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APR 05 2013

PUBLIC SERVICE
COMMISSION

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April 5, 2013

VIA HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: The Application of Louisville Gas and Electric Company for Approval of License Agreement With Charah, Inc. Concerning Mill Creek Generating Station
Case No. 2012-00385

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten redacted copies of the final Specification Gypsum Pelletization Contract between Louisville Gas and Electric Company ("LG&E") and Charah, Inc. LG&E is filing the final contract as required by the Commission's November 2, 2012 Order in this proceeding.

Also enclosed herewith are an original and ten copies of Louisville Gas and Electric Company's Petition for Confidential Protection in the above-referenced matter. Please confirm receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me via our officer courier. Thank you.

Sincerely,

W. Duncan Crosby III

WDC:ec
Enclosures

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS)	
AND ELECTRIC COMPANY FOR)	
APPROVAL OF LICENSE AGREEMENT)	CASE NO. 2012-00385
WITH CHARAH, INC. CONCERNING)	
MILL CREEK GENERATING STATION)	

PETITION FOR CONFIDENTIAL PROTECTION

Louisville Gas and Electric Company (“LG&E”) hereby petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001 §7 and KRS 61.878(1)(c) to grant confidential protection for the item described herein, which LG&E seeks to provide in accordance with the Commission’s Order dated November 2, 2012. In support of this Petition, LG&E states as follows:

1. Under the Kentucky Open Records Act, the Commission is entitled to withhold from public disclosure commercially sensitive to the extent that open disclosure would permit an unfair commercial advantage to competitors of the entity disclosing the information to the Commission. See KRS 61.878(1)(c). Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. The confidential information is contained in the final Specification Gypsum Pelletization Contract between Louisville Gas and Electric Company and Charah, Inc. dated November 5, 2012 (“Confidential Information”). This document contains sensitive information about Charah’s innovative technique for beneficially reusing gypsum produced by coal-fired generators’ environmental equipment, as well as the pricing terms on which Charah and LG&E have agreed for Charah to deploy this new technology at the Mill Creek Generating Station. Publicly disclosing any of the Confidential Information could harm LG&E’s ability to obtain

truly competitive bids to perform similar services in the future, and could discourage vendors from proposing and negotiating to nearly final terms contracts involving innovative technology because of the risk of having their sensitive business information publicly disclosed. To protect LG&E's customers from the harm that would result from a less robust bidding process for such services, as well as the harm that could result from discouraging innovative beneficial reuse vendors, this information should be afforded confidential protection.

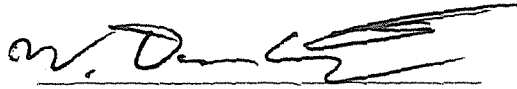
3. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect LG&E's due process rights and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

4. LG&E will timely file with the Commission one paper copy of the Confidential Information highlighted. LG&E will also timely file a paper original and ten paper copies of the contract without the Confidential Information.

WHEREFORE, Louisville Gas and Electric Company respectfully requests that the Commission grant confidential protection for the information at issue, or in the alternative, schedule and evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Dated: April 5, 2013

Respectfully submitted,



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Counsel for Louisville Gas and Electric Company



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**LOUISVILLE GAS AND ELECTRIC COMPANY AND CHARAH, INC.
SPECIFICATION GYPSUM PELLETIZATION CONTRACT**

This Specification Gypsum Pelletization Contract ("Contract") is entered into this 5th day of November, 2012 (the "Effective Date") by and between (i) Louisville Gas and Electric Company (hereinafter referred to as "LG&E"), a Kentucky corporation, whose address is 220 West Main Street, Louisville, Kentucky 40202 and (ii) Charah, Inc. (hereinafter referred to as "Charah"), a Kentucky corporation, whose address is 12601 Plantside Drive, Louisville, Kentucky 40299. LG&E and Charah are referred to collectively as the "Parties" and individually as a "Party".

RECITALS

WHEREAS, combustion of coal at LG&E's Mill Creek Station ("Mill Creek") produces various coal combustion by-products, including, but not limited to "Specification Gypsum" (as hereinafter defined), with such Specification Gypsum having beneficial uses;

WHEREAS, LG&E desires to maximize the beneficial use of Specification Gypsum generated at Mill Creek;

WHEREAS, LG&E desires to provide to Charah, and Charah desires to receive from LG&E, Specification Gypsum generated at Mill Creek for beneficial reuse under the terms and conditions in this Contract; and

WHEREAS, LG&E desires to allow Charah to, and Charah desires to, design, permit, construct and operate a processing plant at Mill Creek to utilize Specification Gypsum for the manufacture of "Pelletized Product" (as defined below) for sale and distribution by Charah;

NOW, THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants, promises and conditions hereinafter set forth, the Parties agree as follows:

1. DEFINITIONS

Unless otherwise as defined in the context of this Contract, the following capitalized terms have the definitions as stated below:

- 1.1. "Affiliate" shall mean for either Party any entity which, from time to time, in whole or in part, and directly or indirectly, controls, is controlled by, or under common control with such Party, and shall include, without limitation, Louisville Gas and Electric Company and Kentucky Utilities Company, both Kentucky corporations.
- 1.2. "Applicable Laws" shall mean any and all applicable federal, state or local laws, regulations, codes, ordinances, administrative rules, court orders, permits or executive orders.
- 1.3. "Charah's Documents" shall have the meaning set forth in Section 13.2.
- 1.4. "Confidential Information" shall have the meaning set forth in Section 14.

