23 and 25.24** (all the foregoing hereinafter referred to as "**Records**") for a minimum of five (5) years following Final Completion. All such Records must be open to inspection and subject to audit and reproduction during normal working hours by Owner or its respective authorized representatives 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 or delivery of Work under this Agreement. For the purpose of evaluating or verifying such actual or claimed costs, Owner and its respective authorized representatives will have access to Records at any time, including any time after final payment by Owner to Contractor pursuant to this Agreement. Owner and its respective authorized representatives shall have access, during normal working hours, to all necessary Contractor facilities. Contractor shall provide adequate and appropriate work space to conduct audits pursuant to this **Section 25.11.1**. Owner shall give Contractor reasonable notice of the date and time they, any individual Owner or any agent of either of them intend to commence any audit. If the audit should disclose an overbilling, Contractor will pay Owner's invoice rectifying such overbilling within thirty (30) Days of receipt. The rights of Owner set forth in this **Section 25.11.1** shall survive the termination or expiration of this Agreement.

25.11.2 Unit Prices. When Contractor's invoice includes compensation for Work performed on unit price basis, Contractor shall submit Contractor's determination of units of Work performed determined in accordance with the provisions of this Agreement, and substantiated by documents. Upon verification by Owner of such documents, Owner will advise Contractor in writing of either Owner's acceptance of Contractor's determination of units or Owner's determination of such units. If Contractor believes that Owner has incorrectly determined the units of Work performed, Contractor will comply with the provisions of **Article 23**. All undisputed amounts will be due and payable in accordance with this Agreement.

25.11.3 Time and Materials. When Contractor's invoice includes compensation for Work performed on a time and material basis or similar basis of compensation, Contractor shall submit to Owner a detailed breakdown in a form reasonably acceptable to Owner of the costs of labor, Equipment, Materials, Consumables, Construction Aids, and markups or fees (if any) due for such month to Contractor. All costs reflected in such breakdown shall be net of applicable credits. The term "**Applicable Credits**" means any and all refunds, rebates, credits, discounts, or similar amounts (including any interest thereon) received by Contractor or to which Contractor is or will be entitled in connection with its performance of the Work. Contractor shall pay, and require each of its Subcontractors to pay, all invoices received in connection with performance of the Work as required by the terms of their respective contracts. Upon receipt of such breakdown, Owner shall, in good faith, make the determination of the amount due Contractor, and unit prices (if applicable) shall govern. The determination of Owner shall be final and conclusive, subject to Contractor's right to dispute such determination pursuant to **Article 23**. Each invoice shall be accompanied with partial releases of Liens in form substantially in the form of **Exhibit F-5**.

25.11.4 Lump Sum. In connection with price adjustments under **Article 10** to Work priced on a lump-sum basis, any of Contractor's prices specified in this Agreement with respect to such adjustments (such as the following items to the extent that the amounts therefor are set forth in Exhibit C: price lists, unit rates, markups and multipliers, and the fixed elements of prices including Contractor owned equipment, insurance, benefits and burden rates, small tools, expendable, equipment operating and maintenance costs) are not subject to audit; **provided, however**, the determination of price adjustments under **Article 10** for all purposes under this Agreement shall be on a completely open-book basis. The determination of costs for time and materials Work performed under this Agreement shall be on a completely open-book basis and, with respect to those items covered by **Exhibit R**, the rates and charges set forth in **Exhibit R** shall be the sole basis for any Contract Price increase related thereto. Contractor agrees to provide any cost information required by NERC, provided that such information shall be used solely for the purpose of fulfilling NERC requirements

**25.12 Survival.** **Articles 7, 13, 16, 17, 18, 19, 20, 23 and 25 and Sections 4.39, 8.8.2, and 22.2** of this Agreement and all other Articles and Sections thereunder providing for indemnification, or limitation of or protection against liability of either Party, survives the termination, cancellation or expiration of this Agreement.

**25.13 No Third Party Beneficiaries.** The provisions of this Agreement are intended for the sole benefit of Owner and Contractor and, except to the extent specifically identified herein, there are no third party beneficiaries other than assignees contemplated by the terms herein.

**25.14 Non-Recourse.** Anything to the contrary notwithstanding, the obligations of Owner under this Agreement (i) are individual and special obligations of Owner and do not constitute obligations of (and no recourse shall be had with respect thereto to) any shareholder of Owner, any of its Affiliates, or any shareholder, partner, member, officer, director, commissioner or employee of any such Person and (ii) no action shall be brought or maintained against any

such partner, Affiliate companies, or any shareholder, partner, member, officer, director, commissioner or employee of any thereof. The Parties acknowledge and agree that any provision of this Agreement that limits, excludes or protects against any liability of Owner, grants indemnity or confers rights or remedies that are intended to benefit (and be enforceable by) Owner, shall be applicable to Owner whether or not Owner is specifically referenced in such provision.

**25.15 Parent Guarantee.** Owner's obligation to make any payment to Contractor hereunder is subject to the receipt of the Parent Guarantee executed by the Guarantor in the form attached hereto as **Exhibit F-8**, guaranteeing the full and timely payment and performance of all of Contractor's obligations under this Agreement. Contractor covenants that the Parent Guarantee will remain in full force and effect to and until the obligations of Contractor under this Agreement have been fulfilled.

**25.16 Provisions Required by Law.** Any term or condition required to be contained in this Agreement as a matter of Applicable Law that is not so contained herein is deemed to be incorporated in this Agreement as though originally set forth herein.

**25.17 Severability.** If any provision of this Agreement, or the application thereof to any Person or circumstance, is to any extent held invalid or unenforceable by a court of competent jurisdiction or pursuant to arbitration as provided herein, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is specifically held invalid or unenforceable, will not be affected thereby, and each and every remaining provision of this Agreement will be valid and binding to the fullest extent permitted by Applicable Law; **provided, however**, the Parties agree to negotiate in good faith and shall reform this Agreement to as closely as possible resemble the original intent and allocation of risks and benefits.

**25.18 Joint Effort.** Preparation of this Agreement has been a joint effort of the Parties and the resulting document (or any portion) is not to be construed more severely against one of the Parties than against the other.

**25.19 Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which is deemed to be an original, but all of which together shall constitute one and the same instrument.

**25.20 Approvals Not To Relieve Contractor.** No approval, consent or failure to disapprove, inspect or failure to inspect, or comment on, any matter by or the submission of any drawing or document to, or acquiescence on the part of, Owner, including any Turnover Acknowledgment, will relieve Contractor of any liability for any of its obligations under this Agreement or otherwise.

**25.21 Consultants.** At their option, Owner and the Financing Parties may retain the services of others, including engineers and financial consultants, to assist Owner and Financing Parties in monitoring the conduct of the Work by Contractor. All rights of access and protection, including Contractor's obligation to indemnify, defend and hold harmless Owner and Financing Parties, will be afforded equally to any of their agents and consultants.

**25.22 Equal Employment Opportunity.** 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).

**25.23 Minority, Women, Disadvantaged and Local Business Enterprises.** Owner has a "Supplier Diversity Policy" to provide the maximum opportunity for Minority Business Enterprises ("MBEs"), Women Business Enterprises ("WBEs"), Disadvantaged Business Enterprises ("DBEs"), and union and non-union local contractors ("LCs") to participate as subcontractors for goods and services. As such, every attempt should be made by Contractor to include MBEs, WBEs, DBEs, and LCs, on subcontract bid lists for the Work. To the extent practicable, this requirement shall be passed down to Subcontractors. Contractor shall provide a supplier diversity program for the Work. Elements of such a program shall at a minimum include: (i) a goal setting process for identifying MBE/WBE/DBE/LC opportunities for involvement in the Work; (ii) an outreach process to identify and attract possible MBE/WBE/DBE/LC business interest in the Work, including working with local organizations such as Kentuckiana Minority Business Council; (iii) a pre-qualification process to assess the suitability of interested MBE/WBE/DBE/LCs; (iv) a bidding process inclusive of suitable MBE/WBE/DBE/LCs on subcontract bid lists; and (v) a monitoring process to provide statistical reporting on opportunities and utilization. Contractor shall report to Owner with respect to its compliance with this Section 25.23 in accordance with Exhibit F-9 (Second Tier Procurement Program).

**25.24 Local Involvement; Reporting.**

25.24.1 Local Workers. Contractor shall make a diligent good faith effort to hire, to the maximum practical extent, qualified Local Hires for and in connection with the performance of the Work in the order of priority in which geographic areas are listed in the definition of Local Hires.

25.24.2 Local Content. Contractor shall make a diligent good faith effort to include, to the maximum practical extent, qualified contractors on subcontract bid lists for portions of the Work that are to be subcontracted by Contractor or its Subcontractors in the order of priority in which geographic areas are listed in the definition of Local Spend.

25.24.3 Reporting. On a monthly basis commencing on the Effective Date, Contractor shall provide a written report substantially in the form set forth in Exhibit F-9, detailing statistical data relating to its workforce and those of its Subcontractors, including information relating to MBEs, WBEs, DBEs, LCs, Local

12/30/11  
SL

1/6/12  
2

Spend, WBE Spend and MBE Spend. Contractor will not be obligated to provide confidential individual employee information under this **Section 25.24.3**.

**25.25 Patent Limitations.** Notwithstanding anything in this Agreement to the contrary, Contractor's obligations and liabilities with respect to patents in connection with the Work provided under the terms (as of the Effective Date of this Agreement) of the Ghent CCR Transport Equipment Contracts shall be limited to only United States patents to the extent that the patent terms (as of the Effective Date of this Agreement) of the applicable Ghent CCR Transport Equipment Contract are so limited.

12/30/11  
SL

12/29/11  
R



IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Kentucky Utilities Company

By: Chris [Signature] DSA for Joe Christy  
Title: Contract Administrator  
12/30/11

TIC - The Industrial Company

By: [Signature]  
Title: VICE PRESIDENT  
12/30/11

12/30/11  
AL

12/29/11  
1/5/12  
[Signature]



**GH Transport - TIC Rollup  
28-Dec-11**

Item
BOFO w/o OFE Equipment
OFE Equipment (13-Dec-11)
<i>WesTech Original Contract #511453</i>
<i>Beumer</i>
<i>Original Contract #514629</i>
<i>CO #1 - Truck Loading Station</i>
<i>Pending CO - EPC Pipe Conveyor Loads</i>
<i>ASH</i>
<i>Original Contract #517454</i>
<i>Pending CO for Finish Coatings</i>
KU's Original Clarifications (11-Nov-11)
<i>#3 - Eliminate electrical vault</i>
<i>#6 - Addition of retention basins</i>
<i>#7 - Sump discharge to Gypsum Stack</i>
<i>#12 - Gypsum storage bldg fully enclosed</i>
<i>#16 - Walkways and lightning on pipe racks</i>
<i>#23 - Demo of Augusta Bldg</i>
<i>#39 - Trench coatings</i>
<i>#45a - Savings on Pipe Conveyor foundations</i>
<i>#58 - Electrical MCC work north of US 42</i>
<i>#60 - DCS Climate Controlled rooms</i>
<i>#78 - SA &amp; IA at head end of Pipe Conveyor</i>
<i>#81 - Per December 09, 2011 Letter</i>
<i>#82 - Elevated pipe rack south of US 42</i>
KU's Revised Clarifications (28-Nov-11)
<i>21 - Additional DCS Stations</i>
<i>42a - Option 2 Electrical Feed</i>
<i>42b - Additional 480v Equipment</i>
<i>75 - Coatings in Fly Ash Contract</i>
<i>78 - SA and IA at Head End of Conveyor</i>
Value Engineering (17-Nov-11)
<i>#1 - Rotate Bottom Ash Building</i>
<i>#4 - Flop gates in-lieu of traveling heads</i>
<i>#12 - Wash water to ATB #2</i>
Additional Scope (09-Dec-11)
<i>TC 13 Fly Ash Electrical Building Mods</i>
<i>TC 03 Silo Changes due to Equipment</i>
<i>Clarification 81 SA and SW Scope Reduction</i>
<i>TC 25 WesTech Scope Break</i>
Additional Scope (13-Dec-11)
<i>TC 25 WesTech Revision #1</i>
<i>Marshalling Cabinets</i>
Additional Scope Insurance (21-Dec-11)
Additional Scope (22-Dec-11)
<i>Spare starters in MCC's</i>
<i>TC 52 Marshalling Cabinets</i>

12/30/11  
ML

*JBL*  
29-Dec-11

**EXHIBIT D**  
**PROJECT SCHEDULE & KEY DATES**

**Item**

**Date**

Mobilization Date

Scheduled Mechanical Completion

Guaranteed Commercial Operation

Guaranteed Final Completion



**Tie-In Scheduled Outages**



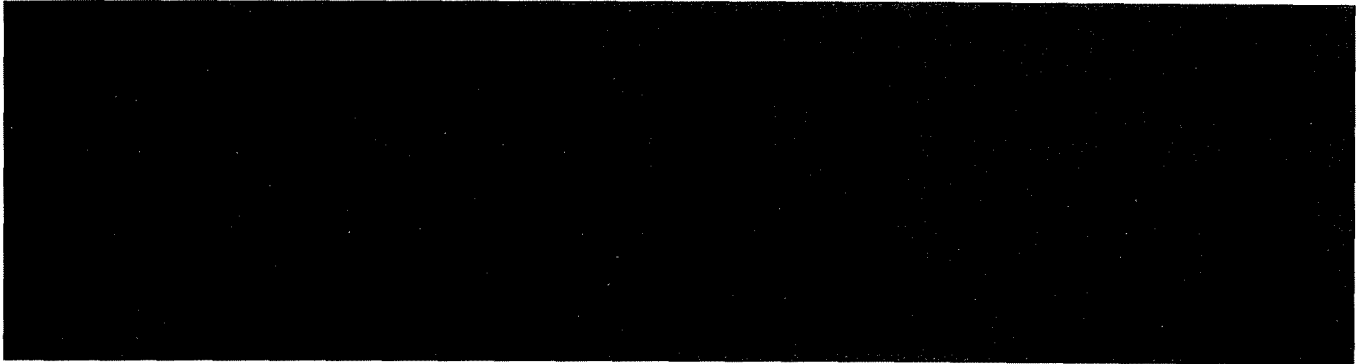
12/30/11  
*m*

*J. Kelly*  
29-Dec-11

### Acceptable Equipment and Materials Suppliers

The following sub-suppliers have been pre-approved by the Buyer/Owner to provide the corresponding components. If the Seller proposes to substitute a sub-supplier not on this list, then the sub-supplier's credentials shall be submitted to the Buyer/Owner for approval. Sufficient data must be provided to the Buyer/Owner in a timely manner to prove that the proposed equipment is of an equivalent quality and has proven operation in similar service conditions, including capacity, to that provided by the pre-approved sub-suppliers. If an offshore sub-supplier is proposed, the Seller shall provide information proving satisfactory domestic stockpiling of any required spare parts. Final decision concerning acceptance of an alternate sub-supplier shall be solely at Buyer/Owner's discretion.

Where multiple sub-suppliers are identified, those indicated in bold text are preferred by the Buyer/Owner and should be used for base bid purposes. Where no sub-supplier is named, the Seller shall select based on previous successful service in similar utility power plant applications.



12/30/11  
gr

JBK  
29-Dec-11

**EXHIBIT F1**  
**APPLICATION FOR PAYMENT**

DATE: \_\_\_\_\_ CONTRACTOR: \_\_\_\_\_

REQUEST FOR PAYMENT #: \_\_\_\_\_ CONTRACT #: \_\_\_\_\_

FOR THE MONTH ENDING: \_\_\_\_\_

MILESTONES ACHIEVED \_\_\_\_\_

ADDITIONAL DESCRIPTION: \_\_\_\_\_

I. GROSS BILLINGS:

	<u>TOTAL THROUGH LAST PERIOD</u>	<u>TOTAL EARNED THIS PERIOD</u>	<u>TOTAL EARNED TO DATE</u>
A: BASE CONTRACT			
B: CHANGE ORDERS			
TOTALS:	_____	_____	_____

II. THIS PERIOD'S BILLING

A. TOTAL VALUE OF MILESTONES ACHIEVED THIS PERIOD: \_\_\_\_\_

B. AGGREGATE PAYMENT AMOUNT SPECIFIED BY THIS MONTH IN EXHIBIT B:  
\_\_\_\_\_

C. SUBTOTAL (LESSER OF A OR B): \_\_\_\_\_

D. SALES TAX: \_\_\_\_\_

E. TOTAL DUE THIS MONTH: \_\_\_\_\_

RESPECTFULLY SUBMITTED BY:

12/30/11  
EL

*ALB*  
29-Dec-11

## EXHIBIT F2

### CERTIFICATE OF (MECHANICAL COMPLETION, COMMERCIAL OPERATION, TIE-IN OR FINAL COMPLETION)

The following form shall be used for Certificates of Mechanical Completion, Commercial Operation and Final Completion:

CERTIFICATE OF \_\_\_\_\_

[Fill in blank with: MECHANICAL COMPLETION, COMMERCIAL OPERATION or FINAL COMPLETION, as appropriate]

This constitutes the Certificate of \_\_\_\_\_  
[Fill in blank with: Mechanical Completion, Commercial Operation or Final Completion, as appropriate] as contemplated by the Engineering, Procurement and Construction Agreement, entered into as of the \_\_\_ day of \_\_\_\_\_ 2011 (the "Agreement"), by and between Kentucky Utilities Company, a Kentucky corporation ("Owner"), and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Contractor").

[The following sentence applies to Certificates of Commercial Operations, only.]  
For purposes of Section 6.7 of the Agreement, the date on which Owner received the notice from the Contractor pursuant to which this Certificate is being issued is \_\_\_\_\_.

Executed on this \_\_\_\_\_ [date] by the Companies on behalf of the Owners.

Kentucky Utilities Company

By \_\_\_\_\_

Title: \_\_\_\_\_



### Exhibit F-3 CHANGE ORDER

<b>Project:</b>	<b>File No.:</b>
<b>Project No.:</b>	<b>Date:</b>
<b>Contractor:</b>	<b>Change Order No.:</b>
<b>Contract For:</b>	<b>Contract No.:</b>
<b>Change Order Title:</b>	

The Agreement is hereby changed as follows:  
**Change Description:**

Adjustment to Schedule (including change(s) to key dates listed in Exhibit D):

Adjustment to Payment Schedule:

Adjustment to Performance Guarantees:

Other Agreement Adjustments (specify):

Original Contract Price.....
Prior Change Orders Amount.....
Contract Price Prior to this Change Order..
This Change Order Amount.....
Net Contract Price Amount .....

**OTHER CONDITIONS:**  
 To the extent stated in this Change Order, the price and time extension in this Change Order is full compensation for all costs and schedule impacts, both direct and indirect, incurred in connection with the conditions giving rise to this Change Order including all applicable markups and fees.

This Change Order, when executed, constitutes a modification to the Agreement, and all provisions of the Agreement, except as modified above or by a previous Change Order, shall apply hereto.

Acceptance for and on behalf of TIC	Acceptance for and on behalf of Kentucky Utilities
By: _____	By: _____
Date: _____	Date: _____
Title: _____	Title: _____
Distribution:	Distribution:
_____	_____
_____	_____

12/30/11  
al

*ABK*  
24-Dec-11



## EXHIBIT F4

### INTEGRATED PROJECT SCHEDULE

#### Preliminary Project Schedule

1. Exhibit D of the Agreement contains a preliminary Project Schedule.

#### A. Project Schedule:

1. An expanded critical path method (CPM) construction project schedule shall be submitted per Exhibit X. Base the schedule on the preliminary Project Schedule in Exhibit D of the Agreement and incorporate review comments and other feedback. Submit an electronic file of the schedule to Owner for review.
2. The CPM Project Schedule shall be developed using Primavera P6 and submitted at least monthly in resident format.
3. The Project Schedule shall show the Work in a graphic format suitable for displaying scheduled and actual progress.
  - a. Prepare schedules as a horizontal bar chart with separate bar for each major portion of the Work or operation.
  - b. The Project Schedule shall indicate major phases and key items of the Work including: starting date, engineering, procurement, delivery, construction, major milestones, dates of Mechanical Completion, start-up, commissioning, testing, Commercial Operation and Final Completion.
  - c. Breakdown Work into significant construction activity entries, with dates Work is expected to begin and be completed. Sequence of listings shall be in the chronological order of the start of each item of Work.
  - d. Scale and spacing shall allow room for notations and revisions.
  - e. Sheet Size: Minimum 11 x 17. 4.
4. The number and types of activities comprising the Project Schedule shall be subject to Owner approval. At least 90% of all activities shall be for durations of less than two weeks. No single schedule activity shall be greater than 30 days.
5. The Project Schedule shall show durations, calculated early and late start and finish dates, and float for each activity. Plug dates shall not be used.
6. Contractor shall not change the milestone dates of the accepted Project Schedule without prior concurrence of Owner.
7. The Project Schedule shall be resource loaded.
8. The Project Schedule shall use unique activity identifiers which correlate to the same activities in the work breakdown structure (WBS) associated with the schedule of values used for invoicing.
9. Coordinate Project Schedule with Milestone Payment Schedule, submittal schedule, procurement schedule, progress reports, and payment requests.

12/30/11  
W

JBL  
29-Dec-11

## EXHIBIT F5

### LIEN WAIVERS AND GENERAL RELEASE

#### FORM OF CONDITIONAL PARTIAL LIEN WAIVER TO BE PROVIDED BY MAJOR SUBCONTRACTORS:

##### Ghent CCR Transport Project

In accord with [insert subcontract name and paragraph(s) reference] the undersigned, for and in consideration of the payments made by \_\_\_\_\_, (the "Company"), to the undersigned, for labor employed in and/or equipment or materials furnished for the construction of the above-referenced Project pursuant to the above-referenced subcontract, hereby certifies as follows:

1. Upon receipt of the sum of \_\_\_\_\_, the undersigned will have received payment in full, less retainage, for labor employed in, equipment or materials furnished and/or performance of work for the construction of the Project through the \_\_\_\_ day of \_\_\_\_\_, 201X and except for receipt of said sum and as an inducement to the Company to make payment of the same, and except for retainage and the following matters [OUTSTANDING CLAIMS TO BE IDENTIFIED], the undersigned hereby affirms that there are no outstanding claims against the Company in connection with any labor employed, work done, equipment or materials furnished or performance of work by the undersigned pursuant to the above-referenced subcontract through such date.

2. Contingent upon receipt of the sum referenced in paragraph 1, the undersigned does hereby waive, release and quit claim in favor of the Owner of the Project, any owner of the site on which the Project is located, each and every party acquiring title to and interest in and/or making a loan on the Project and the title company or companies examining and/or insuring title to the Project and any and all of their successors and assignees (collectively the "Beneficiaries"), all rights that presently exist or hereafter may accrue to the undersigned to assert a lien, whether contractual, statutory or constitutional, upon the land and improvements comprising the Project which rights have arisen or shall arise out of or in connection with labor employed, equipment or materials furnished or performance of work pursuant to the above-referenced subcontract and amendments thereto, but only for labor employed and/or equipment and materials furnished and/or work performed through the \_\_\_\_ day of \_\_\_\_\_, 201X, and excepting the claims listed in paragraph 1 above (if any).

3. The undersigned has not assigned any claim against the Company, or any of the other Beneficiaries, nor any lien or right to perfect a lien with respect to the Project, and the undersigned has the right, power and authority to execute this document.

4. The undersigned warrants that all laborers and subcontractors employed by it in connection with the Project, and all suppliers or materialmen from which it has acquired equipment or materials incorporated into the Project and any lien or bond claimant relating to the undersigned's work in connection with the Project have been paid all amounts due and owing through the \_\_\_\_ day of \_\_\_\_\_, 201X and that none of such laborers, subcontractors, suppliers, materialmen, or claimants has any unsatisfied or unbonded lien or related claim against the Project through such date, except in cases of Owner's non-payment. The undersigned further warrants that, to the best of its knowledge and belief, all applicable due and outstanding taxes, fees, contributions and benefits relating directly or indirectly to the undersigned's work and which are the responsibility of the undersigned have been paid in full.

5. No security interest has been given or executed by the undersigned for or in connection with any materials, appliances, machinery, fixtures or furnishings placed upon or installed in the Project. This Affidavit and Partial Release of Liens is for the benefit of the Company and the Beneficiaries.

This Affidavit and Partial Release of Lien is an independent covenant and will operate and be effective with respect to work performed, labor employed and/or equipment and materials furnished and/or performance of work under the above-referenced subcontract and any related supplemental contract or contracts for extra or additional work on the Project performed by the undersigned through the \_\_\_\_ day of \_\_\_\_\_, 201X.

IN WITNESS WHEREOF, this Affidavit and Partial Release of Lien has been executed on this \_\_\_\_ day of \_\_\_\_\_, 201X.

WITNESS: \_\_\_\_\_ (Name)

\_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_ day of \_\_\_\_\_, 201X.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
(Notarial Seal)

12/30/11  
SL

2  
J. B. ...  
29-Dec-11

**FORM OF CONDITIONAL PARTIAL LIEN WAIVER TO BE PROVIDED BY  
CONTRACTOR:**

**Ghent Generating Station CCR Transport Project**

In accord with Section 8.6(iii) of the Engineering, Procurement and Construction Agreement, dated as of [\_\_\_\_\_, 20XX] ("Agreement"), by and between \_\_\_\_\_ ("Contractor") and Kentucky Utilities Company (the "Owner"), the Contractor, for and in consideration of the payments to be made by the Owner to the Contractor, for Work performed, labor employed and/or for Equipment furnished in connection with the construction of the Facility pursuant to the above-referenced Agreement, hereby certifies as follows. Capitalized terms used and not defined herein shall have the respective meanings set forth in the Agreement:

1. In conjunction with this lien waiver, Contractor is submitting an invoice to Owner in the sum of \_\_\_\_\_ with respect to Work performed, labor employed and/or Equipment provided in connection with the construction of the Facility for the period the \_\_\_\_ day of \_\_\_\_\_, 201X through to the \_\_\_\_ day of \_\_\_\_\_, 201X.

2. Contingent upon receipt of the sum referenced in paragraph 1 in accordance with the Agreement, the Contractor does hereby waive, release and quit claim in favor of the Owner and the Financing Parties and any and all of their successors and assignees (collectively the "Beneficiaries"), all rights that presently exist or hereafter may accrue to the Contractor to assert a lien, whether contractual, statutory or constitutional, upon the Facility and/or all or any portion of the Ghent Generating Station Site or any improvements thereon which rights have arisen or arise out of or in connection with the performance of the Work pursuant to the Agreement, but only for Work performed, labor employed and/or Equipment furnished through the \_\_\_\_ day of \_\_\_\_\_, 201X, except for the following claims: .

3. The Contractor has not assigned any lien or right to perfect a lien against the Facility and/or all or any portion of the Ghent Generating Station Site or any improvements thereon, and the Contractor has the right, power and authority to execute this document.

4. No security interest has been given or executed by the Contractor for or in connection with any materials, equipment, appliances, machinery, fixtures or furnishings placed upon, provided for or installed in the Facility and/or on all or any portion of the Ghent Generating Station Site. This Affidavit and Partial Release of Liens is for the benefit of the Beneficiaries.

This Affidavit and Partial Release of Lien is an independent covenant and will operate and be effective with respect to Work performed and labor employed and/or Equipment furnished under the Agreement and any related supplemental contract or contracts for extra or additional work performed by the Contractor in connection with the Facility for the period the \_\_\_\_ day of \_\_\_\_\_, 201X to the \_\_\_\_ day of \_\_\_\_\_, 201X.

IN WITNESS WHEREOF, this Affidavit and Partial Release of Lien has been executed on this \_\_\_\_ day of \_\_\_\_\_, 201X.

WITNESS: \_\_\_\_\_ (Name)

\_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_ day of \_\_\_\_\_, 201X.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
(Notarial Seal)

12/30/11  
wr

4  
JBL  
29-Dec-11

**FORM OF FINAL AND FULL LIEN WAIVER TO BE PROVIDED BY MAJOR  
SUBCONTRACTORS:**

**Ghent Generating Station Project**

In accord with [insert subcontract name and paragraph(s) reference] the undersigned, for and in consideration of the payments made by \_\_\_\_\_ (the "Company"), to the undersigned, for labor employed in and/or equipment and materials furnished for the construction of the above-referenced Project pursuant to the above-referenced subcontract, hereby certifies as follows:

1. Upon receipt of the sum of \_\_\_\_\_, the undersigned will have received final payment in full for all labor employed in and/or equipment and materials furnished and/or performance of work in connection with the construction of the Project, and except for receipt of said sum and as an inducement to the Company to make payment of the same, and, except for the following matters [OUTSTANDING CLAIMS TO BE IDENTIFIED], the undersigned hereby affirms that there are no outstanding claims against the Company in connection with the Project in connection with any labor employed, equipment and materials furnished and/or performance of work by the undersigned pursuant to the above-referenced subcontract.

2. In consideration of the payments made to date and upon receipt of the sum of \_\_\_\_\_, the undersigned does hereby waive, release and quit claim in favor of the Owner of the Project, any owner of the site on which the Project is located, each and every party acquiring title to and interest in and/or making a loan on the Project and the title company or companies examining and/or insuring title to the Project and any and all of their successors and assignees (collectively, the "Beneficiaries"), all rights that presently exist or hereafter may accrue to the undersigned to assert a lien, whether contractual, statutory or constitutional, upon the land and improvements comprising the Project which rights have arisen or shall arise out of or in connection with labor employed, equipment and materials furnished and/or performance of work pursuant to the above-referenced subcontract and amendments thereto, except for the claims identified in paragraph 1 above (if any).

3. Contingent upon the receipt of the sum of \_\_\_\_\_, and except with respect to claims identified in paragraph 1 above, the undersigned does hereby forever release, waive, and discharge the Company, the Project, the Owner of the Project and the other Beneficiaries from any and all causes of action, suits, debts, accounts, damages, encumbrances, judgments, claims, and demands whatsoever, in law or equity which the undersigned and/or its successors and/or assignees ever had, or ever will have against any of them by reason of labor employed in, equipment and materials furnished and/or the performance of work relating to the construction of the Project; and the undersigned hereby agrees to indemnify and hold the above parties harmless from any and all damages, costs expenses, demands, suits, and legal fees, directly or indirectly relating to any of the foregoing claims or liens.

4. The undersigned has not and will not assign any claim against the Company, or any of the Beneficiaries, nor any lien or right to perfect a lien against the Project, and the undersigned has the right, power, and authority to execute this Affidavit, Waiver and Release.

12/30/11  
42

5 JBH  
24-Dec-11

5. The undersigned warrants that all laborers and subcontractors employed by it, and all suppliers or materialmen from which it has acquired equipment or materials incorporated into the Project and any lien or bond claimant relating to the undersigned's work have been paid all amounts due and owing through the date hereof and that none of such laborers, subcontractors, suppliers, materialmen, or claimants has any claim, demand, or lien against the Project through the date hereof. The undersigned further warrants, to the best of its knowledge and belief that all due and outstanding applicable taxes, fees, contributions and benefits relating directly or indirectly to the undersigned's work and which are the responsibility of the undersigned have been paid in full.

6. No security interest has been given or executed by the undersigned for or in connection with any equipment, materials, appliances, machinery, fixtures, or furnishings placed upon or installed in the Project.

This Affidavit, Waiver of Lien and Release shall be an independent covenant and shall operate and be effective with respect to labor employed, equipment and materials furnished and/or performance of work under the above-referenced subcontract and any related supplemental contract or contracts for extra or additional work on the Project performed by the undersigned. This Affidavit of Waiver and Release is for the benefit of the Company and the Beneficiaries.

IN WITNESS WHEREOF, this Affidavit, Waiver of Lien and Release has been executed on this \_\_\_\_\_ day of \_\_\_\_\_, 201X.

WITNESS:

(Name of Company)

\_\_\_\_\_

Subscribed, sworn to, and acknowledged before me this \_\_\_\_ day of \_\_\_\_, 201X.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
(Notarial Seal)

**FORM OF FINAL AND FULL LIEN WAIVER TO BE PROVIDED BY CONTRACTOR:**

**Ghent Generating Station Site**

In accord with Section 8.6(iii) of the Engineering, Procurement and Construction Agreement, dated as of [\_\_\_\_\_, 20XX] ("Agreement"), by and between \_\_\_\_\_ ("Contractor") and Kentucky Utilities Company ("Owner") the Contractor, for and in consideration of the payments made by the Owner to the Contractor for Work performed, labor employed in and/or Equipment furnished for the construction of the Facility pursuant to the above-referenced Agreement, hereby certifies as follows. Capitalized terms used and not defined herein shall have the respective meanings as set forth in the Agreement:

1. Upon receipt of the sum of \_\_\_\_\_, the Contractor will have received final payment in full for all Work performed, labor employed in and/or Equipment furnished in the construction of the Facility, and except for receipt of said final payment and [OUTSTANDING CONTRACTOR CLAIMS TO BE IDENTIFIED], and as an inducement to the Owner to make such final payment, the Contractor hereby affirms that there are no other outstanding claims against the Owner in connection with this Project. The above excludes claims for unreimbursed Sales Taxes for which the Contractor is entitled to be reimbursed under the Agreement and amounts for which the Contractor is entitled to indemnity under the Agreement, in each case to the extent not known by Contractor on the date of this Affidavit.

2. In consideration of the payments made to date and upon receipt of the sum of \_\_\_\_\_, the Contractor does hereby waive, release and quit claim in favor of the Owner and the Financing Parties and any and all of their successors and assignees (collectively, the "Beneficiaries"), all rights that presently exist or hereafter may accrue to the Contractor to assert a lien, whether contractual, statutory or constitutional, upon the Facility and/or all or any portion of the Ghent Generating Station Site or improvements thereon, which rights have arisen or arise out of or in connection with the performance of the Work pursuant to the Agreement, except for the claims identified in paragraph 1 above.

3. Contingent upon the receipt of the sum of \_\_\_\_\_, and except with respect to claims identified or referenced in paragraph 1 above, the Contractor does hereby forever release, waive, and discharge the Beneficiaries from any and all causes of action, suits, debts, accounts, damages, encumbrances, judgments, claims, and demands whatsoever, in law or equity which the Contractor and/or its successors and/or assignees ever had or ever will have against any of them by reason of non-payment for Work performed, labor employed in and/or Equipment furnished relating to the construction of the Facility; and, in accordance with and subject to the terms of the Agreement, the Contractor hereby agrees to indemnify and hold the above parties harmless from any and all damages, costs expenses, demands, suits, and legal fees, directly or indirectly relating to any of the foregoing claims or liens.

4. The Contractor has not and will not assign any claim against the Beneficiaries, nor any lien or right to perfect a lien against the Facility and/or all or any portion of the Ghent Generating Station Site or improvements thereon, and the Contractor has the right, power, and authority to execute this Affidavit, Waiver and Release.



5. The Contractor warrants that all laborers and subcontractors employed by it, and all suppliers or materialmen from which it has acquired Equipment incorporated into the Facility and any lien or bond claimant relating to the Contractor's work have been paid all amounts due and owing through the date hereof and that none of such laborers, subcontractors, suppliers, materialmen, or claimants has any unsatisfied or un-bonded lien against the Facility and/or all or any portion of the Ghent Generating Station Site or improvements thereon, through the date hereof. The Contractor further warrants that all due and outstanding applicable taxes, fees, contributions and benefits relating directly or indirectly to the Contractor's work and which are the responsibility of the Contractor under the Agreement have been paid in full.

6. No security interest has been given or executed by the Contractor for or in connection with any materials, equipment, appliances, machinery, fixtures, or furnishings placed upon or installed in Facility and/or all or any portion of the Ghent Generating Station Site or improvements thereon.

This Affidavit, Waiver of Lien and Release shall be an independent covenant and shall operate and be effective with respect to Work performed, labor employed and/or Equipment furnished under the Agreement and any related supplemental contract or contracts for extra or additional work performed by the Contractor in connection with the Facility. This Affidavit of Waiver and Release is for the benefit of the Beneficiaries.

IN WITNESS WHEREOF, this Affidavit, Waiver of Lien and Release has been executed on this \_\_\_\_\_ day of \_\_\_\_\_, 201X.

WITNESS:

(Name of Company)

\_\_\_\_\_

Subscribed, sworn to, and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201X.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
(Notarial Seal)

12/30/11  
m

8  
ABH  
29-Dec-11

# GHENT GENERATING STATION DIGGING PERMIT

PERMIT NUMBER: \_\_\_\_\_

REVISED: 8-17-05

This form is to be completed and approved before beginning any digging at the Ghent Generation Station.

Requestor's Name & Company: \_\_\_\_\_

Date Of Request: \_\_\_\_\_

Date Work Is Planned To Start: \_\_\_\_\_

Description Of Work To Be Done & Specific Areas Involved:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sketch Or Drawing Attached? (Y/N) \_\_\_\_\_

### FGD CONSTRUCTION OFFICE APPROVALS:

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### GHENT STATION APPROVALS:

Ghent Planning Office: \_\_\_\_\_ Date: \_\_\_\_\_  
(2-347-4052 or 4053)

Witnesses, If Required (To Be Determined By Ghent Station's Planning Office Representative):

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

THE PERMISSION GIVEN TO DIG: \_\_\_\_\_

NAME OF PERSON NOTIFIED: \_\_\_\_\_

Copies To: Ghent Planning Office: \_\_\_\_\_

FGD Construction Office: \_\_\_\_\_

12/30/11  
AL

*JBLH*  
24-Dec-11

# HOT WORK PERMIT

**STOP!**

Avoid hot work or seek an alternative/safer method, if possible.

This *Hot Work Permit* is required for any temporary operation involving open flames or producing heat and/or sparks. This includes, but is not limited to: brazing, cutting, grinding, soldering, torch-applied roofing and welding.

Instructions	Part 1 Required Precautions Checklist								
<p><b>1. Firesafety supervisor:</b></p> <p>A. Verify precautions listed at right (or do not proceed with the work).</p> <p>B. Complete and retain Part 1. (Part 1A is for quality assurance documentation, if necessary.)</p> <p>C. Issue Part 2 to person performing hot work.</p>	<p><input type="checkbox"/> Available sprinklers, hose streams and extinguishers are in service/operable.</p> <p><input type="checkbox"/> Hot work equipment in good working condition.</p> <p>Requirements within 35 ft. (11 m) of hot work</p> <p><input type="checkbox"/> Flammable liquid, dust, lint and oily deposits removed.</p> <p><input type="checkbox"/> Explosive atmosphere in area eliminated.</p> <p><input type="checkbox"/> Floors swept clean.</p> <p><input type="checkbox"/> Combustible floors wet down, covered with damp sand or fire-resistant sheets.</p> <p><input type="checkbox"/> Remove other combustible material where possible. Otherwise, protect with FM Approved welding pads, blankets and curtains, fire-resistant tarpaulins or metal shields.</p> <p><input type="checkbox"/> All wall and floor openings covered.</p> <p><input type="checkbox"/> FM Approved welding pads, blankets and curtains installed under and around work.</p> <p><input type="checkbox"/> Protect or shut down ducts and conveyors that might carry sparks to distant combustible material.</p> <p>Hot work on walls, ceilings or roofs</p> <p><input type="checkbox"/> Construction is noncombustible and without combustible covering or insulation.</p> <p><input type="checkbox"/> Combustible material on other side of walls, ceilings or roofs is moved away.</p> <p>Hot work on enclosed equipment</p> <p><input type="checkbox"/> Enclosed equipment cleaned of all combustible material.</p> <p><input type="checkbox"/> Containers purged of flammable liquid/vapor.</p> <p><input type="checkbox"/> Pressurized vessels, piping and equipment removed from service, isolated and vented.</p> <p>Fire watch/hot work area monitoring</p> <p><input type="checkbox"/> Fire watch will be provided during and for 60 min. after work, including any break activity.</p> <p><input type="checkbox"/> Fire watch is supplied with suitable extinguishers, and where practical, a charged small hose.</p> <p><input type="checkbox"/> Fire watch is trained in use of equipment and in sounding alarm.</p> <p><input type="checkbox"/> Fire watch may be required in adjoining areas, above and below.</p> <p><input checked="" type="checkbox"/> Monitor hot work area for an additional three (3) hours after the 60-min. fire watch.</p> <p>Other precautions taken:</p> <p><input type="checkbox"/></p>								
<p>Hot work by</p> <p><input type="checkbox"/> Employee</p> <p><input type="checkbox"/> Contractor _____</p> <p>Date _____ Job number _____</p> <p>Location/Building and floor _____</p> <p>Nature of job _____</p> <p>Name (print) and signature of person performing hot work _____</p> <p>_____</p> <p>I verify the above location has been examined, the precautions checked on the Required Precautions Checklist have been taken to prevent fire, and permission is authorized for this work.</p> <p>Name (print) and signature of firesafety supervisor/operations supervisor _____</p> <p>_____</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: center;">Permit Expires</td> <td style="width: 30%; text-align: center;">Date</td> <td style="width: 30%; text-align: center;">Time</td> <td style="width: 10%; text-align: center;">p.m. p.d.</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>	Permit Expires	Date	Time	p.m. p.d.					<div style="border: 1px solid black; padding: 5px; font-size: 24px; font-weight: bold;">3563132</div>
Permit Expires	Date	Time	p.m. p.d.						
<p><b>Note:</b> Emergency notification on back of form. Use as appropriate for your facility.</p> <p>To order additional hot work permits or other FM Global resources, order online 24 hours a day, seven days a week, at <a href="http://www.fmglobalcatalog.com">www.fmglobalcatalog.com</a>.</p> <div style="display: flex; align-items: center;"> <p>F2630 (REV. 6/07) Printed in USA (6/07) © 2003-2007 FM Global All rights reserved.</p> </div>									

12/30/11  
en

*John*  
24-Dec-11

## EXHIBIT F8

### PARENT GUARANTEE OF CONTRACTOR'S OBLIGATION

This Parent Guarantee (this "Guarantee") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2011 by Tic Holdings, Inc., a Colorado corporation ("Guarantor"), to and in favor of Kentucky Utilities Company, a Kentucky corporation ("KU").

