

COAL COMBUSTION RESIDUALS DISPOSAL AGREEMENT

THIS COAL COMBUSTION RESIDUALS DISPOSAL AGREEMENT (“**Agreement**”), dated as of July 1, 2015, is by and between **WESTMORELAND COAL COMPANY**, a Delaware corporation (“**Westmoreland**”) and **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation (“**Utility**” and along with Westmoreland, referred to herein individually as a “**Party**” and collectively as the “**Parties**”).

RECITALS:

WHEREAS, pursuant to the Stock Purchase Agreement (as hereinafter defined), Westmoreland will acquire, as of the date of “Closing” under the Stock Purchase Agreement, one hundred percent (100%) of the issued and outstanding shares of San Juan Coal Company, a Delaware corporation (“**Service Provider**”), and San Juan Transportation Company, a Delaware corporation;

WHEREAS, Utility and Westmoreland are parties to that certain Coal Supply Agreement dated as of the date hereof, (the “**CSA**”) pursuant to which Service Provider will mine and deliver coal for consumption in the San Juan Generating Station (“**SJGS**”);

WHEREAS, Utility and Westmoreland are parties to that certain Reclamation Services Agreement dated as of the date hereof (the “**RSA**”);

WHEREAS, the Parties desire for Service Provider to transport CCR (as defined herein) generated by the consumption of coal at SJGS and bury such CCR in the real property subject to the Fruitland Coal Sublease (which, for purposes of this Agreement, shall have the meaning given to it in the CSA);

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed:

1. **TERM** This Agreement shall become effective simultaneous with the “Closing” under the Stock Purchase Agreement (such date on which the “Closing” occurs, the “**Effective Date**”) but subject to the effectiveness of the San Juan Restructuring Agreement. Subject to the

terms hereof, the Agreement shall continue in effect for a period co-extensive with the term of the CSA, including any extension thereto, unless terminated earlier pursuant to the terms of this Agreement (“**Term**”). “**Stock Purchase Agreement**” means that Stock Purchase Agreement to be executed by Westmoreland and BHP Billiton New Mexico Coal Inc., pursuant to which Westmoreland shall agree to purchase the stock of Service Provider. “**San Juan Restructuring Agreement**” means the San Juan Project Restructuring Agreement among and to be executed by the “Parties” thereto (as such term is defined therein). As of the Effective Date, Westmoreland shall, by executing (and causing SJCC to execute) an Assignment and Assumption of Coal Combustion Residuals Disposal Agreement in the form of Exhibit H, assign all of its right and obligations under this Agreement to SJCC and cause SJCC to assume all of Westmoreland’s rights and obligations under this Agreement. At such Effective Date, SJCC shall replace Westmoreland as a “Party” to this Agreement. Pursuant to Section 15.1, Utility hereby consents to such assignment. Notwithstanding the foregoing, Westmoreland’s obligations as Guarantor hereunder shall not be assigned to Service Company. This Agreement shall automatically terminate in the event of a termination of the Stock Purchase Agreement.

2. **GENERAL SCOPE OF WORK TO BE PERFORMED BY SERVICE PROVIDER**

2.1 Service Provider shall (i) receive from the CCR handling facilities operated by Utility and referred to in Section 3 hereof, some or all (as determined by Utility) of the fly ash and bottom ash (collectively, “**Ash**”) and gypsum (“**Gypsum**”) resulting from the combustion of coal at SJGS (together with the Ash, “**CCR**”) at a rate that ensures no interference or impact on the operations of SJGS, (ii) transport CCR to locations within the areas of the Fruitland Coal Sublease in accordance with this Agreement and the applicable permits and (iii) bury CCR in accordance

with this Agreement and the applicable permits (collectively and as further described herein, such obligations being the “**Work**”).

2.2 Service Provider shall perform all administrative functions, including hiring, training and supervision of personnel, accounting, payroll, record keeping and related activities necessary to perform the Work. Service Provider shall procure all equipment and personnel necessary to perform the Work.

2.3 Service Provider shall perform the Work in full compliance with all applicable laws, ordinances, regulations and directives of any and all governmental authorities having jurisdiction over any aspect of the Work and in conformity with the provisions of all licenses, permits, bond requirements and approvals applicable to any aspect of the Work or the SJCC Site Area (as defined in the CSA) (“**Applicable Law**”). Service Provider shall perform all Work (i) economically, efficiently and safely, and (ii) in conformance with Prudent Industry Practices. “**Prudent Industry Practices**” shall mean the practices, methods and acts engaged in or approved by a significant portion of those entities performing CCR disposal and reclamation activities in the United States of America during the relevant time period and which practices, methods and acts would be expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Service Provider shall not perform any act or undertake any activity which would violate any covenant under any of the Coal Leases (which, for purposes of this Agreement, shall have the meaning given to it in the CSA) or which could have the effect of causing forfeiture of the lessee’s right under said leases. Service Provider shall coordinate all Work with operations under the CSA and the RSA in accordance with Prudent Industry Practices.