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- 1.5. "General Services Agreement" shall mean that General Services Agreement between LG&E and KU Services Company and Charah dated December 27, 2011.
- 1.6. "Gypsum" shall mean, dewatered synthetic gypsum as produced as a by-product of the flue gas desulfurization systems resulting from the combustion of pulverized coal in steam electric generating units having a water moisture content between 10% and 15%.
- 1.7. "Incumbent Customers" shall have the meaning set forth in Section 3.1.2.
- 1.8. "Initial Term" shall have the meaning set forth in Section 7.
- 1.9. "Intellectual Property Rights" shall have the meaning set forth in Section 13.1.
- 1.10. "Per Ton Payment" shall have the meaning set forth in Section 4.1.1.
- 1.11. "Production Commencement Date" shall have the meaning set forth below in Section 3.1.1.
- 1.12. "Production Year" shall mean each twelve (12) month period during the "Term" (as defined below) beginning on the Production Commencement Date and each anniversary of the Production Commencement Date during the Term.
- 1.13. "Specification Gypsum" shall mean Gypsum provided at Mill Creek by LG&E or an Affiliate of LG&E that conforms to the specifications set forth in Exhibit A attached hereto and incorporated herein by reference.
- 1.14. "Specification Gypsum Transfer Point" shall mean that location at Mill Creek identified as such in Exhibit B attached hereto and incorporated herein by reference where Charah shall have access to recover Specification Gypsum at its expense with a loader at the stack-out conveyor on the concrete slab at such location or, alternatively, where Specification Gypsum is discharged from such stack-out conveyor to Charah's transfer hopper.
- 1.15. "Pelletized Product" means that certain proprietary agricultural product marketed under the name Sul4R-Plus™ and produced by Charah from Specification Gypsum that is processed to form a granule, disk or pellet that contains proprietary binders and plant nutrients.
- 1.16. "Pelletized Product Manufacturing Plant" shall mean the manufacturing plant to be designed, built, owned and operated by Charah at its expense at Mill Creek to manufacture Pelletized Product from the Specification Gypsum for use as described in this Contract utilizing the process described generally in Exhibit C attached hereto and incorporated herein by reference.
- 1.17. "Term" shall have the meaning as defined in Section 7.
- 1.18. "Ton" shall mean two thousand (2,000) pounds avoirdupois.
- 1.19. "Work" shall have the meaning set forth in the General Services Agreement.

2. GENERAL PROVISIONS; ADDITIONAL WARRANTIES

- 2.1. This Contract is a Statement of Work for purposes of the General Services Agreement. Capitalized terms used but not defined in the body of this Contract or its exhibits shall have the meanings set forth in the General Services Agreement.

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- 2.2. The provisions of this Contract do not modify that certain Ash Marketing Contract Number 793489 entered into on April 23, 2009 by and between the Parties or that certain Special Waste Landfill Management Contract Number 791022 entered into on April 1, 2009 by and between the Parties.
- 2.3. Except as otherwise expressly provided herein, Charah shall supply all necessary labor, supervision, materials, equipment, tools, supplies, consumables and warehousing, and shall pay all expenses, necessary or appropriate in the performance of the Work.
- 2.4. Without limiting Charah's obligations under Article 13 of the General Services Agreement or under Applicable Laws, no materials containing asbestos shall be supplied or used in the performance of the Work.
- 2.5. Without limiting Charah's obligations under Article 13 of the General Services Agreement or under Applicable Laws, Charah shall meet all requirements set forth in the Lead Construction Standard set forth in 29 CFR 1926.62 in performing the Work but any abatement required under such standard will be performed by LG&E.
- 2.6. Charah may place temporary offices or trailers for use by its personnel performing the Work on LG&E's property at Mill Creek subject to LG&E approval. Any phone and/or internet service installed to such offices or trailers shall be installed at Charah's expense under LG&E guidance with no charge for LG&E granting permission to install such services.
- 2.7. Charah makes the following warranties in addition to the warranties set forth in the General Services Agreement.
 - 2.7.1. Charah represents and warrants that it is experienced in the sale, beneficial use, marketing and management of Specification Gypsum and that the Work shall be performed in a manner consistent with such experience.
 - 2.7.2. Charah represents and warrants that (i) the Pelletized Product Manufacturing Plant will, by December 31, 2013, be capable of processing at least 250,000 tons of Specification Gypsum into Pelletized Product in any twelve (12) month period, (ii) that the process for converting Specification Gypsum to the Pelletized Product is as generally described in Exhibit C, and (iii) the Pelletized Product (including its proprietary binders and plant nutrients) does not contain (nor will it cause generation of) any hazardous substance or hazardous material. Charah shall obtain LG&E's written approval prior to making any material change in the process described in Exhibit C.