#### WITNESSETH:

**WHEREAS**, TIC – The Industrial Company, a Delaware corporation ("Contractor"), has entered into the Engineering, Procurement and Construction Agreement dated as of \_\_\_\_\_, 2011 (the "Agreement") for the supply of a Coal Combustion Residual (CCR) Transport system for installation and incorporation into the electric power generating unit specified thereby, along with certain ancillary or appurtenant equipment, materials and related technical services, as more particularly described therein; and

**WHEREAS**, Contractor is a wholly-owned subsidiary of Guarantor; and

**WHEREAS**, it is a condition to KU's payment obligations under the Agreement that Guarantor shall execute and deliver to KU a guarantee of performance and payment by Contractor in the form of this Guarantee;

**NOW, THEREFORE**, for and in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, GUARANTOR COVENANTS AND AGREES AS FOLLOWS:

#### AGREEMENT

1. Unless otherwise defined herein, all capitalized terms used herein and defined in the Agreement shall have their respective meanings as therein defined. All references to the Agreement made herein shall mean and refer to the Agreement as amended from time to time.

2.

(a) Guarantor hereby irrevocably and unconditionally guarantees to KU, its successors and permitted assigns, as primary obligor and not merely as a surety, (i) the full and prompt payment when due of all of Contractor's payment obligations under the Agreement and (ii) the full and prompt performance when due of all of Contractor's representations, warranties, covenants, duties and agreements contained in the Agreement. All obligations, representations, warranties, covenants, duties and agreements described in clauses (i) and (ii) above are collectively referred to herein as the "Obligations." If at any time Contractor fails, neglects or refuses to timely or fully perform any of the Obligations as expressly provided in the terms and conditions of the Agreement, then, upon receipt of written notice from KU specifying the failure, Guarantor shall perform, or cause to be performed, any such obligation, responsibility, or undertaking as required pursuant to the terms and conditions of the Agreement, including without limitation all payment obligations under the Agreement. It is expressly understood and agreed by Guarantor that to the extent Guarantor's obligations hereunder relate to Obligations which require performance other than the payment of money, KU may proceed against Guarantor to effect specific performance thereof (to the extent such relief is available) or for payment of damages resulting from Contractor's nonperformance. With respect to any claim, action or proceeding against Guarantor in connection with this Guarantee and except as otherwise provided herein, Guarantor shall be entitled to assert

12/30/11

AN

*J.B.H.*  
24-Dec-11

those defenses, to the extent based on or arising pursuant to the terms and conditions expressly contained in the Agreement or as may otherwise be available at law or in equity, that Contractor would be entitled to assert in its own right had such claim, action or proceeding been asserted or instituted against Contractor directly.

(b) Notwithstanding anything to the contrary contained herein, Guarantor's aggregate liability for any and all demands made under this Guarantee shall not exceed the Contract Price. This Guarantee will terminate and be of no further force or effect upon the expiration of the Warranty Period expiration date other than with respect to claims made by KU under this Guarantee prior thereto.

3. This Guarantee is a continuing, absolute, irrevocable and unconditional guarantee by Guarantor of the Obligations. The obligations of Guarantor under this Guarantee shall remain in full force and effect and shall not be affected, reduced, modified or impaired, and Guarantor shall have no right to terminate this Guarantee or to be released, relieved or discharged, in whole or in part, from its payment or performance obligations under this Guarantee, by reason of any of the following:

(a) any amendment, supplement or modification to, waiver of, consent to or departure from, or failure to exercise any right, remedy, power or privilege under or in respect of, the Agreement, the Obligations, or any other agreement or instrument relating thereto to which Contractor is a party;

(b) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of Contractor's assets, or the insolvency, bankruptcy, reorganization, dissolution or liquidation of, or any similar occurrence with respect to, or cessation of existence of, or change of ownership of Contractor, or any rejection of any of the Obligations in connection with any bankruptcy, insolvency or similar proceedings in which Contractor is the debtor or the insolvent party (with or without notice to or knowledge of Guarantor) or any disallowance of all or any portion of any claim against Contractor by KU, its successors and permitted assigns in connection with any such proceeding;

(c) any lack of genuineness, validity, regularity or value of the Agreement, any of the Obligations or any other agreement or instrument relating thereto to which Contractor is a party and which has been entered into by the parties in accordance with the terms of each respective agreement;

(d) any lack of legality or enforceability of the Agreement, any of the Obligations or any other agreement or instrument relating thereto to which Contractor is a party and which has been entered into by the parties in accordance with the terms of each respective agreement;

(e) any failure on the part of Contractor to perform or comply with any term of the Agreement;

(f) the assignment or transfer of this Guarantee, the Agreement or any other agreement or instrument referred to in the Agreement or applicable to Contractor or the Obligations by KU to a Person to which the Agreement is permitted to be assigned;

(g) any change in the ownership of any equity interest in Guarantor (including any such change that results in Guarantor no longer owning (directly or indirectly) an equity interest in Contractor);

(h) the merger or consolidation of Contractor into or with any other Person, or Contractor's loss of its separate corporate identity or Contractor ceasing to be an affiliate of Guarantor;

12/30/11  
m

Exh\_F8\_Parent Guarantee.doc

2

AB/ku  
29-Dec-11

- (i) any action by KU under the Agreement granting indulgence or extension of time for payment to any Person; or
- (j) except as set forth in **Section 2(b)**, any other event, circumstance, act or omission whatsoever which might in any manner or to any extent vary the risk of Guarantor or otherwise constitute a legal or equitable discharge of a surety or guarantor.

Without limiting the foregoing, Guarantor hereby consents and agrees that the following actions may be undertaken from time to time without notice to Guarantor: (x) the Agreement may be amended in accordance with its terms to increase or decrease the obligations of KU or Contractor thereunder; and (y) KU and Contractor may compromise or settle any unpaid or unperformed Obligations or any other obligation or amount due or owing, or claimed to be due or owing, under the Agreement.

4. Guarantor hereby unconditionally waives the defenses under this Guarantee of promptness, diligence, presentment, demand for payment, protest, notice of dishonor, notice of default, notice of acceptance, notice of intent to accelerate, notice of acceleration, notice of the incurring of the Obligations created under or pursuant to the Agreement and all other notices whatsoever (provided that Guarantor shall be entitled to written notice from KU specifying Contractor's failure in accordance with **Section 2(a)** above).

5. Guarantor agrees that this is a guarantee of payment and performance and not merely a guarantee of collection. The liability of Guarantor under this Guarantee shall not be conditional or contingent upon the pursuit of any remedy against Contractor or any requirement that KU exhaust any right, power or remedy or proceed against any other person prior to any action against Guarantor under the terms hereof. This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment to KU by Contractor under the Agreement is rescinded or must otherwise be returned by KU for any reason, including, without limitation, upon the insolvency, bankruptcy or dissolution of Contractor or otherwise, all as though such payment had not been made.

6. Notwithstanding any payment or payments made by Guarantor hereunder, Guarantor shall not be entitled to exercise or enforce any subrogation rights arising by reason of payments made under this Guarantee, nor shall the Guarantor seek or be entitled to seek any contribution or reimbursement from Contractor in respect of payments made by Guarantor hereunder until all amounts owing to KU by Contractor on account of the Obligations and all amounts owing hereunder are indefeasibly paid in full. Once the Guarantor has so paid all amounts to KU in full under this Guarantee, then, and at such time, KU will reasonably assist Guarantor in exercising and enforcing any and all subrogation rights Guarantor may have, *provided* that the reasonable costs of providing such assistance shall be reimbursed by Guarantor to KU.

7. Guarantor agrees that payment or performance of any of the Obligations or other acts which toll any statute of limitations applicable to the Obligations or the Agreement shall also toll the statute of limitations applicable to Guarantor's liability under this Guarantee. No delay or omission on the part of KU, its successors or permitted assigns, in the exercise of, or failure to exercise, any right or remedy shall operate as a waiver thereof, a waiver of any other rights or remedies or a release of Guarantor from any Obligations hereunder and no single or partial remedy shall preclude any further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided herein are cumulative and not exclusive of any rights and remedies provided by law or otherwise to enforce this Guarantee or the Obligations.

8. Guarantor additionally represents and warrants to KU as follows:

12/30/11  
m

J.B.H.  
29-Dec-11

(a) Guarantor is a corporation duly organized, validly existing, authorized to do business and in good standing under the laws of the State of Colorado.

(b) Guarantor has the requisite corporate power and authority to own its property and assets, transact the business in which it is engaged and to enter into this Guarantee and carry out its obligations hereunder. The execution, delivery, and performance of this Guarantee have been duly and validly authorized and no other corporate proceedings on the part of Guarantor or its affiliates are necessary to authorize this Guarantee or the transactions contemplated hereby.

(c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body or third party is required for the due execution, delivery and performance by Guarantor of this Guarantee.

(d) This Guarantee, when executed, shall constitute a valid and binding agreement of Guarantor and is enforceable against Guarantor in accordance with the terms of this Guarantee, except as may be limited by bankruptcy or insolvency or by other laws affecting the rights of creditors generally and except as may be limited by the availability of equitable remedies.

(e) As of the date hereof, the execution, delivery, and performance of this Guarantee does not and will not (i) result in a default, breach or violation of (A) the certificate or articles of incorporation or bylaws of Guarantor or (B) to the best of Guarantor's knowledge after due inquiry, any provision of any applicable law, rule, statute, legislation or order of any governmental authority, or (ii) constitute an event which would permit any person or entity to terminate rights or accelerate the performance or maturity of any indebtedness or obligation of Guarantor, the effect of which would materially affect Guarantor's ability to meet its obligations under this Guarantee, or (iii) constitute an event which would require any consent of a third party or under any agreement to which Guarantor is bound, the absence of which consent would materially and adversely affect Guarantor's ability to meet its obligations under this Guarantee.

9. No amendment of any provision of this Guarantee shall be effective unless it is in writing and signed by Guarantor, KU and any permitted assignee of KU's rights hereunder, and no waiver of any provision of this Guarantee, and no consent to any departure by Guarantor therefrom, shall be effective unless it is in writing and signed by KU and any permitted assignee of KU's rights hereunder.

10. This Guarantee is a continuing guarantee and shall (a) remain in full force and effect until its expiration in accordance with Section 2(b) above, (b) be binding upon Guarantor and its successors and (c) inure to the benefit of and be enforceable by KU and its successors and permitted assigns. Guarantor may not assign its rights or delegate its duties without the written consent of KU.

11. This Guarantee shall be governed by and construed in accordance with the internal substantive laws of the Commonwealth of Kentucky, excluding rules governing conflicts of laws. Each of Guarantor and, by its acceptance hereof, KU, (a) irrevocably submits to the exclusive jurisdiction of the United States District Court for the Western District of Kentucky, located in Louisville (and if such court does not have jurisdiction over a matter at controversy between Guarantor and KU, any state court located in Louisville, Kentucky), (b) waives any objection it may now or hereafter have to the laying of venue of any of the aforesaid courts in any action or proceeding involving this Guarantee and (c) agrees that service of process in any action or proceeding in such courts may be effected by mailing a copy thereof by registered or certified mail to them at their address provided in Section 12 below. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT

OF OR RELATING TO THIS GUARANTEE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

12. Any notices or other communication to be given hereunder shall be given in writing, sent by (a) personal delivery, (b) internationally recognized expedited delivery service, (c) registered or certified United States mail, postage prepaid, or (d) facsimile (followed by registered or certified United States mail, postage prepaid) as follows:

*If to Guarantor:*

TIC Holdings, Inc.  
2211 Elk River Road  
Steamboat Springs, Colorado 80477  
Attention: Pat Barney, General Counsel

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

TIC – The Industrial Company  
188 Inverness Drive West, Suite 700  
Englewood, Colorado 80120  
Attention: Cam Chandler, Legal Counsel

*If to KU:*

Kentucky Utilities Company  
820 West Broadway  
Louisville, Kentucky 40202  
Attention: Scott Straight, Director of Project Engineering  
Email: scott.straight@eon-us.com

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

Kentucky Utilities Company  
220 West Main Street  
Louisville, Kentucky 40202  
Attention: John McCall, General Counsel  
Email: john.mccall@eon-us.com

or to such other address or to the attention of such other individual as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of receipt at the address and in the manner provided herein, or in the case of facsimile, upon receipt.

13. In the event that any of the provisions, or portions or applications thereof, of this Guarantee are held to be unenforceable or invalid by any court of competent jurisdiction, KU and Guarantor shall negotiate an equitable adjustment in the provisions of this Guarantee with a view toward effecting the purpose of this Guarantee, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

12/30/11  
w



IN WITNESS WHEREOF, Guarantor, intending to be legally bound hereby, has caused this Guarantee to be executed and effective as of the date first written above upon the signature of its duly-authorized officer appearing below:

**TIC HOLDINGS, INC.**

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

12/30/11  
w

ABK  
29-Dec-11

## EXHIBIT F9

### Second Tier Procurement Program

#### 1.0 Summary

Attached are Contractor forms for data submittal regarding the use of Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Disadvantaged Business Enterprises (DBE), union and non-union local contractors (LC), union contractors (UC), and non-union contractors (NUC). Contractor does not have to use the exact form; however, all the information requested must be submitted. Expenditures for MBEs, WBEs, DBEs, LCs, UCs, NUCs must be supplied separately; do not combine these expenditures. Where a supplier meets more than one category, identify the categories and whether or not the values for each category include the expenditures. Ghent CCR Transport Supplier forms submitted to the Contractor under the Ghent CCR Transport Supplier Contract shall be submitted to the Owner.

#### 2.0 Definitions and Terms of Management and Ownership

- 2.1 WBE: Woman Business Enterprise: A certified business enterprise that is at least 51% owned by a woman; or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women.
- 2.2 MBE: Minority Business Enterprise: A certified business enterprise at least 51% owned by a minority individual or group, or in case of any publicly owned business, at least 51% of the stock of which is owned by one or more minority groups, and, and whose management and daily business operations are controlled by one or more of these individuals. KU shall presume that minority includes, but is not limited to African Americans, Hispanic American, Asian Pacific Americans, Native American, Subcontinent Asian American, and other groups.
- 2.3 DBE: Disadvantaged Business Enterprise: A certified business enterprise at least 51% owned by a disadvantaged individual or group, or in case of any publicly owned business, at least 51% of the stock of which is owned by one or more disadvantaged groups, and, and whose management and daily business operations are controlled by one or more of these individuals. KU shall presume that disadvantaged includes, but is not limited to Veteran Owned, Service Disabled Veteran Owned and other groups found to be disadvantaged by the U.S. Small Business Administration.
- 2.4 LC: union and non-union local contractor: A business enterprise with primary operations within the Commonwealth of Kentucky or the Louisville Kentucky, Evansville Indiana, or Cincinnati Ohio Metropolitan Statistical Area as defined by the U.S. Census Bureau.
- 2.5 UC: union contractor: A business enterprise with primary operations utilizing union labor.
- 2.6 NUC: non-union contractor: A business enterprise with primary operations utilizing non-union labor.

### 3.0 Expenditure Definitions

- 3.1 Direct expenditures are those materials and services acquisitions from MBEs/WBEs/DBEs/LCs/UCs/NUCs directly attributable to the Agreement. Direct expenditures shall be reported at 100% of cost.
- 3.2 Indirect expenditures are those materials and service acquisitions from MBEs/WBEs/DBEs/LCs that can not be identified or apportioned to any specific customer. For example -- "overhead" items such as paper, computing expenses, or office maintenance incurred by your company. Also included would be any and all materials and services purchased from MBEs/WBEs/DBEs/LCs that are used in the direct production of your product or service. These "indirect expenditures" should be proportionately allocated and reported to Owner as outlined in the example below:

"MBE Indirect Allocation" formula  $\frac{\text{Agreement Price}}{\text{Total YTD Sales}} = \text{Allocation Factor}$

$(\text{Total YTD MBE}^* \text{ Indirect Expenditures} \times \text{Allocation Factor}) = \text{Agreement MBE}^* \text{ Allocation}$

Example: Contractor's total sales are \$50 million; Agreement Price is \$3 million, and total indirect MBE expenditures are \$5,000,000.

$$\frac{\$3,000,000}{\$50,000,000} = 0.06$$

$$5,000,000 \times 0.06 = \$300,000 \text{ (KU's MBE Allocation)}$$

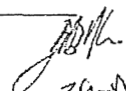
For both direct and indirect expenditures, list the names of the business enterprise, addresses, and dollar amounts.

**\*Note: A separate and similar calculation should also be made for WBEs, DBEs and LCs.**

### 4.0 Expenditure Reporting

Submit the requested information with each monthly invoice per Article 16.19 of the Agreement (Notices).

12/30/11  
m

  
29-Dec-11

\_\_\_\_\_  
(Company Name)

**MBE/WBE/DBE/LC Indirect Expenditure Report**  
**KU Second Tier Program**  
\_\_\_\_\_, 20\_\_

KU Contract/Purchase Order Number (if applicable): \_\_\_\_\_

**Indirect MBE Expenditure Allocation:**  
Use Factor from Previous Page

Sales To KU \$ \_\_\_\_\_

Total MBE Expenditures \$ \_\_\_\_\_

KU Allocation \$ \_\_\_\_\_

**Indirect WBE Expenditure Allocation:**

Sales To KU \$ \_\_\_\_\_

Total WBE Expenditures \$ \_\_\_\_\_

KU Allocation \$ \_\_\_\_\_

**Indirect DBE Expenditure Allocation:**

Sales To KU \$ \_\_\_\_\_

Total WBE Expenditures \$ \_\_\_\_\_

KU Allocation \$ \_\_\_\_\_

**Indirect LC Expenditure Allocation:**

Sales To KU \$ \_\_\_\_\_

Total WBE Expenditures \$ \_\_\_\_\_

LG&E and KU Services Co, \$ \_\_\_\_\_

**Note:** See indirect expenditure allocation formula explanation in Exhibit F9 of the Agreement (Second Tier Reporting Program)

\_\_\_\_\_  
Submitted By

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

12/30/11  
ac

*J. Blum*  
24-Dec-11

**MBE/WBE/DBE/LC/UC/NUC Direct Expenditure Report**  
**Second Tier Program**  
 \_\_\_\_\_, 20\_\_

Contractor: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Telephone: \_\_\_\_\_

Report Date: \_\_\_\_\_  
 Contract/Purchase Order No (if applicable): \_\_\_\_\_  
 Submitted By: \_\_\_\_\_ Title: \_\_\_\_\_

(1)	(2)	(3)		(4)	(5)
WORK DESCRIPTION	SUBCONTRACTING/SUBSUPPLIER NAME CONTACT PERSON & TELEPHONE NO.	TAX ID NO.	MBE/WBE DBE/LC UC/NUC	ORIGINAL PROPOSED EXPENDITURES	ACTUAL PAYMENT
		<b>TOTAL</b>			\$

REFER TO GUIDELINES ATTACHED TO THIS FORM

12/30/11  
m

4 JBH  
29-Dec-11

KUGuidelines for Second Tier (Direct Expenditure) Reporting

Contractor should complete requests 1 through 6, reporting its use of Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), Disadvantaged Business Enterprises (DBEs), union and non-union local contractors (LCs), union contractors (UCs), and non-union contractors (NUC) in direct connection with the goods/services provided under the Agreement.

Contractor should submit reports with the monthly invoice in a format equivalent to the attached MBE/WBE/DBE/LC/UC/NUC Direct Expenditure Report per Article 16.19 of the Agreement (Notices).

Contractor should provide the following Second-Tier information when submitting its monthly invoice on MBE/WBE/DBE/LC/UC/NUC expenditures either on the attached "Direct expenditure" form, or in an equivalent format:

1. **Work Description:** a brief statement of the goods/services provided by the MBE/WBE/DBE/LC/UC/NUC
2. **Subcontractor/Sub-supplier Name Contact Person & Telephone No.:** the name of a contact within the MBE/WBE/DBE/LC/UC/NUC who can verify expenditures made by GHENT CCR TRANSPORT Supplier.
3. **Tax ID Code:** if available.
4. **MBE/WBE/DBE/LC/UC/NUC:** Designate whether company is an MBE/WBE/DBE/LC/UC/NUC
5. **Original Proposed Expenditures:** initial estimate of anticipated expenditures with MBE/WBE/DBE/LC/UC/NUC
6. **Actual Payment:** total of payments made to the MBE/WBE/DBE/LC/UC/NUC through the current reporting period

12/30/11  
ca

Exh\_F9\_2nd Tier Procurement Plan

JBM  
29-Dec-11

EXHIBIT F-10

FORM OF PERFORMANCE LETTER OF CREDIT

**BENEFICIARY:** *Kentucky Utilities Company,*  
a Kentucky corporation  
820 West Broadway, Louisville, Kentucky 40202  
*Telephone: ( ) - - • Fax: ( ) - - • E-mail: @lge-ku.com*

Re: **Irrevocable Standby Letter of Credit No.** \_\_\_\_\_

Issue Date: \_\_\_\_\_, 20\_\_

We, *[Bank Name]*, hereby establish in favor of the above-named Beneficiary (the "**Beneficiary**") this Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (this "**Letter of Credit**") at the request of and for the account of TIC – The Industrial Company, a Delaware corporation, with its principal place of business at 2211 Elk River Road, Steamboat Springs, Colorado 80487 ("**TIC**"), effective immediately and expiring on the date set forth in numbered **Paragraphs 5** and **6** hereof.

This Letter of Credit, we are informed, is issued pursuant to the terms of the Engineering, Procurement and Construction Agreement, dated as of \_\_\_\_\_, 2011, by and between TIC and the Beneficiary, as the same may be amended from time to time (the "**Agreement**").

**1. Stated Amount.** The aggregate amount of funds available under this Letter of Credit shall be U.S. \$ \_\_\_\_\_ (\_\_\_\_\_ United States Dollars), less the aggregate amount of all previous drawings under this Letter of Credit (the "**Stated Amount**"). The Stated Amount may be reduced at any time upon our receipt of a Reduction Certificate executed by the Beneficiary in the form of **Attachment E**.

**2. Drawings.** A drawing hereunder may be made by the Beneficiary on any Business Day on or prior to the date this Letter of Credit expires by delivering to *[Bank Name]*, at any time during its business hours on such Business Day, at *[\_\_\_\_\_]* or at such other address as may be designated by written notice delivered to the Beneficiary as contemplated by numbered **Paragraph 9** hereof, an executed original (or, if applicable, a duplicate original issued in accordance with **Paragraph 14**) of this Letter of Credit together with (i) a draw certificate executed by an authorized officer of the Beneficiary in the form of **Attachment A** hereto (the "**Draw Certificate**"), completed and purportedly signed by such authorized officer and (ii) your draft in the form of **Attachment B** hereto (the "**Draft**"), completed and signed by such authorized officer. Partial drawings are permitted. Draw Certificates and Drafts under this Letter of Credit may be presented by you by means of the above documents sent by overnight delivery or courier to *[Bank Name]*, at its address set forth above, Attention: *[\_\_\_\_\_]* (or at such other address as may be designated by written notice delivered to you as contemplated by numbered **Paragraph 9** hereof).

**3. Time and Method for Payment.** We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate at the opening of business on the first (1st) Business Day succeeding the date of presentation of the conforming Draw Certificate. All amounts to be paid under this Letter of Credit shall be made without set-off or counterclaim by us of any kind.

**4. Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice, no later than one (1) Business Days following our receipt, that the demand for payment was not effected in

accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may correct any such non-conforming demand prior to the date this Letter of Credit expires.

**5. Expiration.** This Letter of Credit shall automatically expire at the close of business on the earlier of one year from the Issue Date specified above (or such later date to which this Letter of Credit may be extended in accordance with the provisions of numbered **Paragraph 6** hereof), or the date on which we receive a Cancellation Certificate in the form of **Attachment C** hereto executed by an authorized officer of the Beneficiary upon receipt of which this Letter of Credit shall be cancelled.

**6. Rollover.** This Letter of Credit shall be deemed automatically extended without amendment for additional periods of one (1) year each from the present or any future expiration date, unless at least sixty (60) days prior to any such expiration date we notify you by registered mail or overnight courier at the above address (or such other address as may be designated by you as contemplated by numbered **Paragraph 9** hereof and as amended accordingly) that we elect not to consider this Letter of Credit extended for any such additional one (1) year period. In the event that thereafter a letter of credit in replacement of this Letter of Credit and satisfactory to you shall not have been delivered to you by the date that is thirty (30) days prior to the expiration date of this Letter of Credit, you may draw upon this Letter of Credit pursuant to numbered **Paragraph 2** hereof in the full amount then available for drawing hereunder. In no event shall this Letter of Credit be automatically extended beyond \_\_\_\_\_, 20\_\_ (the "**Outside Expiration Date**"); provided, that, if TIC's letter of credit obligations shall remain in effect under the Agreement as of the Outside Expiration Date and you shall not have received by the date that is thirty (30) days prior to the Outside Expiration Date a letter of credit in replacement of this Letter of Credit satisfactory to you, you may draw upon this Letter of Credit pursuant to numbered **Paragraph 2** hereof in the full amount then available for drawing hereunder.

**7. Business Day.** As used herein, "**Business Day**" shall mean any day on which commercial banks are not authorized or required to close in the Commonwealth of Kentucky.

**8. Governing Law.** Except as otherwise expressly stated herein, this Letter of Credit shall be governed by the International Standby Practices, International Chamber of Commerce Publication No. 590 ("**ISP 98**") and any amendments or revisions thereto. As to matters not addressed by ISP 98, this Letter of Credit shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without giving effect to any choice of law rules which may direct the application of the laws of another jurisdiction.

**9. Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address (or, as applicable, the fax number) shown for you herein or such other address (or applicable fax number) as may from time to time be designated by you in a written notice to us and as amended accordingly. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address (or, as applicable, fax number) for us indicated on the signature page hereof, or such other address (or applicable fax number) as may from time to time be designated by us in a written notice to you.

**10. Irrevocability.** This Letter of Credit is irrevocable.

**11. Transferability.** This Letter of Credit is transferable in its entirety, but not in part and may be successively transferred. Only the issuing bank is authorized to act as the transferring bank with respect to the Letter of Credit represented hereby. We shall not recognize any transfer of this Letter of Credit until this original Letter of Credit (or, if applicable, any duplicate original issued pursuant to **Paragraph 14** below), together with any amendment(s) and an appropriately completed and executed Transfer Certificate in the form of **Attachment D** hereto, is received by us and our transfer fee of ¼ of 1% (Minimum \$250.00) of the

12/30/11  
m

12/20/11  
R



amount transferred is paid to us. The correctness of the signature and title of the person signing the transfer form must be certified by a duly-authorized officer acting in the name and on behalf of the Beneficiary or otherwise be authenticated by your bank. Upon and after any such transfer under this Letter of Credit, all Drafts and related documentation deliverable hereunder must be executed by the transferee as the Beneficiary hereof. This Letter of Credit may not be transferred to any person with which U.S. persons are prohibited from doing business under U.S. foreign assets control regulations or other applicable U.S. laws and regulations.

**12. Fees.** All fees associated with this Letter of Credit are for account of TIC, except transfer fees to be paid by Beneficiary associated with Attachment D of form F-10.

**13. Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except as provided in numbered Paragraph 8 hereof, Attachments A, B, C, D and E hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above. No amendment or modification of this Letter of Credit may be made without the prior written consent of the Beneficiary and TIC except when the amount of this Letter of Credit is increased.

**14. Replacement Instrument.** If the original of this Letter of Credit has been lost, stolen, mutilated or destroyed, we will promptly issue to the Beneficiary a duplicate original of this Letter of Credit upon our receipt of our acceptable indemnity letter signed by the Beneficiary.

Sincerely,

**/BANK NAME/**

\_\_\_\_\_  
(Bank Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Telephone number)

\_\_\_\_\_  
(Authorized Name and Title)

\_\_\_\_\_  
(Authorized Signature)

12/30/11  
ar

12/30/11  
R

**ATTACHMENT A**

**FORM OF DRAW CERTIFICATE**

The undersigned hereby certifies to /Bank Name/ (the "Issuer"), with reference to Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") issued by Issuer in favor of the Beneficiary (capitalized terms used and not defined herein shall have the respective meanings set forth in the Letter of Credit), as follows:

- (1) The undersigned is the \_\_\_\_\_ of Kentucky Utilities Company (Beneficiary) and is duly authorized by the Beneficiary to execute and deliver this Certificate on behalf of the Beneficiary;
- (2) Beneficiary hereby makes demand against the Letter of Credit by presentation of the Draft accompanying this Draw Certificate, for payment of (U.S.\$ \_\_\_\_\_), such amount not being in excess of the Stated Amount;
- (3) Beneficiary is entitled to draw the amount set forth in clause (2) hereof because the conditions for a drawing pursuant to the Agreement or numbered Paragraph 6 of the Letter of Credit have been met; and
- (4) You are hereby directed to make payment of the requested drawing to:

/Insert Wire Instructions/

/Beneficiary's Name/

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12/30/11  
aa

12/30/11  
R

**ATTACHMENT B**

**DRAWING UNDER THE LETTER OF CREDIT NO. -----**

Date:

ON: The first Business Day immediately succeeding the date of presentation

PAY TO: /Beneficiary's Name/

\$ \_\_\_\_\_ U.S.

FOR VALUE RECEIVED AND CHARGED TO THE ACCOUNT OF LETTER OF CREDIT NO. \_\_\_\_\_

/Beneficiary's Name/

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12/30/11  
ec

12/30/11  
R

**ATTACHMENT C**  
**CANCELLATION CERTIFICATE**

Letter of Credit No. \_\_\_\_\_

The undersigned hereby certifies to */Bank Name/* ("**Issuer**"), with reference to Letter of Credit No. \_\_\_\_\_ issued by Issuer to Kentucky Utilities Company (Beneficiary) (the "**Letter of Credit**") that either (i) the terms of the Agreement require the return of this Letter of Credit or (ii) the Agreement has been terminated and TIC has satisfied all of its outstanding obligations and paid all amounts remaining due under the Agreement following such termination. Pursuant to numbered **Paragraph 5** thereof, the Letter of Credit shall expire upon Issuer's receipt of this certificate. Attached hereto is the Letter of Credit marked "Canceled". Capitalized terms used and not defined herein shall have the respective meanings set forth in the Letter of Credit.

*/Beneficiary's Name/*

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12/30/11  
RL

12/30/11  
R

**ATTACHMENT D**  
**TRANSFER CERTIFICATE**

\_\_\_\_\_, 20-\_\_

/BANK NAME  
AND ADDRESS/

Re: Letter of Credit No. -----

We request you to transfer all of our rights as Beneficiary under the Letter of Credit referenced above to the Transferee(s), named below:

\_\_\_\_\_  
Name of Transferee(s)

\_\_\_\_\_  
Address(es)

By this transfer, all our rights as the transferor, including all rights to make drawings under the Letter of Credit, go to the Transferee(s). The Transferee(s) shall have sole rights as beneficiary(ies), whether existing now or in the future, including sole rights to agree to any amendments, including increases or extensions or other changes and all references to "Beneficiary" in the Letter of Credit, any drawing certificate in the form of **Attachment A** or the other Attachments to the Letter of Credit shall be deemed to mean the Transferee(s). All amendments will be sent directly to the Transferee(s) without the necessity of consent by or notice to us. Capitalized terms used and not defined herein shall have the respective meanings set forth in the Letter of Credit.

We enclose the original Letter of Credit and any amendments. Please indicate your acceptance of our request for the transfer by endorsing the Letter of Credit and sending it to the Transferee(s) with your customary notice of transfer.

For your transfer fee of \$\_\_\_\_\_.

\* Enclosed is our check for \$\_\_\_\_\_

\* You may debit my/our Account No. \_\_\_\_\_

\_\_\_\_\_  
NAME OF TRANSFEROR

\_\_\_\_\_  
NAME OF AUTHORIZED SIGNER AND TITLE

\_\_\_\_\_  
AUTHORIZED SIGNATURE

12/30/11  
al

12/30/11  
R

The signature and title above conform with those shown in our files as authorized to sign for the Beneficiary. Policies governing signature authorization as required for withdrawals from customer accounts shall also be applied to the authorization of signatures on this form. The authorization of the Beneficiary's signature and title on this form also acts to certify that the authorizing financial institution (i) is regulated by a U.S. federal banking agency; (ii) has implemented anti-money laundering policies and procedures that comply with applicable requirements of law, including a Customer Identification Program (CIP) in accordance with Section 326 of the USA PATRIOT Act; (iii) has approved the Beneficiary under its anti-money laundering compliance program; and (iv) acknowledges that *[Bank Name]* is relying on the foregoing certifications pursuant to 31 C.F.R. Section 103.121 (b)(6).

NAME OF BANK
_____
AUTHORIZED SIGNATURE AND TITLE
_____
PHONE NUMBER
_____

12/30/11  
ac

12/30/11  
R

**ATTACHMENT E**  
**REDUCTION CERTIFICATE**

*[Bank Name]*  
*[Address 1]*  
*[Address 2]*  
Attention: \_\_\_\_\_

Irrevocable Standby Letter of Credit No. \_\_\_\_\_

The undersigned hereby certifies to *[Bank name]* ("Issuer"), with reference to the above-specified Irrevocable Standby Letter of Credit issued by Issuer to Beneficiary (the "Letter of Credit"), that, as of and from the reduction date specified below, the Stated Amount is hereby reduced as set forth below:

Reduction Date	Reduction Amount	Revised Stated Amount
xx-xxx-xx	\$xx,xxx.xx	\$xx,xxx,xxx.xx

*[Beneficiary's Name]*

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12/30/11  
ML

12/30/11  
R

## EXHIBIT G

### Guarantees and Performance Guarantee Test Procedure

#### Table of Contents

<b>1.</b>	<b>INTRODUCTION</b>	<b>2</b>
1.1	General	2
1.2	Contractor Requirements	2
1.3	Performance Guarantee Test and Conditions	4
1.4	Performance Guarantee Test Interruptions	5
1.5	Corrections	5
1.6	Performance Guarantee Test Procedure	6
1.6.1	Content	6
1.6.2	Performance Guarantee Test Points and Instrumentation	6
<b>2.</b>	<b>PERFORMANCE GUARANTEE TESTS</b>	<b>7</b>
2.1	Contractor's Preliminary Performance Guarantee Testing	7
2.2	Performance Guarantee Test Procedures	8
2.2.1	General Requirements	8
2.2.3	Sound Emission Test	9

12/30/11  
ca

JBM  
29-Dec-11



## **1. Introduction**

### **1.1 General**

Performance Guarantees shall be as specified herein and shall be measured during the final Performance Guarantee Test under normal operating conditions and no special cleaning, adjustments, or other preparations will be allowed. All Performance Guarantees are to be tested simultaneously in one Performance Guarantee Test. All Performance Guarantees are make-right obligations.

Contractor shall be responsible for carrying out the Performance Guarantee Tests which are those tests that are conducted to demonstrate that the Performance Guarantees have been achieved. Performance Guarantee Tests shall be completed after satisfactory achievement of Mechanical Completion as outlined in the Agreement.

### **1.2 Contractor Requirements**

The Contractor is responsible for all testing required by this Exhibit and the Agreement to demonstrate that the Ghent CCR Transport System has been designed and constructed and is capable of performing according to the requirements of the Agreement

The Contractor shall be responsible to provide all required Performance Guarantee Test connections, equipment, instrumentation, or testing Subcontractors for Performance Guarantee Testing.

Contractor shall certify to the Owner that furnished Equipment and Systems are ready for Performance Guarantee Tests.

If the results of any Performance Guarantee Test results are inconclusive due to bad data or inadequate data, the Performance Guarantee Tests shall be repeated.

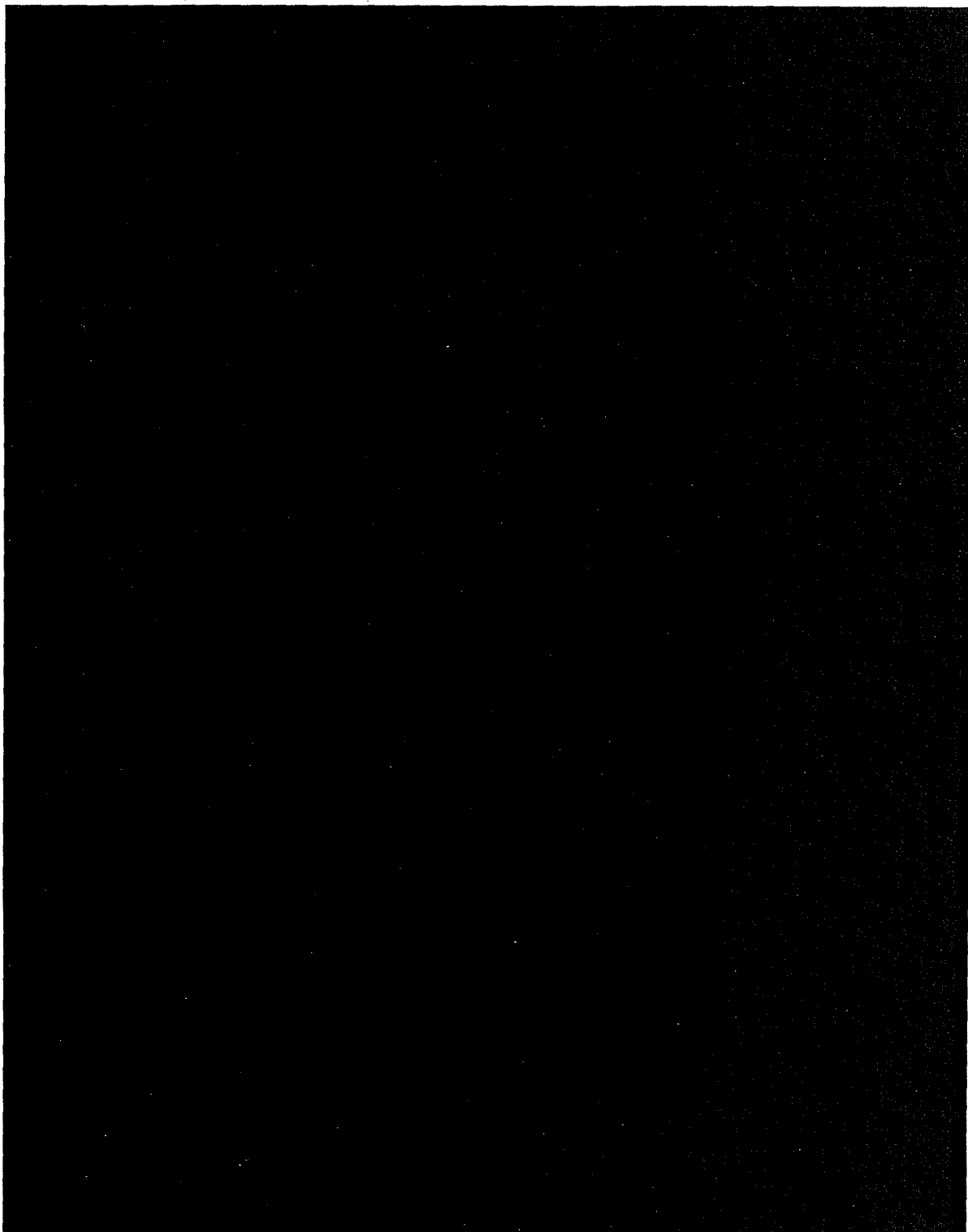
If malfunction of the Equipment and/or Systems furnished by Contractor under this Agreement negates the Performance Guarantee Test, or if the Equipment and/or Systems furnished under this Agreement do not meet the performance requirements as determined by the Performance Guarantee Tests, the cost of additional testing will be at Contractor's expense.

Contractor will provide an independent third party laboratory/testing contractor/testing agency ("Third party Testing Contractor") to administer all Performance Guarantee Tests and to demonstrate Performance Guarantees have been achieved. Performance Guarantee Testing is to be performed as soon as practical after Mechanical Completion is achieved. If during Performance Guarantee Tests, all Performance Guarantees are not met simultaneously, Contractor shall make revisions to its Work during the next scheduled

12/30/11  
aw

J. B. A. H.  
29-Dec-11

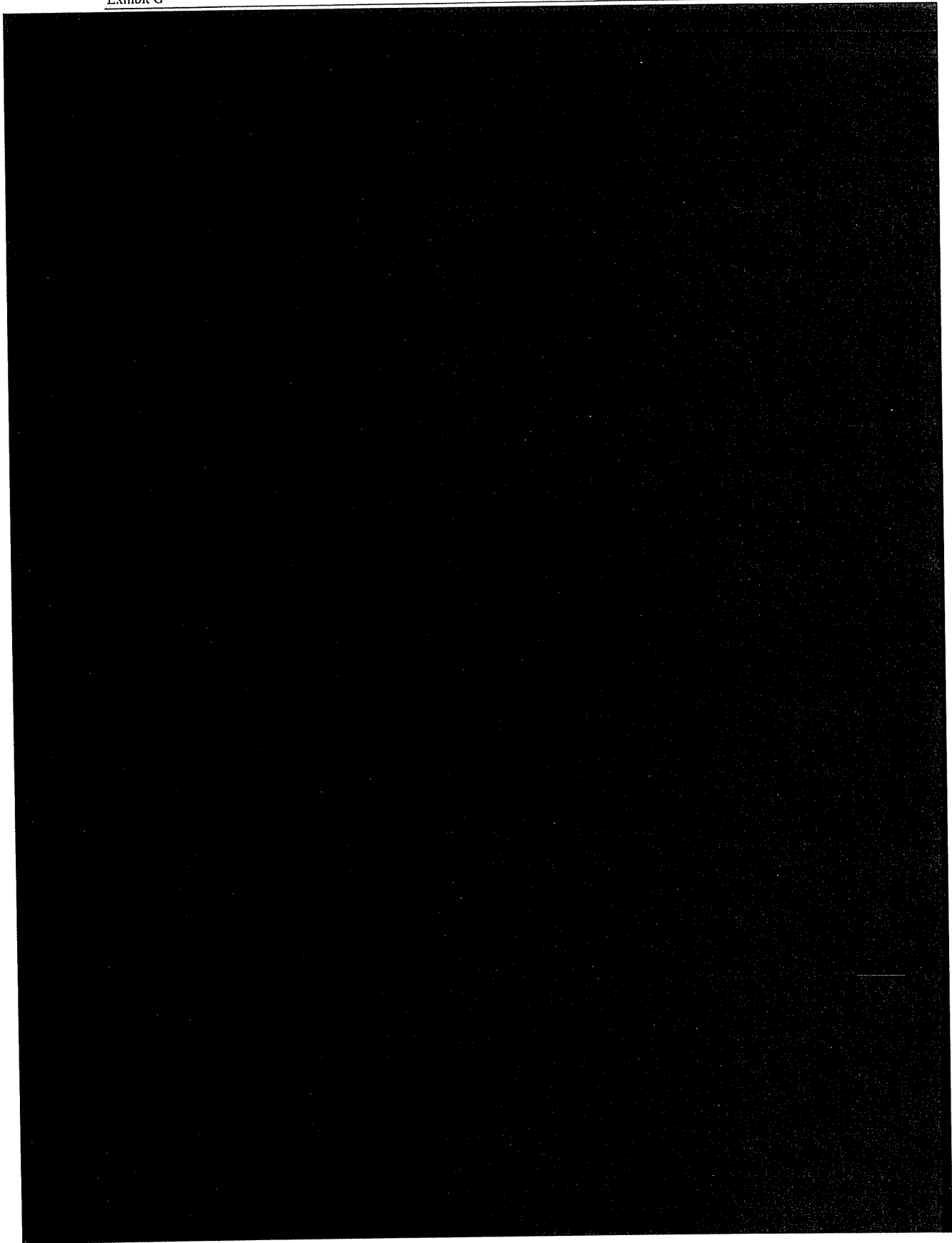
outage or at an earlier time convenient to Owner. If Performance Guarantees are still not achieved, additional repairs and retesting shall be done by Contractor. All costs for repairs (including engineering, equipment, material, installation and retesting) shall be borne by Contractor.