3. RECEIPT AND DISPOSAL OF CCR

3.1 Utility shall maintain in good working order and operate CCR conditioning and loading facilities.

3.2 Ash Handling

3.2.1 Service Provider shall collect the Ash at the ash loading points shown on Exhibit A. Utility shall be responsible for maintaining the bottom ash and fly ash loading points and the ash access road.

3.2.2 Utility shall have the right to designate the loading point at which each truck shall receive Ash, but Service Provider shall have the right to determine the amount of each type of Ash which shall be placed in each of Service Provider's trucks, within the capability of the Ash handling system. Utility shall provide a communication system to indicate to Service Provider's truck operators which loading point is to be used in the loading of each truck. Utility's personnel shall operate the Ash handling facilities and shall load CCR into Service Provider's trucks as expeditiously as possible upon the arrival of such trucks at the loading facilities. The rate that Ash shall be loaded into Service Provider's trucks shall be in accordance with Service Provider's requests, up to the optimum capability of the Ash loading facilities.

3.3 Gypsum Handling

3.3.1 Service Provider shall collect the Gypsum from the free-fall stockpile at the Gypsum loading point as shown in **Exhibit A** and shall be responsible for maintaining the Gypsum loading point.

3.3.2 Service Provider shall maintain the Gypsum access road from the coal lease boundary to the Gypsum loading point within the SJGS property as shown in **Exhibit A**.

3.4 CCR Disposal

3.4.1 Service Provider shall transport all CCR from the delivery points to surface mine open pits and place therein. All such placement of CCR shall be in accordance with Applicable Law.

3.4.2 In connection with the placement of the CCR, Service Provider's responsibility shall include, but not be limited to the following:

(a) pushing (dozing) to facilitate Ash placement and proper final contouring of Ash as dictated by Applicable Law;

(b) dust control (such as periodic plating with spoil material or other applications to be applied) as required by Applicable Law (including the mine permit);

(c) covering the CCR upon reaching final elevation/depth with ten (10) feet of mine spoil material or as required by the mine permit;

(d) coordination of the placement of the CCR in conformance with permit requirements;

(e) providing all engineering, technical and other services necessary to perform the Work;

(f) maintaining accurate and reproducible electronic records of CCR placement (such records shall include maps, databases, written documents, photos or other forms of record as needed or as requested by Utility to show the date, quantities, location and other information necessary to record CCR placement activities performed under this Agreement); and

(g) providing to Utility on or before the tenth (10th) business day of each month a report detailing activities performed under this Agreement and containing such details and information as is requested by Utility.

4. **UTILITY RESERVED RIGHTS** Nothing contained herein shall be construed to prevent Utility from disposing of or reusing all or part of CCR generated at SJGS in any manner it so chooses.

5. **ANNUAL OPERATING PLAN**

5.1 Service Provider shall prepare an “**Annual Operating Plan**” for each Contract Year; provided that the Annual Operating Plan for the first Contract Year shall be attached as **Exhibit B**. “**Contract Year**” shall mean the period between January 1st of a given calendar year and December 31st of such calendar year, provided that (i) the 2016 Contract Year shall commence on the later of January 1, 2016 or the Effective Date and (ii) the portion of the calendar year in which Term ends shall also constitute a Contract Year.

5.2 The Annual Operating Plan shall include (i) for Item Numbers 2-3 in **Exhibit C**, the projected units of Work to be performed on an annual and monthly basis and (ii) for Item Number 6 in **Exhibit C**, the projected amounts of taxes to be incurred in connection with the Work. The Annual Operating Plan shall also include a “**CCR Disposal Plan**” component setting forth the specific Work planned for the coming Contract Year. The CCR Disposal Plan shall

include (i) all engineering designs and estimates required to haul and place CCR and complete all planned Work for such Contract Year; (ii) all units, unit rates, and budgeted costs of performing such Work; and the projected amounts of taxes, royalties, bond premium and other fees to be incurred in connection with the Work.

5.3 Review and Approval of Annual Operating Plan.

5.3.1 On or before June 1st of each Contract Year, Service Provider shall submit a preliminary Annual Operating Plan for the next Contract Year to Utility, along with appropriate supporting information sufficient to allow Utility to independently assess the reasonableness of the Annual Operating Plan. Utility shall provide comments to Service Provider no later than July 1st. Service Provider shall incorporate the comments of Utility and submit the proposed Annual Operating Plan to Utility by August 1st. Utility shall provide Service Provider with notice of additional exceptions, if any, to the Annual Operating Plan no later than September 1st of such year and Service Provider shall promptly address such exceptions and re-submit for approval of the Utility. The Annual Operating Plan approved by Utility shall be the “**Approved Annual Operating Plan**”. If the Utility has not approved an Annual Operating Plan on or before October 1st, the issues shall be submitted to arbitration in accordance with Section 16.