3. DESCRIPTION OF WORK

3.1. GYPSUM MARKETING AND MANUFACTURE OF PELLETTIZED PRODUCT

- 3.1.1. Charah shall commence production of Pelletized Product at the Pelletized Product Manufacturing Plant on or before the later of June 1, 2013 or the date 90 days following the date on which LG&E has completed the extension of utility lines pursuant to Section 3.2.12, below, and all required governmental approvals have been obtained. The date on which Charah commences production of Pelletized Product at the Pelletized Product Manufacturing Plant is referred to in this Contract as the "Production Commencement Date."
- 3.1.2. Subject to limitations set forth below, Charah shall be the exclusive marketer for products produced from Specification Gypsum from Mill Creek for agricultural use,

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including Pelletized Product. Also subject to limitations set forth below, LG&E grants Charah the exclusive right to use up to 250,000 tons of Specification Gypsum generated at Mill Creek each Production Year (subject, however, to proration for a partial Production Year during the Term, if any) for agricultural use; so long as Charah takes the "Minimum Annual Volume" provided below in each Production Year. For purposes of clarification, Charah must take such minimum volumes in order to maintain such exclusivity rights to use Specification Gypsum generated at Mill Creek for agricultural use. Charah shall not be obligated to take such Minimum Annual Volumes except for the purpose of maintaining such exclusivity rights. While such exclusivity rights shall apply to and exclude third parties from any agricultural use of Specification Gypsum from Mill Creek, Charah shall use Specification Gypsum solely for the purpose of the manufacture of Pelletized Product.

Minimum Annual Volumes

First Production Year:	50,000 tons
Second Production Year:	75,000 tons
Third Production Year:	100,000 tons
Each Production Year Thereafter:	125,000 tons

The Parties acknowledge that LG&E has existing contractual obligations to provide one or more third parties ("Incumbent Customers") with up to 300,000 tons of Specification Gypsum per calendar year for non-agriculture uses. Charah agrees that LG&E may continue to make the 300,000 tons of Specification Gypsum per calendar year available to the Incumbent Customers, before making Specification Gypsum available to Charah during the portion of the Term prior to January 1, 2014. During such portion of the Term, the 250,000 tons of Specification Gypsum subject to the exclusivity right of Charah described in this Section 3.1.2 shall be the first 250,000 tons available annually after providing 300,000 tons to Incumbent Customers and LG&E shall not be obligated to make available any Specification Gypsum to Charah at any given time during such portion of the Term unless and until LG&E has Specification Gypsum available at Mill Creek in addition to such 300,000 tons. During the portion of the Term on and after January 1, 2014 LG&E shall make available to Charah on a first right basis, to the extent available, up to 25,000 tons of Specification Gypsum per month, without first making Specification Gypsum available to Incumbent Customers or other third parties; provided that the amount of Specification Gypsum subject to such first rights shall not exceed 250,000 tons in any calendar year for the rest of the Term. Notwithstanding the foregoing, LG&E makes no promise or guarantee as to the amount, if any, or quality of Specification Gypsum that will be available for Charah; provided, however, that LG&E has the right but not the obligation to make Specification Gypsum available for Charah, from a facility other than Mill Creek if the supply at Mill Creek is not sufficient to supply Charah's need for Specification Gypsum for use in producing Pelletized Product. If LG&E makes Specification Gypsum available from another source, LG&E will provide advance notice of its intent to supply from another source. In the event LG&E supplies Specification Gypsum from a source other than Mill Creek, the Parties shall make equitable adjustments in pricing to the extent Charah's costs in obtaining Specification Gypsum at Mill Creek are adversely affected by LG&E providing Specification Gypsum from a source other than Mill Creek.

- 3.1.3. The Parties hereto recognize and acknowledge that LG&E is a public utility and that LG&E's facilities are existing power plants operated by LG&E and that the primary function of such plants is to produce electricity. Specifically, LG&E produces the Specification Gypsum from scrubber limestone sludge wastes generated at LG&E's existing power plants, which wastes have no use or value in their original form. LG&E first processes the scrubber limestone sludge wastes into impure gypsum through the

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forced oxidation and dewatering of the scrubber limestone sludge wastes at solid waste disposal facilities owned and operated by LG&E, which impure gypsum is contaminated with salts, calcites and some flyash and which also has no use or value. LG&E subsequently processes the impure gypsum into Specification Gypsum through the secondary dewatering, cleaning and washing of the impure gypsum at solid waste disposal facilities that are also owned and operated by LG&E. However, for various reasons (including, without limitation, mechanical, economic, technological and regulatory reasons) the amount of Specification Gypsum produced could be substantially reduced or eliminated at any time or from time to time. The Parties agree that LG&E may operate or not operate its current facilities in any manner it chooses, in its sole discretion and without any regard for the effect on or the resulting amount or quality of Specification Gypsum, and that it is under no obligation, under any circumstance, to make any changes to its operations or be prevented from making whatever changes to its plant, facilities or operations as it desires. In that regard, this Contract shall not be construed to restrict or impede LG&E's ability (or increase its costs) to produce electricity.

- 3.1.4. Any Specification Gypsum remaining from Specification Gypsum generated at Mill Creek after LG&E has provided (i) 300,000 tons of Specification Gypsum per calendar year to Incumbent Customers as described in Section 3.1.2, above, prior to January 1, 2014, and (ii) 250,000 tons of Specification Gypsum per Production Year to Charah as described in Section 3.1.2, above, may be provided by LG&E to any Incumbent Customer or other third party or used by LG&E for internal purposes. Additionally, LG&E may provide any quantity of Specification Gypsum to any Incumbent Customer or other third party at any time for non-agricultural use if in LG&E's reasonable judgment doing so will not in itself prevent LG&E from providing Charah with Specification Gypsum as described in Section 3.1.2, above.
- 3.1.5. LG&E warrants that it has the right to transfer and deliver good and marketable title to Specification Gypsum generated at Mill Creek to Charah, free and clear of all liens, encumbrances and other claims of third parties.
- 3.1.6. Charah and LG&E will communicate on a monthly basis, or as needed, to establish written supply schedules of Specification Gypsum consistent with the terms of this Contract. The Parties will use commercially reasonable efforts to comply with such agreed upon schedules. In addition to establishing such supply schedules, LG&E and Charah shall meet prior to the end of each Production Year to create a forecast of estimated production and consumption of Specification Gypsum for the following Production Year taking into consideration, among other things, facility outages and the seasonality of their respective businesses. The forecasts shall be used to develop the supply schedules during the following Production Year. The Production Year forecasts may be updated by LG&E and Charah throughout the Term as needed to reflect any changes in production and/or consumption.