BT

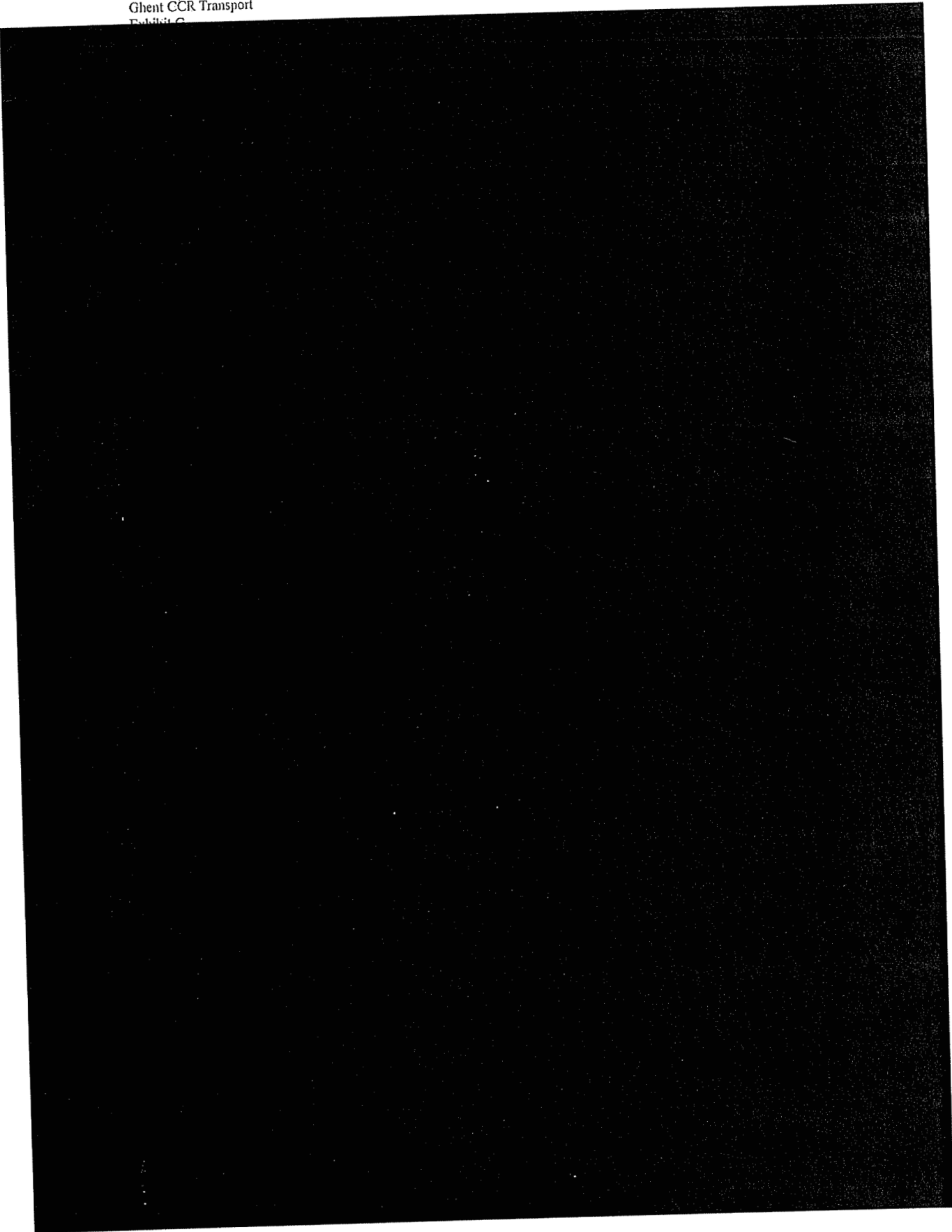
12/30/11  
u

*JBL*  
29-Dec-11



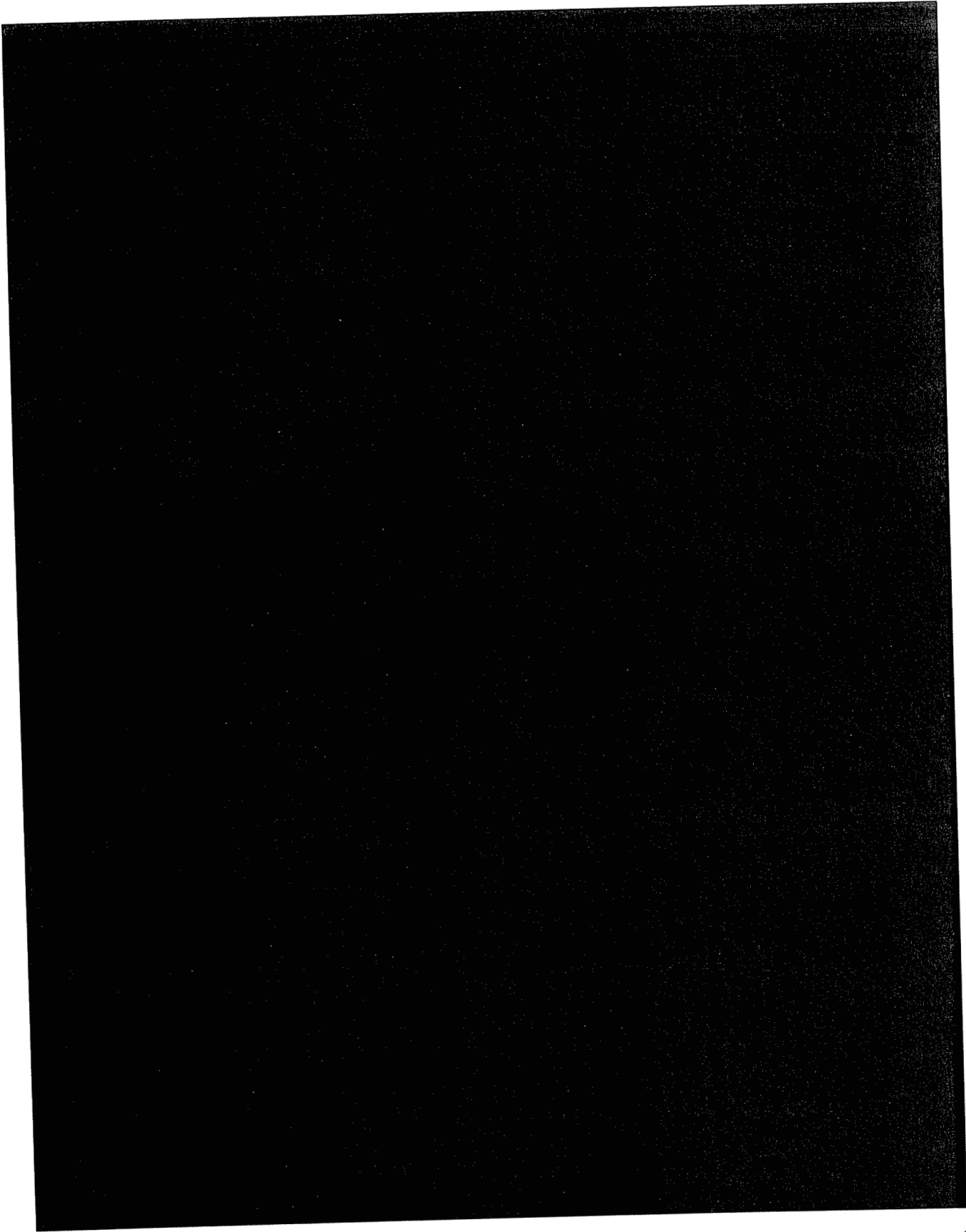
12/30/11  
22

JBA  
29-Dec-11



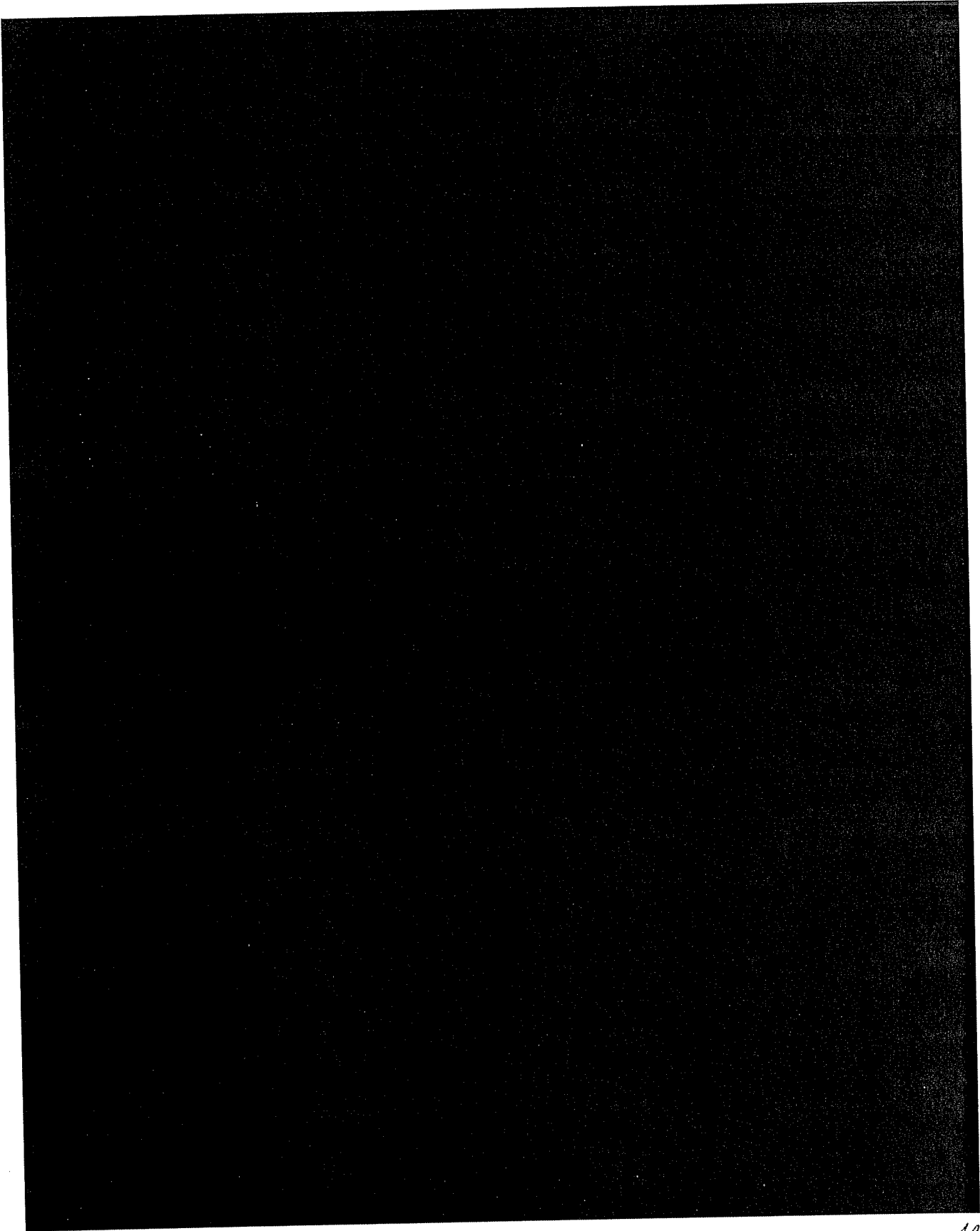
12/30/11  
m

JBL  
29-Dec-11



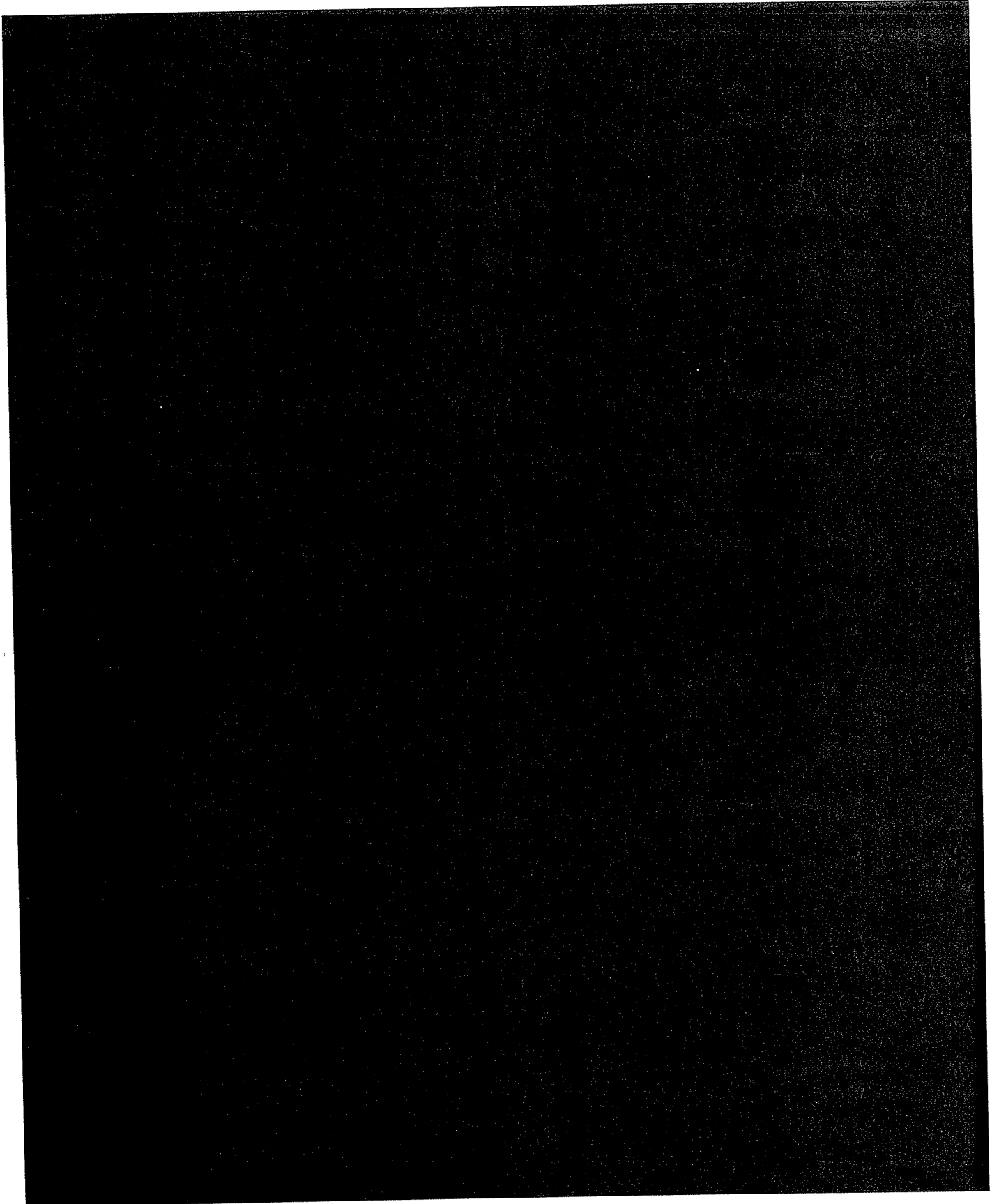
12/30/11  
ML

ABlk  
29-Dec-11



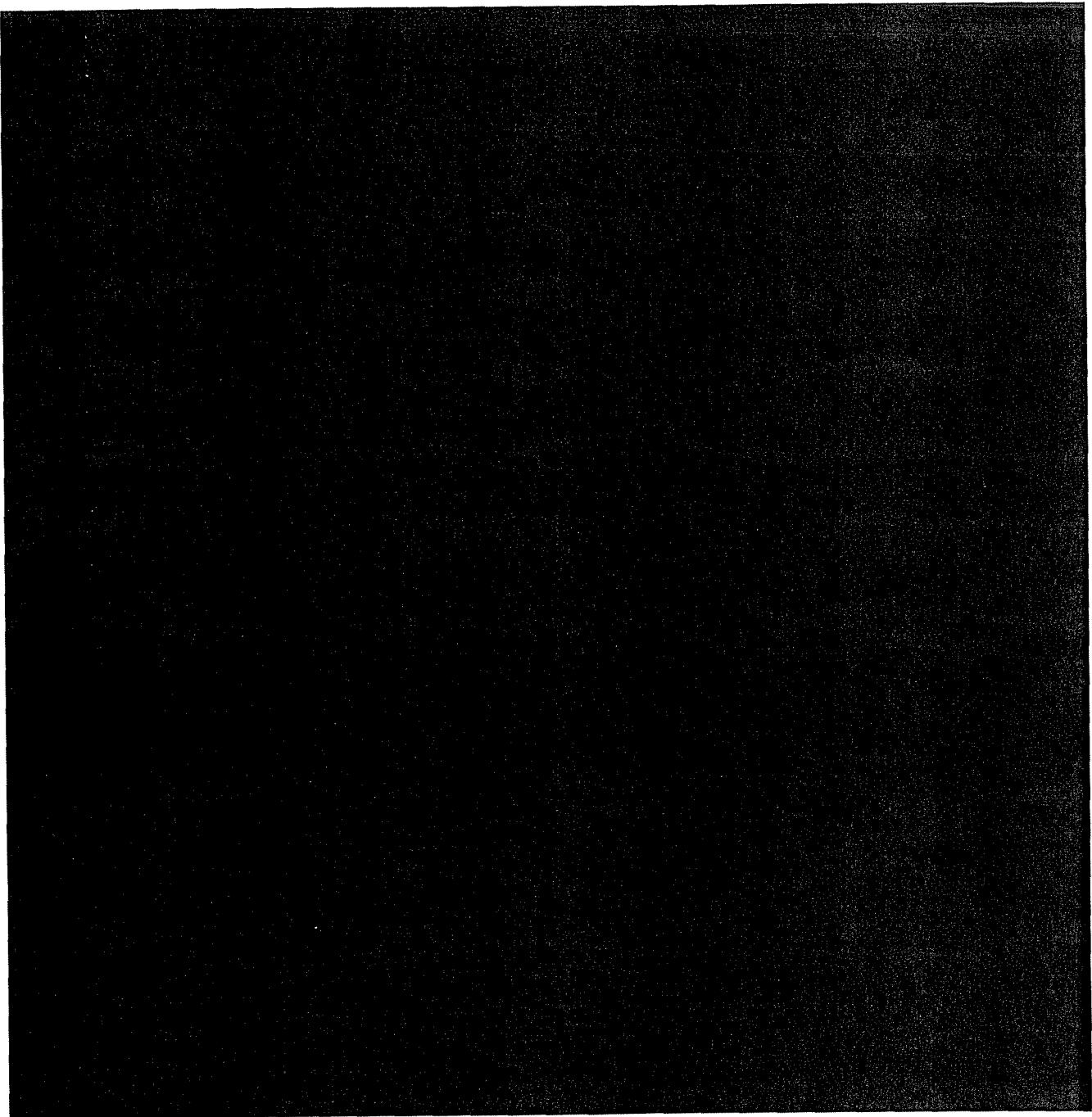
12/30/11  
m

JBH  
29-Dec-11



12/30/11  
*en*

*JBLK*  
29-Dec-11



12/30/11  
a

*J. B. H.*  
24-Dec-11



## EXHIBIT H

### HEALTH AND SAFETY DOCUMENTS

#### Table of Contents

<b>1.0 Health and Safety Documents</b>	<b>2</b>
<b>1.1 Passport Program Process Steps</b>	<b>2</b>
1.1.1 Step 1 – Certification	2
1.1.2 Step 2 – Passport Training	2
1.1.3 Step 3 – Attestation Form	3
1.1.4 Step 4 – Site Specific Orientation	4
1.1.5 Step 5 – Contractor Reporting Requirements	4
<b>1.2 Administration</b>	<b>5</b>
<b>1.3 Passport Revocation and Reinstatement Guidelines</b>	<b>5</b>
<b>APPENDIX B LG&amp;E AND KU SERVICES COMPANY &amp; AFFILIATES</b>	<b>6</b>
<b>APPENDIX C CONTRACTOR / SUBCONTRACTOR SAFETY POLICY</b>	<b>6</b>
Contractor On-site Health and Safety Representative	10
5. Health and Safety Management Plan	12
6. Hazard Analysis	14
Hazard Analysis Requirements	14

*JBM*  
29-Dec-11

12/30/11  
w

## 1.0 Health and Safety Documents

Contractor is required to cooperate with Owner on all matters of health and safety. To enhance the welfare of all who visit and work in and around Owner's facilities, an enhanced contractor safety program has been developed. Building on internal and external best practices, a cross-functional team has developed the "Passport Program." The key components of the program are outlined below.

All personnel working on Site shall undergo both the Ghent Generating Station Contractor Orientation course and the Ghent Generating Station Ammonia Awareness course on their first arrival at Site. The approximate time to complete these courses is one hour.

Contractor shall also comply with Owner's Safety Manual, which is available upon request. As part of Contractor's requirements, several reports are required, which are detailed in the Passport Program and Safety Manual.

Safety is a core value at Kentucky Utilities. To enhance the welfare of all who visit and work in and around Kentucky Utilities facilities, an enhanced Contractor safety program has been developed. Building on internal and external best practices, a cross functional team has developed the "Passport Program." The Passport Program is designed to cover industrial workers. The key components of the program are outlined below.

### 1.1 PASSPORT PROGRAM Process Steps

#### 1.1.1 Step 1 – Certification

All Kentucky Utilities Contractors will be certified prior to performing work.

#### 1.1.2 Step 2 – Passport Training

All industrial workers employed by a certified Contractor must complete an 8-hour training program designed to enlighten employees on the importance of safety and the hazards associated with working in an industrial environment. This training will also identify additional specific OSHA, EPA and DOT compliance training that may be needed in certain situations. The Passport training, however, will not serve to fulfill any of the compliance training required by the above listed agencies. It will be the responsibility of the Contractor to provide any compliance training required for their employees.

There will be two options available to Contractors with regard to the Passport Training:

Option 1 – Train-the-Trainer – Kentucky Utilities will provide a curriculum and conduct train-the-trainer sessions at appropriate intervals for Contractor’s key safety/ training personnel. For those Contractors choosing this option, a resume for each prospective trainer must be submitted and must include the following information:

- Training delivery and development experience
- Knowledge of OSHA, DOT, and EPA Standards applicable to the work for which Contractor is responsible
- Health and safety knowledge and experience in managing a Health and Safety program
- Experience in the utility and power generation industry
- Experience in the type of work to be performed by Contractors

By virtue of their attendance and ability to pass the closing examination, these key personnel would then be approved to provide training to Contractor’s employees to meet the requirements of a “Passport.”

NOTE: Kentucky Utilities reserves the right to reject any Contractor employee as a potential trainer if any of the following occurs:

The above referenced information regarding experience and qualifications is not submitted

The information submitted does not adequately indicate the prospective trainer’s ability to perform the duties of a trainer for the Passport program.

The prospective trainer does not complete the required train-the-trainer session, including successfully pass the final examination.

Option 2 – External Provider - External providers of the Kentucky Utilities Passport safety training program will also be assessed and certified by Corporate Safety in accordance with Option 1. This will allow certified Contractors to seek Passport training for their employees from an external provider.

### **1.1.3 Step 3 – Attestation Form**

Contractors will be required to attest to the fact that each employee who will be working on the Site has received the required Passport training and is current on all required compliance training for the work that employee will be performing. Although Kentucky Utilities will be looking for confirmation that compliance training has been completed, it is not a requirement that the Contractor provide training records for all individuals, and Kentucky Utilities will not monitor compliance training delivered by Contractors to their employees. However, Passport training audits will be performed to ensure the adequacy

*JBAK*  
*29-Dec-11*

12/30/11  
*aw*

of the training provided. If an incident does occur, Kentucky Utilities may request individual training records as part of their accident and incident investigation process.

Upon successful completion of the required safety training, the Contractor will enter the employee's name, date of birth and training information into the Kentucky Utilities Contractor Health & Safety System. An electronic notification will be sent to the appropriate Kentucky Utilities representative for Passport authorization. Upon approval (on-line), the Contractor will be notified electronically that the passport has been approved and that the Contractor can print and issue a Passport card to their employee. The card will have an identification number printed on it that will associate the worker with his or her records in the Database. The Contractor employee must carry this card and valid photo ID at all times while on Site.

The Passport does not serve as security clearance for an employee. The Passport merely attests to the fact that the Contractor employee has completed all required training. Site access will be handled in accordance with local site access procedures. For long-term Contractors, a photo ID with a magnetic strip may also be issued to a Contractor employee for security purposes. For all other Contractor employees, a sign-in sheet may be utilized to track individuals on Site.

#### 1.1.4 Step 4 – Site Specific Orientation

Each Contractor employee must attend a site specific orientation training identifying parking directions, security procedures, site map, emergency evacuation procedures, emergency contact names, medical facility locations, specific alarms, and site-specific hazardous materials. A separate orientation will be required for each generation site for which the Contractor employee works. This orientation will normally occur on the first day of work on the job Site.

#### 1.1.5 Step 5 – Contractor Reporting Requirements

All accidents, injuries, dangerous occurrences and near misses shall be reported as soon as possible to the nominated representative of Kentucky Utilities. In any case, all injuries shall be reported within 1 hour.

Contractors shall also report statistical information to Kentucky Utilities on a monthly basis. This is to include all sub contractors working for contractor on the Site. The information required is:

- Number of hours worked at each Kentucky Utilities job site
- Number of Fatalities, Lost Workday Cases and OSHA Recordable Injuries for each job site.

The preceding month's statistical information shall be entered into the Kentucky Utilities Contractor Health & Safety Database by the Contractor no later than the 5<sup>th</sup> day of the month.

## 1.2 Administration

- **All affected Contractor employees must have a passport.**
- The Passport is valid for 12 Months. Refresher training options will be developed and provided annually
- The cost of training will be the responsibility of the Contractor.
- The Contractor is responsible for ensuring that all of the above requirements are met for every individual worker utilized in work at Kentucky Utilities facilities. This includes all subcontractors utilized by Contractor. Contractor will be responsible for ensuring that such subcontractor employees have met all of the requirements regarding issuance of a Passport and for ensuring that all reporting requirements outlined in Step 5 above are fulfilled with regard to the subcontractor.
- Kentucky Utilities reserves the right to revoke an individual's Passport. See Passport Revocation and Reinstatement Guidelines below.
- Contract crew safety audits will be performed to assess effectiveness of and compliance with intent of Passport Program. These audits will be conducted by Site Safety, Site Contract Proponents, and Managers.
- Corporate Health & Safety reserves the right to audit contractors for appropriate compliance and passport training documents.

## 1.3 Passport Revocation and Reinstatement Guidelines

Kentucky Utilities reserves the right to revoke an individual's Passport. A Passport can be revoked for:

- Failure to comply with safety rules, procedures or programs
- Failure to comply with drug and alcohol rules or testing requirements
- Creation of an unsafe condition that has potential to result in death or serious injury
- Any reason deemed appropriate by the Responsible Manager

It is NOT mandatory for a Passport to be revoked following a report of an accident, injury or near-miss. If an investigation finds sufficient evidence to support revocation, a report and recommendation will be sent to the Responsible Manager for review and action.

If a Contractor wishes to appeal a revocation decision, this should be made in writing to the Responsible Manager.

A Passport can be reinstated after the Contractor has satisfied the Responsible Manager that the individual will conduct themselves appropriately on the Site.

If an individual's Passport is revoked for a second time, the individual will not be allowed to reapply for a Kentucky Utilities Passport within 5 years without consent of a General Manager.

**2.0 Contractor Safety Policy**

**Appendix B LG&E and KU Services Company & Affiliates  
(KU, LG&E)  
LG&E and KU Services Company**

**Appendix C Contractor / Subcontractor Safety Policy**

PURCHASE ORDER #: \_\_\_\_\_ CONTRACT JOB #: \_\_\_\_\_

NAME OF CONTRACTOR:

SCOPE \_\_\_\_\_ OF \_\_\_\_\_ WORK:

WORK \_\_\_\_\_ LOCATION:

CONTACT NAME: \_\_\_\_\_ WORK ORDER #: \_\_\_\_\_  
(AUTHORIZED CONTRACTOR/SUBCONTRACTOR REPRESENTATIVE)

**1. Contractor / Subcontractor Safety Policy**

**General**

LG&E and KU Services Company, is committed to safety excellence and in providing a safe and healthful work environment for anyone working on our property. The personal safety and health of each employee, contractor and the safety of the general public are of primary importance to LG&E and KU Services Company. Accordingly, there is no job so important that safety policies and procedures or legal obligations are compromised.

This Policy does not replace the Contractor's/subcontractor's ("Contractor") existing safety and health program(s), provided that their program(s) meet or exceed these and any additional site specific minimum requirements. Contractor's employees not following this Policy will be subject to removal from the job site.

The Contractor is required to comply with all federal and state safety laws and all provisions of the LG&E and KU Services Company, Health & Safety Manual. The Contractor is responsible for conducting its work and activities safely. LG&E and KU Services Company expect and require that you continuously update your employees with respect to safety issues

6 *J.B.H.*  
29-Dec-11

12/30/11  
m

relevant to the work and to take immediate corrective action when your employees violate safety rules or procedures.

It is the responsibility of Contractors' construction managers, superintendents, safety representatives and foremen/supervisors to ensure workers under their supervision maintain safe work areas and perform their tasks in a safe manner. It is also the responsibility of each worker to follow every precaution and LG&E and KU Services Company safety rule and Policy to protect them and their fellow workers.

Contractors are responsible for ensuring that any subcontractors working under their purview are held to the same performance expectations, and therefore this Policy, as the contractor themselves.

## 2. Scope

### General

This Policy applies to all construction activities performed for LG&E and KU Services Company by Contractor's employees or employees of the Contractor's subcontractors. Construction activities may originate from construction contracts, service contracts, purchase orders, or in-house work orders. This Policy is in addition to the requirements of the General Services Agreement or other contract under which the Contractor is performing construction activities.

## 3. General Safety Requirements

1. Contractors will comply with all applicable federal and state regulations and the LG&E and KU Services Company safety rules and programs relevant to the work performed.
2. Contractors will ensure that any and all subcontractors working under their purview comply with all applicable federal and state regulations and the LG&E and KU Services Company safety rules and programs relevant to the work performed.
3. Contractors are responsible for their employees and any and all subcontractors working for them. Contractors are responsible for ensuring that the subcontractors follow all provisions of this document. Contractors are responsible for providing their employees, and subcontractors with all information provided by LG&E and KU Services Company regarding:
  - \* Occupational health and safety;
  - \* Federal, state and local environmental regulations including LG&E and KU Services Company environmental compliance policies and procedures;

- \* Exposure to atmospheric health, serious physical or chemical hazards; and
  - \* Precautionary measures and procedures for performing the work.
4. All Contractors' employees, and any subcontractor employees, shall receive training under the LG&E and KU Services Company Contractor Health and Safety Passport Program.
  5. The LG&E and KU Services Company Policy prohibits the Contractor's employees, agents or representatives from:
    - \* Consuming or possessing alcohol while on the LG&E and KU Services Company job sites, including the parking lots;
    - \* Reporting to perform work on the LG&E and KU Services Company job sites with unauthorized drugs on his/her person or while under the influence of drugs or alcohol;
    - \* Intentionally dumping unauthorized chemicals/materials into a sewer, waterway or on the ground;
    - \* Mishandling LG&E and KU Services Company waste;
    - \* Allowing employees to perform work that involves operating heavy equipment or working at elevations when using prescribed medication that can cause drowsiness or otherwise impair the employee's ability to perform the work in a safe manner.
  6. The following conduct is prohibited by the Contractor at and about LG&E and KU Services Company property:
    - \* Theft, horseplay, gambling, sabotage or attempted sabotage.
    - \* Threatening, intimidating or abusing employees, customers, vendors or guests of LG&E and KU Services Company.
    - \* Fighting, creating, or inciting a disturbance.
  7. LG&E and KU Services Company have a smoke-free policy in all buildings and vehicles.
  8. Attendance at job site safety meetings is required of the Contractor at the discretion of the LG&E and KU Services Company authorized representative. At least one representative of the Contractor will attend such job safety meetings.
  9. Any Contractor's employee, who appears sick, extremely tired, or otherwise unable to perform his/her job in a safe manner will be reported to the Contractor's supervision for evaluation and possible removal from the job site.
  10. Contractors are responsible for establishing control measures to protect their employees, subcontractors or workers under their control, from exposure to hazards (chemical, atmospheric health and physical) present at the job site.



11. The Contractor must provide electrical ground fault protection for employees using construction power (temporary branch circuits to include extension cords) through the use of approved ground fault circuit interrupters (GFCI). Additionally, Contractors must provide ground fault protection when using permanent facility power and using cord and plug equipment in wet or damp locations. Applies to 120-volt single phase 15 and 20-ampere receptacle outlets.
12. Contractor employees will work in full pants and shirts appropriate for the task being performed and in compliance with appropriate regulations. Shorts and tank tops are not allowed unless otherwise specified. (Some jobs will require wearing long sleeve shirts.)
13. Contractors shall not transport employees in the cargo bed of a truck or trailer.
14. All Contractors must receive authorization from the LG&E and KU Services Company authorized representative, before performing work in areas posted as "DANGEROUS OR HAZARDOUS."
15. Employees of Resident Contractors, defined as those Contractors with an annual contract and who provide day-to-day services for LG&E and KU Services Company, shall be required to have a negative drug pre-test when hired and before reporting to work at an LG&E and KU Services Company site. They shall also be required by the Contractor to participate in a drug and alcohol testing program that randomly tests 50% of their employees annually, while working on an LG&E and KU Services Company site.
16. If a Contractor brings "transient" workers on site for "plant outages", "project work" or "major construction", the transient workers shall be required to have a negative drug pre-test when hired and within 7 days before reporting to work at an LG&E and KU Services Company site. The transient contractors are added to testing pool with 100% annual random testing for the duration of the assignment. If a contractor sends one of their workers to another LG&E and KU Services Company site with no interruption of service, no pre-work drug test is required. The worker remains in the 100% annual random testing pool. If a worker reports to another LG&E and KU Services Company site with an interruption in service of thirty days or more, the worker shall be required to have a negative drug test before reporting to work at that site. The worker remains in the 100% annual random testing pool.

#### **4. Specific Safety Requirements**

##### **Contractor Safety Qualification**

Contractor selection and ultimate certification shall include an evaluation of the Contractor's prior safety performance, current written safety programs, safety training,

*ABH*  
29-0 ec-vi

12/30/11  
SL

and qualifications of key Health & Safety (H&S) personnel to assure LG&E and KU Services Company that the Contractor is capable of meeting its safety performance goals. Employees of certified Contractors and any subcontractor employees shall undergo "Passport Training" for those designated as Industrial Workers prior to performing work at an LG&E and KU Services Company facility. This by no means will replace regulated compliance training for the work the contractor employee will be performing.

### **Subcontractor Safety Qualifications**

Subject only to the specific exception stated below, any and all subcontractors used by a Contractor to perform work for LG&E and KU Services Company shall meet or exceed the following criteria:

- a) The subcontractor's incident rates for the three (3) most recent calendar years do not exceed, in any one (1) year, the industry average, based on NAISC (or SIC), as published by the Bureau of Labor Statistics;
- b) The subcontractor has not experienced any employee fatality identified within any of the three (3) most recent calendar years' statistics.
- c) The subcontractor has not received any citation, from OSHA, the Kentucky Public Service Commission or any other state agency regulating utilities in the most recent three (3) calendar years; and
- d) The subcontractor has a current Workers Compensation Insurance Experience Modification Rate (EMR) less than or equal to 1.0.

LG&E and KU Services Company may, at the sole option of such company, provided written authorization for the use of a subcontractor not meeting the above criteria; provided that such authorization must specifically identify how the subcontractor fails to meet the criteria and state additional protective measures the Contractor shall put in place in order to use such subcontractor. Such authorization may be withdrawn at any time for any reason.

The criteria stated above are minimum standards and Contractors using subcontractors shall seek out subcontractors with the highest safety performance available.

### **CONTRACTOR ON-SITE HEALTH AND SAFETY REPRESENTATIVE**

The Contractor shall appoint a qualified on-site Health and Safety Representative, accepted by the LG&E and KU Services Company authorized representative, with the

authority to enforce all of the safety requirements of this Policy, including implementation of the Contractor's Injury and Illness Prevention Program.

LG&E and KU Services Company authorized representative and H&S will make a risk-based decision as to the qualification level of the Contractor H&S representative. Requirements may range from a full-time on-site safety professional (Certified Safety Professional) to a craft supervisor or "person in charge" with competency as measured by experience training.

Whenever the Contractor has any employees or subcontractors on the job site, the Contractor must have a designated representative on the construction worksite that is knowledgeable of the project's hazards and has full authority to act on behalf of the Contractor. The Contractor's designated representative must make periodic observations of the construction worksite to identify and correct any instances of noncompliance with the project health and safety requirements.

#### QUALIFICATION EVALUATION

Based on the level of H&S qualification determined necessary by LG&E and KU Services Company, the Contractor shall submit documentation, for review and acceptance by LG&E and KU Services Company in support of the proposed designated representative. Suggested qualifications may include, but are not limited to:

- Professional certifications (CSP, CIH, ASP, etc.).
- Curriculum detailing work experience and EH&S responsibilities on projects of similar scope for the previous five years, at a minimum.
- Evidence of construction safety training such as the 10-hour or 30-hour OSHA training.
- Proof of "Competent Person" (as defined below) or "Qualified Person" (as defined below) status attained by the proposed on-site H&S representative.

#### Contractor Health and Safety Representative Responsibilities

The Contractor H&S Representative shall:

- ❖ Assist in the development of the contractor's safety plan and job site management system.
- ❖ Support training of contractor personnel.

- ❖ Evaluate the Contractor's safety process continuously.
- ❖ Attend any pre-job meetings to discuss their site-specific safety plan.
- ❖ Conduct and formally document job briefings.
- ❖ Assist in the identification of jobs requiring a hazard analysis.
- ❖ Assist in evaluating potential subcontractors in accordance with this Policy.

### COMPETENT PERSON

Each Contractor shall provide to LG&E and KU Services Company a written list of those persons designated as a Competent Person, who shall be available at the work site and capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to workers, and who has authorization to take prompt corrective measures to eliminate them. Persons shall be responsible for conducting periodic observations of the job sites, materials and equipment, and shall maintain the accident prevention program. Contractor shall ensure that each Competent Person listed has been trained in the following areas as applicable:

- Asbestos
- Cranes
- Confined Space
- Demolition
- Excavations
- Fall Protection
- Industrial Trucks
- Ladders
- Scaffold
- Steel Erection
- Tower Climbing

### **5. HEALTH AND SAFETY MANAGEMENT PLAN**

Prior to commencement of contract work, the Contractor shall develop and submit to the LG&E and KU Services Company authorized representative a written Health & Safety (H&S) Management Plan on how the contract work will be completed without endangering the health and safety of those performing the work or anyone else working in the general area. The H&S Management Plan will be developed for the following higher risk contracts, including projects:

- ❖ All construction projects (new site and refurbishment)
- ❖ Contracts with an estimated value of \$250,000 and over
- ❖ Long term contracts (12 months and over)
- ❖ Contracts for which the Contractor will use subcontractors.
- ❖ Contracts that provide a service by performing **high risk\*** activities.
- ❖ Any other contracts at the discretion of the contract manager.

*\*High risk activities include but are not limited to:*

- ❖ *Electrical work requiring an Electrical Work Permit*
- ❖ *Asbestos removal*
- ❖ *Cooling tower maintenance*
- ❖ *Demolition*
- ❖ *Hot work in hazardous area*
- ❖ *Permit Required Confined Spaces*
- ❖ *Scaffolding*
- ❖ *Tank cleaning or testing*
- ❖ *Welding in hazardous areas*
- ❖ *Working at heights*
- ❖ *Work on telecommunications towers*
- ❖ *Work involving excavations to a depth of more than 4 feet*
- ❖ *Work involving the use of explosives*
- ❖ *Work on or near pressurized gas pipes*
- ❖ *Work over or adjacent to water*
- ❖ *Work involving diving*

The Health and Safety Management Plan shall contain at a minimum:

- ❖ The name of the On-site Health and Safety representative who is responsible for the implementation of their safety plan.
- ❖ LG&E and KU Services Company policy on environment, safety and health.
- ❖ LG&E and KU Services Company policy on substance abuse and testing policies if applicable.
- ❖ How and when each Contractor will conduct their job briefings.
- ❖ Provisions for conducting and documenting weekly job site safety audit/inspections by manager/supervisor level personnel.
- ❖ Training methods used to meet OSHA training requirements, and to ensure that safety program requirements are communicated to all Contractor personnel.