5.4 Quarterly Reporting. In addition to other reports Service Provider is required to provide under this Agreement, Service Provider shall provide a quarterly report to

Utility (“Quarterly Report”) containing, at a minimum, the following: (i) budget variance reports that show budget-to-actual Work, units, unit rates and invoiced amounts for the preceding quarter as compared to the Annual Operating Plan and (ii) mapping and quarterly budget projection reports that show projected Work, units, unit rates and amounts to be invoiced versus budgeted Work and costs for the remaining quarters of the current Contract Year.

6. **SERVICE PROVIDER’S COMPENSATION**

6.1 **Monthly Compensation.** In consideration for the Work to be performed hereunder, Utility agrees to pay to Service Provider on a monthly basis the sum of the following components:

6.1.1 The specified fixed monthly amount for Item Number 1 in **Exhibit C**, with no markup or overhead.

6.1.2 For Item Numbers 2 and 3 in **Exhibit C**, an amount based on the actual units of Work performed as specified in the Monthly Work Survey.

6.1.3 The specified fixed monthly amount for Item Number 4 in **Exhibit C**.

6.1.4 For Item Number 5 in **Exhibit C**, the specified percentage multiplied by the total of the monthly costs incurred in connection with Item Numbers 2-4.

6.1.5 For Item 6 on **Exhibit C**, the actual and substantiated taxes that are reasonably incurred in connection with the Work with no markup or overhead; provided that Service Provider shall exert commercially reasonable efforts in accordance with Prudent Industry Practices to

minimize the total amount of such taxes paid in connection with the Work.

6.1.6 For Item 7 on Exhibit C, the actual and substantiated bond premium costs as specified in Exhibit C with no markup or overhead.

6.2 Monthly Survey

6.2.1 For purposes of payment in connection with Item Numbers 2 and 3 in Exhibit C, Service Provider shall conduct (either on its own behalf or through a contractor) a monthly survey of the relevant portions of the SJCC Site Area to determine the units of Work performed during the previous month by Service Provider (“**Monthly Work Survey**”). Utility shall have the right to (i) observe the surveys conducted by Service Provider pursuant to this Section 6.2, (ii) review and audit the results of any survey, and (iii) enter the SJCC Site Area to conduct (either on its own behalf or through a contractor) a survey of the Work performed. Service Provider shall provide to Utility copies of all field notes and computations generated by Service Provider (or its contractor, as applicable) in connection with the survey along with each monthly invoice pursuant to Section 7.

6.2.2 The measurement of CCR will be by volume placed in the surface mined open pits. The measurement of re-grading and topsoil quantities by volume will be on the basis of “final placed materials”, which is defined as the volume of the material as it lies in its finally

placed state. Re-grading and quantities, which are to be paid by volume, will be calculated by generally accepted land surveying methods. Quantities that are to be paid by linear measure or area will be measured as projected on a horizontal plane.

6.3 Cost Recovery. For the avoidance of doubt, no costs may be invoiced hereunder that have been invoiced under the CSA or the RSA. In addition, Utility shall not be responsible for or required to compensate Service Provider for any Work or other liabilities that result from Service Provider's material breach of this Agreement.

6.4 Quarterly Price Adjustment. For Item Numbers 2-3 in Exhibit C, the specified fixed unit rates shall be adjusted each calendar quarter (with the first such quarterly adjustment occurring as of the later of January 1, 2016 or the Effective Date) based on the methodology set forth in Exhibit D. For Item Number 4 in Exhibit C, the specified fixed cost shall be adjusted each calendar quarter (with the first such quarterly adjustment occurring as of the later of January 1, 2016 or the Effective Date) based on the methodology set forth in Exhibit D.

7. INVOICE AND SETTLEMENT

7.1 The accounting and billing period for transactions hereunder shall be one calendar month. Service Provider shall submit an invoice for a month no later than the tenth (10th) business day of the subsequent month. Payment shall be made by Utility by the later of (i) the twenty-second (22nd) day of the month succeeding the month for which such invoice is submitted or (ii) on the twelfth (12th) day after receipt of the invoice by Utility.

7.2 Payment pursuant to this Agreement shall be made to Service Provider by electronic funds transfer to such bank accounts as Service Provider may from time to time designate.

7.3 In case any portion of a bill shall be in dispute, the undisputed amount shall be paid when due; provided, however, that Utility may also pay the disputed portion of such bill without thereby waiving its right to contest such disputed portion of the bill.