3.2. DESCRIPTION OF WORK - PELLETIZED PRODUCT MANUFACTURE

- 3.2.1. Subject to the timing described above in Section 3.1.1 and any and all required governmental approvals, including without limitation any approval required under the order of the Kentucky Public Service Commission in Case No. 2002-00029, Charah will design, permit, construct and operate the Pelletized Product Manufacturing Plant (with its location at Mill Creek as shown on Exhibit B). Charah will provide LG&E a single point of contact for daily coordination of matters related to the marketing of Pelletized Product and Charah will be responsible for responding to potential buyers inquiring as to the availability and quality of Pelletized Product.

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- 3.2.2. By December 31, 2013, Charah will construct the Pelletized Product Manufacturing Plant such that it is operationally capable of producing at least 250,000 tons of Specification Gypsum into Pelletized Product in any twelve (12) month period.
- 3.2.3. Charah will provide LG&E with a single point of contact for daily coordination with LG&E regarding the Parties' obligations under this Contract and be available on a 24/7 basis.
- 3.2.4. Charah shall use its reasonable best efforts to market Pelletized Product in local and regional markets by truck and in distant markets by rail and/or barge.
- 3.2.5. Charah shall be solely responsible for all transportation contractors, and ensuring that all such contractors comply with Applicable Laws, Mill Creek facility rules and applicable provisions of this Contract, including without limitation the General Services Agreement.
- 3.2.6. Charah shall process Specification Gypsum into Pelletized Product and load Pelletized Product into various forms of transportation for shipment, including the training of personnel engaged in the transportation, loading and shipment of Specification Gypsum and/or Pelletized Product via trucks, rail or barge.
- 3.2.7. Any unsold Pelletized Product produced at Mill Creek shall be disposed of in Mill Creek's landfill in accordance with Applicable Laws.
- 3.2.8. Charah shall be authorized to market, sell, distribute and use Pelletized Product produced from Specification Gypsum supplied by LG&E to Charah at Mill Creek under this Contract as a beneficially useful product. In no event shall Charah market, sell or use Pelletized Product and/or Specification Gypsum for any use constituting "disposal" within the meaning of any Applicable Laws. Storage and distribution of Specification Gypsum and/or Pelletized Product shall be in compliance with all Applicable Laws including, without limitation, all applicable environmental laws and regulations, and shall not constitute disposal.
- 3.2.9. As a material consideration of Charah entering into this Contract, Charah shall pay 100% of all costs to design, engineer and erect the Pelletized Product Manufacturing Plant (with its location at Mill Creek as shown on Exhibit B). The Pelletized Product Manufacturing Plant will manufacture Pelletized Product from Specification Gypsum for lawful resale for agricultural use. Other uses not specifically identified under this Contract requested by Charah shall require prior written consent from LG&E, which consent shall not be unreasonably withheld.
- 3.2.10. Subject to any and all required governmental approvals, including without limitation any approval required under the order of the Kentucky Public Service Commission in Case No. 2002-00029, LG&E provides Charah with a license to access the site of the Pelletized Product Manufacturing Plant to permit its erection and thereafter to allow Charah, its employees, subcontractors, agents and/or representatives, access to maintain and service the facility and/or to conduct its manufacturing operations thereon in order to produce and transport Pelletized Product as described in this Contract.
- 3.2.11. LG&E shall provide reasonable assistance to Charah at Charah's expense in obtaining all necessary building, construction, zoning and any other applicable permits or governmental approvals to erect and/or pre-approve the erection of the Pelletized Product Manufacturing Plant. Any environmental permitting with respect to the

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Pelletized Product Manufacturing Plant shall be in LG&E's name and processed by LG&E; *provided, however*, Charah shall provide all reasonable assistance to LG&E related thereto at no charge.