*JBK*  
*24-Dec-11*

- ❖ Incident reporting, first aid, and emergency procedures.
- ❖ List of all Competent Persons overseeing those tasks in which OSHA requires such person(s), such as excavation, asbestos abatement and scaffolding.

Subcontractors shall be held to the same level of performance as the Contractor's written H&S Management Plan. The Contractor shall submit written documentation for its subcontractors that demonstrates how their subcontractors shall meet compliance with the site safety plan.

## 6. HAZARD ANALYSIS

Contractor shall complete a "Contractor Safety Management / Project Specific Hazard Analysis" \* and a "Contractor Hazard Mitigation Plan". These documents shall be submitted to the LG&E and KU Services Company authorized representative prior to the initiation of any work. In addition, a "Quality Assurance Closure Form for Contractors"\* shall be completed and submitted to the LG&E and KU Services Company authorized representative at the completion of the project.

*\* The Hazard Analysis, Mitigation Plan and Closure Form is presented during the Contractor Passport Train-the-Trainer session.*

All Contractor and subcontractor personnel scheduled to work in the activities identified, shall receive safety training in those activities prior to working on them. (A safety toolbox meeting would be an acceptable forum to meet this requirement). The Contractor shall maintain proof of employee training, and shall make available such proof upon request. Note: This by no means shall replace their regulatory compliance training.

### **HAZARD ANALYSIS REQUIREMENTS**

A hazard analysis shall be written based on the following conditions:

- ❖ All major outage work
- ❖ Special Projects
- ❖ Jobs with the highest injury or illness rates
- ❖ Jobs with the potential to cause severe or disabling injuries or illness, even if there is no history of previous accidents
- ❖ Jobs complex enough to require written instructions
- ❖ At the discretion of the LG&E and KU Services Company authorized representative

## 7. Engineered Protective Systems

The Contractor shall submit for review to the LG&E and KU Services Company authorized representative such safety system that is required by regulation to be designed by a registered professional engineer. This review is solely to verify that the Contractor has had the required protective systems prepared and stamped by a registered professional engineer.

LG&E and KU Services Company review of any documents showing the design or construction of protective systems for worker and property protections shall not relieve the Contractor of its obligations to comply with applicable laws and standards for the design and construction of such protective work. Contractor shall indemnify and hold harmless LG&E and KU Services Company and their engineering personnel from any and all claims, liability, costs, actions and causes of action arising out of or related to the failure of such protective systems. The Contractor shall defend LG&E and KU Services Company, its officers, employees and agents including without limitation engineer personnel, in any litigation or proceeding brought with respect to the failure of such protective systems.

The cost of required safety engineering services required for safety and protective systems shall be borne solely by the Contractor and shall be deemed to have been included in the amount bid for the work as stated in the contract.

## **8. Safety Training and Education**

Contractor shall ensure that its workforce is compliant trained and qualified to perform the work. Contractor shall ensure that all subcontractor employees demonstrate the same level of competence.

### **Site Orientation**

All Contractors / subcontractors shall undergo an LG&E and KU Services Company "site specific" training/orientation prior to engaging in work activities at a generating station. In addition, Contractors that conduct work at LG&E and KU Services Company generation facilities that process ammonia shall also undergo an ammonia awareness training/orientation prior to conducting work.

Contractor employees conducting work in a substation must first complete a Substation Entry training program.

### **Contractors Pre-job Orientation**

Contractor shall require and administer a pre-job orientation to its employees and all subcontractor employees prior to engaging in work activities. Contractor shall maintain on the work site a detailed outline of the orientation and a signed and

dated roster of all employees who have completed the orientation. The orientation shall address the following elements at a minimum:

- ❖ Employee rights and responsibilities
- ❖ Authority and responsibility to issue Stop Work Order
- ❖ Alcohol and drug abuse policy
- ❖ Contractor's disciplinary procedures
- ❖ First aid and medical facilities
- ❖ Hazard recognition and procedures for reporting or correcting unsafe conditions or practices
- ❖ Procedures for reporting accidents and incidents
- ❖ Hazard Communication Program
- ❖ Access to employee exposure monitoring data and medical records
- ❖ Protection of the environment, including air, water, and storm drains from construction pollutants
- ❖ Location of and access to reviewed Health & Safety Management Plan, Project Specific Hazard Analysis, and Hazard Mitigation Plan.
- ❖ Location and contents of required postings

### Daily Job Briefings

Contractors shall ensure that all of their personnel (employees and sub-contractors) on the job site receive the daily Job Briefing before they start each job. Job Briefings shall discuss, at a minimum, the hazards associated with the job; work procedures involved; special precautions; energy source controls; and personal protection equipment requirements. This job briefing shall be conducted by the contractor's person in charge. Should the scope of the work change, than another job briefing shall be conducted.

## 9. Emergency Procedures

An emergency is any situation that poses an immediate threat to life or property. Each Contractor shall maintain one person currently qualified in CPR and First Aid on site at all times. Refer to the site orientation, or the LG&E and KU Services Company authorized representative for specific information for handling of a life threatening or other serious injury, fire, etc. Following the occurrence of an emergency, the contractor shall ensure that all proper incident reports are completed and distributed, and that the LG&E and KU Services Company authorized representative is notified immediately.

### Incident Reporting

In the event a job site accident occurs, the Contractor shall immediately implement controls and restrictions on the accident site to ensure the site remains undisturbed until released by the LG&E and KU Services Company authorized representative. All accidents shall be reported to the LG&E and KU Services Company authorized representative immediately after the site is



secured. A written incident report shall be furnished within the same day of the incident. A job site accident would include, but not be limited to a fire, explosion, equipment failure, release or exposure to toxic liquids, fumes or vapors, etc.

#### **Near Miss / Injury-free Event**

It is the responsibility of the Contractor, to complete all near miss investigations, and to report these occurrences with recommendations / implementation of corrective actions. The report is to be submitted to the LG&E and KU Services Company authorized representative within 24 hours.

#### **Medical Treatment Event**

The Contractor shall report all accidents (either occupational injury or illness) requiring medical treatment, as soon as possible, but no later than the end of the work shift, to the LG&E and KU Services Company authorized representative along with a copy of the first report of the injury. Serious injuries (defined as an injury that would require off site medical attention) shall be reported within 15 minutes, even during off shifts. (Review project specific emergency notification procedures.)

#### **Fatality**

It is the responsibility of the Contractor to immediately notify LG&E and KU Services Company should a fatality occur. It is the responsibility of the Contractor to notify the Kentucky Occupational Safety & Health, Division of Compliance within the appropriate Kentucky notification periods.

#### **Stop Work Order**

A stop work order must be given when imminent danger is identified or where significant damage to equipment or property or environmental degradation could occur if the operation continued. Any employee of a Contractor that observes an imminent-danger situation is responsible for stopping the work and reporting it to their supervisor. When a stop work order is issued, only those areas of a construction project immediately involved in the identified hazardous situation are to be included in the order.

Immediately after stopping work, the person issuing the order, or their supervisor, must report to the LG&E and KU Services Company authorized representative of their action. Work shall not resume until the LG&E and KU Services Company authorized representative has agreed that the imminent danger has been eliminated.

### **10. Hazard Specific Requirements**

The Contractor will ensure that their employees (and all subcontractor employees) are properly equipped and trained to comply with the LG&E and KU Services Company standards and federal and state regulations; including but not limited to the following:

**Asbestos**

**Blasting and the use of explosives**

**Chemical Safety/Hazard Communication**

**Commercial Diving Operations**

**Confined Space Entry**

**Control of Energy Sources (Lockout/Tagout)**

**Crane Operations, including rigging**

**Electrical**

**Fall Management** (personal fall arrest systems, scaffolding, walking & work surfaces, ladders and floor & wall openings)

**Hazardous Waste and Chemical Spills**

**Hot Work**

**Personal Protective Equipment (PPE)**

**Powered Industrial Trucks**

**Trenching**

**11. Enforcement**

The Contractor is responsible for the health and safety of its employees and any subcontractor employees under their control. Enforcement of this Policy, as well as other recognized safety requirements, is the responsibility of the Contractor. The evaluation does not constitute acceptance of the Contractor's safety programs or work practices nor, in any way relieve a Contractor of full responsibility for meeting all appropriate OSHA regulations to ensure the safety of its employees.

Whenever there is a jurisdictional question of which standard will apply, the most stringent safety practice will take precedence. The Contractor must document exceptions and attach them to this form. Contractors and their employees who do not follow this Policy are subject to removal from the worksite as well as being banned from future LG&E and KU Services Company projects/contracts.

LG&E and KU Services Company reserve the right to evaluate the safety of Contractor's work practices to determine if they meet LG&E and KU Services Company standards and state/ federal regulations. In addition to the audit rights under the applicable contract LG&E and KU Services Company reserve the right to audit any and all documents (job briefings, audits, etc.) at anytime during the course of the work.

## 12. LG&E and KU Services Company Safety and Health Issues

Contract work may involve use, handling, storage, or work in vicinity of *hazardous chemicals or materials*. (Concerns are Hazard Communication...spill prevention/response).

Contractor may perform work (operation, maintenance or emergency response function) as necessary.

Contractor may perform *hot work* (e.g. welding, torch cutting, brazing, etc.)

Contract may require Contractor to work in or near *confined spaces*.

Contract work may require using/working under clearance procedures for the control of hazardous energy (*lockout/tagout*).

Contract may involve work on an uncontrolled hazardous substance site, Superfund site, or other contaminated site that could trigger Hazardous Waste Operations and Emergency Response (*HAZWOPER*) planning and training requirements. (Ref: CERCLIS List)

Contract work may involve application, handling or disturbance of *lead, cadmium and/or zinc chromate containing materials*. An example would be the removal of *toxic surface coatings* (i.e. paint).

Contract work may involve handling, disturbance, abatement or work around *asbestos containing materials (ACM)*.

Contract work may involve application of *pesticides, herbicides, etc.*

## 13. Hazardous Chemical Communication

The following is a list of Hazardous Chemicals and atmospheric contamination that may be encountered at LG&E and KU Services Company sites. It should in no way be deemed as the only contamination that could be encountered at LG&E and KU Services Company sites. Always be aware of the contamination that could be encountered and become familiar with their Material Safety Data Sheets.

12/30/11  
11/06/11

<u>Chemical Name</u>	<u>Formula</u>	<u>Trade Name</u>	<u>Description/ Target Organ</u>
Anhydrous Ammonia	NH3 (99-100%)		Liquid colorless gas or compressed liquid with extremely pungent odor. Targets eyes, skin and respiratory system.
Arsenic	AS	Organic Arsenic	Targets skin, kidneys, liver and resp. system.
Asbestos		Hydrated Mineral	Fibers found in insulation, gaskets, packing, vinyl asbestos flooring, roofing, and other materials. Targets respiratory system. Can cause lung cancer.
Carbon Dioxide	CO <sub>2</sub>	Carbonic Acid Gas Dry ice	Targets respiratory system and cardiovascular system
Carbon Monoxide	CO	Flue gas/Monoxide gas.	Colorless, odorless. Targets lungs, blood, can be immediately fatal.
Chromium Hexavalent	Cr(VI)	Hexavalent Chromium	Metal that targets the respiratory tract, skin and eyes. Irritant.
Hydrogen Sulfide	H <sub>2</sub> S	Sewer gas Hydrosulfuric Acid	Colorless gas with strong rotten egg odor, quick loss of sense of smell, can

12/30/11  
42

*JBL*  
29-Dec-11

			be immediately fatal.	
Hydrogen	H <sub>2</sub>	Liquid Gas	Colorless, odorless, targets eyes, skin respiratory system	
Lead	Pb	Lead metal	Heavy soft gray metal. Targets eyes, kidneys and blood.	
Ozone	O <sub>3</sub>	Triatomic Oxygen	Colorless, targets eyes and respiratory sys.	
Sulfur Dioxide	SO <sub>2</sub>	Sulfuric Acid	Targets eyes, skin,	and
	respiratory sys.			

12/30/11  
42

*J. B. [Signature]*  
20-Dec-11

#### 14. Definitions

**Competent Person:** means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to workers, and who has authorization to take prompt corrective measures to eliminate them.

**Qualified Person:** is one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated their ability to solve or resolve problems relating to subject matter, the work, or the project.

I have read the LG&E and KU Services Company Contractor Safety Policy as outlined above and I understand and agree to abide by the requirements set forth therein; and confirm this by signing below.

CONTRACTOR SENIOR MANAGER: \_\_\_\_\_  
\_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

12/30/11  
AL

22  
JBA  
29-Dec-11

### 3.0 CONTRACTOR/SUBCONTRACTOR SAFETY AND HEALTH QUESTIONNAIRE AND CHECKLIST

THIS QUESTIONNAIRE IS **REQUIRED** FOR ALL CONTRACTORS AND SUBCONTRACTORS PRIOR TO STARTING WORK

The Company is committed to providing a safe and healthy workplace for employees and Contractors/Subcontractors. To qualify to perform work, the Contractor/Subcontractor shall provide the following information and agree to obtain the following information from all subcontractors utilized.

Contractor/Subcontractor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Contracted Activity (please describe): \_\_\_\_\_

Contractor/Subcontractor Representative: \_\_\_\_\_ Phone: \_\_\_\_\_

Please provide a brief description of the work activities and location(s) undertaken by your company:  
\_\_\_\_\_

**The following information must be from the facilities providing labor. We are not interested in overall statistics at a national or international level.** Describe the area to which this questionnaire applies. \_\_\_\_\_

In the table below, provide the three most recent full years of history for the area or region this questionnaire applies. In addition, attach copies of applicable OSHA 300 Logs (showing the actual injuries, etc. – not the summaries) and verification of your EMR/discount rate information.

ITEM	DESCRIPTION	20__ —	20__ —	20__ —
A	Interstate Experience Modification Rate (EMR)			

12/30/11  
G

*JBM*  
29-0cc-11

	Using the OSHA 300 Logs from the facilities providing labor, please document the following:			
B	Recordable Incident Rate (RIR)	—	—	—
C	Lost Time Incident Case Rate (LTICR)(only incidents that resulted in days away from work)	—	—	—
D	Lost Workday Injury and Illness Case Rate (LWDCR)(includes days away from work, job transfers and job restrictions)	—	—	—
E	Number of Injuries and Illnesses (Total Line Entries of 300 Log)	—	—	—
F	Number of Lost Work Day Cases (Column H of 300 Log)	—	—	—
G	Number of Job Transfer or Restriction Cases (Column I of 300 Log)	—	—	—
H	Number of Injury Related Fatalities (Column G of 300 Log)	—	—	—
I	Employee Hours Worked/Year (If unknown use # of employees x 2080)			
J	Total Number of Employees			

12/30/11  
m

*JBH*  
29-Dec-11



K	NAISC or Standard Industrial Classification (SIC)			
---	---------------------------------------------------	--	--	--

(B) Rate =  $E \times 200,000 \div \text{Hours}$     (C) Rate =  $F \times 200,000 \div \text{Hours}$     (D) Rate =  $(F + G) \times 200,000 \div \text{Hours}$

	Question	Y / N	Comments
1.	Does your company have a written safety and health program? Please attach a copy with this submission.		
2.	Does your company have a written Hazard Communication Program?		
3.	Does your company have a written environmental compliance assurance program? Does your company have a written DOT Operator Qualification Plan? Please attach a copy with this submission for review.  Note: Plan must meet or exceed LG&E and KU Services Company Gas Distribution Operator Qualification Plan.		

12/30/11  
 SL

*JBHL*  
 29-Doc-11

4.	<p>Does your company use subcontractors? (This Questionnaire is required for all Subcontractors)</p> <p>If you do use sub-contractors, do you qualify subcontractors based on their ability to address safety, health, and environmental requirements?</p> <p>Do you verify that subcontractors meet regulatory requirements?</p> <p>Does your subcontractor have a DOT Operator Qualification Plan or are they qualified under your plan. If they have their own plan then please submit a copy for review</p>		
5.	<p>Are all documents, pertaining to this questionnaire, available for auditing? If no, please explain</p>		
6.	<p>Who in your company is responsible for coordinating your safety and health program? Name/Job</p> <p>Title: _____ Phone # ( ) _____</p> <p>Is safety and health a full time responsibility for this position?</p>		
7.	<p>Has your company received any citations from a regulatory agency during the last three years?</p> <p>If yes, describe citation(s)</p>		

*JBL*  
24-Dec-11

12/30/11  
22

8.	Does your company perform safety audits/review?  If yes, are safety audits documented?		
9.	Who reviews the safety audit/review and how often?  Job  Title: _____  _____		

12/30/11  
ll

*JBlh*  
29-Dec-11

10.	<p>Does your company provide/require the following?</p> <p>Eye Protection (ANSI-Z41.1)(29 CFR 1910.133)</p> <p>Fall Protection (ANSI-Z41.1)(29 CFR 1926.501 or 1910.66)</p> <p>Foot Protection (ANSI-Z41.1)(29 CFR 1910.136)</p> <p>Hand Protection (ANSI-Z41.1)(29 CFR 1910.138)</p> <p>Hard Hats (ANSI-Z89.1)(29 CFR 1910.135)</p> <p>Hearing Protection (ANSI-Z41.1)(29 CFR 1910.95)</p> <p>Respiratory Protection (ANSI-Z41.1)(29 CFR 1910.134)</p>		
11.	<p>In addition to regulatory required Personal Protective Equipment, what other PPE is required or supplied?</p> <p>If any, please describe or list: _____</p> <p>_____</p>		

12/30/11  
 m

*J.B.M.*  
 29-Dec-11

12.	Describe how you will meet the requirements for first aid and medical provision under this contract.		
13.	Does your company have scheduled, documented employee safety meetings?  If yes, how often? _____		
14.	Who conducts the safety meetings?  Job Titles: _____		
15.	What managers/supervisors participate in the safety meetings?  Job Titles: _____		
16.	Are meetings reviewed and critiqued by managers/supervisors?		

17.	<p>Does your company hold on-site (tailgate/toolbox) safety meetings?</p> <p>If yes, how often? _____</p> <p>Who conducts these safety meetings?</p> <p>Job Titles: _____</p> <p>Is documentation available?</p>		
18.	<p>Does your company have a written policy regarding drug screening or testing of your employees?</p> <p>If Yes, please provide a copy of your plan to The Company representative.</p>		
19.	<p>Does your drug-testing program conform to DOT requirements?</p> <p>Comments: _____</p> <p>_____</p> <p>If yes, which set of DOT regulations does your drug-testing program designed to satisfy?</p> <p>Pipeline and Hazardous Material Safety Administration PHMSA</p> <p>Federal Motor Carrier Safety Administration FMCSA</p>		

12/30/11  
EL

JBL  
29-Dec-11

20.	Does your company have policy requiring written accident/incident reports (spills, injuries, property damage, etc.)?		
21.	Does your company conduct accident/incident investigating?  If yes, please attach a brief outline of procedures		
22.	Does your company document, investigate and discuss near miss accidents?  If yes, is documentation available?		
23.	Are accident/incident reports reviewed by managers/supervisors?		
24.	Indicate the circumstances in which your company's employees may be subject to drug screening. Employment Random Probable Cause Post Accident Periodic Other		

12/30/11  
m

JBAL  
29-Dec-11

Please respond to all items with "Yes, No, or NA." (Estimated Percentage of Employees should reflect the percentage of employees providing labor who have received training).

PROGRAMS/TRAINING	REFERENCE SOURCE	PROGRAM DOCUMENTED AND WRITTEN Y/N/NA	EST. %	FREQUENCY OF TRAINING FOR INDIVIDUAL EMPLOYEES
Asbestos Class IV (Awareness)	OSHA 29 CFR 1926.1101			
Asbestos Class III	OSHA 29 CFR 1926.1101			
Asbestos Class I and II	OSHA 29 CFR 1926.1101			
Confined Space Entry	OSHA 29 CFR 1910.146(g)			
Cranes	OSHA 29 CFR 1926 Subpart CC			
Natural Gas Operations	DOT 49 CFR 192, Subpart N			
DOT HM-126f Hazmat Employee	DOT 49 CFR 172.704			
Generation, Transmission, and Distribution Standard	OSHA 29 CFR 1910.269			
Electrical Safety	OSHA 29 CFR 1910.332			
Emergency Evacuation	OSHA 29 CFR 1910.38(a)			

12/30/11  
ac

*JBL*  
29-Dec-11



Excavations	OSHA 29 CFR 1926.651			
Fall Protection	OSHA 29 CFR 1926.500			
First Aid/CPR	OSHA 29 CFR 1910.151(b)			
Forklifts	OSHA 29 CFR 1910.178(l)			
Hazard Communications	OSHA 29 CFR 1910.1200(h)			
Hazwoper - Awareness Level	OSHA 29 CFR 1910.120			
Hazwoper 8 Hour	OSHA 29 CFR 1910.120			
Hazwoper 24 Hour	OSHA 29 CFR 1910.120			
Hazwoper 40 Hour	OSHA 29 CFR 1910.120			
Hazwoper Supervisor 8 Hour	OSHA 29 CFR 1910.120			
Hearing Conservation	OSHA 29 CFR 1910.95			
Incipient Fire Fighting	OSHA 29 CFR 1910.157(g)			
Lead Worker	OSHA 29 CFR 1926.62(l)			
Lead Supervisor	See Above			

12/30/11  
m

JBM  
29-Dec-11

Lockout/Tag out Authorized Person	OSHA 29 CFR 1910.147(c)(7)			
Lockout/Tag out Affected Person	See Above			
New Employee Orientation	OSHA 29 CFR 1910.119(g)			
Personal Protective Equipment	OSHA 29 CFR 1910.132(f)			
Process Safety Management	OSHA 29 CFR 1910.119			
Respiratory Protection	OSHA 29 CFR 1910.134			
Scaffolding	OSHA 29 CFR 1926.454			
Substance Abuse	DOT 46 CFR 16.401 & 391.119			

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

12/30/11  
cu

*JBM*  
20-02-11

## EXHIBIT I

### INSURANCE

#### INSURANCE OBTAINED BY CONTRACTOR

A. Contractor shall procure, pay premiums, and provide its own insurance coverage during the performance of the Work. At a minimum Owner requires Contractor to obtain the following coverages:

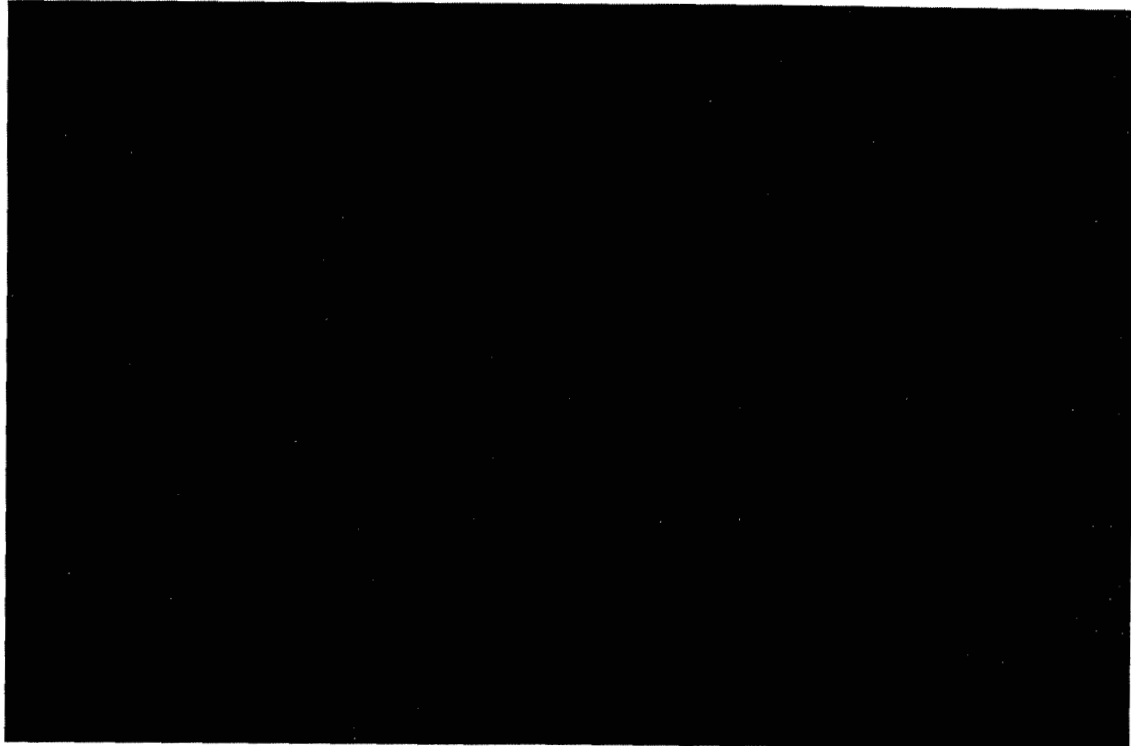
Contractor shall at all times during the period in which the Agreement is in force, provide and maintain insurance of the type and with limits as stated in this Exhibit I.

Contractor is responsible for maintaining, at its own cost, any other insurance it deems necessary.

The insurance specified may be provided in a policy or policies, primary and excess.

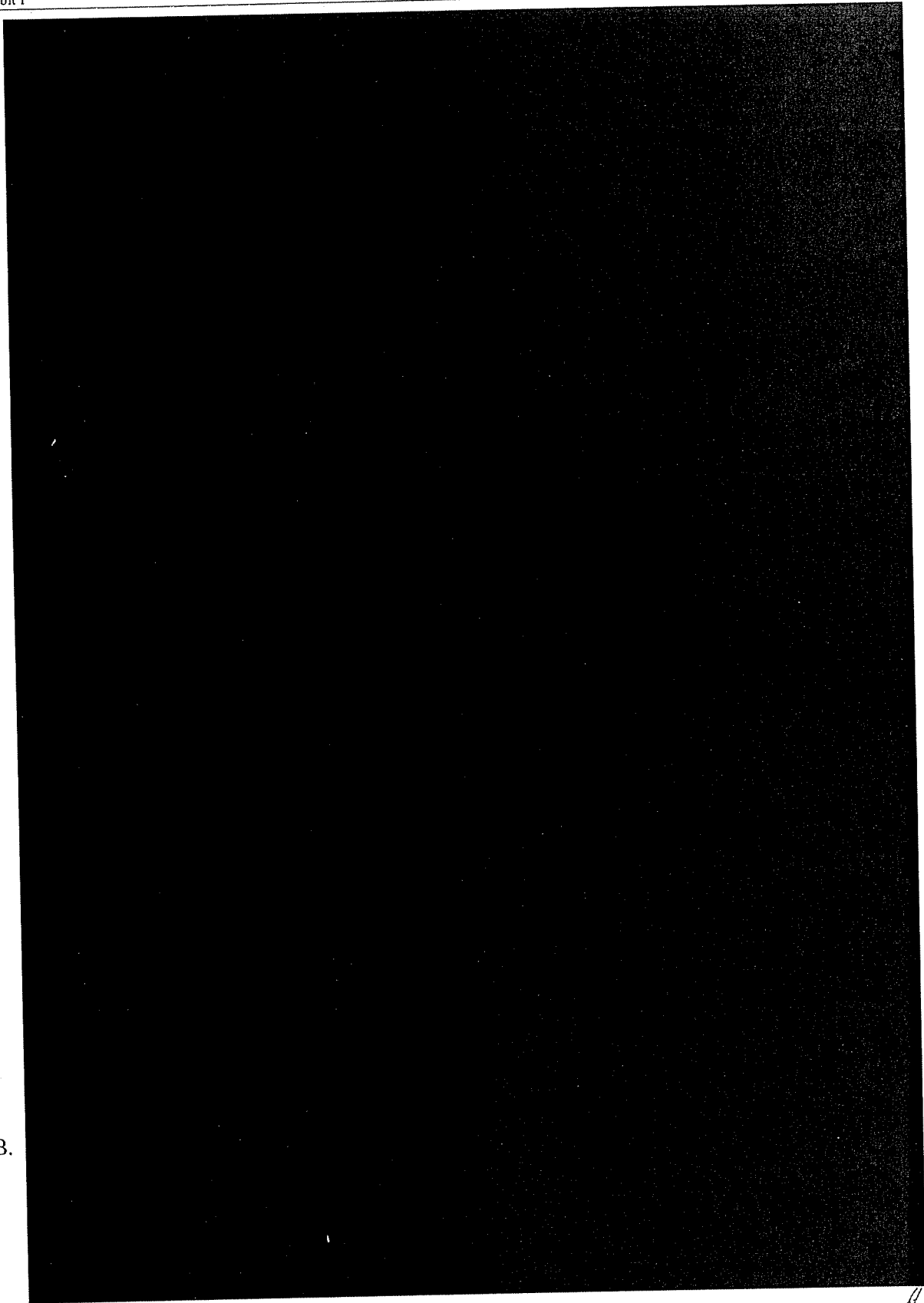
Contractor shall (i) provide and maintain the following insurance and (ii) cause each such insurance policy, except with regard to Workers' Compensation and Professional Liability, to name Owner and Owner's Engineer as additional insured and waive rights of subrogation against Owner, and (iii) submit evidence of such coverage (including evidence of Owner as additional insured and waiver of subrogation) to Owner prior to performing any Work on the Ghent Generating Station Site.

(a) **Workers' Compensation and Employer's Liability Policy**, which shall include:



12/30/11  
AL

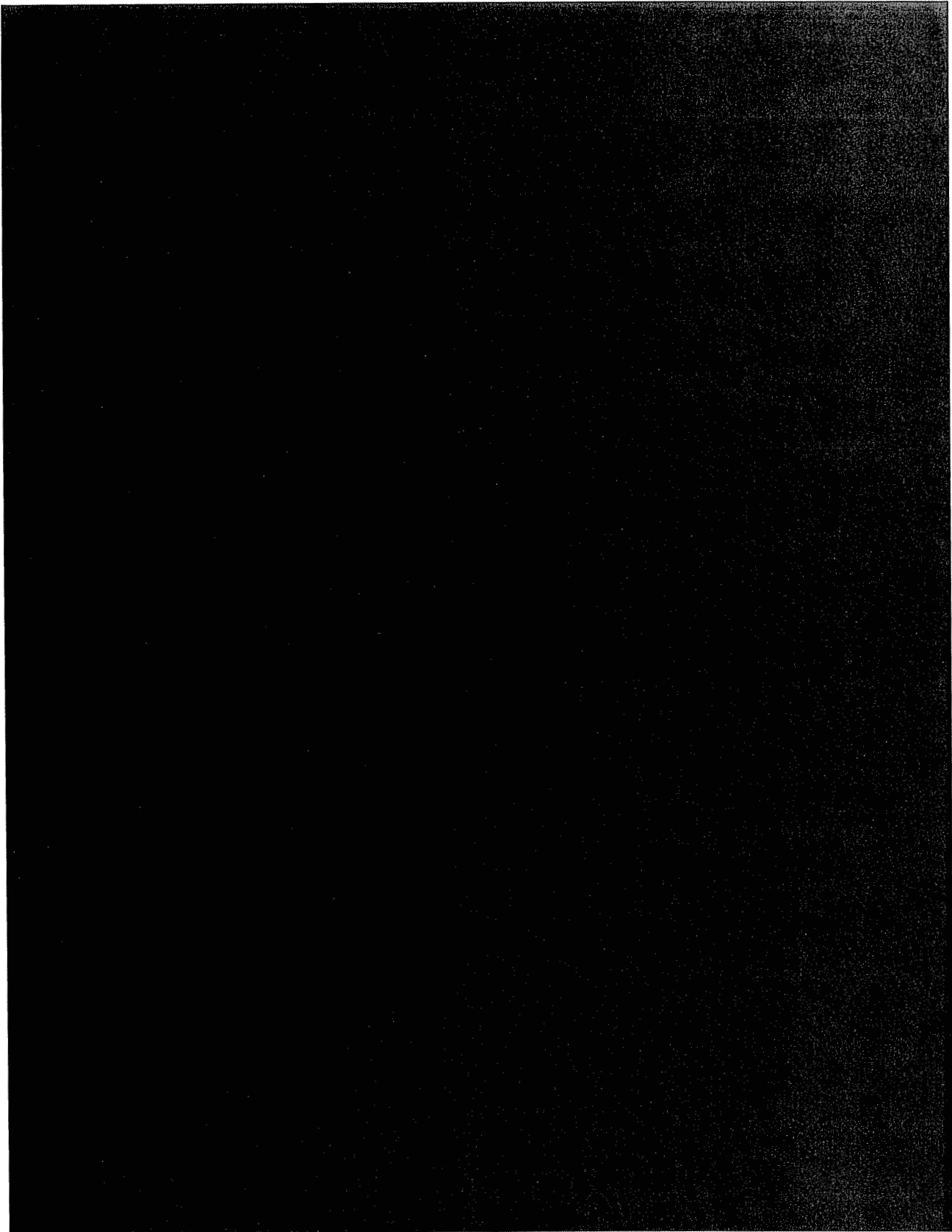
JBL  
29 Dec-11



B.