7.4 Service Provider shall furnish to Utility a statement with each invoice setting forth in reasonable detail such pertinent data as may be necessary to support the calculations made by Service Provider of Service Provider's total invoice. Such invoice shall include at a minimum the following details:

7.4.1 For Item Number 2 in Exhibit C, the actual units of Work performed as specified in the Monthly Work Survey.

7.4.2 For Item Numbers 3 and 6 in Exhibit C, a detailed record of all actual and substantiated costs reasonably incurred by Service Provider.

7.5 Audit and SJCC Site Area Access

7.5.1 From time to time, but not more often than once in any Contract Year, Utility shall have the right to audit or have an audit performed of Service Provider's books and records to verify that the invoices for the year or years being audited have been correctly calculated and only include amounts due and owing under this Agreement. No invoice, even if paid, shall be deemed final pending the results of the audit. If the audit finds that a paid invoice has not been correctly calculated or includes amounts that are not due and owing under this Agreement, Service Provider shall promptly refund the amount of the charge determined to be improper with interest calculated from

the date that Utility paid the invoice. To the extent that the audit concludes that an unpaid invoice has not been correctly calculated and includes amounts that are not due and owing under this Agreement, Utility shall not be required to pay that amount. Any audit must be commenced within two (2) years after the year being audited.

7.5.2 Utility shall have the right to enter the SJCC Site Area; provided that any representative of Utility entering the SJCC Site Area shall first give reasonable notice to Service Provider and comply with all safety requirements. Service Provider shall provide assistance to any representative of Utility entering the SJCC Site Area, including, where requested by Utility, guided tours by employees of Service Provider familiar with the operations of Service Provider.

7.6 Any dispute between Utility and Service Provider, whether following an audit or not, as to whether an invoice has been correctly calculated or includes amounts not due and owing under this Agreement, shall be resolved through arbitration in accordance with Section 16. Upon Utility's request, Service Provider shall Supply or make available for verification all documentation necessary to verify the invoiced amounts subject to commercially reasonable protection of any confidential information.

8. **SERVICE PROVIDER'S EVENT OF DEFAULT AND UTILITY'S REMEDIES**

8.1 A "Service Provider Event of Default" shall be deemed to have occurred in the event that (i) Service Provider fails to perform a material obligation under this Agreement;

(ii) Service Provider's failure to perform the Work prevents or, in Utility's sole and reasonable discretion, threatens to prevent Utility from operating SJGS at the desired capacity; or (iii) Utility is entitled to terminate the CSA or the RSA due to an event of default thereunder by Service Provider.

8.2 Upon the occurrence of a Service Provider Event of Default described in Section 8.1(i) or (ii), Utility shall promptly notify Service Provider and Service Provider shall have seven (7) days to provide a remedial plan to Utility setting forth a plan to remediate such Service Provider Event of Default ("**Remedial Plan**"). Such Remedial Plan must provide for the remediation of the Service Provider Event of Default within thirty (30) days ("**Cure Period**"). In the event that (i) Service Provider fails to provide a Remedial Plan to Utility within seven (7) days of notice of a Service Provider Event of Default from Utility; (ii) Utility, in its sole reasonable discretion, determines that such Remedial Plan is insufficient to cure the Service Provider Event of Default within thirty (30) days; or (iii) Service Provider fails to cure the Service Provider Event of Default by the end of the Cure Period, Utility shall be entitled to terminate the Agreement in accordance with Section 10. Upon the occurrence of a Service Provider Event of Default described in Section 8.1(iii), Utility shall be entitled to terminate this Agreement in accordance with Section 10. Notwithstanding anything contained herein to the contrary, if Service Provider disputes the existence of any alleged Service Provider Event of Default and has provided written notification of such dispute, no Service Provider Event of Default shall be deemed to exist unless and until such dispute is resolved either by mutual agreement of the Parties or through arbitration pursuant to Section 16.

8.3 In the event of an occurrence of a Service Provider Event of Default described in Section 8.1(ii) or (iii), Utility shall be entitled to immediately commence performance

of the Work (either on its own behalf or through a contractor). Upon Utility's notice of its intent to commence performance of the Work, Utility shall be entitled to utilize Service Provider's equipment ordinarily used by Service Provider in the performance of Work hereunder and Service Provider shall provide reasonable assistance in making such equipment available to Utility. Utility shall be entitled to continue performing the Work until Service Provider provides to Utility evidence, which in Utility's sole reasonable discretion, demonstrates Service Provider's ability to perform the Work in accordance with this Agreement. Service Provider shall be required to compensate Utility for the positive difference, if any, between the compensation that would have been due to Service Provider under this Agreement and the actual and substantiated costs reasonably incurred by Utility in performing the Work during the period of time in which Utility was performing the Work pursuant to this Section 8.3.

9. **UTILITY'S EVENT OF DEFAULT AND SERVICE PROVIDER'S REMEDIES**

9.1 A "Utility Event of Default" shall be deemed to have occurred in the event that (i) Utility fails to perform a material obligation under this Agreement; or (ii) Service Provider is entitled to terminate the CSA or the RSA due to an event of default thereunder by Utility.