- 3.2.12. LG&E shall at its sole cost run all necessary utility lines within fifty (50) feet of the Pelletized Product Manufacturing Plant for electricity, natural gas, water, sewer and telephone/cable service.
- 3.2.13. At all times during the Term, title to the Pelletized Product Manufacturing Plant shall belong to Charah. Charah shall pay and provide for its own property and casualty insurance thereon in limits it deems appropriate. Within six (6) months following the termination or expiration of the Contract, Charah, at its sole cost, shall dismantle and haul away the equipment and components comprising the Pelletized Product Manufacturing Plant excepting its concrete foundation/slab, the buildings and the removal of any utility lines serving the Manufacturing Plant. Charah shall address all petroleum, hazardous substances and materials and wastes brought onto or generated at the site of the Manufacturing Plant in accordance with Article 13 of the General Services Agreement. For purposes of clarifying Charah's obligations under Article 13 of the General Services Agreement, any wastes entering the soil, sewer or groundwater from the Manufacturing Plant shall be considered generated in the course of the Work.
- 3.2.14. At all times during the Term, LG&E shall provide for utilities necessary to operate the Pelletized Product Manufacturing Plant, specifically electricity, natural gas, water and sewer. Charah will pay LG&E's standard industrial rates applicable to all LG&E industrial customers for electricity and natural gas used at the Pelletized Product Manufacturing Plant. Water and sewer services will be provided to Charah at LG&E's cost for these services.
- 3.2.15. Any lawful storm water run-off and/or lawful water and/or lawful waste discharge from the Pelletized Product Manufacturing Plant shall go into LG&E's waste water system and be processed at LG&E's expense.
- 3.2.16. Charah shall be allowed to utilize the existing barge loading system to load Pelletized Product provided that Charah's use of the barge loading system does not interfere with LG&E's loading operation. Charah shall also be allowed to construct at its sole expense a future conveyor from the Manufacturing Plant to a discharge point onto the existing barge loading system conveyor. The design and location of Charah's future conveyor must be submitted to LG&E and approved by LG&E prior to construction. LG&E's approval of such design and location shall not be unreasonably withheld. Any such conveyor shall be removed by Charah at its expense within six (6) months following the expiration or termination of this Contract.
- 3.2.17. *To determine quantities of Pelletized Product loaded on trucks, each truck shall be weighed empty and loaded at Mill Creek and weighed on scales furnished and maintained by LG&E or a new truck scale located as shown on Exhibit B and furnished by Charah. LG&E shall calibrate these scales on a semi-annual basis.*
- 3.2.18. For Pelletized Product loaded on barges, weighing of material will be done by draft survey performed by Charah at the point of barge loading with LG&E performing random checks of Charah's readings throughout the term of the Contract. If any other forms of transportation are used (i.e., rail), the Parties will mutually agree on means of establishing weight.



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4. COMPENSATION

4.1. Compensation For Gypsum Marketing And Manufacture of Pelletized Product

- 4.1.1. During the first five (5) Production Years of the Term, LG&E shall pay Charah a fee of [REDACTED] per ton, not to exceed 100,000 tons per Production Year, on sales of Pelletized Product produced at the Pelletized Product Manufacturing Plant. Thereafter, Charah shall pay LG&E a purchase price of [REDACTED] per ton on sales of Pelletized Product produced at the Pelletized Product Manufacturing Plant (such purchase price does not include sales or use tax but is inclusive of all other federal, state, municipal and local taxes, fees and costs of any kind incurred by LG&E during the Term) (collectively, the "Per Ton Payment").
- 4.1.2. Charah will provide weigh tickets for each ton of Pelletized Product produced and sold at the Pelletized Product Manufacturing Plant. After the first five (5) Production Years of the Term, Charah will make monthly cash payments of amounts due to LG&E under Section 4.1.1, above.
- 4.1.3. Payment under this Section 4.1 shall be based on the monthly sales summary report with the shipping tickets as backup. In the event of a discrepancy between a monthly sales summary report and shipping tickets, the shipping tickets shall control. Shipments will be reported each month for the previous month within the first 15 days of the following month and payments will be made within 30 days after each monthly report.

5. GENERAL TERMS AND CONDITIONS

5.1. TERMINATION

- 5.1.1. **Termination for Convenience:** The provisions of this paragraph supersede the provisions of Article 21.04 of the General Services Agreement for purposes of this Contract. LG&E may terminate this Contract for LG&E's convenience on 180 days' notice to Charah. If this Contract is terminated by LG&E for LG&E's convenience before or during the first seven (7) Production Years of the Term LG&E shall reimburse Charah for a share of Charah's documented actual costs to erect the Pelletized Product Manufacturing Plant allocated as set forth in Exhibit D attached hereto and incorporated herein by reference with the share that would be reimbursed by LG&E reflected in the column headed End of Month Undepreciated Balance. The estimated costs and recovery amortization schedule are attached as Exhibit D. Once construction is complete and the actual project costs are known, the actual Project Cost shall be inserted in the recovery schedule to document the final amortization amounts. LG&E's liability for the cost of erecting the Pelletized Product Manufacturing Plant shall not exceed 110% of the applicable amounts shown in Exhibit D as of the Effective Date. Upon any termination for convenience by LG&E after the first seven (7) Production Years of the Term, LG&E shall not have liability for the cost of erecting the Pelletized Product Manufacturing Plant. Upon any termination for convenience by LG&E, LG&E shall reimburse Charah for its actual and reasonable costs of removing portions of the Pelletized Product Manufacturing Plant as described in Section 3.2.13, above, but shall not be required to reimburse Charah for the cost of addressing all petroleum, hazardous substances and materials and wastes brought onto or generated at the site of the Manufacturing Plant in accordance with Article 13 of the General Services Agreement.

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5.1.2. In the event Charah does not produce Pelletized Product under this Contract for a period of 365 consecutive days as a result of an event described in Article 5 of the General Services Agreement (under the heading "Force Majeure"), LG&E may at its option terminate this Contract by giving notice to Charah. In the event of such a termination, LG&E shall not have liability for the costs described in Section 5.1.1, above. Such a termination shall not be effective unless LG&E has given Charah forty-five (45) days' prior written notice of intent to terminate this Contract because of the absence of production of Pelletized Product, and Charah resumes production of Pelletized Product within such forty-five (45) day notice period.

5.1.3. **Notice and Cure.** Neither party may terminate this Contract for a breach or violation of any conditions or agreements of this Contract unless (i) the terminating party has given the breaching party forty-five (45) days' prior written notice of intent to terminate this Contract because of a breach or violation, and (ii) such breach or violation has not been cured by the breaching party within such forty-five (45) day notice period.