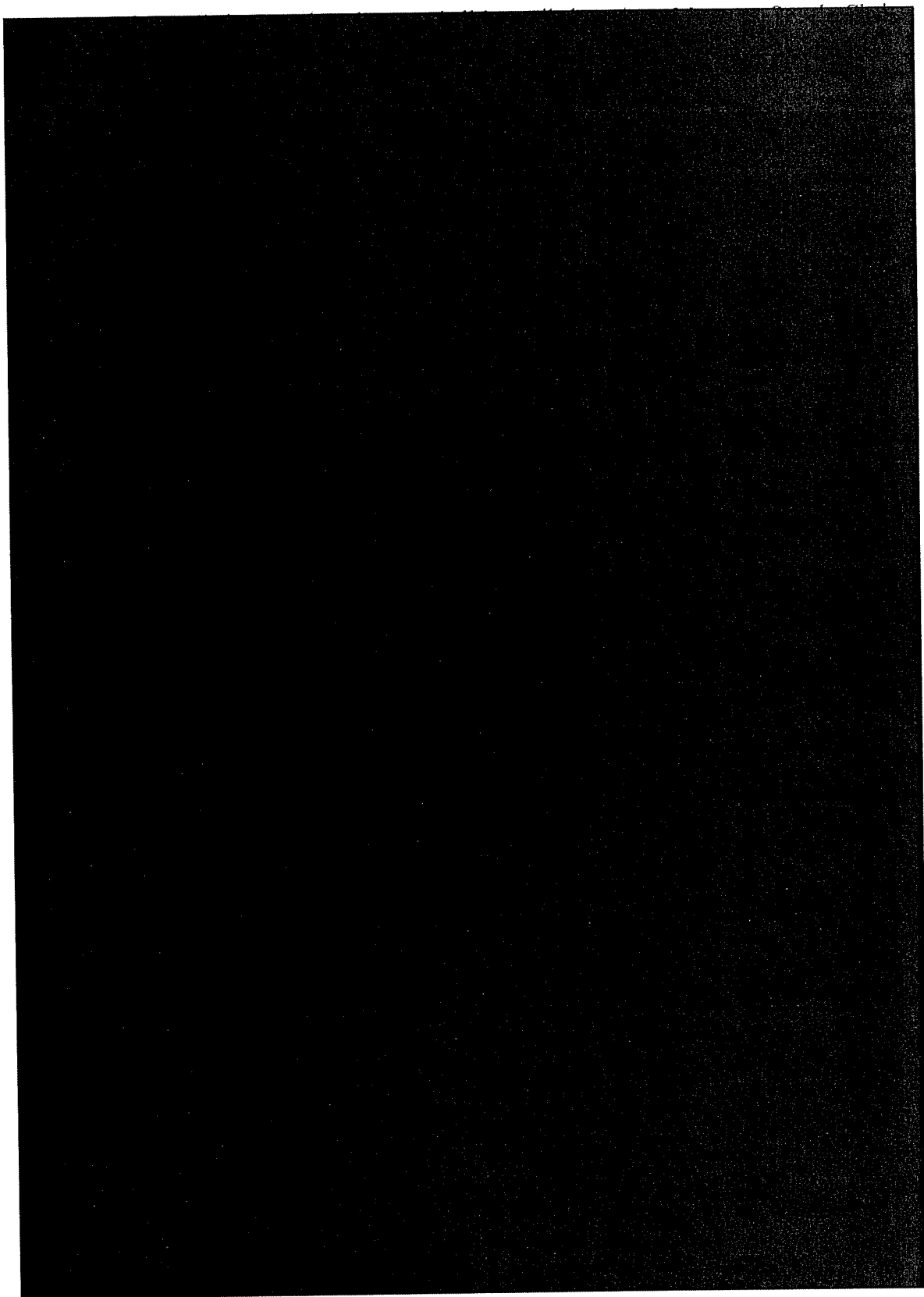
12/30/11  
ac

*J. Blk*  
24-Dec-11



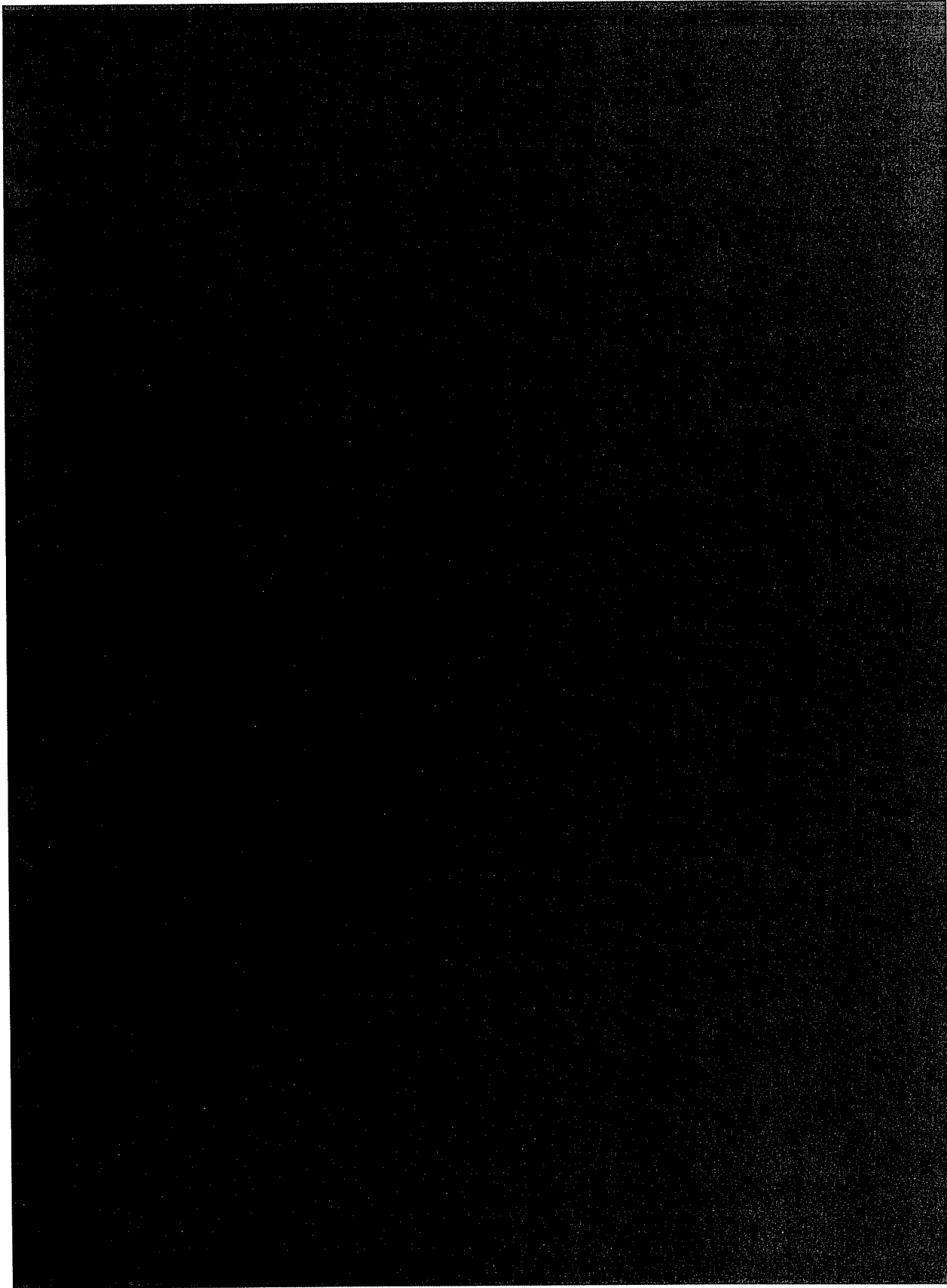
12/30/11  
GL

3 JBH  
24-Dec-11



12/30/11  
an

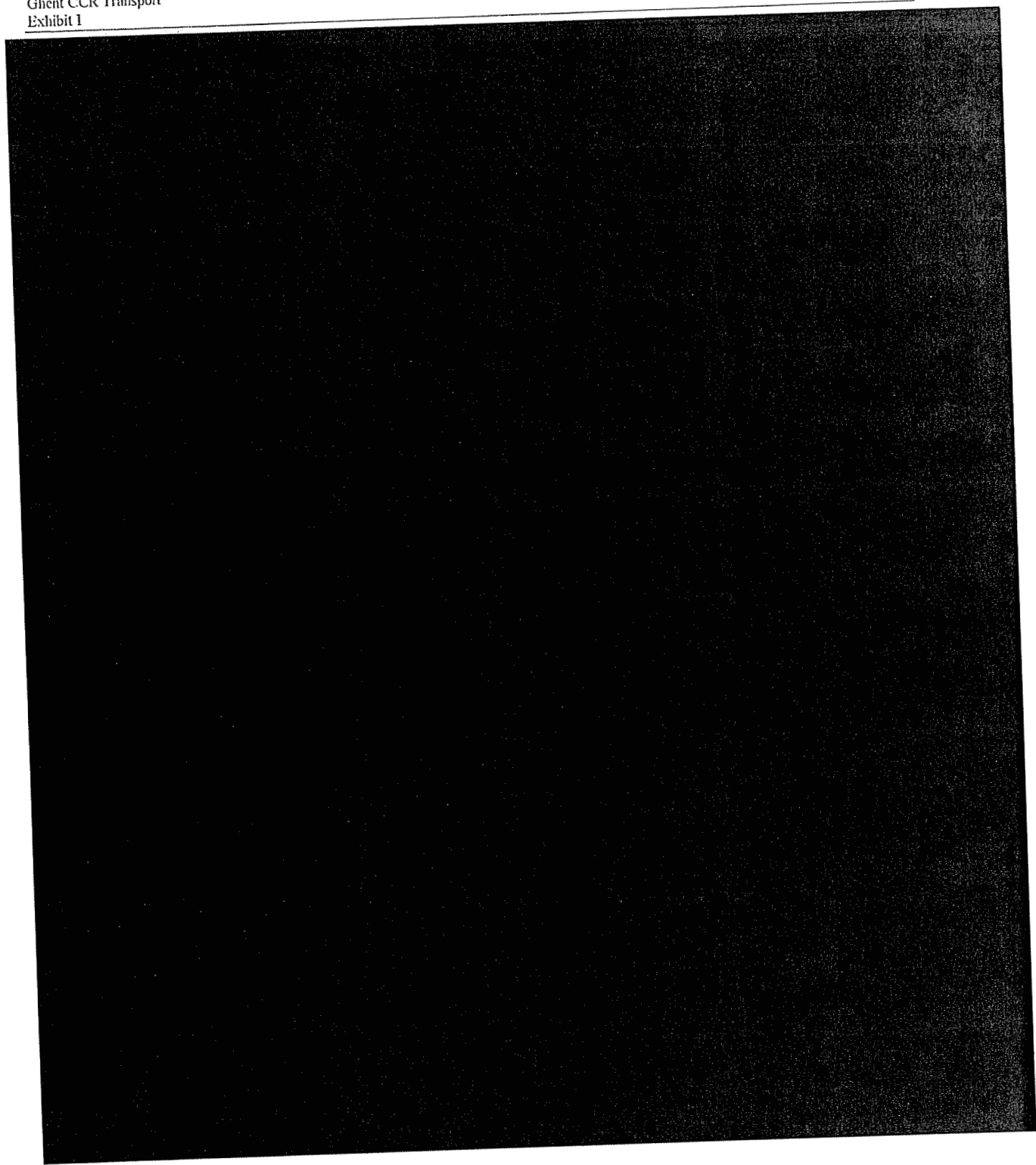
JBM  
29-Dec-11



Exhibit\_1\_Insurance 122311.docx

12/30/11  
m

50 JBA  
24-Dec-11



12/30/11  
en

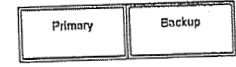
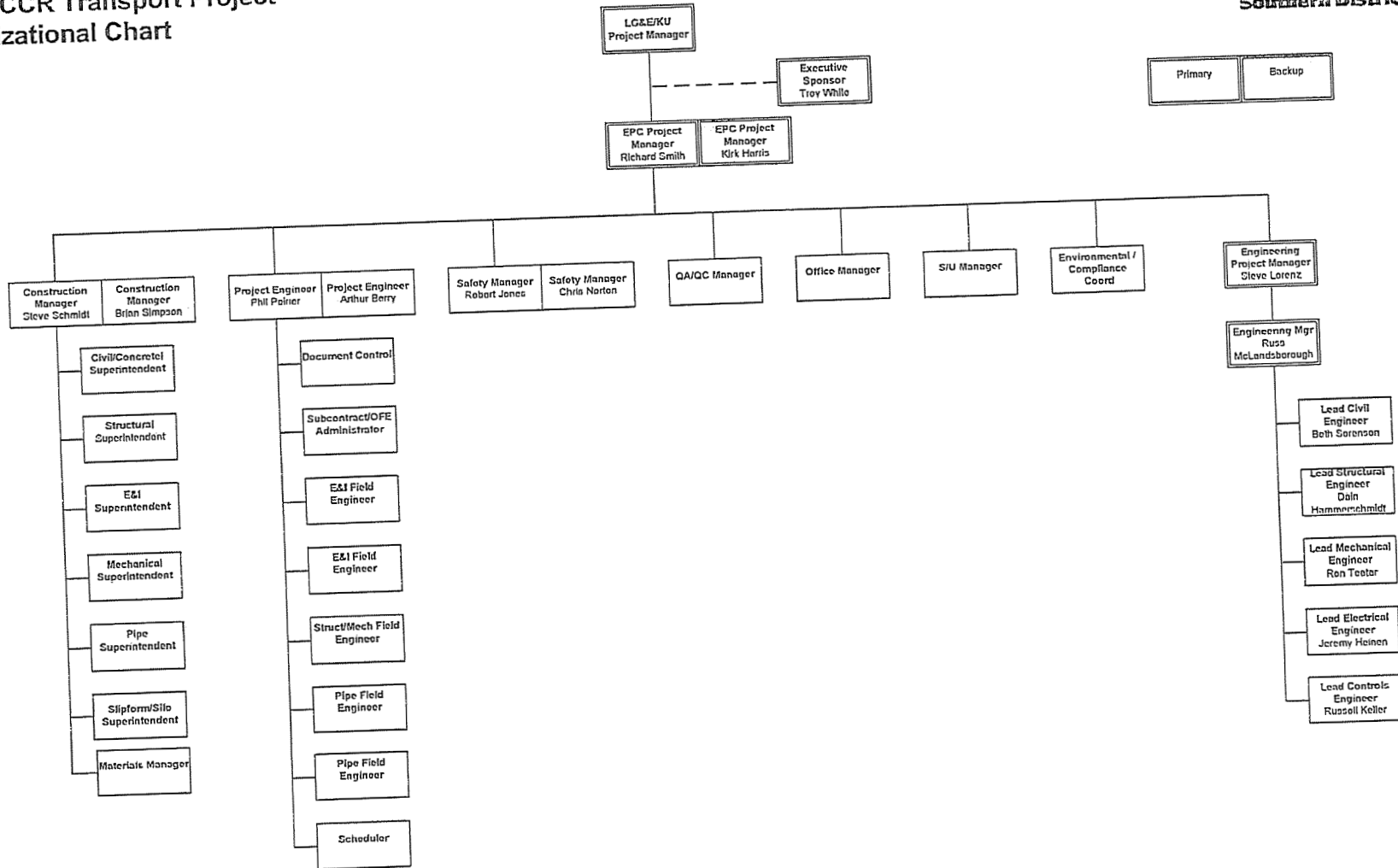
Exhibit\_1\_Insurance 122311.docx

6 JBNh  
24-Dec-11





# Ghent CCR Transport Project Organizational Chart



Thursday, December 08, 2011

*JBL*  
29-Dec-11

12/30/11  
GA

## EXHIBIT M MEETINGS AND PROGRESS REPORTS

### 1.0 Meetings and Progress Reports Details

#### 1.01 SUMMARY:

- A. This section outlines the meeting, scheduling and reporting requirements for the Agreement. The Contractor will provide support for these activities as applicable including attending project meetings.
- B. Project Meetings:
  - 1. Preliminary Conference.
  - 2. Engineering Coordination Meetings.
  - 3. Weekly Model meeting
  - 4. Onsite Weekly Progress meeting
- C. Schedules and Reports:
  - 1. Initial Coordination Submittals.
  - 2. Work Progress Schedule.
  - 3. Work Progress Reports.
  - 4. Delivery Schedule.
- D. Related Work Specified Elsewhere:
  - 1. Submittals: In accordance with Exhibit X
  - 2. Equipment and Materials

#### 1.02 PROJECT MEETINGS:

- A. Preliminary Conference:
  - 1. Contractor will conduct a meeting within 20 days after the Effective Date of Agreement, to review items stated in the agenda and to establish a working understanding between the parties as to their relationships during performance of the Work. The conference shall be attended by:
    - a. Contractor.
    - b. Representatives of principal Subcontractors and Suppliers.
    - c. Owner's representative(s).
  - 2. Meeting Agenda:
    - a. Projected fabrication/construction schedules.
    - b. Project coordination.
    - c. Procedures and processing of:
      - (1) Substitutions.
      - (2) Submittals.
      - (3) Change Orders.
      - (4) Applications for Payment.
    - d. Procedures for testing.
  - 3. Location of Meeting: Owner's office or by teleconference.
  - 4. Reporting: Contractor will prepare and distribute minutes of the meeting to each party represented.
- B. Engineering Coordination Meetings:
  - 1. Contractor will schedule and conduct a meeting at least monthly for coordination during Contractor's equipment engineering and design phase of the Work. Meetings shall be attended by:
    - a. Contractor representative(s) including engineering personnel.

*JSA*  
20-Dec-11

12/30/11  
ar

- b. Representatives of principal Subcontractors and Suppliers.
- c. Owner's representative(s).
2. Meeting Agenda:
  - a. Review of action items.
  - b. Facility design interfaces.
  - c. Equipment and Material procurement status.
  - d. Engineering/fabrication/manufacturing schedules.
  - e. Requests for information (RFIs).
3. Location of Meetings: Project Site or teleconference.
4. Reporting: Contractor will prepare and distribute minutes of the meetings to each party represented.

1.03 SCHEDULES AND REPORTS:

- A. Initial Coordination Submittals: Within the time period(s) defined in accordance with Exhibit X, Contractor shall submit to Contractor and Owner for review and acceptance:
  1. A preliminary Work progress schedule.
  2. A preliminary schedule of Submittals, as stated in accordance with Exhibit X.
  3. Certification of insurance.
- B. Work Progress Schedule:
  1. After submittal of preliminary Work progress schedule, submit to Contractor and Owner a detailed Work progress schedule within the time period(s) defined in accordance with Exhibit X. Base the schedule on the preliminary Work progress schedule and incorporate review comments and other feedback.
  2. The schedule shall show the Work in a graphic format suitable for displaying scheduled and actual progress.
    - a. Prepare schedules as a horizontal bar chart with separate bar for each major portion of the Work or operation.
    - b. The schedule shall also show the Work broken down into major phases and key items with the dates Work is expected to begin and be completed. Sequence of listings shall be in the chronological order of the start of each item of Work.
    - c. Scale and spacing shall allow space for notations and revisions.
    - d. Sheet size: Minimum 11 x 17.
  3. Provide sub-schedules to define critical portions of entire schedules.
  4. Coordinate Work progress schedule with Work progress reports and delivery schedule.
  5. Contractor will review and comment on Work progress schedule:
    - a. Contractor shall print and distribute copies of the accepted schedule to Owner, Suppliers, and other parties required to comply with scheduled dates.
  6. Contractor shall not change the accepted milestone dates in the Work progress schedule without prior written approval of Owner.
  7. Submit to Owner an updated schedule at least once monthly. Schedule shall show actual progress and any proposed changes in the schedule of remaining Work.
- C. Work Progress Reports:
  1. Submit monthly a report on actual Work progress. More frequent reports may be required should the Work fall behind the accepted schedule.
  2. Work progress reports shall consist of marked copies of prints made from the accepted Work progress schedule, and a narrative report which shall include but not be limited to the following:
    - a. A description of current and anticipated delaying factors, if any.
    - b. Impact of possible delaying factors.
    - c. Proposed corrective actions.

3. Work reported complete but not readily apparent to Owner must be substantiated with supporting data.
  4. Should operations fall behind accepted schedule to an extent that completion of Work within the Contract Time appears doubtful, Contractor shall, at no change in Contract Price, take corrective action to get back on schedule.
- D. Delivery Schedule:
1. Within 120 days after the Effective Date of this Agreement, Owner and Contractor shall agree on a delivery schedule for all Equipment and Materials to be furnished for which the delivery time has not been previously agreed or specified.
  2. Contractor shall notify Owner at least two Days in advance of any equipment deliveries.

## 2.0 Meeting Notes Template

### Ghent CCR Transport

Document No.:  
Date Issued:

### Meeting Notes

Meeting

Telecom

Conference Report

<b>Distribution:</b>	<b>Date, Time &amp; Place:</b>

<b>Subject:</b>	<b>Participants:</b>
<b>Originated By:</b>	<b>Recorded By:</b>

<b>Action Item</b>	<b>Assigned to/Status</b>
--------------------	---------------------------

### 3.0 Progress Report Table of Contents

- 1.0 EXECUTIVE SUMMARY
- 2.0 DESCRIPTION OF SERVICES
  - A. ENGINEERING ACTIVITIES
    - 1. Architectural
    - 2. Civil
    - 3. Control Systems
    - 4. Electrical
    - 5. Mechanical
    - 6. Plant Design
  - B. PROCUREMENT
  - C. SAFETY & HEALTH
  - D. CONSTRUCTION
  - E. COMMUNITY RELATIONS
  - F. LABOR RELATIONS
  - G. STARTUP
- 3.0 ENVIRONMENTAL
- 4.0 SCHEDULE
- 5.0 ISSUES AND CONCERNS
- 6.0 APPENDICES
  - A. Payment Schedule
  - B. Scope Change Register
  - C. Critical Schedule Activities
  - D. Project Schedule Milestone Dates

*ARK*  
30-Dec-11

12/30/11  
*ca*

- E. Percent Complete Curves:
  - Total Project
  - Engineering
  - Construction
  - Startup
- F. Bulk Commodity Curves:
  - Concrete
  - Structural Steel
  - Above Ground large Bore Pipe
  - Above Ground Small Bore Pipe
  - Cable Tray
  - Above Ground Conduit
  - Cable
  - Terminations
- G. System Turnover Curves:
  - Construction to Startup
  - Startup to Owner
- H. Staffing Curve
- I. Purchase Order and Sub-Contract Award Status
- J. Owner Inspection Summary
- K. Supplier Quality Shop Visits
- L. Project Schedule
- M. Progress Photos

## EXHIBIT O

### OWNER PROVIDED ITEMS

The following items will be provided by Owner to support the Work and, as applicable, in accordance with the interface requirements (e.g. – location, pressures, and flow rates) as identified in Exhibit A.

The personnel, services, information and other items specified in the Project Schedule and/or Technical Specifications (Exhibit A), (e.g., including utilities available, O&M staff available, inter-tie for energization available, requirements for electrical tie-ins, etc.) will be provided no later than the dates stated in the Project Schedule and/or Exhibit A (or, if Contractor is behind schedule, on such later date as may be reasonably required by Contractor for the performance of the Work). The furnishing of personnel, services, information and other items not specified in the Project Schedule shall be at such time and manner as may be reasonably required by Contractor for the performance of the Work to support the Project Schedule.

Exhibit P sets forth the responsibilities of the Parties with respect to the Permits required for the Work, including Permits relating to matters addressed in this Exhibit O.

As used below, “reasonable quantities,” means the aggregate quantities that should reasonably be anticipated to be required for the construction and commissioning of the Ghent CCR Transport System.

#### 1. Electrical Power

- a. Owner will provide reasonable quantities of electrical power supply as requested by Contractor for Contractor’s use during construction at locations designated by Owner. Power at the head end of the pipe conveyor and along the pipe conveyor route is the responsibility of the contractor.
- b. Owner will provide back-feed electrical power as necessary for the Work, in reasonable quantities requested by Contractor, no later than February 11, 2013.
- c. Owner will complete any upgrades indicated as being required by the ETAP study (i.e., the study to be performed by Contractor to determine the degree, if any, of upgrades necessary on the Owner’s side of the electrical supply tie-in points in order to supply the load required by the Ghent CCR Transport System) by the later of January 14, 2013 or 293 days after Contractor delivers the ETAP study to Owner.

#### 2. Water

- a. Owner will provide reasonable quantities of service water to support construction in quantities requested by Contractor at quality and pressure as described in Attachment A, available at the point(s) agreed by the Parties.

- b. Owner will provide reasonable quantities of service water in quantities requested by Contractor at quality and pressure as described in Attachment A to support start-up, commissioning, testing and operation of the Ghent CCR Transport System.
- c. Owner will provide reasonable quantities of potable water for construction purposes and purposes specified in Exhibit A in quantities requested by Contractor at quality and pressure described in Attachment A.

3. Waste Disposal

- a. Owner will provide a suitable on-site location for disposal of excess excavated material and demolished paving (asphalt & concrete) at an agreed location within 1 mile of the Job Site. A temporary spoil area on the Ghent Generating Station Site will be agreed upon between the Parties for material that is to be reused as fill.
- b. Wastewater discharge facilities available at the points agreed by the Parties.

4. Owner O&M Personnel

Owner will supply to Contractor a utility norm of personnel (working Ghent's operations normally scheduled shifts) for the start-up and commissioning, testing, checkout, training, and operation and maintenance of the Ghent CCR Transport System.

5. Owner Security Personnel

Owner will provide a security person at the main gate of the Ghent Generating Station Site. Owner is not responsible for patrols or Contractor access gates.

6. Pipe Conveyor Truck Loading Area Access

Owner will provide reasonable access to the pipe conveyor truck loading area at the Ghent Generating Station for Contractor and its Subcontractors in connection with the performance of the Work.



## EXHIBIT P

### PERMITS

Contractor shall assist Owner in obtaining and maintaining the necessary permits required in the name of Owner and shall obtain and maintain all other permits and licenses as required by the Agreement. Critical permits required for the development, design, engineering, financing, procurement, construction and operation of the Project, include but are not limited to those detailed below.

#### Owner's Responsibility:



#### Contractor's Responsibility:

Any statutory or non-statutory clearance/permits required to perform the Work, including but not limited to:



EXHIBIT "R" - LABOR RATES

Project : Ghent CCR Transport Project  
 Location : Ghent, Kentucky, KY

Current as of : Jan 1, 2011  
 Expiration Date : Dec 31, 2011

Current as of : Jan 1, 2012  
 Expiration Date : Dec 31, 2012

Current as of : Jan 1, 2013  
 Expiration Date : Dec 31, 2013

Classification	Base Rate/Hr	Overtime Rate/Hr	Subsistence Rate/Hr	Base Rate/Hr	Overtime Rate/Hr	Subsistence Rate/Hr	Base Rate/Hr	Overtime Rate/Hr	Subsistence Rate/Hr
Senior Operations Manager									
Senior Project Manager									
Senior Construction Manager									
Project Manager									
Construction Manager									
Proj Superintendent I									
Proj Superintendent II									
Proj Superintendent III									
Proj Superintendent IV									
Senior Project Engineer									
Proj Coord & Proj Engr I									
Coord/Field Engr II									
Coord/Field Engr III									
Coord/Field Engr IV									
Office Manager									
Safety Manager									
Material Manager									
QC Manager									
QC Inspector									
Instr Technician Level 1									
Instr Technician Level 2									
Instr Technician Level 3									
General Foreman									
Craft Foreman									
Leadman									
Licensed Journeyman									
Heavy Crane Operator									
Craftsman Level 1									
Craftsman Level 2									
Craftsman Level 3									
Helper Level 1									
Helper Level 2									
Helper Level 3									
Laborer									
Safetyman									
Warehouseman									
Toolman									
Field Clerk									

Notes:

Subsistence will be invoiced at the rates above plus applicable payroll taxes for only those employees brought onto the jobsite from outside of the local area. Subsistence will be invoiced at the above hourly rate for all hours worked.

12/30/11  
 m

*JB/K*  
 29-Dec-11

TIC generally pays salaried employees on a per-week basis, and hourly employees on a per-day basis.

Additional hours (to equate to the full daily or weekly rate) will be invoiced in accordance with jobsite policies for special circumstances such as weather delays.

Overtime is billed for all hours over 40 per week and for all hours worked on holidays recognized by the owner.

Safety Material and consumables are included in the above hourly unit labor rates.

Materials will be billed at invoice cost plus tax and freight, plus overhead and profit of 15.00 percent.

Subcontractors will be billed at invoice cost plus 15.00 percent.

---

Rev Date: 7/1/11 Computer: File: 11.0069.12

12/30/11  
cu

ABH  
29-Dec-11

**EXHIBIT S**  
**SITE AND SITE CONDITIONS**

**Table of Contents**

<b>1.0</b>	<b>Site Location</b>	<b>2</b>
<b>2.0</b>	<b>Site Areas</b>	<b>2</b>
<b>3.0</b>	<b>Site Description</b>	<b>3</b>
<b>4.0</b>	<b>Site Infrastructure</b>	<b>3</b>
<b>5.0</b>	<b>Basic Meteorological Data</b>	<b>3</b>
<b>6.0</b>	<b>Existing Construction Buildings</b>	<b>6</b>
<b>7.0</b>	<b>NERC Reliability Standards</b>	

12/30/11  
u

*JBM*  
29-Dec-11

## 1.0 Site Location

The Ghent Generating Station Site (hereinafter in this Exhibit S, "Site") is located in Carroll County, Kentucky, adjacent to the Ohio River, approximately 50 miles southwest of Cincinnati, OH and 59 miles northeast of Louisville, Kentucky.



## 2.0 Site Areas

Drawing GH0-SK-C-00001 shows the general limits of the Site.

Ghent CCR Transport 1 shows Landfill site.

Ghent CCR Transport 2 shows CCR Transport access gates, access roads, laydown areas, and CCR Transport area.

*JBA*  
29-Dec-11

12/30/11  
m

The areas shown on the layout drawings shall also be used in respect of site construction purposes, for office requirements, stores and fabrication areas, workshops, canteen, Contractor parking and toilet facilities, and other necessary facilities.

### **3.0 Site Description**

During construction of the Ghent CCR Transport System, the facility will remain open and operating. Operation of the plant requires periodic deliveries of coal by both, truck and rail, and continuous disposal of plant effluent. The Contractor shall conduct its operations in a manner that will not impede or adversely affect operation of the facility, delivery of coal, or disposal of plant effluent. Existing railroad tracks, roadways, and disposal facilities shall be kept open and usable, except during short, pre-scheduled and agreed upon durations. The Contractor shall note, other contractors will be performing work on-site during the construction period. The Contractor shall coordinate work to prevent any interference with plant operations or other contractors work.

### **4.0 Site Infrastructure**

Site access is available via US 42. There is limited rail connection to the Site via CSX.

Construction power supply connection will be provided from an existing source of KU's choosing excluding the head end of the pipe conveyor. A suitable connection for construction power in offices shall be agreed with Owner.

Construction water supply shall tie in to existing services on Site and shall be agreed with Owner. Contractor shall take precautions to prevent contamination of Owner's potable water supply.

No permanent Construction sewage drainage is available at the Site and temporary sewage disposal arrangements will be the responsibility of the Contractor.

### **5.0 Basic Meteorological Data**

Where additional data for design is required Contractor shall be responsible for determination of appropriate limiting conditions. Contractor is advised that this data is not up to date and is recommended to gather additional recent data.

Louisville Meteorological Data for Precipitation (inches): Averages 1960 - 1990, Extremes 1948 - 1995.

	Rainfall	Rainfall	Rainfall	Rainfall	Snowfall	Snowfall
	mean	high	min	1 day max	mean	max
January	2.86	11.38	0.45	3.00	5.90	28.40
February	3.30	9.02	0.76	3.66	5.00	15.90
March	4.66	14.91	1.03	6.97	3.10	22.90
April	4.23	11.10	0.76	4.08	0.20	1.60
May	4.62	11.57	1.37	4.60	-	-
June	3.46	10.11	0.49	5.12	-	-
July	4.51	10.05	0.99	5.09	-	-
August	3.54	8.79	0.23	3.12	-	-
	Rainfall	Rainfall	Rainfall	Rainfall	Snowfall	Snowfall
	mean	high	min	1 day max	mean	max
September	3.16	10.49	0.27	4.30	-	-
October	2.71	6.47	0.39	2.64	-	2.40
November	3.70	9.12	0.72	3.58	1.00	13.20
December	3.64	8.86	0.65	2.77	2.20	9.30
Annual	44.39	59.80	30.38	6.97	17.40	43.10

Louisville Meteorological Data for Temperature (°F): Averages 1960 – 1990, Extremes 1948 – 1995.

	Monthly Averages			Daily Extremes	
	Max	Min	Mean	Max	Min
January	40.3	23.2	31.7	77	-22
February	44.8	26.5	35.7	77	-19
March	56.3	36.2	46.3	86	-1
April	67.3	45.4	56.3	91	22
May	76	54.7	65.3	95	31
June	83.5	62.9	73.2	102	42
July	87	67.3	77.2	105	50
August	85.7	65.8	75.8	101	46
September	80.3	58.7	69.5	104	33
October	69.2	45.8	57.6	92	23
November	56.8	37.3	47.1	84	-1
December	45.1	28.6	36.9	76	-15
Annual	66	46	56.1	105	-22

*ABK*  
29-Dec-11

12/30/11  
cu

Louisville Meteorological Data for Humidity: 1993 - 2002.

Month	Mean	Max	Min
January	75.3	100	23
February	68.9	100	6
March	66.0	100	5
April	63.4	100	17
May	67.7	100	23
June	72.7	100	27
July	69.5	100	15
August	69.9	100	25
September	68.1	100	5
October	70.8	100	23
November	71.1	100	23
December	77.2	100	21

Louisville Meteorological Data for Pressure (mbar): 1993 - 2002.

Month	Mean	Max	Min
January	1,019.8	1,043.8	994.4
February	1,019.7	1,039.4	990.7
March	1,017.9	1,042.1	989.6
April	1,015.7	1,032.3	994.4
May	1,015.2	1,029.6	998.1
June	1,015.3	1,028.6	995.4
July	1,016.2	1,025.5	1,005.2
August	1,017.2	1,025.9	990.0
September	1,016.9	1,028.2	997.8
October	1,019.0	1,035.7	992.3
November	1,020.0	1,040.8	992.7
December	1,019.8	1,042.5	997.4

Louisville Meteorological Data for Wind Speed and Stability Class: 1984 - 1992.

Pasquill-Gifford Stability Class	Wind Speed Category (miles/hour)						
	Calm	1-3	4-7	8-12	13-18	19-24	> 24
Extremely Unstable	0.3	0.2	0.6	0.0	0.0	0.0	0.0
Unstable	0.5	1.3	3.2	2.1	0.0	0.0	0.0
Slightly Unstable	0.3	0.4	3.5	6.2	1.2	0.1	0.0
Neutral	0.7	1.1	9.8	19.2	14.1	2.0	0.3
Slightly Stable	0.0	0.0	7.6	5.8	0.0	0.0	0.0
Stable	4.1	4.3	11.1	0.0	0.0	0.0	0.0

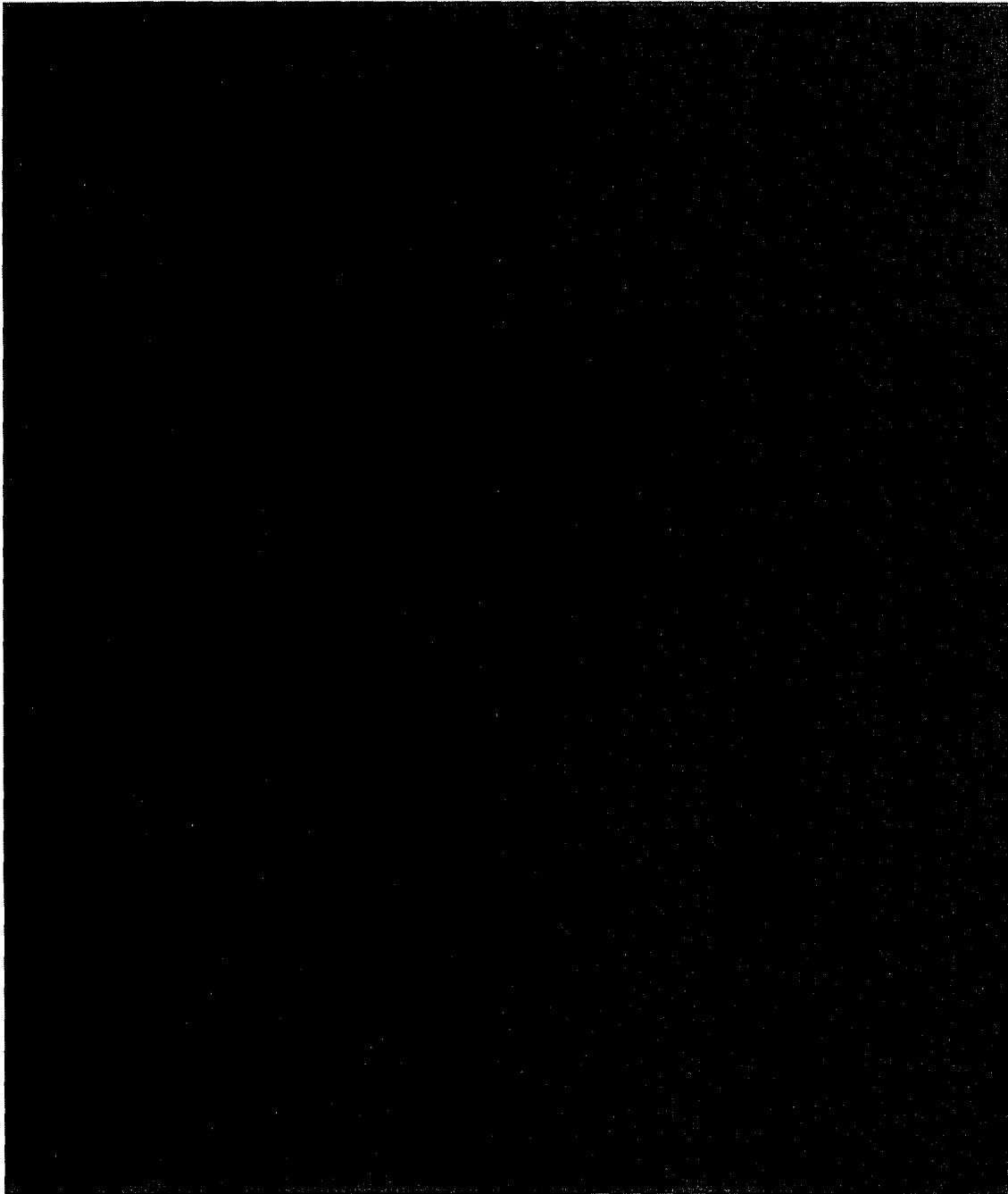
*JB/la*  
29-Dec-11

12/30/11 *ec*



## 6.0 Existing Construction Buildings

No existing buildings are available at the Site for construction use. Any temporary construction buildings needed for the Contractors use will have to be temporary and provided by the Contractor.



*JBA*  
29-Dec-11

12/20/11  
*me*

Item	Value Engineering Items
1	Rotate the bottom ash building 90 degrees.
2	Provide a portal reclaimer using a straight boom rather than a knuckle boom.
3	For the Gypsum shed, possibly only enclose 3 sides.
4	For the conveyor system, use flop gates in lieu of travelling heads.
5	For the ash handling battery/UPS system, use power from existing plant.
6	For the battery/UPS system, use a sealed lead-acid battery type system similar to a telecommunication UPS system for the landfill area and gypsum area UPS systems
7	Review the retaining wall design on the north along the creek and the southwest.
8	Direct bury 15KV and 25KV cable to landfill area routed alongside pipe conveyor
9	Combine the Unit 1 & Unit 2 Ash handling electrical systems and the Unit 3 & Unit 4 Ash handling electrical systems
10	Utilize a sleeper rack for piping south of 42 on the east end of Gypsum Slurry Rack (Clarification Item # 82)
11	Look at the requirements for walkways along pipe racks and the associated service air, service water, and receptacles to be located along walkways.
12	Allow the wash water to go to ATB2.
13	Delete Restoration of spare Bottom Ash Pipe Lines From Unit 1 & 3 Boilers To SFC Area
13.a	Utilize carbon steel piping in lieu of Basalt piping on straight run sections of piping on spare bottom ash piping from Unit 1 & 3 Boilers to Submerged Flight Conveyor. Basalt abrasion spools would be used at changes of direction similar to what is being supplied by Diamond Power on Fly Ash and Bottom Ash Contract.

12/30/11  
AM

*ASB*  
30-Dec-11

## EXHIBIT U

### TRAINING

Contractor will develop and implement a Job Site-based comprehensive training program for Owners experienced operating and maintenance (O&M) personnel to understand the overall integrated operation and maintenance of the Ghent CCR Transport System. O&M personnel will be required to pass the training course prior to operating or maintaining the Ghent CCR Transport System.

The training program will consist of Job Site classroom training and instruction for 64 Owners' O&M personnel, followed by on-the-job training through Commercial Operation. The level of detail and pace of this training program will be based on the assumption that Owners' personnel being trained have some knowledge and experience with power plants and power plant components and require only orientation to the specific operational requirements of the new Equipment.

Training for Equipment provided in the Ghent CCR Transport Contract will be provided by the each equipment supplier. The EPC Contract shall provide training for the balance of plant Equipment. Training shall be coordinated and scheduled in conjunction with the EPC Supplier's training to provide an overall comprehensive training program for the Ghent CCR Transport system.

Within 6 months after Effective Date, Contractor will prepare and submit the training program and preliminary schedule to Owners for review. It is expected that classroom training will begin approximately 8 weeks before and complete no later than the start of the final Tie-In Outage of the Ghent CCR Transport system, and Owners should ensure the availability of all nominated personnel requiring training at that time. Contractor shall gain approval from Owner for all training developed and implemented.

#### Classroom Training

Contractor's training materials will be based on system descriptions, each containing an operations section with a basic description of systems and equipment operations. Contractor's training materials will also provide a basic description of several modes of integrated plant operations. The level of detail provided in these materials will address any detailed step-by-step sequence action required by the operators. An alarm response section will address those alarms for which the appropriate operator response may not be obvious.

#### Lesson Plan Outline

The student's lesson text will incorporate the following elements:

- Course Objectives – what the student is required to learn
- System Overview – what the system does and how it works

- Major Component Description – functional description
- Flow Path and Controls – major flow paths, instrumentation, protective devices, controls, and interlocks
- Principles of Operation
- Startup, Normal Operation, Shutdown, and Infrequent operation procedures
- Alarm Responses
- Support Systems – systems needed for operations
- Hazards and Safety Features
- Routine Maintenance
- Emergency Procedures
- Figures and Tables (as required)

Contractor's trainers will present those portions of the classroom training that are prepared by Contractor (approximately 50 percent of the training). The remainder of the classroom training will be presented by the original equipment manufacturers (OEMs), major equipment and system vendors, or subcontractors. Contractor will arrange for, schedule, and coordinate the classroom training presented by OEMs/subcontractors.

The classroom training provided by the vendors/subcontractors will cover the following equipment and systems:

- Ghent CCR Transport System
- Gypsum Byproduct Dewatering Belt System
- Bottom Ash Dewatering Systems
- Pipe Conveyor System
- Fly Ash Conveying System
- Electrical Equipment
- Distributed Control System
- Auxiliary Systems

### Student Evaluations

Up-to-date records reflecting each student's progress, including test results and attendance, will be submitted to Owners upon completion of each training course for review and evaluation.

### Materials

Contractor will provide training materials, manuals, slides, films, and other instructional material as may be necessary for training.

Training aids, such as films, slides, computer presentations, computer-simulated process interactive videos, and software packages/materials, along with supplies necessary to support, maintain, and successfully supplement the training program, will be furnished and then turned over to Owners at completion.

### **Facilities**

Training will be conducted at the Ghent Generating Station Training building or other mutually agreed-on-site location.

### **On-The-Job Training**

Contractor considers on-the-job training an essential part of an overall training program. During the commissioning phase, Owners O&M staff will work closely with the Contractor Startup team and the OEM technical advisors. This will give the O&M staff an opportunity to convert knowledge gained in the classroom to practical experience in the plant by assisting with hands-on activities such as preoperational system valve lineups. In addition, Contractor will involve Owners operations personnel during the development of the operating procedures and allow active participation in writing detailed sequences of actions required for basic integrated operations, such as cold start to full load, hot restart, normal shutdown, and response to plant abnormal conditions.

## EXHIBIT V

### OPERATING AND MAINTENANCE MANUALS

- 1.0 Operating and Maintenance Manuals Submittal Instructions
1. In addition to electronic Submittals specified in Exhibit X, Equipment instruction books and operating manuals prepared by the each equipment supplier and the PJFF Supplier shall include the following:
    - a. Index and tabs.
    - b. Instructions for installation, start-up, operation, inspection, maintenance, parts lists and recommended spare parts, and data sheets showing model numbers.
    - c. Matrix of all regularly scheduled maintenance requirements.
    - d. Applicable drawings.
    - e. Warranties and guarantees.
    - f. Name and address of nearest manufacturer-authorized service facility.
    - g. All additional data specified.
  2. Information listed above shall be bound into hard-back binders. Four manuals are required, two equivalent to heavy duty Bok-Hinge Split Prong, McBee Swing Hinge or Crane Binder Technologies post type binders or approved equal and two in standard binders. Sheet size shall be 8-1/2" x 11". Binder color shall be black. Capacity shall be a minimum of 1-1/2 inches, but sufficient to contain and use sheets with ease.
    - a. Provide the following accessories:
      - i. Label holder.
      - ii. Business card holder.
      - iii. Sheetlifters.
      - iv. Horizontal pockets.
    - b. The following information shall be imprinted, inserted, or affixed by label on the binder front cover: See Appendix 01330-C for details.
      - i. Owner's name.
      - ii. Owner's facility or plant name.
      - iii. Equipment item name.
      - iv. Volume number (if applicable).
      - v. Contract number.
      - vi. Manufacturer's name and address.
    - c. The following information shall be imprinted, inserted, or affixed by label on the binder spine:
      - i. Equipment item name.
      - ii. Owner's name and Owner's facility or plant name.
      - iii. Manufacturer's name.
      - iv. Contract number.
      - v. Volume number (if applicable).
    - d. Submit mockup of cover and spine for Owner's review.

2.0 Typical Instruction Book or Operating Manual Cover and Spine Layout

<p><b>Ghent CCR Transport EQUIPMENT</b></p> <p><b>KU</b></p> <p><b>Ghent CCR Transport</b></p> <p><b>Contract Number _____</b></p> <p><b>Volume Number* _____</b></p>	<p><b>LG&amp;E</b></p> <p><b>Ghent CCR Transport (Instruction Book) (Operating Manual)</b></p> <p><b>for</b></p> <p><b>Ghent CCR Transport</b></p> <p><b>Volume Number* _____</b></p> <p><b>Contract Number _____</b></p> <p><b>Manufacturer's Name</b> <b>Manufacturer's Address</b></p>	<p>22</p> <p>18</p> <p>36</p> <p>22</p> <p>16</p> <p>16</p> <p>22</p> <p>18</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------

(Spine)

(Cover)

NOTES:

1. Choose either "Instruction Book" or "Operating Manual."
2. All lettering shall be a block style font, imprinting color to contract with binder color specified.
3. Cover lettering shall be point sizes indicated in column to right of cover illustration.
4. Spine letter shall be 14-point minimum.
5. \*Volume number required only if instructions are contained in more than one volume.