9.2 Upon the occurrence of a Utility Event of Default described in Section 9.1(i), Service Provider shall promptly notify Utility and Utility shall have seven (7) days to provide a Remedial Plan to Service Provider. Such Remedial Plan must provide for the remediation of the Utility Event of Default within the Cure Period. In the event that (i) Utility fails to provide a Remedial Plan to Service Provider within seven (7) days of notice of a Utility Event of Default from Service Provider; (ii) Service Provider, in its sole reasonable discretion, determines that such Remedial Plan is insufficient to cure the Utility Event of Default within thirty (30) days;

or (iii) Utility fails to cure the Utility Event of Default by the end of the Cure Period, Service Provider shall be entitled to terminate the Agreement in accordance with Section 10. Upon the occurrence of a Utility Event of Default described in Section 9.1(ii), Service Provider shall be entitled to terminate this Agreement in accordance with Section 10. Notwithstanding anything contained herein to the contrary, if Utility disputes the existence of any alleged Utility Event of Default and has provided written notification of such dispute, no Utility Event of Default shall be deemed to exist unless and until such dispute is resolved either by mutual agreement of the Parties or through arbitration pursuant to Section 16.

10. **TERMINATION FOR EVENT OF DEFAULT** In the event that Utility elects to terminate this Agreement pursuant to Section 8.2, Utility shall provide notice of such termination to Service Provider, and in the event Service Provider elects to terminate this Agreement pursuant to Section 9.2, Service Provider shall provide notice of such termination to Utility. In the event of any such termination, any accrued and undisputed payment obligations outstanding at time of termination shall continue to be due and payable; provided that no such termination, shall relieve any Party from any liability for any breach of this Agreement prior thereto.

11. **INSURANCE** Service Provider shall be responsible for obtaining the insurance set forth in **Exhibit F**.

12. **SITE ACCESS** Utility, along with any co-owner of SJGS, shall be permitted, upon reasonable notice, to enter the SJCC Site Area for the purpose of observing the performance of the Work; provided that any person entering the SJCC Site Area pursuant to this Section 12 shall observe all reasonable safety precautions imposed by Service Provider.

13. **FORCE MAJEURE** Neither Service Provider nor Utility shall be deemed in default of any obligation hereunder and performance of any such obligation shall be suspended as

provided herein if performance is prevented by reason of a Force Majeure Event. A "Force Majeure Event" means any event beyond the reasonable control of the Party affected which the Party by exercise of due diligence shall be unable to overcome, including but without limitation failure of plant or facilities, flood, earthquake, storm, lightning, fire, explosion, epidemic, war, riot, civil disturbance, labor stoppage, sabotage, restraint by court or public authority, or the necessity for compliance with Applicable Law. No Party shall, however, be relieved of liability for failure of performance if such failure is due to causes arising out of its own negligence or to causes which it could, but fails to, remove or remedy with reasonable dispatch. If any Party is prevented by a Force Majeure Event from carrying out any obligations hereunder, the obligations of that Party insofar as such obligations are affected by the Force Majeure Event shall be suspended while, but only for so long as, the Force Majeure Event continues to prevent the performance of such obligations. Any Party prevented from carrying out any obligations by Force Majeure Event shall within seven (7) days give the other Party notification of the Force Majeure Event including reasonably full particulars in respect thereof. Upon cessation or abatement of the Force Majeure Event, the Party affected by the Force Majeure Event shall promptly resume performance and the time for observance of the condition or performance of the obligations in question shall be extended for a period equivalent to the total period during which the Force Majeure Event exists.

14. **NOTICES**

14.1 Any notice required hereunder shall be sufficient if delivered by registered or certified mail to a Party at its address set forth below:

If to Service Provider:

Westmoreland Coal Company
Attn: Joe Micheletti, EVP US Operations

200, 9540 South Maroon Circle
Englewood, CO 80112-5730

with a copy addressed as follows:

Westmoreland Coal Company
Attn: Lynette Stanley-Maddocks, General Counsel
200, 9540 South Maroon Circle
Englewood, CO 80112-5730

and if to Utility, addressed as follows:

Public Service Company of New Mexico
Attn: Patrick Apodaca, General Counsel
414 Silver Ave SW
Albuquerque, NM 87102-3289

with a copy addressed as follows:

Public Service Company of New Mexico
Attn: Chris Olson, Vice President-Generation
414 Silver Ave SW
Albuquerque, NM 87102-3289

14.1.1 The Parties may, by written, notice in accordance with this paragraph, at any time change their address set forth herein.

15. **ASSIGNMENT**

15.1 This Agreement may not be assigned by either Party without prior written consent of the other Party, provided that such consent shall not to be unreasonably withheld.