5.2. INDEMNIFICATION

5.2.1. In addition to the indemnification obligations set forth in Article 12 of the General Services Agreement, Charah agrees to indemnify, hold harmless and defend LG&E and all of its directors, officers, employees and Affiliates from and against any claim, liability, loss and expenses including, but not limited to, attorneys' fees and legal expenses, arising directly or indirectly from or in connection with Charah's performance or failure to perform under this Contract including, but not limited to, those arising directly from or in connection with (a) injury to or death of persons (including, but not limited to, the employees of LG&E, Charah or any user or purchaser of Pelletized Product sold or otherwise conveyed by Charah pursuant to this Contract or any product produced therefrom) or damage to or loss of property (including, but not limited to, the property of LG&E, Charah or any user or purchaser of Pelletized Product sold or otherwise conveyed by Charah pursuant to this Contract or any product produced therefrom); (b) Charah's failure to comply with, or Charah's breach of, any obligation in this Contract; (c) Charah's failure to comply with any Applicable Law; (d) Charah's release or threatened release of a hazardous substance, contaminant and pollutant, and improper or inadequate recordkeeping, inspections, reporting or regulatory approvals relating thereto, and (e) any claim on behalf of a purchaser or user of Pelletized Product sold or otherwise conveyed by Charah pursuant to this Contract or any product produced therefrom. This obligation to indemnify, defend, and hold harmless shall survive expiration of this Contract.

5.3. COMPLIANCE WITH LAW

Without limiting the application of Article 9 of the General Services Agreement or any Applicable Law, any and all use of Pelletized Product by Charah within the Commonwealth of Kentucky, including without limitation the sale or other conveyance of Pelletized Product shall comply with the applicable provisions of 401 KAR 45:060, Section 1(7). Charah agrees to require in contracts for sale of all Pelletized Product that the purchaser comply with all Applicable Laws, including without limitation, the statute in the immediately preceding sentence, in its use of the Pelletized Product.

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5.4. TITLE AND RISK OF LOSS

Title to and risk of loss with respect to Specification Gypsum shall pass to Charah when the products leave the Specification Gypsum Transfer Point or such other point that the Parties may mutually agree upon from time to time for provision of Specification Gypsum; provided that title to any such Specification Gypsum shall revert to LG&E if and when Charah returns such Specification Gypsum not processed into Pelletized Product to LG&E. All Specification Gypsum not taken by Charah shall be owned by LG&E and it shall be LG&E's sole responsibility and at its cost to dispose of or beneficially reuse.

5.5. SAFETY

Safety of both LG&E employees and the employees of Charah, and its subcontractors is of the utmost importance.

- 5.5.1. Plant Resident Contractor Work: The Work under this contract is considered "Plant Resident Contractor Work". In accordance with the revised LG&E and KU Services Company Contractor / Subcontractor Safety Policy effective 1-31-08 which is hereby incorporated by reference (the "Contractor / Subcontractor Safety Policy"), all contractor employees working on-site at Mill Creek for "Plant Resident Contractor Work" shall be required to complete a negative drug and alcohol pre-test within seven (7) days before reporting to work on-site. Charah 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 work assignment. LG&E and KU Services Company Corporate Health and Safety will be auditing Charah's compliance with these requirements. Testing costs are the responsibility of Charah.
- 5.5.2. Safety at LG&E is a core value that has the utmost importance to all parties. Therefore, at a minimum Charah shall develop and maintain a safety plan explaining how Charah will perform the Work in a safe manner and detailing applicable internal safety training programs and types of employee safety equipment required in accordance with all standards of the Occupational Safety & Health Administration (OSHA) and the contractual requirements contained herein. The site safety plan shall utilize the required Hazard Analysis, Hazard Mitigation Plan, Job Performance Monitoring and Quality Assurance Close Form as identified in the Contractor / Subcontractor Safety Policy.
- 5.5.3. All Charah employees and subcontractor employees are required to attend a site specific safety orientation and be "Passport" trained prior to commencement of Work at the site. Charah is responsible for all site and safety compliance by its employees and all subcontractors and their employees.
- 5.5.4. Charah shall state name of any proposed subcontractor(s) and which portion of the Work they propose to perform. If Charah or subcontractor(s) proposes to use any non-English speaking employees then the plan shall state how communication will be managed at all times on the job site.
- 5.5.5. LG&E requires notification of all subcontractors at least 48 hours prior to commencement of Work. LG&E requires that, at a minimum, Charah shall impose the same contractual conditions upon the subcontractor(s), including all safety requirements, as required by any resulting agreement or contract with LG&E to perform the Work. LG&E maintains the right to reject any Charah or Charah subcontractor personnel or require that same be removed from the site upon request.

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6. SPECIFIC REPORTING REQUIREMENTS

Charah shall maintain accurate records of tons of Pelletized Product from Mill Creek sold and the dates, quantities and buyers for Charah's sales or other conveyances. Charah shall provide to the designated LG&E representatives, a monthly summary of such records. LG&E will have the right to verify Charah records and payments at the Charah site office within regular business hours and with reasonable advance notice. Charah shall retain all such records for a period of five (5) years following the transfer of title and risk of loss of the Specification Gypsum used to produce the Pelletized Product that is the subject of such records.

Charah shall report on a monthly basis their Tier II level spend with Diverse Business Enterprises as defined by the US Government.