*J.B.H.*  
24-Dec-11

12/30/11  
an

Ghent CCR Transport System

**Unit of Property Description**

**Transport System**

Electrical Systems  
Instrumentation and Controls  
Instrument Air Compressor  
Electrical/Control Building  
Maintenance/Shop Building  
Transfer Tower  
Concrete Foundations (by quantity)  
Transformer Foundations (by quantity)  
Underground Utilities  
Underground Electrical Ductbanks  
Underground Piping  
U1 Fines Purge Pump Building  
U2/3 Fines Purge Pump Building  
U4 Fines Purge Pump Building  
CCR Underground Electrical  
CCR Equipment Foundations  
CCR Equipment  
CCR Transformers  
CCR Retaining Wall Foundations  
CCR Retaining Wall  
CCR Conveyor Belts:  
    Conveyors  
    Belts/Buckets  
    Rollers  
    Motor  
    Gear Reducer  
    Supporting Steel  
  
Pipe Rack Foundations  
Pipe Rack  
  
Pipe Conveyor Foundations  
Pipe Conveyor

12/30/11  
ac

*JBLH*  
29-Dec-11



**Fly Ash**

Fly Ash Handling Equipment  
Pump Motors  
Pug Mills  
Fly Ash Building Foundations  
Fly Ash Building 1/2  
Fly Ash Building 3/4  
Fly Ash Pipe Rack  
Silo "A"  
Silo "B"  
Marketable Silo  
Silo Stair Tower (2)  
10 inch pressure piping  
12 inch pressure piping  
14 inch pressure piping  
8 inch vacuum piping  
10 inch vacuum piping  
12 inch vacuum piping  
2 Exhausters  
2 Blowers  
2 Filter Separators  
4 Pressure Vessels

**Bottom Ash**

Submerged Flight Conveyor  
Submerged Flight Conveyor Foundation  
Submerged Flight Conveyor Building  
Pump Motors  
Ash Water Return Sump  
Ash Bunker Cover

**Gypsum Dewatering**

Gypsum Storage Shed  
Vacuum Belt Filter  
Vacuum Pumps Skids  
Cake Wash Skids  
Cloth Wash Skids  
Gypsum Processing Plant Foundation  
Gypsum Processing Plant Building  
Gypsum Processing Plant Sump  
Portal Reclaimer

12/30/11  
22

*JBL*  
29-Dec-11

# EXHIBIT X

## Submittals, Reviews, and Hold Points

### TABLE OF CONTENTS

1.0	Submittal Schedule	2
2.0	Review	2
3.0	Hold Points	2

12/30/11  
W

JBL/K  
24-Dec-11

TABLE 00451.2 - Schedule of Submittals

Schedule of Submittals and Applicable Liquidated Damages								
Item No.	Reference Document	Submittal Item	Submittal Dates				Liquidated Damages Yes/No	Owner Review Required Yes/No
			Calendar Days	Event	Due Date			
<b>Technical Submittals</b>								
<b>General</b>								
1		Plant Startup Procedures, including sample Turnover Packages	60	Before	Startup of first system		No	Yes
2		Training		Before	Turn-over of each system			
3		Equipment O&M Manuals		Before	Start of Training		No	No
4		Ghent CCR Transport System Operations and Maintenance Manuals	30	Before	Start of Training		No	Yes
<b>Civil/Structural</b>								
5		Site survey	15	After	Survey completed		No	No
6		Dewatering and settlement records			Final / As-Built		No	No
7		Proposed dewatering system including: • Calculations • Piezometer locations • Dewatering Plan Layout • Installation Details • Filler materials • Backup system	10	Before	Site Disturbance		No	Yes
8		Pile design details including pile lengths, calculations, reinforcing, uplift details, reinforcing steel and concrete strengths, concrete mix design, and concrete compressive test results.	20	Before	Pile installation begins		No	Yes
9		Individual Pile Driving Records, including all test results		After	Pile Installation complete		No	No
<b>Foundations</b>								
10		Concrete placement plan for special structures	15	Before	Concrete placement		No	No
11		Results of testing and test reports.	7	After	Tests		No	No
12		Plant building and equipment foundations key plan with dimensions or coordinates, standard details and general notes	90	After	Effective Date		No	Yes
13		Preliminary foundation drawings	120	After	Effective Date		No	Yes
<b>Structural Steel</b>								
14		Structural Steel Material Certification			Upon request		No	No
15		High Strength Bolts Material Certification			Upon request		No	No
16		Direct Tension Indicators Material Certification			Upon request		No	No
17		Preliminary Structural Steel Drawings for designed buildings and structures (including pipe rack)	90	After	Effective Date		No	Yes
<b>Material Handling</b>								
18		Preliminary CCR handling flow diagrams	60	After	Effective Date		No	Yes
19		Preliminary CCR conveyor plans and elevations	60	After	Effective Date		No	Yes
<b>Buildings</b>								
20		Final location, arrangement, and size of the buildings	120	After	Effective Date		No	Yes
21		Preliminary building floor plans and elevations	60	After	Effective Date		No	Yes
22		Building architectural notes, standard details, schedules for doors, windows, openings and miscellaneous hardware	120	After	Effective Date		No	No
<b>Underground Piping</b>								
23		U/G piping systems drawings and details	90	After	Effective Date		No	Yes
<b>Protective Coatings</b>								
24		Product data sheets	90	After	Effective Date		No	No
25		Surface preparation/coating procedures	90	After	Effective Date		No	No
26		Lining/coating inspection/test procedures	90	After	Effective Date		No	No
27		Coating system application/repair procedures	90	After	Effective Date		No	No
28		Color scheme /coating samples	120	After	Effective Date		No	Yes
29		Painting certification	10	After	Completion of work		No	No
<b>Mechanical</b>								
30		Plot plan / general arrangement	60	After	Effective Date		No	Yes
31		Preliminary P&ID's and System Descriptions for EACH system, including - All major mechanical systems - HVAC and plumbing	120	After	Effective Date		No	Yes
32		Sump/Tank Capacities In gallons and hours	60	After	Effective Date		No	No
33		Major Equipment List	150	After	Effective Date		No	Yes
34		Valve List	150	After	Effective Date		No	Yes
35		Pipeline List	150	After	Effective Date		No	Yes
36		Mechanical Device List	150	After	Effective Date		No	Yes
37		Tie-in list					No	Yes
38		Facility access arrangement drawings (walkways, platforms, ladders, and stairways)	120	After	Effective Date		No	Yes
40		Preliminary Piping arrangement composite drawings	120	After	Effective Date		No	Yes
41		Demolition Drawings	120	After	Effective Date		No	Yes
42		Pipe Support Drawings	160	After	Effective Date		No	Yes

12/30/11  
an

JBH  
29-Dec-11

Schedule of Submittals and Applicable Liquidated Damages								Owner Review Required
Item No.	Reference Document	Submittal Item	Submittal Dates					
			Calendar Days	Event	Due Date	Liquidated Damages		
43		Major equipment specifications, including, but not limited to the following: - Bulk Material Handling Equipment - Fly Ash Silos - Slurry Pumps - General Service Pumps - Tanks - Fire Protection Systems - Agitators - Compressed Air Equipment		Before	Equipment Procurement		No	Yes
44		Vendor equipment drawings, including - detailed equipment arrangement drawings - performance curves and data - shop testing plan, schedule, and test results - lubrication requirements - utility requirements (air, water, etc.) - motor nameplate data - maintenance / pull space requirements - operating instructions / requirements		Before	Shipment to jobsite		No	No
45		Fire protection system drawings, including - hydraulic calculations - hydrant layout - extinguisher layout - hose station layout - fire protection system(s) layout - fire panel details, location, arrangement - Design submittal for submittal to insurer - Final conformed to construction drawings and documentation	120	After	Effective Date		No	Yes
46		Field Erected Tank drawings, including - outline drawings - nozzle schedule - calculations - tank inspection reports	120	After	Effective Date		No	No
47		Valve data, including valve drawings / cut sheets, test reports, operator information, Cv curves		Before	Shipment to jobsite		No	No
48		Control Valve data, including valve drawings / cut sheets, calculations, test reports, flow data (Cv, Cg, or Cs), instrumentation		Before	Shipment to jobsite		No	No
49		Safety and Relief Valve data, including valve drawings / cut sheets, calculations, test reports		Before	Shipment to jobsite		No	No
50		HVAC Systems design information and drawings, including - ductwork and equipment arrangement - system calculations - vendor drawings	150	After	Effective Date		No	No
<b>Electrical</b>								
51		Preliminary Overall one-line diagrams	90	After	Effective Date		No	Yes
52		Preliminary Electrical Load List	150	After	Effective Date		No	Yes
53		Transformer & Medium Voltage Meter and Relay One-Line Diagrams		Before	Equipment Procurement		No	Yes
54		Low Voltage Switchgear Meter and Relay One-Line Diagrams		After	Equipment Procurement		No	Yes
55		Three Line Diagrams		After	Equipment Procurement		No	Yes
56		Modifications to Existing One-Line, Metering/Relaying, and/or Three-Line Diagrams		After	Equipment Procurement		No	Yes
57		Preliminary Load Flow and motor starting calculation		Before	Equipment Procurement		No	Yes
58		Preliminary Short circuit calculation		Before	Equipment Procurement		No	No
59		Preliminary Transformer sizing		Before	Equipment Procurement		No	No
60		Preliminary Battery Sizing		Before	Equipment Procurement		No	No
61		Grounding and lightning protection design calculation		Before	Equipment Procurement		No	No
62		Cable Sizing		Before	Equipment Procurement		No	No
63		Underground duct bank cable sizing		Before	Equipment Procurement		No	No
64		UPS Sizing		Before	Equipment Procurement		No	Yes
65		Transformer specifications		Before	Equipment Procurement		No	Yes
66		Medium and Low Voltage Switchgear Specifications		Before	Equipment Procurement		No	Yes
67		Motor Control Center Specifications		Before	Equipment Procurement		No	Yes
68		DC System Specifications		Before	Equipment Procurement		No	Yes
69		UPS Specification		Before	Equipment Procurement		No	Yes
70		Electrical Tie-In List		Before	Release for Construction		No	No
71		Circuit and Raceway Schedule as a sort-able data file (Refer to Client Format Standards)		Before	Release for Construction		No	No
72		Completed motor data sheets for each individual motor		Before	Release for Construction		No	Yes
73		Lightning protection drawings		Before	Release for Construction		No	Yes
74		Grounding Drawings		Before	Release for Construction		No	Yes
75		Lighting/paging/communication/security drawings		Before	Release for Construction		No	No
76		Cable Tray Drawings		Before	Release for Construction		No	No

12/30/11  
ML

*JBH*

Schedule of Submittals and Applicable Liquidated Damages							
Item No.	Reference Document	Submittal Item	Submittal Dates				Owner Review Required
			Calendar Days	Event	Due Date	Liquidated Damages	
77		Raceway Drawings		Before	Release for Construction	No	No
78		Schematic Diagrams and termination lists		Before	Release for Construction	No	No
79		Heat tracing drawings		Before	Release for Construction	No	No
80		Protective relay settings and device coordination calculation		Before	Equipment Energization	No	Yes
81		Relay instruction and service manuals, device setting summary, setting sheets, protective device software files, coordination curves, CT ratio correction factor and excitation curves		Before	Equipment Energization	No	No
83		Transformer tap selection calculation		Before	Equipment Energization	No	No
84		Engineering Detailed Design Documents listed above.			Each Revision	No	No
85		Manufacturers Design Documents			Each Revision	No	No
<b>Instrumentation &amp; Controls</b>							
86		Control room arrangement drawing	180	After	Effective Date	No	Yes
87		Overall control system architecture drawing - for Owner Approval	180	After	Effective Date	No	Yes
88		Overall control system architecture diagram		Before	Release for Construction	No	Yes
89		I/O List - Hardware Cutoff		Before	Release for Fabrication	No	No
90		I/O List - Software Cutoff		Before	Release for Configuration	No	No
92		Logic discriptions		Before	Release for Configuration	No	Yes
93		Operator graphic sketches		Before	Release for Configuration	No	Yes
94		Preliminary Instrument list		Before	Equipment Procurement	No	Yes
95		Flow element calculation data sheets showing beta ratio, dP, flow		Before	Equipment Procurement	No	No
96		Instrument installation details		Before	Release for Construction	No	Yes
97		Instrument factory calibration sheets		Upon	Shipment to jobsite	No	No
98		Engineering Detailed Design Documents listed above.			Each Revision	No	No
99		Manufacturers Design Documents			Each Revision	No	No
<b>Quality System Requirements - Q002 In Attachment A</b>							
100	Q100 in Attach A	Quality Manual, controlled copy	30	After	Effective Date	No	No
101	Q100 in Attach A	Certification Letter or Certificate of Authorization (copy), if certified by a registered agency, e.g., ASME Certificate of Authorization	30	After	Effective Date	No	No
102	Q100 in Attach A	Subsupplier listing	30	After	Effective Date	No	Yes
103	Q100 in Attach A	Inspection and test plan	90	After	Effective Date	No	Yes
104	Q100 in Attach A	Notification of inspection/test (for Owner hold/witness points)	14	Before	Test/Inspection	No	No
<b>General Welding Requirements - Q100 In Attachment A</b>							
105	Q100 in Attach A	Welding Procedure Specifications (WPS) with applicable Procedure Qualification Records (PQR)	30	Before	Start of Fabrication	No	Yes
106	Q100 in Attach A	Welder and welding operator qualification records		Upon	Request	No	Yes
107	Q100 in Attach A	Procedures for storing, issuing, and reconditioning of electrodes, wires, and fluxes	30	Before	Start of Fabrication	No	Yes
108	Q100 in Attach A	Repair procedures associated with a nonconformance report	5	After	Discovery of Repair	No	Yes
109	Q100 in Attach A	Post-weld heat treatment procedures	30	Before	Start of Fabrication	No	Yes
110	Q100 in Attach A	Solution annealing heat treatment procedure, if required	30	Before	Start of Fabrication	No	Yes
111	Q100 in Attach A	CMTR or equivalent material test reports for filler materials for welding P-No. 5B or 15E (9Cr-1Mo-V) alloy materials	30	Before	Start of Fabrication	No	Yes
112	Q100 in Attach A	Visual inspectors' qualifications and certificates	30	Before	Start of Fabrication	No	No
113	Q100 in Attach A	Nondestructive examination procedures	30	Before	Start of Fabrication	No	Yes
114	Q100 in Attach A	Root side purging procedures	30	Before	Start of Fabrication	No	Yes
115	Q100 in Attach A	Nonconformance reports	5	After	Discovery of Nonconf.	No	Yes
116	Q100 in Attach A	ASME/NBIC Data Reports	30	After	Fabrication Completion	No	Yes
117	Q100 in Attach A	Radiographs	14	After	Fabrication Completion	No	No

12/30/11  
AL

29-Dec-11 *JBH*

**1.0 Submittal Schedule (Contained within Table 00451.2)**

**2.0 Review**

Contractor shall allow 10 Business Days in Owner's office for reviewing original Submittals and 10 Days in Owner's office for reviewing resubmittals.

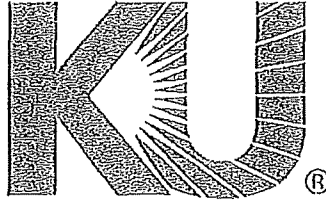
**3.0 Hold Points**

The following list of activities shall be treated as Hold Points:

- A. Backfill Placement Compaction Testing
- B. Rebar Placement
- C. Concrete Placement
- D. Insulation Placement over Ductwork (Weld Inspections)
- E. Paint Primer and Final Coat
  
- F. Structural Steel Connection Final Bolt Up
- G. Embedded Grounding and Conduits (Prior to Concrete Pour)
- H. Electrical Devices (Transformers, Switchgear, MCC, Controls) Prior to Energization

12/30/11  
al

JBL  
29-Dec-11



**KENTUCKY UTILITIES COMPANY**  
**CONTRACT No. 517454**

**Bottom Ash Handling & Fly Ash Conveying Systems**

This contract (this "Contract") is entered into, effective as of October 31, 2011 (the "Effective Date"), between Kentucky Utilities Company, a Kentucky corporation, an affiliate of LG&E and KU Services Company (hereinafter referred to as "KU" or "Company"), whose address is 820 West Broadway, Louisville, KY 40220, and Diamond Power International Inc, a Delaware corporation (hereinafter referred to as "Contractor"), whose address is 2600 East Main Street, P.O. Box 415, Lancaster, Ohio, 43130. Contractor is wholly owned subsidiary of The Babcock & Wilcox Power Generation Group, Inc., a Delaware corporation ("BWPGG"). BWPGG has entered into a General Services Agreement (the "GSA") with LG&E and KU Services Company, a Kentucky corporation. For purposes of this Contract, the terms of the GSA shall apply as if Contractor was a party to the GSA rather than BWPGG and the terms of this Contract (other than Exhibit 2, the GSA) constitute a Purchase Order under the GSA. The parties hereto agree as follows:

**1.0 GENERAL**

Contractor shall provide the following: Bottom Ash Handling System & Fly Ash Conveying System (individually "System" and collectively the "Systems"), and other work as more specifically described in Articles 2.0 and 3.0 hereof (hereinafter referred to as the "Work") and COMPANY shall compensate the Contractor for the Work, under all the terms and conditions hereof.

**2.0 DESCRIPTION OF WORK**

- 2.1 Except as otherwise expressly provided herein, Contractor shall supply all labor, supervision, materials, equipment, tools and warehousing, and shall pay all expenses, necessary or appropriate in the performance of the Work.
- 2.2 No materials containing asbestos shall be supplied or used in the performance of Work.
- 2.3 Without limitation, Contractor shall meet all requirements set forth in the Lead Construction Standard 29 CFR 1926.62.
- 2.4 The Work shall include but not be limited to the following:
  - 2.4.1 The Work specified in Exhibit 1 and 1a.

3.0 SPECIFICATIONS, EXHIBITS AND DRAWINGS

All Work shall be performed in strict accordance with the following specifications, exhibits and drawings which are incorporated herein by reference.

3.1 Exhibits

EXHIBIT No.	TITLE
Exhibit No. 2	General Services Agreement "GSA"
Exhibit No. 3	Bottom Ash Handling Project Cost and Deliverables
Exhibit No. 3a	Fly Ash Conveying Project Cost and Deliverables
Exhibit No. 4	LG&E AND KU SERVICES COMPANY Contractor/Subcontractor Safety Policy
Exhibit No. 5	LG&E AND KU SERVICES COMPANY Drug Testing Program
Exhibit No. 6	LG&E AND KU SERVICES COMPANY Contractor Code of Conduct
Exhibit No. 7	Daily Activity Report
Exhibit No. 8	Passport Overview
Exhibit No. 9	Change Order/Work Release
Exhibit No. 10	Project Specific Hazard Analysis
Exhibit No. 11	Hazard Mitigation Plan
Exhibit No. 12	Contractor Quality Assurance Closure Form
Exhibit No. 13	Contractor Safety Questionnaire
Exhibit No. 14	Assignment and Assumption Agreement
Exhibit No. 15	Cable Tab Records Submittal Specification
Exhibit No. 16	Electronic Submittal Spec for Engineered Dwgs
Exhibit No. 17	Electronic Submittal Spec for Vendor Docs
Exhibit No. 18	Bottom Ash Handling Technical Clarification Log
Exhibit No. 18a	Fly Ash Conveying Technical Clarification Log
Exhibit No. 19	Job Performance Monitoring Tool
Exhibit No. 20	Parent Guarantee
Exhibit No. 21	KU Ghent Cross reference lube oil list
Exhibit No. 22	Fly Ash Conveying Spare Parts
Exhibit No. 23	Bottom Ash Handling Spare Parts
Exhibit No. 24	Form for Letter of Credit (LOC)

3.2 DRAWINGS (See Exhibit 1 and Exhibit 1a)

4.0 NOT USED

5.0 TERM

This Contract shall become effective upon Effective Date and continue through Final Completion, subject to Article 21 of the GSA (Exhibit 2).

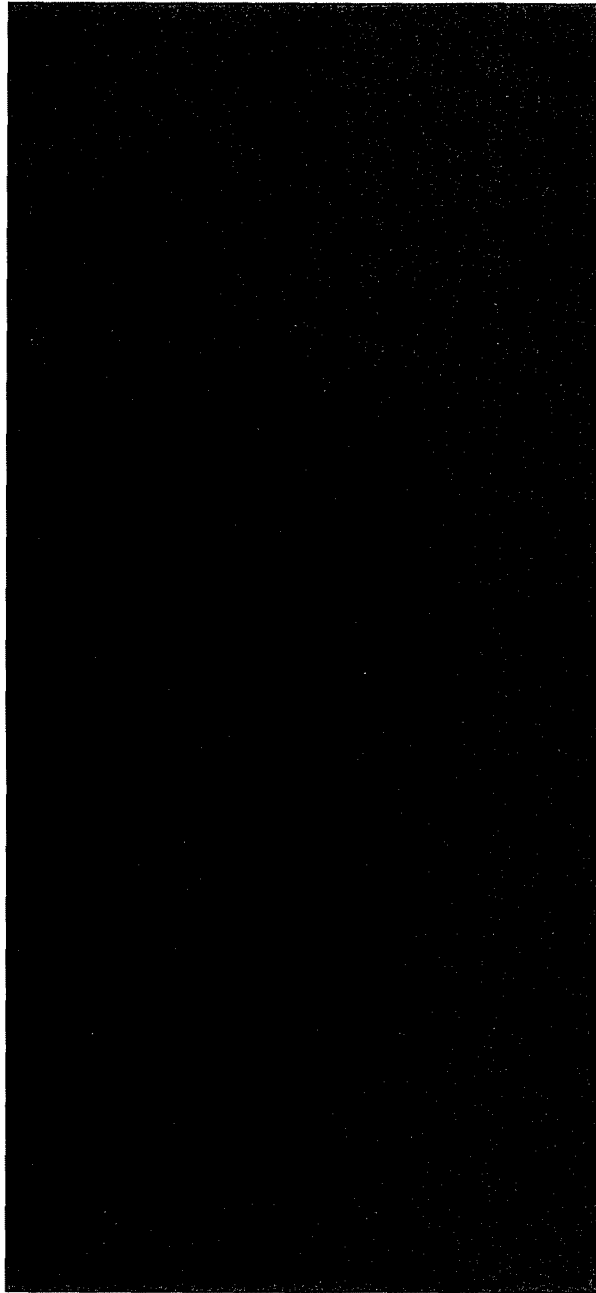
*ABH*  
29-Dec-11

12/30/11  
*ll*



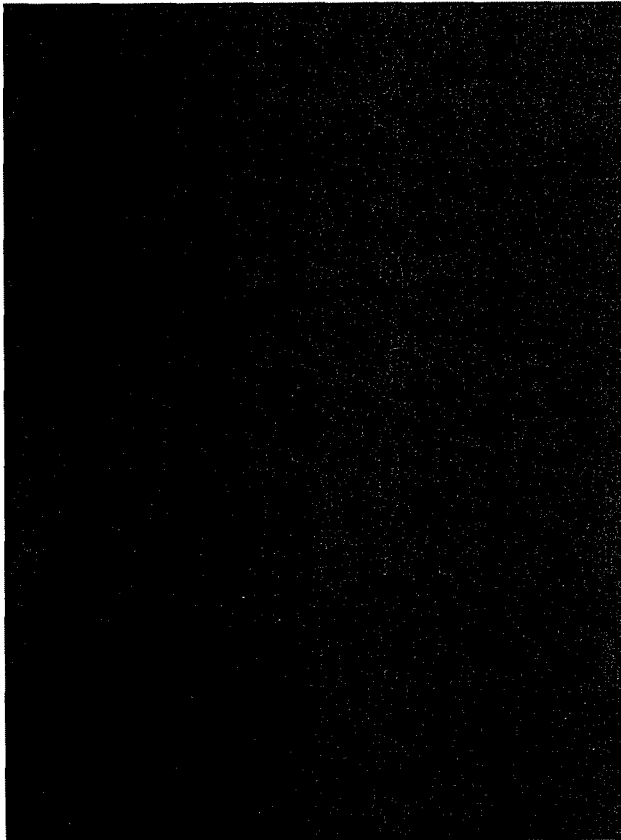
6.0 PERFORMANCE SCHEDULE

- 6.1 Contractor shall commence performance of the Work on the Effective Date and shall complete Work not later than the dates listed below in Table 1 (Bottom Ash Handling) and Table 2 (Fly Ash Conveying).



12/30/11  
m

ZBA  
29-Dec-11



COMPANY intends to assign this Contract to a general contractor (the "General Contractor") who will integrate the Work with work performed by the General Contractor and its other subcontractors into an integrated installed coal combustion residuals transport system (the "System") at the Company's Ghent Generating Station. Alternatively, the Company reserves the right to complete the System itself with the participation by subcontractors. In either case, with respect to the System, the following terms have the meanings assigned them below:

"Mechanical Completion" means when, with respect to the System, all of the following have occurred: (i) all components of the System have been furnished and installed, checked for alignment, lubrication, rotation, and hydrostatic and pneumatic pressure integrity; (ii) turnover acknowledgement of all components of the System has been given by Company; (iii) all components of the System have been installed, cleaned and statically tested and cold commissioning has been completed; (iv) all initial tests of the System have been completed and passed and all instruments in the System have been calibrated; (v) an initial punch list has been established and mutually agreed upon by Company and General Contractor (or subcontractors, as applicable); (vi) the performance guarantee test procedures for the System have been submitted to and accepted by Company.

\*\*\*"Commercial Operation" will have been achieved when all of the following have occurred: (i) Mechanical Completion has occurred; (ii) all work with respect to the System is complete except punch list items; (iii) all performance guarantee tests on the System have been successfully performed, and all necessary and desirable system adjustments identified during the start-up and testing process have been made; (iv) all performance guarantees on the System have been simultaneously achieved in a single performance guarantee test; (v) all obligations of General Contractor (or subcontractors, as applicable) required to have

12/30/11  
ML

ABM  
29-Dec-11

been performed as of Commercial Operation have been properly discharged; (vi) final versions of the operating and maintenance manuals approved by Company have been delivered; (vii) all other submittals required to be submitted prior to or as of Commercial Operation have been submitted; (viii) all special tools have been delivered to Company.

\*\*\*"Final Completion" will be deemed to have occurred when all of the following have occurred in respect of the System: (i) Commercial Operation has been achieved, (ii) all guarantee tests on the System have been conducted demonstrating compliance with all guarantee points; (iii) all as-built drawings, design documents, station manuals and other documents required to be delivered to Company have been so delivered, (iv) liquidated damages for which General Contractor (or the subcontractors, as applicable) is liable and other amounts owed to Company with respect to the System, if any, have been paid to Company (v) all work with respect to the System has been completed other than work that requires future performance (e.g., warranty work), (vi) General Contractor (or the subcontractors, as applicable) has demobilized from the Work site leaving it clean and free of debris.

6.1.1 Contractor shall coordinate Contractor-supplied material with COMPANY representative and deliver materials to the job site as required.

6.1.2 Contractor shall notify COMPANY's representative at least one full working day prior to working any Saturday, Sunday or COMPANY holiday.

6.2 If Company reasonably determines that Contractor has fallen behind its schedule for completing the Work and that there is a material risk that Contractor will not meet the scheduled dates for the milestones set forth in Section 6.1 above, Company may give notice to this effect to Contractor. Upon the giving of such notice, Contractor shall have 10 days to develop and implement a plan to ensure it will meet all scheduled milestone dates and to deliver such plan to Company. If no such plan is delivered in the 10 days, or if the Company reasonably determines that such plan does not adequately ensure meeting all scheduled milestone dates, Company may terminate the Contract for cause.

## 7.0 STANDARD TERMS AND CONDITIONS

The terms of LG&E AND KU SERVICES COMPANY's General Services Agreement (attached as Exhibit 2) executed by BWPGG on November 19, 2010, and the Contractor Code of Business Conduct and Contractor Safety Policies are hereby incorporated by reference herein and are thereby made a part of this Contract.

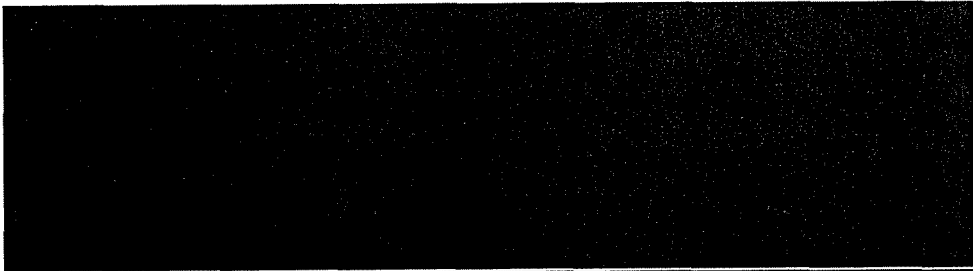
### 7.1 ASSIGNMENT AND ASSUMPTION AGREEMENT

Company reserves the right to assign this Contract to the General Contractor pursuant to the Assignment and Assumption Agreement set forth in Exhibit 14 attached hereto and made a part hereof. Upon request of Company, Contractor shall execute an acknowledgement of such an assignment and assumption, provided, that the assignment and assumption shall be effective and enforceable regardless of whether or when Contractor executes such acknowledgement or otherwise expresses any consent thereto. Upon such assignment and assumption, Company shall be released of its obligations under this Contract and Contractor shall look only to the General Contractor to fulfill the obligations designated as being those of Company hereunder. Contractor also acknowledges that General Contractor may in turn assign this Contract to another entity or to the Company and such assignments shall not require any consent from Contractor.

### 7.2 ORDER OF PRECEDENCE

The body of this Contract and the Exhibits hereto are to be considered complementary and what is required by one will be binding as if required by all. Contractor has included within the Contract

Price the cost to complete the Work in its entirety and to fulfill its other obligations hereunder. In addition, the Work includes all that should be properly included and all that would be customarily included within the general scope and magnitude of the Work in order to achieve the obligations. The failure to specifically list a requirement in one document, once such requirement is specifically listed in another, does not imply the inapplicability of such requirement and Contractor shall provide or perform, as appropriate, as part of this Contract all Work or Items required to conform to the Technical Specification (Exhibits 1 and 1a ), the other Exhibits and the standards herein contained. In the event of a conflict between the body of this Contract and the Exhibits, the body of this Contract governs. In the event of a conflict in an Exhibit or between or among Exhibits, the requirement most favorable to Company will take precedence, except as may be otherwise determined by Company. Each Modification (defined as any contract amendment or change order) will take precedence over that part of this Contract (including, as applicable, any prior Modification) which it supersedes.



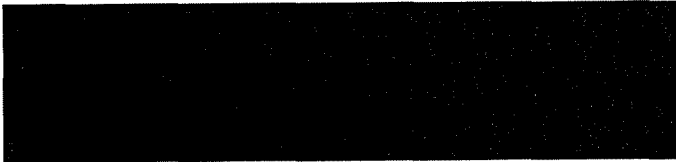
8.0 CONTRACTOR DRUG AND ALCOHOL TESTING

8.1 Plant Outage, Plant Project, or Major Construction Work: The work under this Contract is considered "Plant Outage, Plant Project, or Major Construction Work". In accordance with the revised LG&E AND KU SERVICES COMPANY Contractor / Subcontractor Safety Policy effective 1-31-08, all contractor employees working on-site for "Plant Outage, Plant Project, or Major Construction Work" shall be required to complete a negative drug and alcohol pre-test within seven (7) days before reporting to work on-site. The Contractor shall complete random drug and alcohol testing on ten percent (10%) of their on-site workforce assigned to this work site within thirty (30) days of the start of Work and shall test ten percent (10%) subsequently on an on-going monthly basis for the duration of their on-site "project" work assignment. LG&E AND KU SERVICES COMPANY Corporate Health and Safety will be auditing Contractor compliance with these requirements. Testing costs are the responsibility of the Contractor.

9.0 SPECIFIC REPORTING REQUIREMENTS

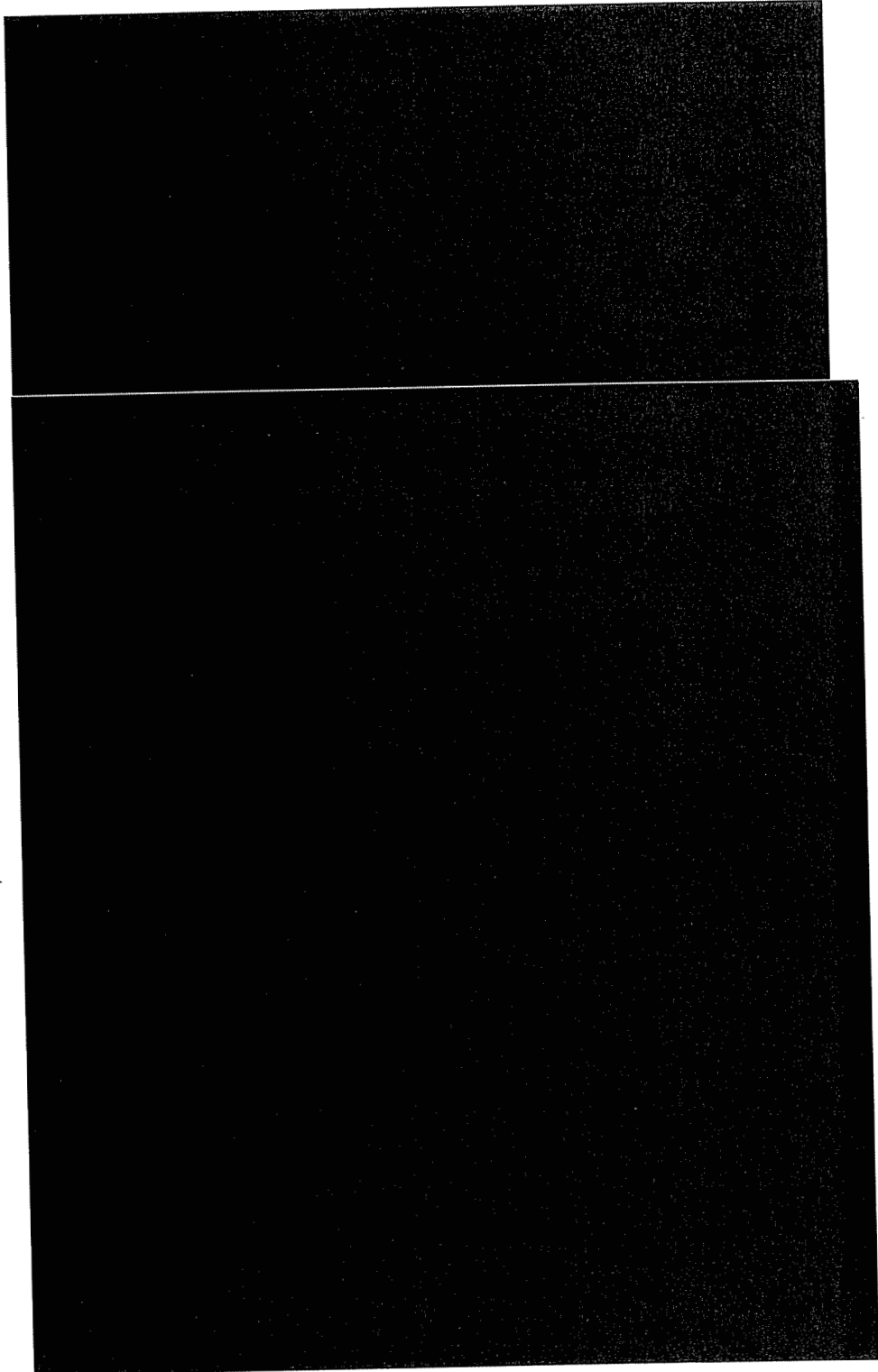
Contractor shall promptly submit the schedules and reports set forth below:

9.1 In accordance with Exhibit 3 (Project Cost and Deliverables).



*ARAL*  
20-Dec-11

12/30/11  
ar



AB/L  
29-Dec-11

12/30/11  
m



10.2 SPECIAL INVOICING INSTRUCTIONS

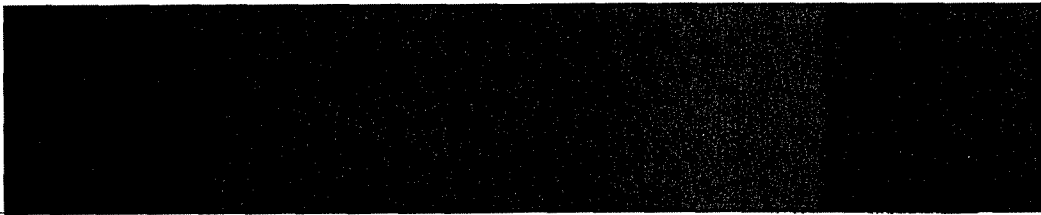
10.3.1 See the Article titled "Invoices and Effect of Payments" in the GSA.

10.3.2 Invoices shall be prepared in one original and one copy distributed as follows:

Original: Kentucky Utilities Company  
820 West Broadway  
Louisville, KY 40202  
Attn: Jeff Heun

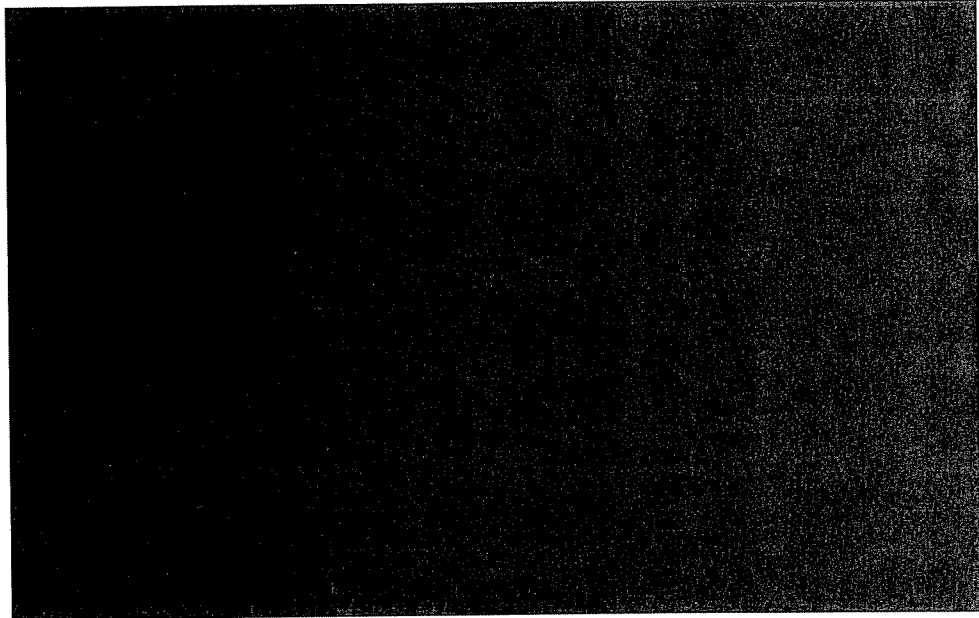
Copy: Kentucky Utilities Company  
820 West Broadway  
Louisville, KY 40202  
Attn: Judy Disney

Invoice	Project #	511453
Information	Company Contact	Jeff Heun
	Contractor contact	Mike Gibson



12/30/11  
AL

JBAK  
29-Dec-11



11.0 CONTRACTUAL NOTICES

See the Article titled "Notices" in the GSA for provisions governing contractual notices. In addition, a copy of all notices to COMPANY shall be sent to:

11.1 Kentucky Utilities Company address: 820 West Broadway  
Louisville, KY 40202  
Attn: Charles Ransdell  
(502) 627-3299  
[charles.ransdell@lge-ku.com](mailto:charles.ransdell@lge-ku.com)

11.2 Contractor's Address: Diamond Power International, Inc.  
2600 East Main Street,  
P.O. Box 415  
Lancaster, Ohio, 43130  
[lazotti@a-s-l.com](mailto:lazotti@a-s-l.com)

12.0 ENTIRE AGREEMENT

This Contract, including all specifications, exhibits and drawings listed in this Contract and the GSA, 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 this Contract.

*JBL*  
29-Dec-11

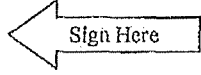
12/30/11  
ML

The parties hereto have executed this Contract on the dates written below, but it is effective as of the date first written above.

Kentucky Utilities Company

BY: *Joe Clements*  
NAME (Print): Joe Clements  
TITLE: Manager CONTRACTS  
DATE: 11/10/11

Diamond Power International, Inc.  
BY: *Eileen M. Cometti*  
NAME (Print): Eileen M Cometti  
TITLE: President  
DATE: 11/3/2011



-END-

*ABM*  
29-Dec-11

12/30/11  
AL



**COMMERCIAL SCHEDULE A  
LABOR HOURLY RATES**

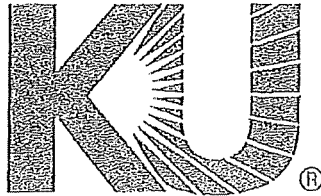
Description	Straight Time	Overtime	Premium Time
Field Service Representative			

1. The above rates may be used for agreed to Change Orders and Standby Time.
2. Except as may be expressly provided otherwise elsewhere in this Contract, the rates set forth above are inclusive of all direct wage rates, fringe benefits, labor allowances, payroll taxes, insurance, small tools which cost Contractor less than \$1,500 per tool, temporary construction facilities, consumables, expendables, overhead profit and all other costs and expenses incurred by Contractor in performing the Work and this Contract.
3. The rates will only apply to actual hours worked or standby time, as agreed and attested to by a COMPANY Representative.
4. Overtime rates will be paid for hours worked in excess of 8 hours per day when worker is on 5 - 8 hour day schedule; for hours worked in excess of 10 hours per day when worker is on 4 - 10 hour day schedule. Overtime will be paid for hours in excess of forty (40) hours per week. All overtime must be pre-authorized by COMPANY.
5. Premium time will be paid for all hours worked on and the following holidays.

New Years Day	Labor Day
Memorial Day	Thanksgiving
Good Friday	Christmas Eve
Independence Day	Christmas Day

12/30/11  
M

*JH*  
29-Dec-11



**KENTUCKY UTILITIES COMPANY**  
**CONTRACT No. 514629**

**Pipe Conveyor System**

This "Contract" is a Statement of Work within the meaning of the General Services Agreement (the "GSA") between (i) LG&E and KU Services Company, a Kentucky corporation, and (ii) Beumer Corporation, a Delaware corporation (hereinafter referred to as "Contractor"), whose address is 4435 Main Street, Suite 750, Kansas City, Missouri, 64111. This Contract is entered into, effective as of October 7, 2011 (the "Effective Date"), between Kentucky Utilities Company, a Kentucky corporation, an affiliate of LG&E and KU Services Company (hereinafter referred to as "KU" or "Company"), whose address is 820 West Broadway, Louisville, KY 40220, and Contractor. The parties hereto agree as follows:

**1.0 GENERAL**

Contractor shall perform the following: Engineer, provide, deliver, and install a Pipe Conveyor System as more specifically described in Articles 2.0 and 3.0 hereof (hereinafter referred to as the "Work") and COMPANY shall compensate the Contractor for the Work, under all the terms and conditions hereof.

**2.0 DESCRIPTION OF WORK**

- 2.1 Except as otherwise expressly provided herein, Contractor shall supply all labor, supervision, materials, equipment, tools and warehousing, and shall pay all expenses, necessary or appropriate in the performance of the Work.
- 2.2 No materials containing asbestos shall be supplied or used in the performance of Work.
- 2.3 Without limitation, Contractor shall meet all requirements set forth in the Lead Construction Standard 29 CFR 1926.62.
- 2.4 The Work shall include but not be limited to the following:
  - 2.4.1 Pipe Conveyor Spec 172160.77.0430 dated June 16<sup>th</sup>, 2011.

**3.0 SPECIFICATIONS, EXHIBITS AND DRAWINGS**

All Work shall be performed in strict accordance with the following specifications, exhibits and drawings which are incorporated herein by reference.