16. **ARBITRATION**

16.1 Either Party may demand final and binding arbitration of any dispute, claim or controversy arising out of or relating to this Agreement, performance or actions pursuant to this Agreement, or concerning the interpretation of this Agreement (whether such matters sound in contract, tort or otherwise and including without limitation repudiation, illegality, and/or fraud in the inducement) by giving written notice to the other Party of all claims it desires to submit to arbitration. The notice shall include: (a) the demanding Party's designation of a Party arbitrator;

and (b) a detailed statement of the facts and theories supporting the claims. The Party on whom the arbitration demand is served shall have thirty (30) days from receipt of the notice to respond in writing to the demand and to submit any additional claims it wishes to submit to arbitration at the same time. The response also shall include: (a) the designation of the Party arbitrator for that Party; and (b) a detailed statement of the facts and theories supporting the claims and/or defenses asserted. The Party originally demanding arbitration shall reply in writing to any additional claims submitted within ten days from the receipt of such response.

16.2 Any Party who fails to designate timely its Party arbitrator shall forfeit its right to designate an arbitrator. If only one arbitrator is timely designated, that single arbitrator shall hear the dispute. If two arbitrators are timely designated, those arbitrators shall, within thirty days, either agree on the appointment of a third, disinterested arbitrator knowledgeable as to the subject matter involved in the arbitration or petition the Chief Judge of the United States District Court for the District of New Mexico for the appointment of a third arbitrator. The Parties shall be equally liable for the reasonable fees and expenses of the neutral arbitrator hearing the dispute. The Parties shall be responsible for the fees and expenses of their respective Party-appointed arbitrator.

16.3 All reasonable efforts will be made to hold a hearing on the claims submitted within sixty (60) days after the appointment of the last arbitrator. In conducting the hearing, the arbitrators are directed, where feasible and where not inconsistent with the provisions of this section, to adhere to the then-existing American Arbitration Association procedures and rules relating to commercial disputes. Unless otherwise agreed by the Parties, the hearing shall be held in Albuquerque, New Mexico.

16.4 The arbitrators shall apply the laws of the State of New Mexico.

16.5 The decision or award of the arbitrators shall be given in writing within thirty (30) days after the conclusion of the hearing. The arbitrators are authorized to award money damages, injunctive and declaratory relief and/or specific performance, if such relief in their opinion is appropriate. In any arbitration, each Party shall bear its own costs, expenses, and attorneys' fees. The arbitrators do not have authority to award costs, expenses, or attorneys' fees to the prevailing Party. The award or decision of the arbitrators shall be subject to review or enforcement in accordance with the New Mexico Uniform Arbitration Act, N.M.S.A. 1978 §§ 44-7-1 et seq. Any Party shall be entitled to recover reasonable attorneys' fees and costs incurred in enforcing any arbitration award or decision made pursuant to the arbitration provisions of this Agreement.

16.6 During the arbitration, unless otherwise ordered by the arbitrators, the Parties shall continue to perform under this Agreement.

17. **DISCLAIMER** Nothing contained in this Agreement is intended nor shall anything contained herein be construed to confer upon persons or entities not parties to this Agreement any rights with respect to any provisions contained herein, including the right to enforce any provision of said Agreement.

18. **LIMITATION ON DAMAGES** Except to the extent that (i) damages claimed by third parties for which a Party has a duty to indemnify hereunder as expressly provided in Section 20 are shown to be consequential in nature, or (ii) damages are attributable to a Party's fraud or willful misconduct, notwithstanding anything else in this Agreement to the contrary, neither Party shall be liable to the other Party for any loss, damage or other liability otherwise equivalent to or in the nature of any indirect, incidental, consequential, exemplary, punitive or special damages arising from performing or a failure to perform any obligation under this Agreement.

19. **GOVERNING LAW** The terms and provisions of this Agreement shall be interpreted and construed in accordance with the laws of the State of New Mexico.

20. **INDEMNIFICATION**

20.1 Service Provider shall indemnify and save Utility and its employees, directors, officers, agents, successors, assigns and affiliates harmless from, and shall defend them against, any and all claims, demands or liabilities arising out of the operations of Service Provider under this Agreement at the San Juan Station site or the SJCC Site Area, excepting those claims, demands or liabilities arising out of the acts of Utility, its employees, agents, contractors, and representatives.

20.2 Utility shall indemnify and save Service Provider and its employees, directors, officers, agents, successors, assigns and affiliates harmless from, and shall defend them against, any and all claims, demands or liabilities arising out of the operations of Utility under this Agreement at the San Juan Station site or the SJCC Site Area, excepting those claims, demands or liabilities arising out of the acts of Service Provider, its employees, agents, contractors, and representatives.