7. TERM

The "Initial Term" of this Contract shall commence on the Effective Date and shall continue for thirteen (13) years from the Effective Date, unless terminated sooner as provided herein pursuant to Article 21 of the General Services Agreement as modified for purposes of this Contract by Section 5.1, above. Upon the mutual written agreement of the Parties, the Parties may enter into any number of consecutive five-year "Renewal Terms" (the Initial Term and any number of Renewal Terms, if any, are collectively together referred to as the "Term").

8. NOTICE

Any and all notices pertaining to this Contract shall be in writing and sent via nationally recognized overnight courier or United States certified or registered mail to the following addresses:

To Charah:

Charah, Inc.
Attn: Charles Price, President & CEO
12601 Plantside Drive
Louisville, Kentucky 40299

To LG&E:

LG&E Mill Creek Generating Station
Attn: Commercial Manager
14660 Dixie Highway
Louisville, Kentucky 40272

A Party may change the proper address for notice by providing written notice to the other Party in the manner set forth in this Section 8.

9. WAIVER

No waiver by LG&E or Charah of any provision herein or of a breach of any provision shall constitute a waiver of any other breach or of any other provision.

10. HEADINGS

The headings of "Sections" and other parts of this Contract are for convenience only and do not define, limit, or construe the contents thereof.

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11. SEVERABILITY

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

12. STATE LAW GOVERNING AGREEMENT

This Contract shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky, without regard to its principles of conflicts of laws. Any actions by and between the parties shall be filed in either state or federal courts located in Louisville, Jefferson County, Kentucky.

13. OWNERSHIP OF INTELLECTUAL PROPERTY; PATENTS

The following replaces in its entirety Section 16.02 of the General Services Agreement for purposes of this Contract:

- 13.1. Any patents, copyrights, trade secrets, know-how and any other intellectual property rights ("Intellectual Property Rights") held or produced by Charah, whether **before** or after the commencement of this Contract, relating to the Work performed under this Contract shall **remain** the property of Charah. Nothing in this Section 13 grants or implies any right or title to LG&E to any Intellectual Property Rights now or hereafter owned or controlled by Charah.
- 13.2. All materials prepared or developed hereunder by Charah or Charah's employees, agents or subcontractors, including documents, drawings, specifications, construction documents for the **Pelletized Product** Manufacturing Plant, software, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples (collectively, to be broadly construed, "Charah's Documents") shall be and remain the property of Charah when prepared, whether delivered to LG&E or not. Charah and LG&E agree that all Charah's Documents prepared by Charah or Charah's employees, consultants, agents or subcontractors under this Contract which is subject to protection under copyright laws shall belong to Charah. To the extent that Charah has been paid in accordance with the requirements of this Contract, Charah's Documents that Charah provides to LG&E as deliverables under this Contract, if any, shall be made available to LG&E, through a fully paid right of use from Charah to LG&E during the Term, for LG&E's own use for the operation, maintenance or repair, excluding replacement, of the Work. Charah's Documents prepared by Charah or Charah's employees, consultants, agents or subcontractors under this Contract will be considered Confidential Information and maintained as confidential in accordance with Article 24 of the General Services Agreement.
- 13.3. The **obligations** set forth in this Section 13 shall survive termination or expiration of this Contract.

14. CONFIDENTIAL INFORMATION

The following replaces in its entirety Article 24 of the General Services Agreement for purposes of this Contract:

Both Parties and their employees, officers, shareholders, agents and directors shall treat as confidential and proprietary and shall not disclose to others during or subsequent to the Term, except as necessary to perform this Contract (and then only on a confidential basis satisfactory to both Parties), any written or graphical information or any written or graphical description whatsoever (including any written or graphical technical information, computer data or programs, experience or data) regarding the other Party's plans, programs, facilities, processes, products, costs, equipment,

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operations or customers which may come within their knowledge not otherwise in the public domain (collectively, the "Confidential Information"). Both Parties acknowledge that a breach of this provision will cause immediate and irreparable harm and that the damages, which the other Party will suffer, may be difficult or impossible to measure. Therefore, upon any actual or impending violation of this provision, a Party will be entitled to issuance of a restraining order, preliminary and permanent injunction, without bond, restraining or enjoining such violation by the other Party or its agents, employees, or contractors. This remedy will be in addition to, and not in limitation of, any other remedy which may otherwise be available under this Contract.

15. NO JOINT VENTURE

This Contract is not intended to, and nothing contained in this Contract shall, create any partnership, joint venture or other arrangement between Charah and LG&E. No term or provision of this Contract is intended to be, or shall be, for the benefit of any person, firm, organization, limited liability company or corporation not a party hereto, and no such other person, firm, organization, limited liability company or corporation shall have any right or cause of action hereunder.

16. COUNTERPARTS

This Contract may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one agreement.

17. FURTHER ASSURANCES

The Parties agree to furnish upon request to each other such further information and to execute and deliver to each other such other documents, all as the other party may reasonably request for the purpose of carrying out the intent of this Contract and the documents referred to in this Contract provided that such acts or things shall not cause a hardship to either Party.

18. ENTIRE AGREEMENT; INCORPORATION OF GENERAL SERVICES AGREEMENT

This Contract, including all exhibits referenced herein and the General Services Agreement constitutes the entire agreement between the Parties relating to the Work and supersedes all prior or contemporaneous oral or written agreements, negotiations, understandings and statements pertaining to the Work or this Contract. Unless otherwise specified herein in this Contract or to the extent the terms in this Contract are different from the terms in the General Services Agreement, the terms of the General Services Agreement shall govern this transaction.

The Parties hereto have executed this Contract on the dates written below, but this Contract is effective as of the Effective Date.