3.1 Exhibits

EXHIBIT NO.	REVISION NO.	TITLE
Exhibit No. 2		General Services Agreement - GSA
Exhibit No. 3		Project Cost and Deliverables
Exhibit No. 4		LG&E AND KU SERVICES COMPANY Contractor/Subcontractor Safety Policy
Exhibit No. 5		LG&E AND KU SERVICES COMPANY Drug Testing Program
Exhibit No. 6		LG&E AND KU SERVICES COMPANY Contractor Code of Conduct
Exhibit No. 7		Daily Activity Report
Exhibit No. 8		Passport Overview
Exhibit No. 9		Change Order/Work Release
Exhibit No. 10		Project Specific Hazard Analysis
Exhibit No. 11		Hazard Mitigation Plan
Exhibit No. 12		Contractor Quality Assurance Closure Form
Exhibit No. 13		Contractor Safety Questionnaire
Exhibit No. 14		Assignment and Assumption Agreement
Exhibit No. 15		Cable Tab Records Submittal Specification
Exhibit No. 16		Electronic Submittal Spec for Engineered Dwgs
Exhibit No. 17		Electronic Submittal Spec for Vendor Docs
Exhibit No. 18		Technical Clarification Log
Exhibit No. 19		Job Performance Monitoring Tool
Exhibit No. 20		Ghent Cross Reference Lube List



4.0 TEMPORARY FACILITIES AND UTILITIES

4.1 FURNISHED BY CONTRACTOR

Except as otherwise expressly set forth in this Contract, Contractor shall supply, install, properly maintain and remove all temporary facilities and utilities necessary for performance of the Work, including but not limited to:

- 4.1.1 All temporary buildings
- 4.1.2 All sanitary facilities, including janitorial services
- 4.1.3 First-aid facilities
- 4.1.4 Fuels and lubricants
- 4.1.5 Transportation facilities on and off site
- 4.1.6 Communication facilities
- 4.1.7 Compressed air and gases
- 4.1.8 Maintenance of Contractor's lay down, storage and work areas and roads within such areas
- 4.1.9 Rigging, scaffolding and all equipment for erection

*J.B.H.*  
29-Dec-11

12/30/11  
62

- 4.1.10 All cranes and other necessary equipment for lifting and moving equipment
- 4.1.11 All small tools & equipment necessary to perform Work
- 4.1.12 All standard expendable or consumable construction items and supplies including welding material and tools
- 4.1.13 Containers, ice, cups for drinking water
- 4.1.14 Cost of unloading, loading and storing all materials, equipment and supplies
- 4.1.15 Electrical power for small tools, etc., required in the actual work areas
- 4.1.16 Dumpsters and waste disposal

The type of facilities, move-in and move-out dates and locations on job sites shall be subject to and in accordance with the review and approval of COMPANY.

4.2 FURNISHED BY COMPANY

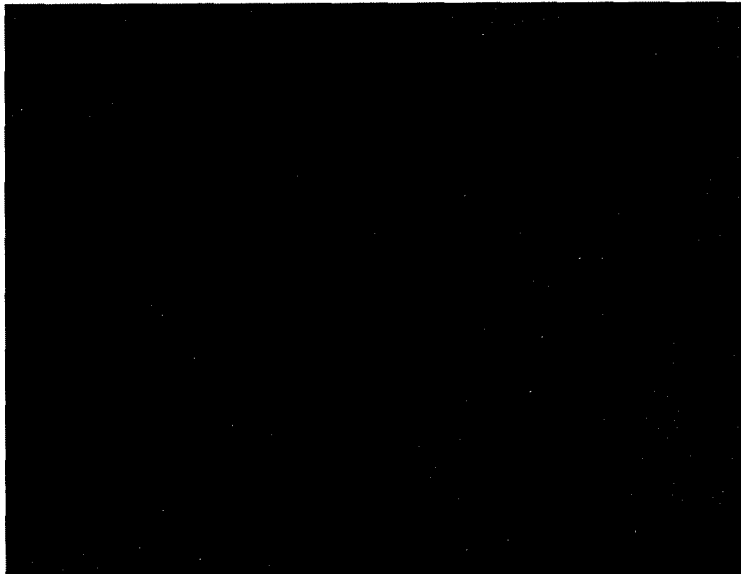
- 4.2.1 Temporary Construction Power at terminal point(s) determined by Company.

5.0 TERM

This Contract shall become effective upon Effective Date and continue through Final Completion, subject to the Article titled "Termination at COMPANY's Option" set forth in the attached GSA. COMPANY makes no promise or guarantee as to the amount of Work to be performed under this Contract.

6.0 PERFORMANCE SCHEDULE

- 6.1 Contractor shall commence performance of the Work on the Effective Date and shall complete Work not later than the dates listed below.



*JBA*  
29-Dec-11

12/30/11  
*an*

COMPANY intends to assign this Contract to a general contractor (the "General Contractor") who will integrate the Work with work performed by the General Contractor and its other subcontractors into an integrated installed coal combustion residuals transport system (the "System") at the Company's Ghent Generating Station. Alternatively, the Company reserves the right to complete the System itself with the participation by subcontractors. In either case, with respect to the System, the following terms have the meanings assigned them below:

"Mechanical Completion" means when, with respect to the System, all of the following have occurred: (i) all components of the System have been furnished and installed, checked for alignment, lubrication, rotation, and hydrostatic and pneumatic pressure integrity; (ii) turnover acknowledgement of all components of the System has been given; (iii) all components of the System have been installed, cleaned and statically tested and cold commissioning has been completed; (iv) all initial tests of the System have been completed and passed and all instruments in the System have been calibrated; (v) an initial punch list has been established and mutually agreed upon by Company and General Contractor (or subcontractors, as applicable); (vi) the performance guarantee test procedures for the System have been submitted to and accepted by Company.

\*\*"Commercial Operation" will have been achieved when all of the following have occurred: (i) Mechanical Completion has occurred; (ii) all work with respect to the System is complete except punch list items; (iii) all performance guarantee tests on the System have been successfully completed, and all necessary and desirable system adjustments identified during the start-up and testing process have been made; (iv) all performance guarantees on the System have been simultaneously achieved in a single performance guarantee test; (v) all obligations of General Contractor (or subcontractors, as applicable) required to have been performed as of Commercial Operation have been properly discharged; (vi) final versions of the operating and maintenance manuals approved by Company have been delivered; (vii) all other submittals required to be submitted prior to or as of Commercial Operation have been submitted; (viii) all special tools have been delivered to Company.

\*\*\*"Final Completion" will be deemed to have occurred when all of the following have occurred in respect of the System: (i) Commercial Operation has been achieved, (ii) all guarantee tests on the System have been conducted demonstrating compliance with all guarantee points; (iii) all as-built drawings, design documents, station manuals and other documents required to be delivered to Company have been so delivered, (iv) liquidated damages for which General Contractor (or the subcontractors, as applicable) is liable and other amounts owed to Company with respect to the System, if any, have been paid to Company (v) all work with respect to the System has been completed other than work that requires future performance (e.g., warranty work), (vi) General Contractor (or the subcontractors, as applicable) has demobilized from the Work site leaving it clean and free of debris.

- 6.1.2 Contractor shall coordinate Contractor-supplied material with COMPANY representative and deliver materials to the job site as required.
- 6.1.3 Contractor shall arrange or coordinate material storage at the job site or offsite shop to avoid material theft or damage.
- 6.1.4 Contractor shall notify COMPANY's representative at least one full working day prior to working any Saturday, Sunday or COMPANY holiday.

*J.B.M.*  
29-Dec-11

12/30/11  
m

6.2 If Company reasonably determines that Contractor has fallen behind its schedule for completing the Work and has reasonable concerns whether Contractor will meet the scheduled dates for the milestones set forth in Section 6.1 above, Company may terminate the Contract for cause.

7.0 STANDARD TERMS AND CONDITIONS



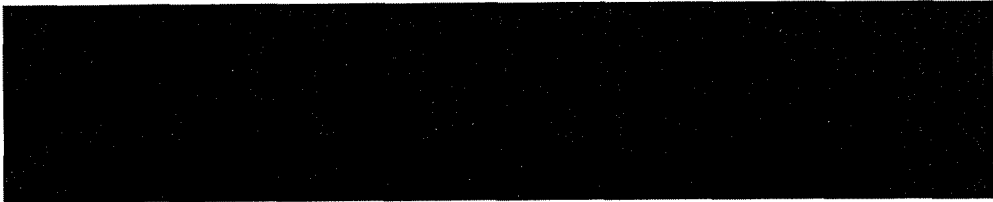
7.1 ASSIGNMENT AND ASSUMPTION AGREEMENT

Company reserves the right to assign this Contract to the General Contractor pursuant to the Assignment and Assumption Agreement set forth in Exhibit 14 attached hereto and made a part hereof. Upon request of Company, Contractor shall execute an acknowledgement of such an assignment and assumption, provided, that the assignment and assumption shall be effective and enforceable regardless of whether or when Contractor executes such acknowledgement or otherwise expresses any consent thereto. Upon such assignment and assumption, Company shall be released of its obligations under this Contract and Contractor shall look only to the General Contractor to fulfill the obligations designated as being those of Company hereunder. Contractor also acknowledges that General Contractor may in turn assign this Contract to another entity or to the Company and such assignments shall not require any consent from Contractor.

7.2 ORDER OF PRECEDENCE

The Body of this Agreement and the Exhibits hereto are to be considered complementary and what is required by one will be binding as if required by all. Contractor has included within the Contract Price the cost to complete the Work in its entirety and to fulfill its other obligations hereunder. In addition, the Work includes all that should be properly included and all that would be customarily included within the general scope and magnitude of the Work in order to achieve the obligations. The failure to specifically list a requirement in one document, once such requirement is specifically listed in another, does not imply the inapplicability of such requirement and Contractor shall provide or perform, as appropriate, as part of this Agreement all Work or items required to conform to the [redacted] the other Exhibits and the standards herein contained. In the event of a conflict between the Body of this Agreement and the Exhibits, the Body of this Agreement governs. In the event of a conflict in an Exhibit or between or among Exhibits, the requirement most favorable to Company will take precedence, except as may be otherwise determined by Company. Each Modification (defined as any contract amendment or change order) will take precedence over that part of this Agreement (including, as applicable, any prior Modification) which it supersedes.

7.3 LIMITATION OF LIABILITY



12/30/11  
m

J.B. [Signature]  
29-Dec-11

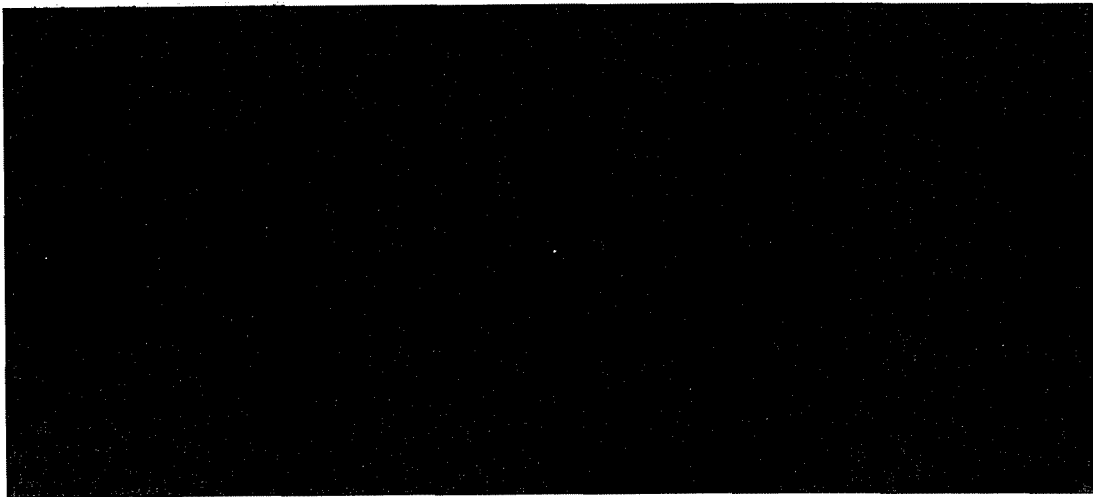
8.0 CONTRACTOR DRUG AND ALCOHOL TESTING

8.1 Plant Outage, Plant Project, or Major Construction Work: The work under this Contract is considered "Plant Outage, Plant Project, or Major Construction Work". In accordance with the revised LG&E AND KU SERVICES COMPANY Contractor / Subcontractor Safety Policy effective 1-31-08, all contractor employees working on-site for "Plant Outage, Plant Project, or Major Construction Work" shall be required to complete a negative drug and alcohol pre-test within seven (7) days before reporting to work on-site. The Contractor shall complete random drug and alcohol testing on ten percent (10%) of their on-site workforce assigned to this work site within thirty (30) days of the start of Work and shall test ten percent (10%) subsequently on an on-going monthly basis for the duration of their on-site "project" work assignment. LG&E AND KU SERVICES COMPANY Corporate Health and Safety will be auditing Contractor compliance with these requirements. Testing costs are the responsibility of the Contractor.

9.0 SPECIFIC REPORTING REQUIREMENTS

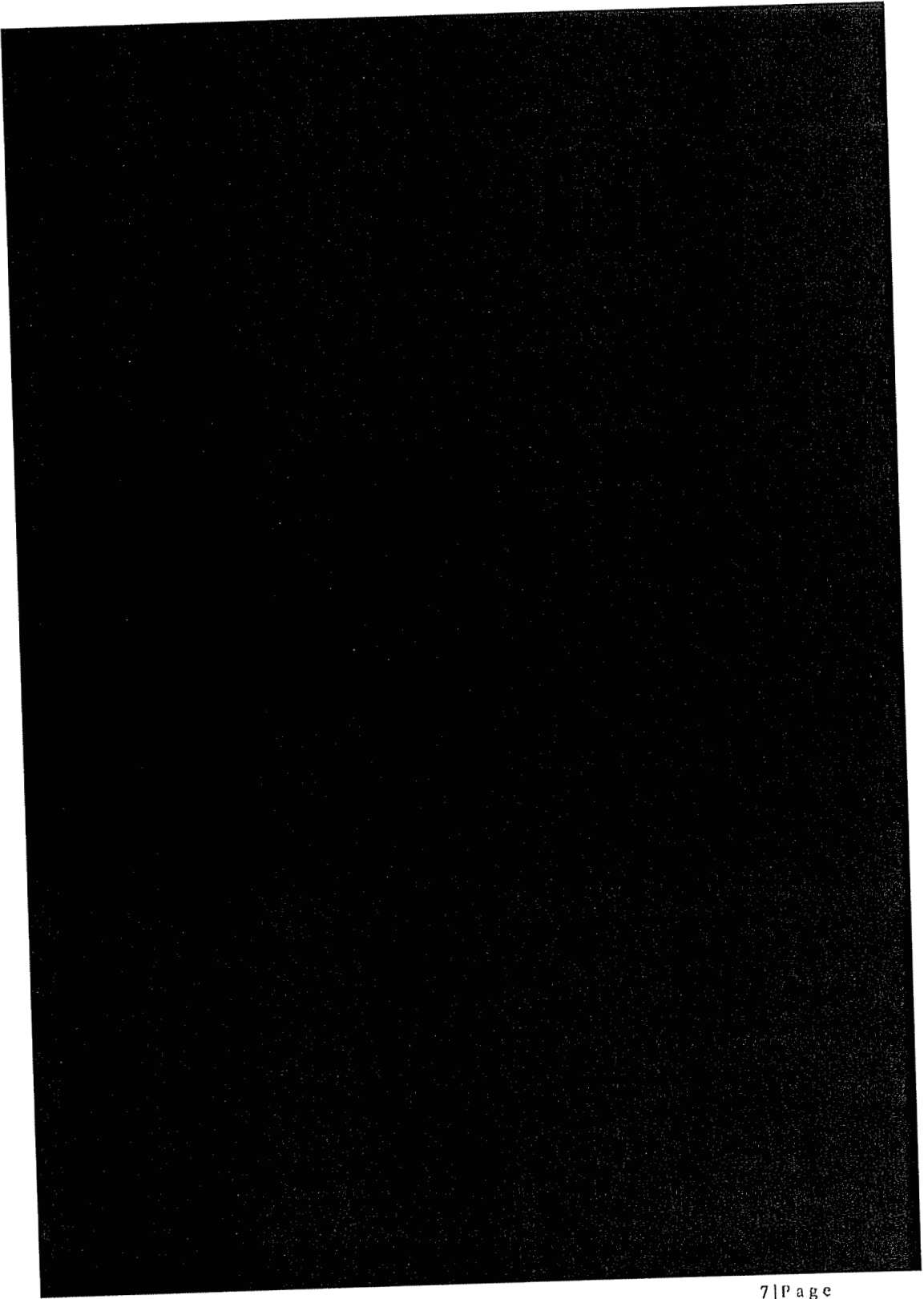
Contractor shall promptly submit the schedules and reports set forth below:

- 9.1 Critical Path Schedule, as specified by COMPANY. The schedule shall show labor required by time interval and shall reflect percent of schedule completion by time interval. Schedule shall be updated monthly and three (3) copies furnished to COMPANY
- 9.2 A report every other week showing scheduled progress versus actual progress, giving details of how the Work will be completed in relation to the schedule.
- 9.3 Equipment construction schedule correlated to Work schedule.



12/30/11  
m

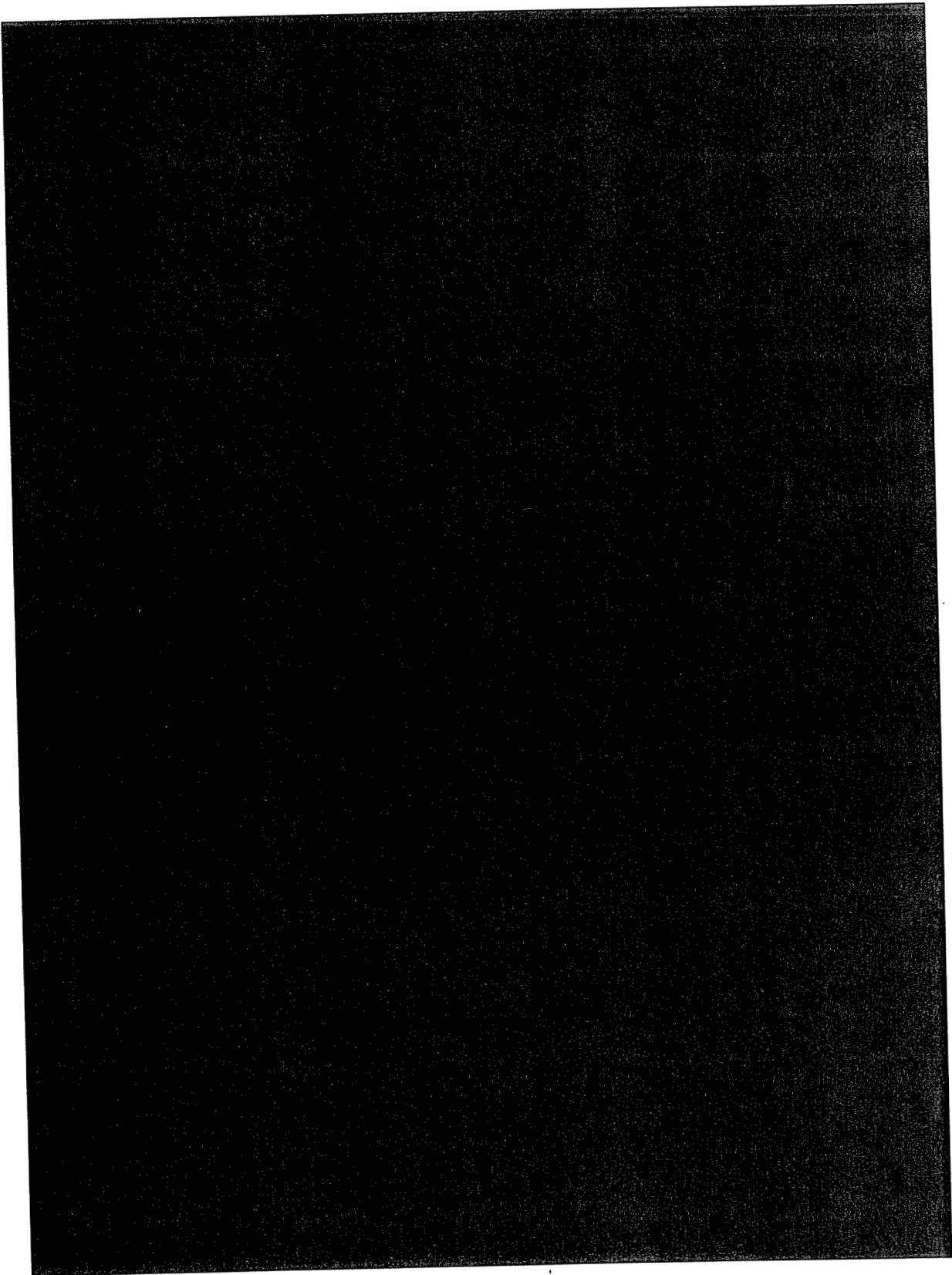
JBM  
29-Dec-11



12/30/11  
m

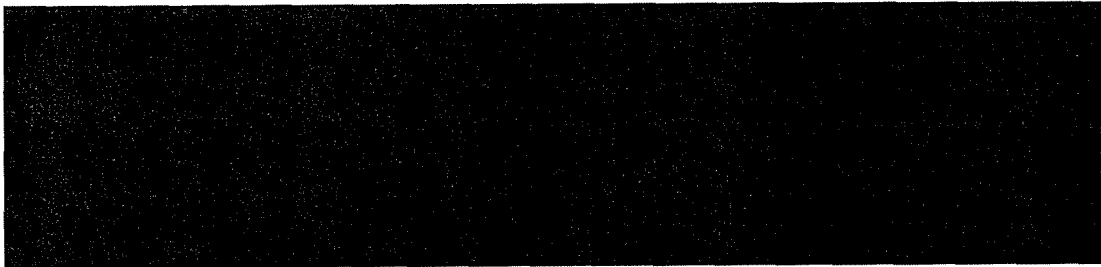
JBK  
29-Dec-11





12/30/11  
m

JBAK  
29-Dec-11



11.0 CONTRACTUAL NOTICES

See the Article titled "Notices" in the GSA for provisions governing contractual notices. In addition, a copy of all notices to COMPANY shall be sent to:

11.1 Kentucky Utilities Company address: 820 West Broadway  
Louisville, KY 40202  
Attn: Charles Ransdell  
(502) 627-3299  
[charles.ransdell@lge-ku.com](mailto:charles.ransdell@lge-ku.com)

11.2 Contractor's Address: Beumer Corporation  
4435 Main St, Suite 750  
Kansas City, MO 64111

12.0 ENTIRE AGREEMENT

This Contract, including all specifications, exhibits and drawings listed in this Contract and the GSA, 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 this Contract.

The parties hereto have executed this Contract on the dates written below, but it is effective as of the date first written above.

Kentucky Utilities Company

BY: Joe Clements

NAME (Print): Joe Clements

TITLE: Manager, Contracts

DATE: 10/14/11

Beumer Corporation

BY: Simon Shipp

NAME (Print): SIMON SHIPP

TITLE: VICE PRESIDENT

DATE: 12 October 2011



-END-

12/30/11  
m

JBM  
29-Dec-11

**COMMERCIAL SCHEDULE A  
LABOR HOURLY RATES**

Description	Straight Time	Overtime	Premium Time
SUPERINTENDENT			
FOREMAN			
OPERATOR			
LABORER			
CARPENTER			
WELDER / Millwright / Ironworker			
PIPE FITTER			
ELECTRICIAN			

1. The above rates may be used for agreed to Change Orders and Standby Time.
2. Except as may be expressly provided otherwise elsewhere in this Contract, the rates set forth above are inclusive of all direct wage rates, fringe benefits, labor allowances, payroll taxes, insurance, small tools which cost Contractor less than \$1,500 per tool, temporary construction facilities, consumables, expendables, overhead profit and all other costs and expenses incurred by Contractor in performing the Work and this Contract.
3. The rates will only apply to actual hours worked or standby time, as agreed and attested to by a COMPANY Representative.
4. Overtime rates will be paid for hours worked in excess of 8 hours per day when worker is on 5 - 8 hour day schedule; for hours worked in excess of 10 hours per day when worker is on 4 - 10 hour day schedule. Overtime will be paid for hours in excess of forty (40) hours per week. All overtime must be pre-authorized by COMPANY.
5. Premium time will be paid for all hours worked on and the following holidays.

New Years Day	Labor Day
Memorial Day	Thanksgiving
Good Friday	Christmas Eve
Independence Day	Christmas Day

12/30/11  
m

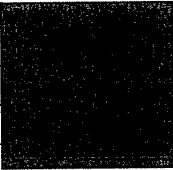
*J. Ball*  
29-Dec-11


**COMMERCIAL SCHEDULE B  
EQUIPMENT RATES**

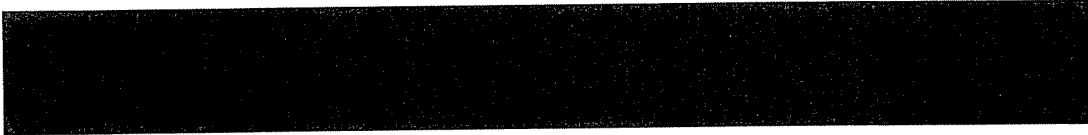
Equipment Description
Equipment Description
Air Compressor - 185 CFM
Pavement Breakers/ Air Drill and Hose
Up to 9700 Watts
Pump - 2" Centrifugal w/hoses
Pump - 3" Centrifugal w/hoses
Mud Buggie I Marooka
Truck - 3/4 ton
Truck - Mob./ Demob. Lowboy or Float
Truck - Mob./ Demob. Rollback or Flatbed
Welding Rig
Telehandlers
Track Loaders - 950/ 953 or equal
Dozer - up to D-5 or equal
Dozer -D6 or equal
Excavator - 304 to 308 or equal
Excavator- 312 or equal
Excavator- 322 or equal
Excavator - 325 or equal
Excavator - 330 or equal
Rubber Tire Backhoe
Skid Steer - Less than 75HP
Up to 8000#
Up to 26' - Battery
Up to 80' 500#
Tri-Axle
Up to 150 HP Smooth or Sheepsfoot

12/30/11  
AL

ABM  
29-Dec-11

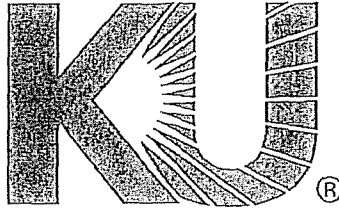
Plate Compactor	
Light Plant UP to 5000 Watts	
Mat (4 x 16)	

1. The above rates may be used for agreed to Change Orders and Standby Time.
2. The above rates are inclusive of all maintenance, repairs, fueling, lubrication, spare parts, insurance and taxes associated with the operation of the equipment and overhead and profit.
3. The rates are exclusive of all equipment drivers and operators which are set forth in Schedule A Labor Hourly Rates.
4. 
5. Prior approval by COMPANY's Engineer or Representative is required for all equipment rentals in connection with changes in the Scope of Work.



12/30/11  
ML

ABH  
29-Dec-11



**KENTUCKY UTILITIES COMPANY  
CONTRACT No. 511453**

**FGD Byproduct Dewatering System**

This "Contract" is a Statement of Work within the meaning of the General Services Agreement (the "GSA") between (i) KENTUCKY UTILITIES COMPANY (formerly E.ON U.S. Services Inc. by name change, hereinafter referred to as "COMPANY"), a Kentucky corporation, and (ii) Westech Engineering, Inc., a California corporation (hereinafter referred to as "Contractor"), whose address is 3625 South West Temple, Salt Lake City, Utah, 84115. This Contract is entered into, effective as of July 21, 2011 (the "Effective Date"), between Kentucky Utilities Company, a Kentucky corporation, an affiliate of LG&E and KU Services Company (hereinafter referred to as "KU" or "Company"), whose address is 820 West Broadway, Louisville, KY 40220, and Contractor. The parties hereto agree as follows:

**1.0 GENERAL**

Contractor shall perform the following: FGD Byproduct Dewatering System as more specifically described in Articles 2.0 and 3.0 hereof (hereinafter referred to as the "Work") and COMPANY shall compensate the Contractor for the Work, under all the terms and conditions hereof.

**2.0 DESCRIPTION OF WORK**

- 2.1 Except as otherwise expressly provided herein, Contractor shall supply all labor, supervision, materials, equipment, tools and warehousing, and shall pay all expenses, necessary or appropriate in the performance of the Work.
- 2.2 No materials containing asbestos shall be supplied or used in the performance of Work.
- 2.3 Without limitation, Contractor shall meet all requirements set forth in the Lead Construction Standard 29 CFR 1926.62.
- 2.4 The Work shall include but not be limited to the following:
  - 2.4.1 FGD Byproduct Dewatering System Spec 172150.65.3240

**3.0 SPECIFICATIONS, EXHIBITS AND DRAWINGS**

All work shall be performed in strict accordance with the following specifications, exhibits and drawings which are incorporated herein by reference.

3.1 Exhibits

<u>EXHIBIT NO.</u>	<u>REVISION NO.</u>	<u>TITLE</u>
Exhibit No. 2		General Services Agreement "the Standard Terms"
Exhibit No. 3		Schedule of Submittals and Applicable Liquidated Damages
Exhibit No. 4		LG&E AND KU SERVICES COMPANY Contractor/Subcontractor Safety Policy
Exhibit No. 5		LG&E AND KU SERVICES COMPANY Drug Testing Program
Exhibit No. 6		LG&E AND KU SERVICES COMPANY Contractor Code of Conduct
Exhibit No. 7		Daily Activity Report
Exhibit No. 8		Passport Overview
Exhibit No. 9		Change Order/Work Release
Exhibit No. 10		Project Specific Hazard Analysis
Exhibit No. 11		Hazard Mitigation Plan
Exhibit No. 12		Contractor Quality Assurance Closure Form
Exhibit No. 13		Contractor Safety Questionnaire
Exhibit No. 14		Assignment and Assumption Agreement
Exhibit No. 15		Cable Tab Records Submittal Specification
Exhibit No. 16		Electronic Submittal Spec for Engineered Dwgs
Exhibit No. 17		Electronic Submittal Spec for Vendor Docs
Exhibit No. 18		Clarifications and Exceptions
Exhibit No. 19		Job Performance Monitoring Tool
Exhibit No. 20		Westech Engineering 1010125 dated June 23, 2011



4.0 TEMPORARY FACILITIES AND UTILITIES

4.1 FURNISHED BY CONTRACTOR

Except as otherwise expressly set forth in this Contract, Contractor shall supply, install, properly maintain and remove all temporary facilities and utilities necessary for performance of the Work, including but not limited to:

- 4.1.1 All temporary buildings
- 4.1.2 All sanitary facilities, including janitorial services
- 4.1.3 First-aid facilities
- 4.1.4 Fuels and lubricants
- 4.1.5 Transportation facilities on and off site
- 4.1.6 Communication facilities
- 4.1.7 Compressed air and gases

*J. B. H.*  
29-Dec-11

12/30/11  
m

- 4.1.8 Maintenance of Contractor's lay down, storage and work areas and roads within such areas
- 4.1.9 Rigging, scaffolding and all equipment for erection
- 4.1.10 All cranes and other necessary equipment for lifting and moving equipment
- 4.1.11 All small tools
- 4.1.12 All standard expendable or consumable construction items and supplies including welding material and tools
- 4.1.13 Containers, ice, cups for drinking water
- 4.1.14 Cost of unloading, loading and storing all materials, equipment and supplies
- 4.1.15 Electrical power for small tools, etc., required in the actual work areas
- 4.1.16 Dumpsters and waste disposal

The type of facilities, move-in and move-out dates and locations on job sites shall be subject to and in accordance with the review and approval of COMPANY.

5.0 TERM

This Contract shall become effective upon award and continue through Final Completion, subject to the Article titled "Termination at COMPANY's Option" set forth in the attached Standard Terms. COMPANY makes no promise or guarantee as to the amount of Work to be performed under this Contract.

6.0 PERFORMANCE SCHEDULE

6.1 Contractor shall commence performance of the Work on contract award and shall complete Work not later than the dates listed below.



COMPANY intends to assign this Contract to a general contractor (the "General Contractor") who will integrate the Work with work performed by the General Contractor and its other subcontractors into an integrated installed coal combustion residuals transport system (the "System") at the Company's Ghent Generating Station. Alternatively, the Company reserves the right to complete the System itself with the participation by subcontractors. In either case, with respect to the System, the following terms have the meanings assigned them below:

12/30/11  
m

JBLK  
29-Dec-11



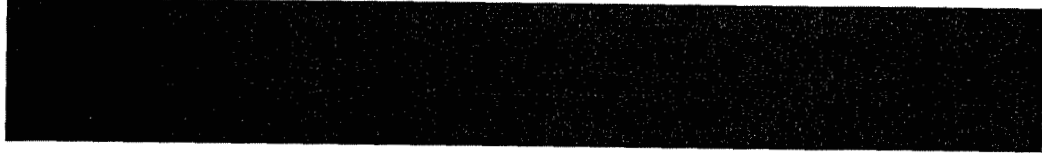
**“Mechanical Completion”** means when, with respect to the System, all of the following have occurred: (i) all components of the System have been furnished and installed, checked for alignment, lubrication, rotation, and hydrostatic and pneumatic pressure integrity; (ii) turnover acknowledgement of all components of the System has been given; (iii) all components of the System have been installed, cleaned and statically tested and cold commissioning has been completed; (iv) all initial tests of the System have been completed and passed and all instruments in the System have been calibrated; (v) an initial punch list has been established and mutually agreed upon by Company and General Contractor (or subcontractors, as applicable); (vi) the performance guarantee test procedures for the System have been submitted to and accepted by Company.

**\*\*“Commercial Operation”** will have been achieved when all of the following have occurred: (i) Mechanical Completion has occurred; (ii) all work with respect to the System is complete except punch list items; (iii) all performance guarantee tests on the System have been successfully completed, and all necessary and desirable system adjustments identified during the start-up and testing process have been made; (iv) all performance guarantees on the System have been simultaneously achieved in a single performance guarantee test; (v) all obligations of General Contractor (or subcontractors, as applicable) required to have been performed as of Commercial Operation have been properly discharged; (vi) final versions of the operating and maintenance manuals approved by Company have been delivered; (vii) all other submittals required to be submitted prior to or as of Commercial Operation have been submitted; (viii) all special tools have been delivered to Company.

**\*\*\*“Final Completion”** will be deemed to have occurred when all of the following have occurred in respect of the System: (i) Commercial Operation has been achieved, (ii) all guarantee tests on the System have been conducted demonstrating compliance with all guarantee points; (iii) all as-built drawings, design documents, station manuals and other documents required to be delivered to Company have been so delivered, (iv) liquidated damages for which General Contractor (or the subcontractors, as applicable) is liable and other amounts owed to Company with respect to the System, if any, have been paid to Company (v) all work with respect to the System has been completed other than work that requires future performance (e.g., warranty work), (vi) General Contractor (or the subcontractors, as applicable) has demobilized from the Work site leaving it clean and free of debris.

- 6.1.2 Contractor shall coordinate Contractor-supplied material requirement with COMPANY representative and deliver materials to the job site as required.
  - 6.1.3 Contractor shall arrange or coordinate material storage at the job site or shop to avoid material theft or damage.
  - 6.1.4 Contractor shall notify COMPANY's representative at least one full working day prior to working any Saturday, Sunday or COMPANY holiday.
- 6.2 If Company reasonably determines that Contractor has fallen behind its schedule for completing the Work and has reasonable concerns whether Contractor will meet the scheduled dates for the milestones set forth in Section 6.1 above, Company may terminate the Contract for cause.

7.0 STANDARD TERMS AND CONDITIONS



7.1 ASSIGNMENT AND ASSUMPTION AGREEMENT

Company reserves the right to assign this Contract to the General Contractor pursuant to the Assignment and Assumption Agreement set forth in Exhibit 13 attached hereto and made a part hereof. Upon request of Company, Contractor shall execute an acknowledgement of such an assignment and assumption, provided, that the assignment and assumption shall be effective and enforceable regardless of whether or when Contractor executes such acknowledgement or otherwise expresses any consent thereto. Upon such assignment and assumption, Company shall be released of its obligations under this Contract and Contractor shall look only to the General Contractor to fulfill the obligations designated as being those of Company hereunder. Contractor also acknowledges that General Contractor may in turn assign this Contract to another entity or to the Company and such assignments shall not require any consent from Contractor.

7.2 ORDER OF PRECEDENCE

The Body of this Agreement and the Exhibits hereto are to be considered complementary and what is required by one will be binding as if required by all. Contractor has included within the Contract Price the cost to complete the Work in its entirety and to fulfill its other obligations hereunder. In addition, the Work includes all that should be properly included and all that would be customarily included within the general scope and magnitude of the Work in order to achieve the obligations. The failure to specifically list a requirement in one document, once such requirement is specifically listed in another, does not imply the inapplicability of such requirement and Contractor shall provide or perform, as appropriate, as part of this Agreement all Work or items required to conform to the Technical Specification (Exhibit 1), the other Exhibits and the standards herein contained. In the event of a conflict between the Body of this Agreement and the Exhibits, the Body of this Agreement governs. In the event of a conflict in an Exhibit or between or among Exhibits, the requirement most favorable to Owner will take precedence, except as may be otherwise determined by Owner. Each Modification will take precedence over that part of this Agreement (including, as applicable, any prior Modification) which it supersedes.

12/30/11  
AL

J. B. A. H.  
29-Dec-11

8.0 CONTRACTOR DRUG AND ALCOHOL TESTING

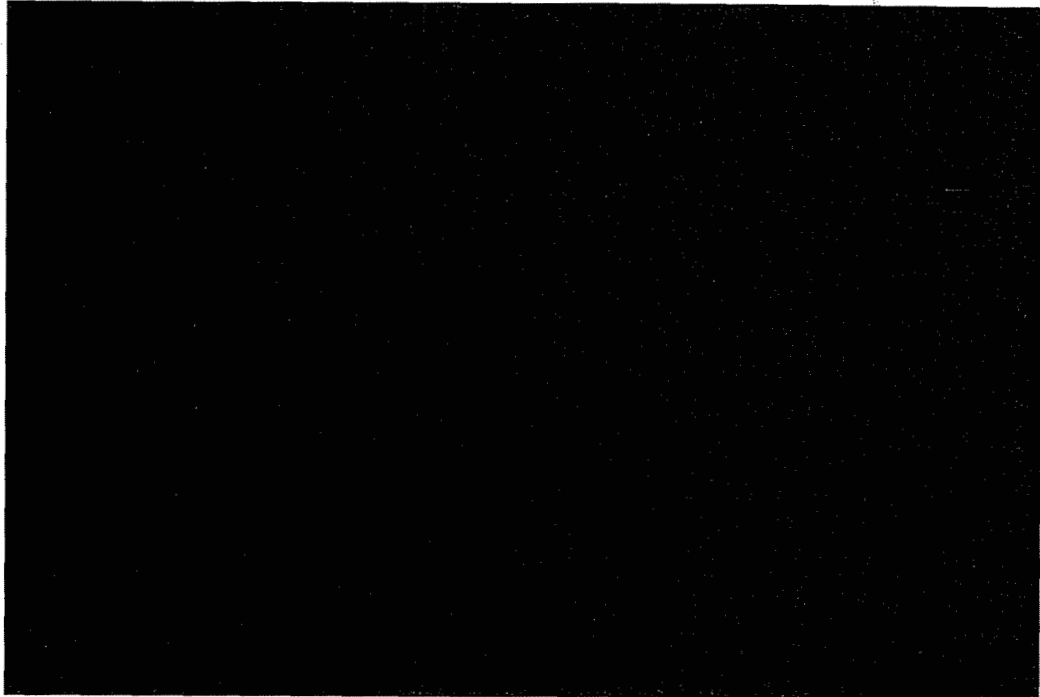
8.1 **Plant Outage, Plant Project, or Major Construction Work:** The work under this Contract is considered "Plant Outage, Plant Project, or Major Construction Work". In accordance with the revised LG&E AND KU SERVICES COMPANY Contractor / Subcontractor Safety Policy effective 1-31-08, all contractor employees working on-site for "Plant Outage, Plant Project, or Major Construction Work" shall be required to complete a negative drug and alcohol pre-test within seven (7) days before reporting to work on-site. The Contractor shall complete random drug and alcohol testing on ten percent (10%) of their on-site workforce assigned to this work site within thirty (30) days of the start of Work and shall test ten percent (10%) subsequently on an on-going monthly basis for the duration of their on-site "project" work assignment. LG&E AND KU SERVICES COMPANY Corporate Health and Safety will be auditing Contractor compliance with these requirements. Testing costs are the responsibility of the Contractor.

9.0 SPECIFIC REPORTING REQUIREMENTS

Contractor shall promptly submit the schedules and reports set forth below:

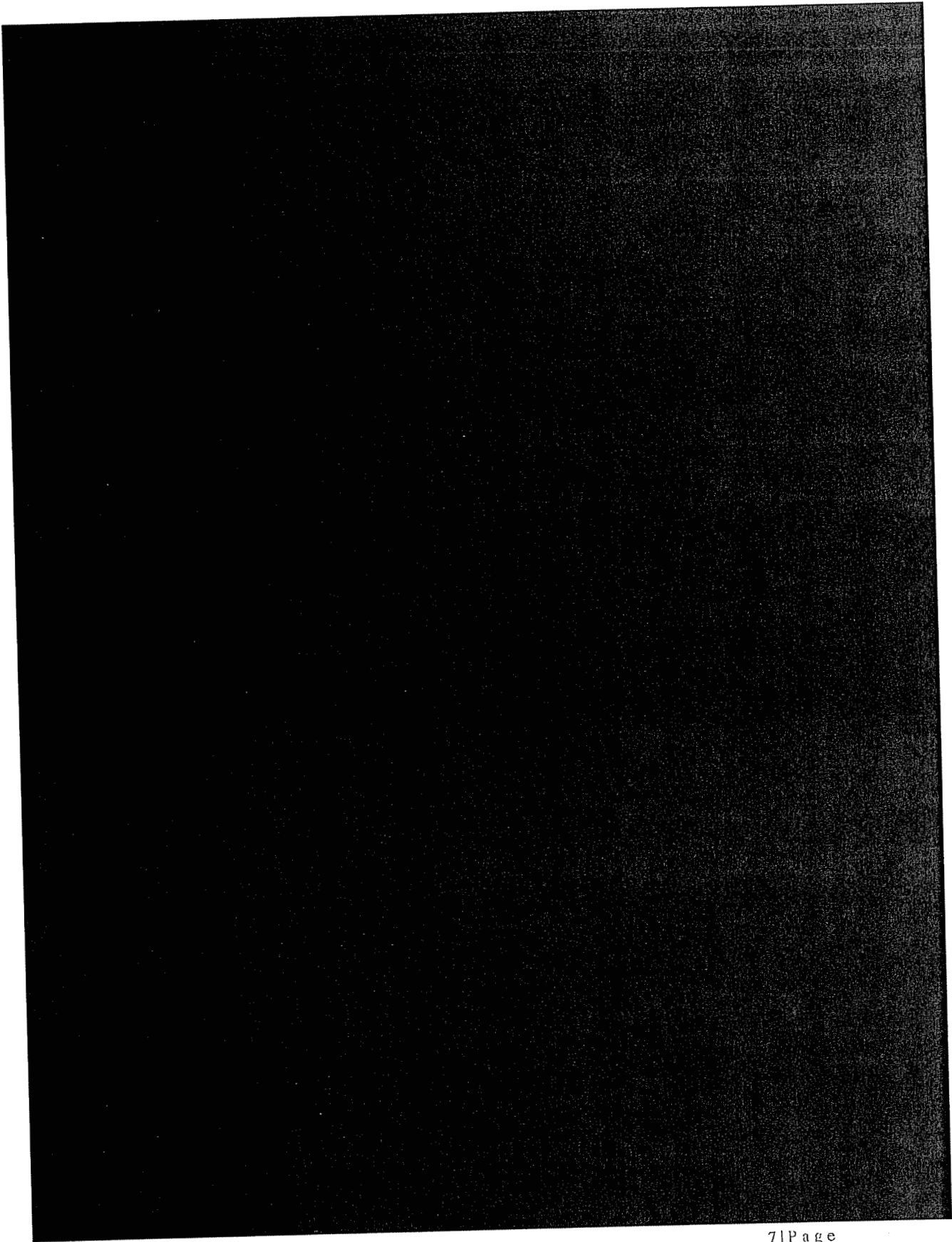
- 9.1 Critical Path Schedule, as specified by COMPANY. The schedule shall show labor required by time interval and shall reflect percent of schedule completion by time interval. Schedule shall be updated monthly and three (3) copies furnished to COMPANY
- 9.2 A report every other week showing scheduled progress versus actual progress, giving details of how the Work will be completed in relation to the schedule.
- 9.3 Equipment construction schedule correlated to Work schedule.