20.3 If a court of competent jurisdiction determines that the provisions of N.M.S.A. §56-7-1 or 2, (1978 Comp.) are applicable to this Agreement, then only to the extent that the indemnification provided in this Agreement or any portion of the indemnification provided in this Agreement would be deemed void or unenforceable under said statutes and to the narrowest extent possible, that portion of the Agreement shall not extend to indemnify against liability, claims, damages, losses or expenses, including attorneys' fees, for or arising out of:

20.3.1 In the case that N.M.S.A. §56-7-1, is so determined to be applicable,

(a) bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents; and,

20.3.2 In the case that N.M.S.A. §56-7-2, is so determined to be applicable,

(a) the sole or concurrent negligence of the indemnified party or the agents or employees of the indemnified party or any independent contractor who is directly responsible to the indemnified party; or

(b) any accident which occurs in operations carried on at the direction or under the supervision of the indemnified party or an employee or representative of the indemnified party or in accordance with methods and means specified by the indemnified party or employees or representatives of the indemnified party.

21. **GUARANTY** Service Provider shall cause the Guarantor to issue the Guaranty (in the form of **Exhibit E**) as of the date hereof.

22. **AMENDMENTS AND WAIVERS** No amendment of any provision of this Agreement will be valid unless the amendment is in writing and signed by the Service Provider and Utility. No waiver of any provision of this Agreement will be valid unless the waiver is in writing and signed by the waiving Party. The failure of a Party at any time to require performance of any provision of this Agreement will not affect such Party's rights at a later time to enforce such provision. No waiver by a Party of any breach of this Agreement will be deemed to extend to any other breach hereunder or affect in any way any rights arising by virtue of any other breach.

23. **COUNTERPARTS** This Agreement may be executed by the Parties in multiple counterparts and shall be effective as of the date set forth above when each Party shall have

executed and delivered a counterpart hereof, whether or not the same counterpart is executed and delivered by each Party. When so executed and delivered, each such counterpart shall be deemed an original and all such counterparts shall be deemed one and the same document. Transmission of images of signed signature pages by facsimile, e-mail or other electronic means shall have the same effect as the delivery of manually signed documents in person.

24. **ENTIRE AGREEMENT** This Agreement (including the Schedules, Exhibits and other documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

25. **HEADINGS** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

26. **SEVERABILITY** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.


27. **WAIVER OF JURY TRIAL** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS DESCRIBED IN OR CONTEMPLATED BY THIS AGREEMENT.

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CONFIDENTIAL

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

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: 
Name: Chris M. Olson
Title: Vice President, Generation

WESTMORELAND COAL COMPANY

By: _____
Name: _____
Title: _____

CONFIDENTIAL

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

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: _____
Name: _____
Title: _____

WESTMORELAND COAL COMPANY

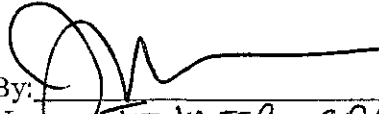
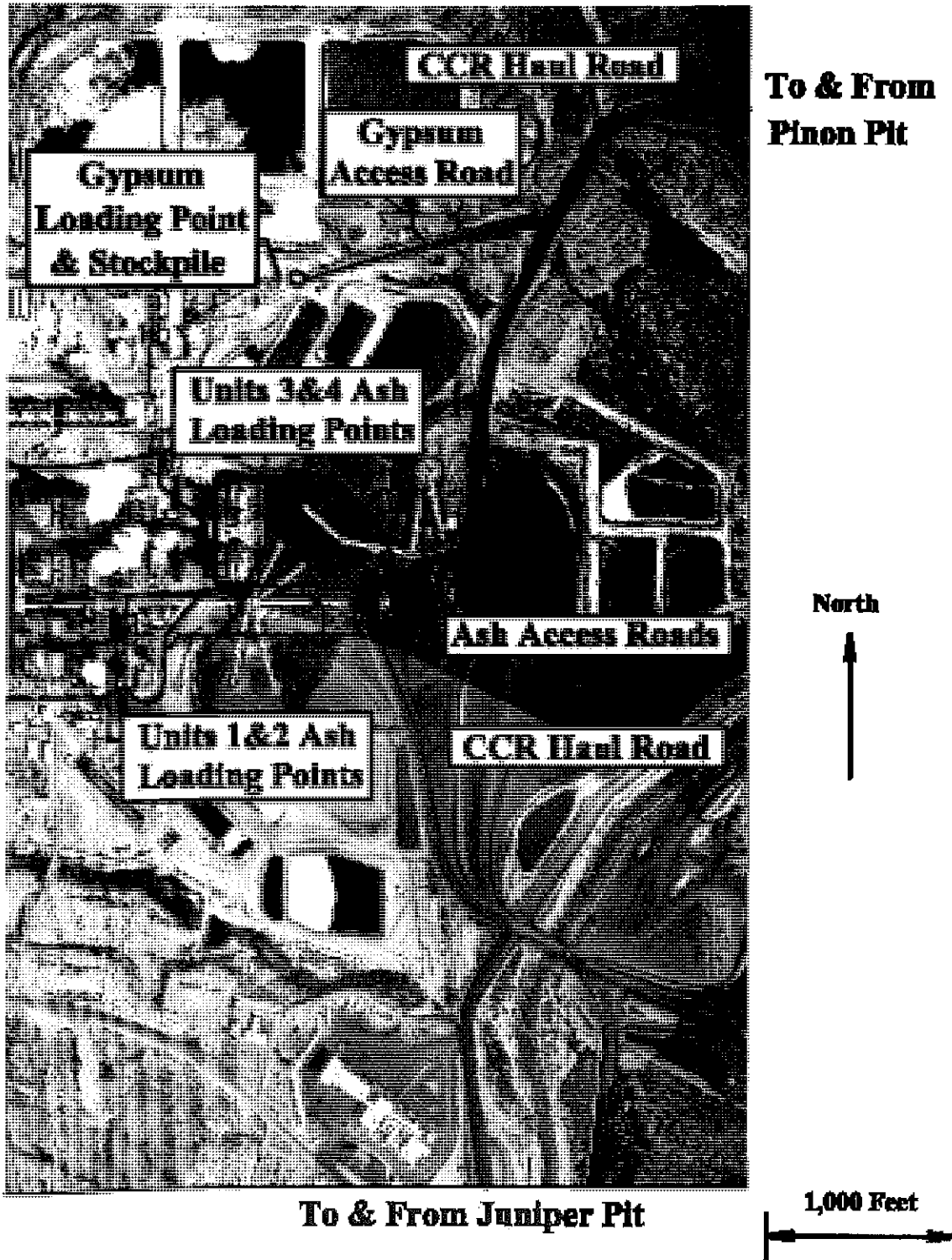
By: 
Name: JENNIFER GRAPTON
Title: SECRETARY, SR. VP