LOUISVILLE GAS AND ELECTRIC COMPANY

By: 

Name: Man. Commercial Ops

Title: Dan Kraemer

Date: 11/7/12

CHARAH

By: 

Name: Charles E. Price

Title: President & CEO

Date: 11/5/12

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- Exhibit A: Description of Specification Gypsum
- Exhibit B: Proposed Site Plan (showing site of Specification Gypsum Transfer Point and Location of Pelletized Product Manufacturing Plant at Mill Creek Power Station)
- Exhibit C: Description of Pelletized Product Process
- Exhibit D: Pelletized Product Manufacturing Plant Amortization Schedule

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EXHIBIT A

Specification Gypsum Specifications

- o Free Moisture - 10 – 14%
- o Chloride - Less than 120 PPM
- o Calcium Sulfate Purity -- 92% or Greater
- o Inert Content – Less than 1.5 %

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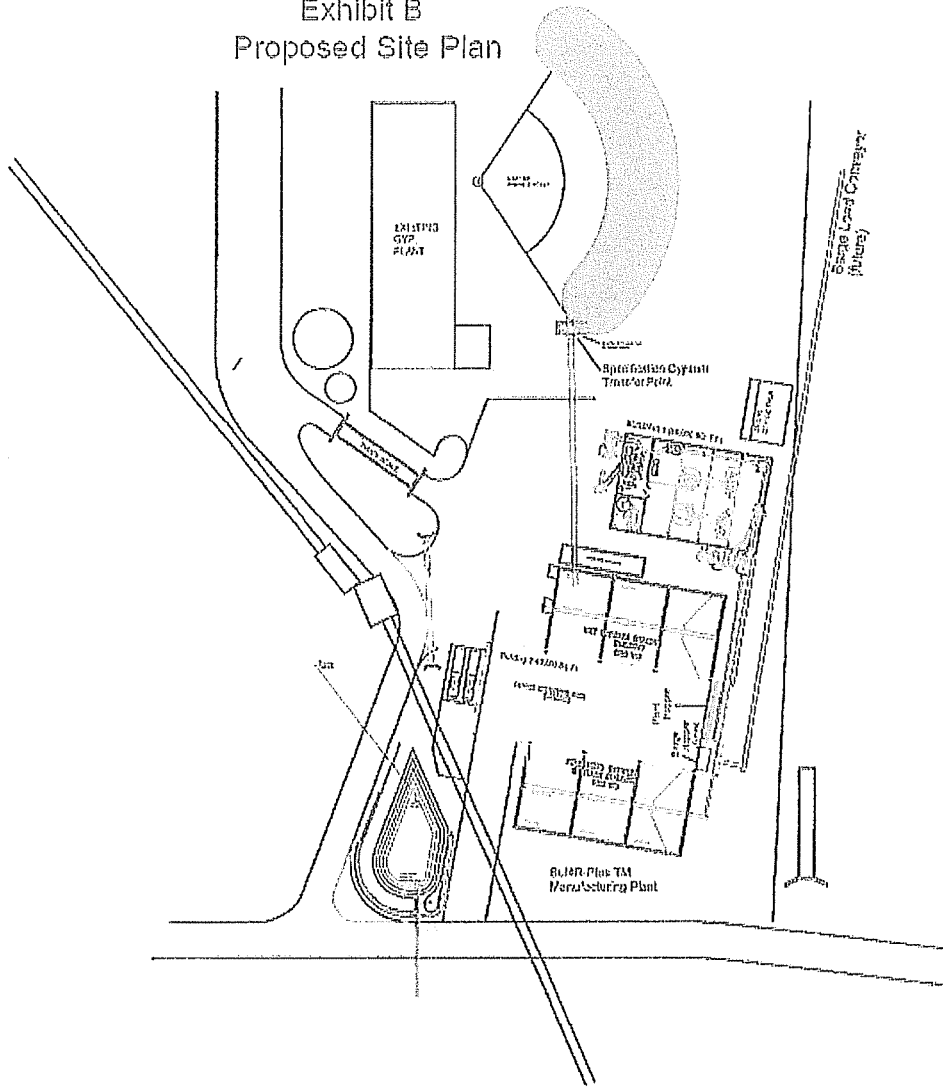


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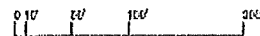
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Exhibit B Proposed Site Plan



OHIO RIVER



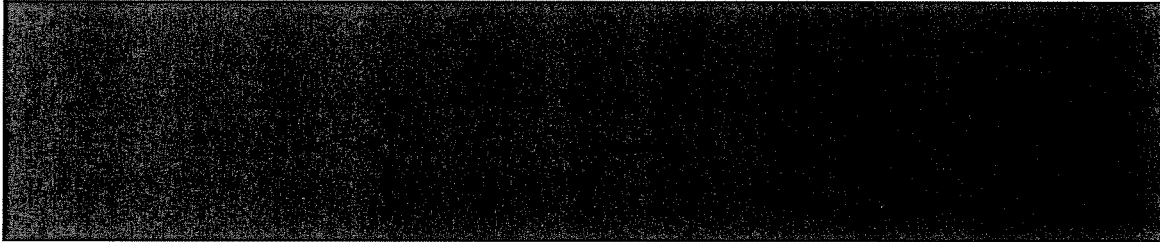
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EXHIBIT C





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Exhibit D Amortization Schedule

Capital Investment
Amortization period (mos)
Monthly amortization



Month End	End of Month Undepreciated Balance	Month End	End of Month Undepreciated Balance

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