10.0 COMPENSATION



12/30/11  
ML

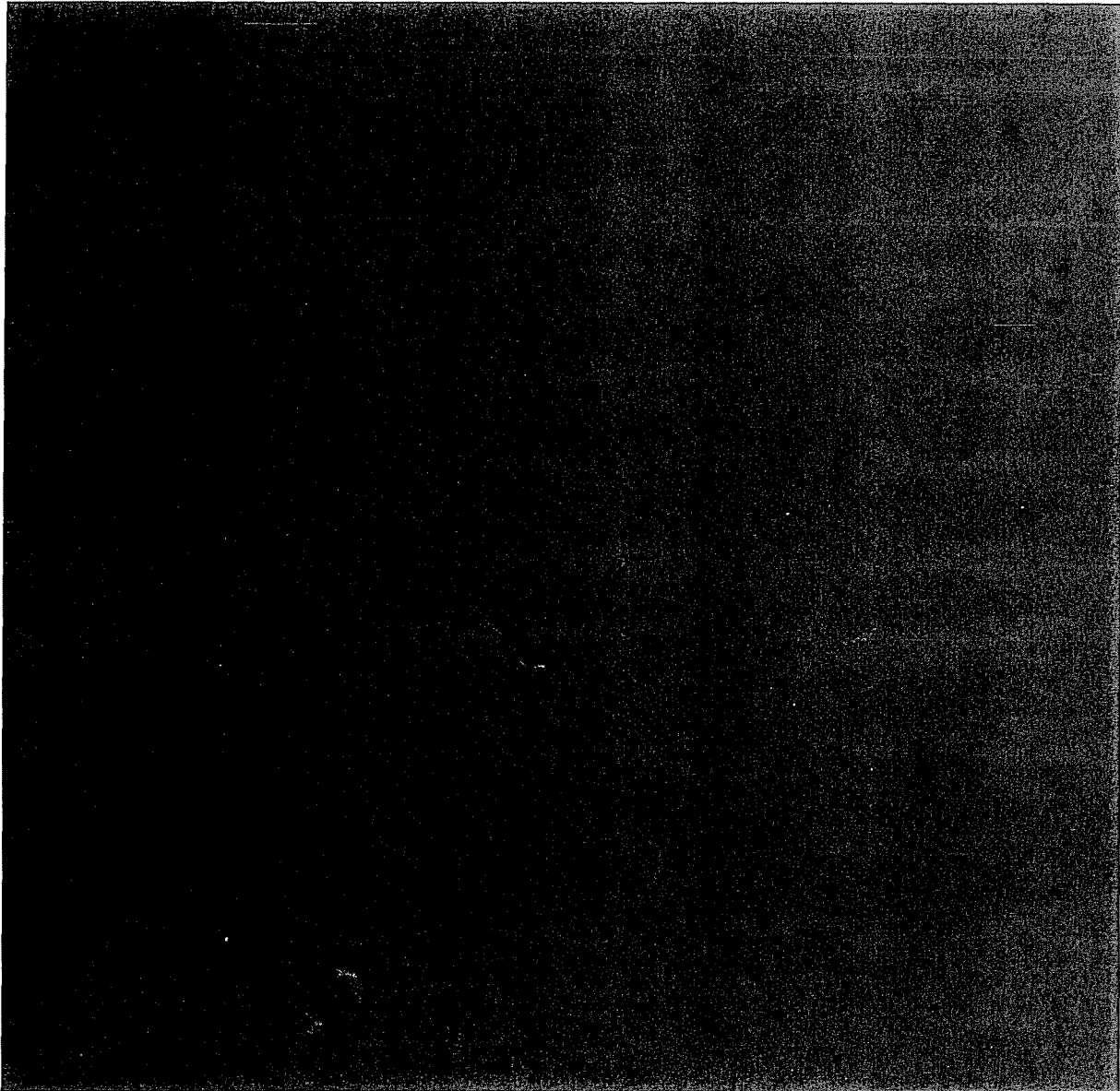
JBM  
29-Dec-11



7 | Page

*JLH*  
29-Dec-11

12/30/11  
m



**11.0 CONTRACTUAL NOTICES**

See the Article titled "Notices" in the Standard Terms for provisions governing contractual notices. In addition, a copy of all notices to COMPANY shall be sent to:

11.1 Kentucky Utilities Company address:      820 West Broadway  
Louisville, KY 40202  
Attn: Charles Ransdell  
(502) 627-3299  
[charles.ransdell@lge-ku.com](mailto:charles.ransdell@lge-ku.com)

11.2 Contractor's Address:      Westech Engineering, Inc.  
3625 South West Temple  
Salt Lake City, UT  
(801) 290-1473 (Tel)  
(801) 265-1080 (Fax)

12/30/11  
m

*ABW*  
29-D ec-11

12.0 ENTIRE AGREEMENT

This Contract, including all specifications, exhibits and drawings listed in this Contract and the Standard Terms, 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 this Contract.

The parties hereto have executed this Contract on the dates written below, but it is effective as of the date first written above.

Kentucky Utilities Company

BY: Joe Clements  
NAME (Print): Joe Clements  
TITLE: Mgr. Contracts  
DATE: 8/15/11

Westech Engineering, Inc

BY: Craig N. Martin  
NAME (Print): Craig N. Martin  
TITLE: Vice President  
DATE: 11 August 2011

-END-

JRM  
29-0 cc-11

12/30/11  
ac

**COMMERCIAL SCHEDULE A  
LABOR HOURLY RATES**

Description	Straight Time	Overtime	Premium Time
Field Service Technician*	[REDACTED]		

1. The above rates may be used for agreed to Change Orders and Standby Time.
2. Except as may be expressly provided otherwise elsewhere in this Contract, the rates set forth above are inclusive of all direct wage rates, fringe benefits, labor allowances, payroll taxes, insurance, small tools which cost Contractor less than \$1,500 per tool, temporary construction facilities, consumables, expendables, overhead profit and all other costs and expenses incurred by Contractor in performing the Work and this Contract.
3. The rates will only apply to actual hours worked or standby time, as agreed and attested to by a COMPANY Representative.
4. Overtime rates will be paid for hours worked in excess of 8 hours per day when worker is on 5 - 8 hour day schedule; for hours worked in excess of 10 hours per day when worker is on 4 - 10 hour day schedule. Overtime will be paid for hours in excess of forty (40) hours per week. All overtime must be pre-authorized by COMPANY
5. Premium time will be paid for all hours worked on and the following holidays.

New Years Day	Labor Day
Memorial Day	Thanksgiving
Good Friday	Christmas Eve
Independence Day	Christmas Day

12/30/11  
AL

*J. Blin*  
29-Dec-11

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "Agreement") is made and entered into this 29<sup>th</sup> day of December, 2011, by and between Kentucky Utilities Company, a Kentucky corporation ("Assignor"), and TIC – The Industrial Company, a Delaware corporation ("Assignee") (collectively, the "Parties" and individually a "Party").

WHEREAS, Assignor and Assignee are parties to an agreement dated as of 29 December, 2011 (as amended, modified and supplemented from time to time, the "Agreement"); and

WHEREAS, Assignor has entered into a Contract numbered 511453 dated as of July 21, 2011 (as amended, modified and supplemented from time to time, the "Equipment Contract") with Westech Engineering, Inc., a California corporation (the "Equipment Manufacturing Supplier"), for the supply a FGD Byproduct Dewatering system; and

WHEREAS, in accordance with the terms of the Agreement, Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor, Assignor's rights and obligations under the Equipment Contract as and to the extent set forth in this Agreement; and

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

### ARTICLE 1 ASSIGNMENT AND ASSUMPTION

Section 1.1 Effective as of the date hereof, Assignor hereby assigns to Assignee all of its right, title and interest in and to the Equipment Contract, and Assignee hereby assumes all of Assignor's obligations under the Equipment Contract.

12/30/11  
m

RRP  
1/6/12

JBK  
12/29/11



ARTICLE II  
MISCELLANEOUS PROVISIONS

Section 2.1 This Agreement may not be amended, modified or supplemented except pursuant to an instrument in writing signed by the Parties. The failure of any Party to enforce any of the terms and conditions or to exercise any right or privilege under this Agreement shall not be construed as waiving any such term or condition or right or privilege and the same shall continue and remain in force and effect as if no such failure to enforce or exercise has occurred. No waiver shall be valid unless so stated in writing by the Party granting the waiver.

Section 2.2 If any provision of this Agreement is held invalid or unenforceable, all other provisions will not be affected, and with respect to the provision held invalid or unenforceable, the Parties will amend this Agreement as necessary to affect the original intent of the Parties as closely as possible.

Section 2.3 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky without regard to its rules of conflict of laws that would require the application of laws of a different jurisdiction.

Section 2.4 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties. Any counterpart may be executed by facsimile signature or any image transmitted by electronic mail (such as a pdf file) and such facsimile signature or image shall be deemed an original.

Signatures on Next Page

12/30/11  
ML

ZRP  
1/6/12

UBR  
12/29/11

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly signed as of the date above written.

KENTUCKY UTILITIES COMPANY

TIC -- The Industrial Company  
(ASSIGNEE)

By: Charles Ransdell  
Name: Charles Ransdell  
Title: Contract Administrator

By: Sung Lee  
Name: VICE PRESIDENT Sung Lee  
Title:

ACKNOWLEDGEMENT:

Westech Engineering, Inc., a California corporation, hereby acknowledges and agrees as of the date hereof that the Equipment Contract has been assigned and assumed pursuant to the terms hereof.

Westech Engineering, Inc.

By: Rex R. Plazner  
Name: Rex Plazner  
Title: President

12/30/11  
ML

JSB  
12/29/11

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "Agreement") is made and entered into this 29<sup>th</sup> day of December, 2011, by and between Kentucky Utilities Company, a Kentucky corporation ("Assignor"), and TIC – The Industrial Company, a Delaware corporation ("Assignee") (collectively, the "Parties" and individually a "Party").

WHEREAS, Assignor and Assignee are parties to an agreement dated as of 29 December, 2011 (as amended, modified and supplemented from time to time, the "Agreement"); and

WHEREAS, Assignor has entered into a Contract numbered 517454 dated as of October 31, 2011 (as amended, modified and supplemented from time to time, the "Equipment Contract") with Diamond Power International, Inc., a Delaware corporation (the "Equipment Manufacturing Supplier"), for the supply of a Bottom Ash Dewatering and Fly Ash Conveying system; and

WHEREAS, in accordance with the terms of the Agreement, Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor, Assignor's rights and obligations under the Equipment Contract as and to the extent set forth in this Agreement; and

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

### ARTICLE 1 ASSIGNMENT AND ASSUMPTION

Section 1.1 Effective as of the date hereof, Assignor hereby assigns to Assignee all of its right, title and interest in and to the Equipment Contract, and Assignee hereby assumes all of Assignor's obligations under the Equipment Contract.

ARTICLE II  
MISCELLANEOUS PROVISIONS

Section 2.1 This Agreement may not be amended, modified or supplemented except pursuant to an instrument in writing signed by the Parties. The failure of any Party to enforce any of the terms and conditions or to exercise any right or privilege under this Agreement shall not be construed as waiving any such term or condition or right or privilege and the same shall continue and remain in force and effect as if no such failure to enforce or exercise has occurred. No waiver shall be valid unless so stated in writing by the Party granting the waiver.

Section 2.2 If any provision of this Agreement is held invalid or unenforceable, all other provisions will not be affected, and with respect to the provision held invalid or unenforceable, the Parties will amend this Agreement as necessary to affect the original intent of the Parties as closely as possible.

Section 2.3 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky without regard to its rules of conflict of laws that would require the application of laws of a different jurisdiction.

Section 2.4 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties. Any counterpart may be executed by facsimile signature or any image transmitted by electronic mail (such as a pdf file) and such facsimile signature or image shall be deemed an original.

Signatures on Next Page

12/30/11  
hr

OSR  
12/29/11

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly signed as of the date above written.

KENTUCKY UTILITIES COMPANY

TIC - The Industrial Company  
(ASSIGNEE)

By: Charles Randall  
Name: Charles Randall  
Title: Contract Administrator

By: [Signature]  
Name:  
Title:

**ACKNOWLEDGEMENT:**

Diamond Power International, Inc., a Delaware corporation, hereby acknowledges and agrees as of the date hereof that the Equipment Contract has been assigned and assumed pursuant to the terms hereof.

**Diamond Power International, Inc.**

By: [Signature]  
Name: David M. Staveland  
Title: Commercial Manager



January 18, 2012

Simon Shipp

Beumer Corp.

4435 Main Street Suite 750

Kansas City, MO 64111

Re: Assignment and Assumption Agreement

LG&E KU Services Company  
Project Engineering  
820 W. Broadway  
Louisville, KY 40202  
[www.lge-ku.com](http://www.lge-ku.com)

Charles Ransdell  
Contract Administrator  
T 502-627-3299  
F 502-217-2858  
M 502-751-2598  
[charles.ransdell@lge-ku.com](mailto:charles.ransdell@lge-ku.com)

Simon,

The attached document reflects the document I am placing in the mail to your attention for signature on all three (3) originals, and return of two (2) to my attention.

Let me know when you have the signatures secured and when the pertinent documents are returned.

Happy New Year.

Regards,

Respectfully,

A handwritten signature in black ink, appearing to read 'Charles Ransdell', written in a cursive style.

Charles Ransdell

Contract Administrator

Project Engineering

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "Assignment") is made and entered into this 30<sup>th</sup> day of December, 2011, by and between Kentucky Utilities Company, a Kentucky corporation ("Assignor"), and TIC – The Industrial Company, a Delaware corporation ("Assignee") (collectively, the "Parties" and individually a "Party").

**WHEREAS**, Assignor and Assignee are parties to an agreement dated as of 30 December, 2011 (as amended, modified and supplemented from time to time, the "Agreement"); and

**WHEREAS**, Assignor has entered into a Contract numbered 514629 dated as of October 7, 2011 (as amended, modified and supplemented from time to time, the "Equipment Contract") with Beumer Corporation, a Delaware corporation (the "Equipment Manufacturing Supplier"), for the supply of a Pipe Conveyor system; and

**WHEREAS**, in accordance with the terms of the Agreement, Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor, Assignor's rights and obligations under the Equipment Contract as and to the extent set forth in this Assignment; and

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

### ARTICLE 1 ASSIGNMENT AND ASSUMPTION

Section 1.1 Effective as of the date hereof, Assignor hereby assigns to Assignee all of its right, title and interest in and to the Equipment Contract, and Assignee hereby assumes all of Assignor's obligations under the Equipment Contract.

**ARTICLE II**  
**MISCELLANEOUS PROVISIONS**

Section 2.1 This Assignment may not be amended, modified or supplemented except pursuant to an instrument in writing signed by the Parties. The failure of any Party to enforce any of the terms and conditions or to exercise any right or privilege under this Assignment shall not be construed as waiving any such term or condition or right or privilege and the same shall continue and remain in force and effect as if no such failure to enforce or exercise has occurred. No waiver shall be valid unless so stated in writing by the Party granting the waiver.

Section 2.2 If any provision of this Assignment is held invalid or unenforceable, all other provisions will not be affected, and with respect to the provision held invalid or unenforceable, the Parties will amend this Assignment as necessary to affect the original intent of the Parties as closely as possible.

Section 2.3 This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky without regard to its rules of conflict of laws that would require the application of laws of a different jurisdiction.

Section 2.4 This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties. Any counterpart may be executed by facsimile signature or any image transmitted by electronic mail (such as a pdf file) and such facsimile signature or image shall be deemed an original.

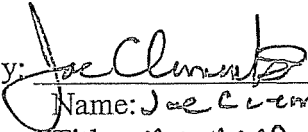
Signatures on Next Page

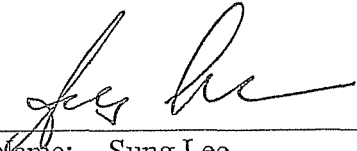


IN WITNESS WHEREOF, each of the undersigned has caused this Assignment to be duly signed as of the date above written.

KENTUCKY UTILITIES COMPANY

TIC – The Industrial Company  
(ASSIGNEE)


By:   
Name: Joe Clements  
Title: Manager, Contracts

By:   
Name: Sung Lee  
Title: Vice President

**ACKNOWLEDGEMENT:**

Beumer Corporation, a Delaware corporation, hereby acknowledges and agrees as of the date hereof that the Equipment Contract has been assigned and assumed pursuant to the terms hereof.

**Beumer Corporation**

By:   
Name: SIMON SHARP  
Title: VICE PRESIDENT.

KENTUCKY UTILITIES COMPANY

FINANCIAL EXHIBIT  
(807 KAR 5:001 SEC. 6)

March 31, 2012

(1) Amount and kinds of stock authorized.

80,000,000 shares of Common Stock, without par value  
5,300,000 shares of Cumulative Preferred Stock, without par value -- authorized, but unissued  
2,000,000 shares of Preferred Stock, without par value -- authorized, but unissued

(2) Amount and kinds of stock issued and outstanding.

Common Stock:

37,817,878 shares issued and outstanding, without par value, recorded at \$307,818,689.

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets otherwise.

None

(4) Brief description of each mortgage on property of applicant, giving date of execution name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of the indebtedness actually secured, together with any sinking fund provisions.

Date of Execution: As of October 1, 2010 (Supplemental Indentures were executed on October 15, 2010 and November 1, 2010.)

Mortgagor: Kentucky Utilities Company

Trustee: The Bank of New York Mellon

Amount of Authorized Debt: One quintillion dollars

Amount of Debt Secured: \$1,850,779,405

Sinking Fund Provisions: None

Pledged Assets: Substantially all assets of Kentucky Utilities located in Kentucky

- (5) Amount of bonds authorized, and amount issued giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with an amount of interest paid thereon during the last 12-month period.

Secured by first mortgage lien on substantially all assets in Kentucky.

Kentucky Utilities Company

Date of Issue	Date of Maturity	Rate of Interest	Principal Amount		Interest Expense
			Authorized	Outstanding at March 31, 2012	Year Ended March 31, 2012
Pollution Control Bonds					
05/01/00	05/01/23	Variable	\$ 12,900,000	\$ 12,900,000	\$ 19,922
02/01/02	02/01/32	Variable	20,930,000	20,930,000	150,526
02/01/02	02/01/32	Variable	2,400,000	2,400,000	16,905
02/01/02	02/01/32	Variable	7,200,000	2,400,000	207,152
02/01/02	02/01/32	Variable	7,400,000	7,400,000	52,094
07/01/02	10/01/32	Variable	96,000,000	96,000,000	16,895
10/01/04	10/01/34	Variable	50,000,000	50,000,000	81,942
02/23/07	10/01/34	Variable	54,000,000	54,000,000	89,148
05/24/07	02/01/26	5.75%	17,875,000	17,875,000	1,027,813
05/24/07	03/01/37	6.00%	8,927,000	8,927,000	535,620
10/17/08	02/01/32	Variable	77,947,405	77,947,405	128,318
			<u>\$ 355,579,405</u>	<u>\$ 350,779,405</u>	<u>\$ 2,326,335</u>
First Mortgage Bonds					
11/16/10	11/01/15	1.63%	\$ 250,000,000	\$ 250,000,000	\$ 4,062,500
11/16/10	11/01/20	3.25%	500,000,000	500,000,000	16,250,000
11/16/10	11/01/40	5.13%	750,000,000	750,000,000	38,437,500
			<u>\$ 1,500,000,000</u>	<u>\$ 1,500,000,000</u>	<u>\$ 58,750,000</u>

- (6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest in whose favor, together with amount of interest paid thereon during the last 12-month period.

There are no notes outstanding as of March 31, 2012.

- (7) Other indebtedness, giving same by classes and describing security, if any with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

None, other than current and accrued liabilities.

- (8) Rate and amount of dividends paid during the five previous fiscal years, and amount of capital stock on which dividends were paid. (1)

Dividends on Common Stock, without par value (not based on rate per share)

2007	-
2008	-
2009	-
2010	\$50,000,000
2011	\$123,500,000

- (1) On November 1, 2010, PPL Corporation completed its acquisition of E.ON U.S. LLC, the Company's parent. Upon completion of the acquisition, E.ON U.S. LLC was renamed LG&E and KU Energy LLC. The 37,817,878 shares are currently owned by LG&E and KU Energy LLC. From May 1998 to October 31, 2010, the 37,817,878 shares were all owned by E.ON U.S. LLC (formerly LG&E Energy LLC) and all dividends declared by KU's Board of Directors were paid to E.ON U.S. LLC. Subsequent to October 31, 2010, all dividends declared by KU's Board of Directors were paid to LG&E and KU Energy LLC. During the 1<sup>st</sup> quarter of 2012 KU declared and paid a dividend on common stock of \$24,000,000.

- (9) Detailed Income Statement, Balance Sheet and Statement of Retained Earnings

Monthly Financial and Operating Reports are filed each month with the Kentucky Public Service Commission. Attached are detailed Statements of Income, Balance Sheets and Retained Earnings for the Company for the period ending March 31, 2012.

**Kentucky Utilities Company**  
Balance Sheet as of March 31, 2012

<b>Assets</b>		<b>Liabilities and Proprietary Capital</b>
<b>Utility Plant</b>		<b>Proprietary Capital</b>
Utility Plant at Original Cost.....	\$ 6,837,808,460.84	Common Stock.....
Less: Reserves for Depreciation and Amortization.....	2,419,286,203.27	Less: Common Stock Expense.....
	<u>4,418,522,257.57</u>	Paid-In Capital.....
<b>Total</b> .....		Other Comprehensive Income.....
		Retained Earnings.....
<b>Investments</b>		Unappropriated Undistributed Subsidiary Earnings.....
Electric Energy, Inc.....	6,465,195.55	<b>Total Proprietary Capital</b> .....
Ohio Valley Electric Company.....	250,000.00	Pollution Control Bonds.....
Nonutility Property-Less Reserve.....	179,120.94	First Mortgage Bonds.....
		LT Notes Payable to Associated Companies.....
<b>Total</b> .....	<u>6,894,316.49</u>	<b>Total Long-Term Debt</b> .....
<b>Current and Accrued Assets</b>		<b>Total Capitalization</b> .....
Cash.....	26,696,148.67	<b>Current and Accrued Liabilities</b>
Special Deposits.....	19,049,263.40	ST Notes Payable to Associated Companies.....
Temporary Cash Investments.....	153,471,798.55	Accounts Payable.....
Accounts Receivable-Less Reserve.....	3,237,051.00	Accounts Payable to Associated Companies.....
Materials and Supplies-At Average Cost		Customer Deposits.....
Fuel.....	86,500,323.28	Taxes Accrued.....
Plant Materials and Operating Supplies.....	34,275,059.84	Interest Accrued.....
Stores Expense.....	10,207,802.39	Dividends Declared.....
Emission Allowances.....	415,494.53	Miscellaneous Current and Accrued Liabilities.....
Prepayments.....	5,995,929.86	
Miscellaneous Current and Accrued Assets.....	886.52	<b>Total</b> .....
<b>Total</b> .....	<u>339,849,758.04</u>	<b>Deferred Credits and Other</b>
<b>Deferred Debts and Other</b>		Accumulated Deferred Income Taxes.....
Unamortized Debt Expense.....	20,993,395.72	Investment Tax Credit.....
Unamortized Loss on Bonds.....	11,623,874.20	Regulatory Liabilities.....
Accumulated Deferred Income Taxes.....	85,241,359.67	Customer Advances for Construction.....
Deferred Regulatory Assets.....	267,700,866.01	Asset Retirement Obligations.....
Other Deferred Debts.....	45,907,397.34	Other Deferred Credits.....
<b>Total</b> .....	<u>431,466,892.94</u>	Miscellaneous Long-Term Liabilities.....
		Accum Provision for Postretirement Benefits.....
<b>Total Assets</b> .....	<u>\$ 5,196,733,225.04</u>	<b>Total</b> .....
		<b>Total Liabilities and Stockholders Equity</b> .....
		<u>\$ 5,196,733,225.04</u>

**Kentucky Utilities Company**  
**Statement of Income**  
**March 31, 2012**

	Year Ended 3/31/2012
Electric Operating Revenues.....	\$ 1,522,035,957.11
Rate Refunds.....	-
 Total Operating Revenues.....	 1,522,035,957.11
Fuel for Electric Generation.....	516,817,356.17
Power Purchased.....	103,829,269.81
Other Operation Expenses.....	234,009,083.64
Maintenance.....	126,205,679.78
Depreciation.....	184,687,593.56
Amortization Expense.....	7,505,149.44
Regulatory Credits.....	(6,011,854.42)
Taxes	
Federal Income.....	(17,247,753.46)
State Income.....	1,899,319.18
Deferred Federal Income - Net.....	102,811,975.59
Deferred State Income - Net.....	11,097,503.08
Property and Other.....	29,144,074.49
Investment Tax Credit.....	-
Loss (Gain) from Disposition of Allowances.....	(886.52)
Accretion Expense.....	2,934,108.65
 Total Operating Expenses.....	 1,297,680,618.99
 Net Operating Income.....	 224,355,338.12
 Other Income Less Deductions	
Amortization of Investment Tax Credit.....	2,800,110.74
Other Income Less Deductions.....	533,585.57
AFUDC - Equity.....	47,125.06
 Total Other Income Less Deductions.....	 3,380,821.37
 Income Before Interest Charges.....	 227,736,159.49
Interest on Long-Term Debt.....	61,076,334.12
Amortization of Debt Expense - Net.....	3,773,938.89
Other Interest Expenses.....	5,107,381.64
AFUDC - Borrowed Funds.....	(13,892.09)
 Total Interest Charges.....	 69,943,762.56
 Net Income.....	 \$ 157,792,396.93

**Kentucky Utilities Company**  
**Analysis of Retained Earnings**  
**March 31, 2012**

	Year Ended 3/31/12
Retained Earnings Balance at Beginning of Period.....	\$ 1,463,485,376.42
Add:	
Net Income for Period.....	157,792,396.93
Deduct:	
Common Dividends	
Common Stock Without Par Value	(116,500,000.00)
Adjust for Equity in Subsidiary	
Earnings for Year	
EE Inc.....	1,243,444.00
Dividends Received Current Year	
-EE Inc.....	-
Retained Earnings Balance at End of Period.....	1,506,021,217.35
Unappropriated Undistributed Subsidiary Earnings.....	14,468,538.75
Retained Earnings and Undistributed Subsidiary Earnings at End of Period.....	\$ 1,520,489,756.10

**SECRETARY'S CERTIFICATE**

I, Gerald A. Reynolds, do hereby certify that I am the duly qualified and acting General Counsel, Chief Compliance Officer and Corporate Secretary of Kentucky Utilities Company, a Kentucky and Virginia corporation, (the "Company"), and that as such officer, I have access to all original records of the Company and that I am authorized to make certified copies of Company records on its behalf. I further hereby certify that the attached resolutions are a true and correct copy of the resolutions of the Company adopted by unanimous written consent effective as of June 5, 2012, and that the same have not been altered, amended or repealed.

IN WITNESS WHEREOF, I have executed this Certificate this 5<sup>th</sup> day of June, 2012.



---

Gerald A. Reynolds  
General Counsel, Chief Compliance Officer  
And Corporate Secretary



**ACTION OF THE BOARD OF DIRECTORS  
OF  
KENTUCKY UTILITIES COMPANY  
TAKEN BY WRITTEN CONSENT  
IN LIEU OF A SPECIAL MEETING**

June 5, 2012

**ISSUANCE OF FIRST MORTGAGE BONDS**

WHEREAS, the Board of Directors of the Company (the "Board") has determined that it is desirable and in the best interests of the Company to issue up to \$300,000,000 aggregate principal amount of long-term debt in the form of first mortgage bonds for the purposes of providing funds for anticipated capital expenditures, operational or financial needs and other general corporate purposes.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board as follows:

The Offering

- (a) That the Board authorizes and approves the issuance and sale by the Company from time to time, in one or more series, and in any combination, of up to \$300,000,000 aggregate principal amount of long-term debt in the form of first mortgage bonds (any of such bonds, the "Debt Securities") in one or more underwritten public offerings, negotiated sales, or private placement transactions (such offerings, sales and transactions collectively referred to herein as the "Offering"), the net proceeds of such Debt Securities to be used for general corporate purposes, including construction and other capital expenditures, operational funding requirements, and repayment, refunding or refinancing of short- or long-term debt at maturity or otherwise.
- (b) That the Company be, and it hereby is, authorized to issue and offer for sale the Debt Securities through or to one or more underwriters, selling or placement agents, or other purchasers pursuant to an underwriting, purchase or similar agreement, on and subject to such terms and conditions as may be approved by the Authorized Officers (as defined below), provided that the interest rate on such Debt Securities shall not exceed 6-6.5% per annum.

Debt Securities or First Mortgage Bonds

- (c) That the Chief Executive Officer, President, Chief Financial Officer, Chief Administrative Officer, General Counsel, Chief Compliance Officer and Corporate Secretary, any Vice President, the Treasurer, and the Controller of the Company (each, an "Authorized Officer" and, collectively, the "Authorized Officers") are, and each of them hereby is, authorized by and on behalf of the Company, to negotiate, enter into, execute and deliver one or more supplemental indentures, company orders and/or officer's certificates (the "Supplemental Indentures") pursuant to the Company's Indenture dated October 1, 2010 to The Bank of New York Mellon, as trustee (such Indenture, as heretofore supplemented and as to be further supplemented and amended by any such instrument the "Indenture") relating to the creation and issuance of, and establishing the designation, form, characteristics and terms of the Debt Securities, in such form or forms and having such terms as the Authorized Officers executing the same shall approve, and to perform all of the agreements and obligations of the Company under the Supplemental Indentures and Indenture and to consummate the transactions contemplated thereby; and that each Authorized Officer be, and hereby is, authorized to execute and deliver such other agreements, certificates and documents and to take such other actions in connection with the execution and delivery of any Supplemental Indenture or other instrument pursuant to the Indenture as such Authorized Officers deem necessary, advisable or appropriate; with such changes therein, additions thereto or omissions therefrom, as any Authorized Officer executing, acknowledging or delivering the same shall approve, such Authorized Officer's execution, acknowledgement and/or delivery thereof to be conclusive evidence of such approval.
- (d) That the Authorized Officers are, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Company, to execute, acknowledge and deliver new securities representing the Debt Securities in substantially such form and containing such terms and conditions as such Authorized Officer shall approve, with such changes therein, additions thereto or omissions therefrom as such Authorized Officer executing, acknowledging or delivering the same shall approve, such Authorized Officer's execution, acknowledgement and delivery thereof to be conclusive evidence of such approval.
- (e) That the Authorized Officers are, and each of them hereby is, authorized, empowered and directed to fix and approve the terms and conditions on which the Debt Securities are to be issued and authenticated and the final terms of the Supplemental Indentures or any other instrument pursuant to the Indenture, including, without limitation, the rights of the holders thereof, the interest rate or rates, the maturity date or dates, the sinking fund, redemption or repurchase provisions and prices, the purchase price or prices, the offering date and terms and all other matters relating thereto, and to take all such other actions as any Authorized Officer deems necessary, advisable or appropriate to consummate the transactions contemplated by the Supplemental Indentures.
- (f) That a facsimile of the corporate seal of the Company may be imprinted on the Supplemental Indentures and/or Debt Securities, which facsimile is hereby acknowledged to be the corporate seal of the Company for the purposes of sealing the Debt Securities.
- (g) That the Authorized Officers are, and each of them hereby is, authorized to execute and deliver on behalf of the Company, in the event that all or a portion of the Debt Securities

bear a fixed or variable rate of interest: (i) one or more interest rate lock or swap agreements or similar agreements with one or more underwriters, banks or other financial institutions or other counter-parties, including affiliated entities, providing for the hedging of the interest rates on such securities, and (ii) any other agreement, document or instrument that may be necessary or appropriate in connection with any such transaction.

#### Paying Agent and Security Registrar

- (h) That The Bank of New York Mellon is hereby appointed to act as the initial paying agent and security registrar for the Debt Securities described herein in accordance with the provisions of the Indenture; provided that any Authorized Officer may take all actions necessary or desirable, on behalf of the Company, to provide for any additional or different paying agent or security registrar for any Debt Securities, if such Authorized Officer deems such provision to be desirable, such officer's determination to be conclusively evidenced by his execution of documentation effecting such appointment or change.

#### Offering Documents

- (i) That, in connection with the issuance and sale of the Debt Securities, the Authorized Officers are, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Company to: (i) prepare, or cause to be prepared, one or more prospectuses, offering memoranda or other appropriate disclosure documents (including all exhibits, annexes and other documents relating thereto) in connection with such issuance and sale of the Debt Securities, including any supplement(s) or amendment(s) thereto (the "Offering Memorandum"); (ii) execute, as such Authorized Officers or Authorized Officer deem(s) necessary, advisable or appropriate, any and all, agreements, documents and instruments in connection with such issuance and sale; and (iii) take all such other actions as such Authorized Officers or Authorized Officer deem(s) necessary, advisable or appropriate in order to effect the issuance and sale of the Debt Securities, such Authorized Officer's authority and determination to execute such documents and instruments and to take such actions being conclusively evidenced by such execution or action, as the case may be.

#### Authorization of Underwriting, Purchase or Similar Agreements

- (j) That the Authorized Officers are, and each of them hereby is, authorized and directed, for and on behalf of the Company, to fix and approve the terms of an underwriting, purchase or similar agreement relating to the issuance and sale of the Debt Securities to one or more underwriters, selling or placement agents or other purchasers thereof (the "Purchase Agreement") to be entered into by and among the Company and such underwriters, agents or purchasers as may agree to become parties thereto, and the Authorized Officers be, and each of them hereby is, authorized to execute and deliver the same, in such form or with such changes therein, additions thereto or omissions therefrom as such Authorized Officers may approve, such execution and delivery by any such Authorized Officer to be conclusive evidence of such authorization and approval.
- (k) That the Authorized Officers are, and each of them hereby is, authorized to execute and file such instruments, make all such payments, and do such other acts and things as, in the opinion of any Authorized Officer, may be necessary or desirable in order to comply

with the rules and regulations promulgated under the Securities Act of 1933, as amended; and to qualify the Company or any Debt Securities under the securities or "Blue Sky" laws of such states of the United States and other jurisdictions as may be necessary or desirable, and to take further necessary action for said purposes.

Regulatory Approval

- (l) That the Authorized Officers of the Company are, and each of them hereby is, authorized and empowered to execute and file, or cause to be filed, on behalf of the Company, such applications, petitions or notices (including amendments or supplements thereto) with the Public Service Commission of the Commonwealth of Kentucky, the State Corporation Commission of the Commonwealth of Virginia, the Tennessee Regulatory Authority and any other federal, state, or local commission, court, agency or body having jurisdiction as may be required to obtain any approvals, consents, orders or rulings as such officers or counsel for the Company may deem to be necessary or desirable in connection with the transactions contemplated hereby, as may be required by law or as may be deemed to be proper or appropriate in their judgment or in the judgment of counsel for the Company in connection with the foregoing.

General

- (m) That the Authorized Officers of the Company are, and each of them is, hereby authorized and empowered, in the name and behalf of the Company, to execute and deliver such agreements and other documents relating to electronic deposit and delivery, cash management, information services and such other matters as they shall deem necessary or desirable to otherwise facilitate the offering, issuance, sale and delivery of the Debt Securities and receive and apply the proceeds therefrom.
- (n) That the officers of the Company are, and each of them hereby is, authorized in the name and on behalf of the Company and under its corporate seal or otherwise, to take or cause to be taken all such further actions and to execute and deliver or cause to be executed and delivered all such further instruments, agreements, certificates and other documents in connection with the Offering as such persons may deem necessary, advisable or appropriate in connection with the transactions contemplated thereby and hereby, and to incur all such fees and expenses as shall be necessary, advisable or appropriate in their judgment in order to carry into effect the purpose and intent of any and all of the foregoing resolutions.
- (o) That any acts of the officers of this Company, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts in the name of and on behalf of this Company.
- (p) That the Authorized Officers are, and each of them hereby is, authorized and directed to take any and all further action to see that the intent of the above resolutions is carried forth.

This unanimous written consent may be executed in two or more counterparts, all of which taken together shall be deemed one and the same instrument.

**ACTION OF THE BOARD OF DIRECTORS  
OF  
KENTUCKY UTILITIES COMPANY  
TAKEN BY WRITTEN CONSENT  
IN LIEU OF A SPECIAL MEETING**

**June 5, 2012**

**EXPANSION OF REVOLVING CREDIT FACILITIES**

**WHEREAS**, the Company is borrower under a \$400 million Revolving Credit Agreement, dated as of November 1, 2010, among the Company, the Lenders party thereto and Wells Fargo Bank, National Association, as administrative agent, as amended (the "Existing Credit Agreement"), which currently is scheduled to expire in October 2016, subject to the ability to expand the facility by up to \$100 million at the Company's request, and subject to the consent of the lenders; and

**WHEREAS**, the Company desires to increase the amount of borrowings available under its revolving credit facilities to a total aggregate amount of up to \$500 million, through modification of the Existing Credit Agreement or by entering into additional revolving credit facilities having similar terms, such expansions or alternative facilities having a combined aggregate principal amount not to exceed \$100 million (collectively, the "Revolving Credit Facilities"); and

**WHEREAS**, the Board has determined that it is in the Company's best interests to amend or modify, as appropriate, the Existing Credit Agreement or negotiate and enter into additional revolving credit agreements, as appropriate, so as to effect the Revolving Credit Facilities; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Board as follows:

**Credit Agreements or Amendments**

- (a) That the Chief Executive Officer, President, Chief Financial Officer, the Chief Administrative Officer, the General Counsel, Chief Compliance Officer and Corporate Secretary, any Vice President, the Treasurer, and the Controller of the Company (each, an "Authorized Officer" and, collectively, the "Authorized Officers") be, and each of them hereby is, authorized by and on behalf of the Company, authorized and empowered to negotiate, execute and enter into, on behalf of the Company, such forms of amended, modified, replacement or new promissory notes or credit agreements, whether relating to the Existing Credit Agreement or to new credit arrangements, with existing or new banks and financial institutions, that such Authorized Officer deems necessary or desirable to document and effect the Revolving Credit Facilities, together with such other agreements, instruments, notices, certificates and documents, on such terms and

conditions as the officer executing such documents deems appropriate, with such officer's execution of a definitive agreement to conclusively evidence such officer's approval and the approval of this Board of Directors.

- (b) That the Authorized Officers be, and each of them hereby is, authorized by and on behalf of the Company to: (i) request advances (including issuance of letters of credit) under the Revolving Credit Facilities; (ii) delegate to any other officers or employees of the Company, either acting individually or jointly, authority to request advances (including issuances of letters of credit) under the Revolving Credit Facilities; and (iii) execute and deliver any other agreements and documents and take any and all other action as contemplated by the Revolving Credit Facilities or as such officer may deem necessary or desirable in connection with the making of advances (including issuances of letters of credit) on account of the Company pursuant to the Revolving Credit Facilities.
- (c) That the Authorized Officers be, and each of them hereby is, authorized and directed to cause the preparation of, to approve, or consent to, and execute and deliver the necessary documents, instruments, agreements or certificates necessary to enter into the Revolving Credit Facilities.

General

- (d) That the Authorized Officers of the Company be, and each of them hereby is, authorized and empowered to execute and file, or cause to be filed, on behalf of the Company, such applications, petitions or notices (including amendments or supplements thereto) with the Public Service Commission of the Commonwealth of Kentucky, the State Corporation Commission of the Commonwealth of Virginia, the Tennessee Regulatory Authority and any other federal, state, or local commission, court, agency or body having jurisdiction as may be required to obtain any approvals, consents, orders or rulings as such officers or counsel for the Company may deem to be necessary or desirable in connection with the transactions contemplated hereby, as may be required by law or as may be deemed to be proper or appropriate in their judgment or in the judgment of counsel for the Company in connection with the foregoing.
- (e) That any and all actions heretofore taken by the Authorized Officers within the terms of the foregoing resolutions, including any actions taken in connection with applications to the Public Service Commission of the Commonwealth of Kentucky, the Virginia State Corporation Commission and the Tennessee Regulatory Authority or any other federal, state, or local commission, court, agency or body having jurisdiction as required to obtain any approvals, consents, orders or rulings as such officers or counsel for the Company deemed to be necessary or desirable in connection with the transactions contemplated hereby, be and the same are hereby in all respects approved, ratified and confirmed.

This unanimous written consent may be executed in two or more counterparts, all of which taken together shall be deemed one and the same instrument.