EXHIBIT A—CCR LOADING POINTS AND GYPSUM ACCESS ROAD



**EXHIBIT B—APPROVED ANNUAL OPERATING PLAN
FOR THE 2016 CONTRACT YEAR**

Notwithstanding the effectiveness of the Agreement in accordance with Section 1, the Parties shall, promptly upon execution of the Agreement, jointly develop the Approved Annual Operating Plan for the 2016 Contract Year. Such Approved Annual Operating Plan for the 2016 Contract Year shall be completed before November 1, 2015 and shall upon completion be deemed incorporated herein as Exhibit B.

EXHIBIT C

Item No.	Work Description	Quantities	Unit	Unit Rates (2015 \$)	Total Monthly Amount (2015 \$)	Total Annual Amount (2015 \$)
1	Capital Recovery Charge	Fixed	Fixed Cost	N/A	1/12 of specified amount	2016-2017 Contract Years: \$552,000 2018-2021 Contract Years: \$414,000 2022 Contract Year: \$103,500 All additional Contract Years (if applicable): \$207,000 Specified annual amounts are only applicable in Contract Years comprised of 12 months.
2	Load, Haul, Dump and Grade CCR. CCR grading to conform with the contours of the approved FSC.	Monthly survey of in place volume.	cubic yards	>500,000 cy: \$2.91/cy <500,000: \$3.50/cy (500,000 cy trigger based on total volume on Item 2 and, if trigger met, lower price applies to all Work performed in Contract Year)	Per Work performed	Per Work performed
3 a	Covering CCR with as specified in the approved permit. CCR cover to conform with the approved contours of the FSC. Using Dozer.	Monthly survey of in place volume.	cubic yards	>500,000 cy: \$0.63/cy <500,000 cy: \$0.90/cy (500,000 cy trigger based on total volume on Items 3a and 3b and, if trigger met, lower price applies to all Work performed in Contract Year)	Per Work performed	Per Work performed

3b	Covering CCR as specified in the approved permit. CCR cover to conform with the approved contours of the FSC. Using Truck/Excavator.	Monthly survey of in place volume.	cubic yards	>500,000 cy: \$3.03/cy <500,000 cy: \$3.80/cy (500,000 cy trigger based on total volume on Items 3a and 3b and, if trigger met, lower price applies to all Work performed in Contract Year)	Per Work performed	Per Work performed
4	Operation coordination, permitting support, engineering/technical support and records, and shop/facilities	N/A	Fixed Cost	N/A	\$42,833	\$514,000 (only applicable in Contract Years comprised of 12 months)
5	Service Provider Management Compensation	7.5% of all monthly billed costs	Fixed	N/A	7.5% of all monthly billed costs for Item Numbers 2-4	7.5% of the costs incurred in a Contract Year for Item Numbers 2-4
6	Taxes as Specified in Exhibit G	As Levied	N/A	N/A	At Cost as Incurred	At Cost as Incurred
7	Reclamation Bond Premium	Based on Reclamation Bond Amount	N/A	N/A	1/3rd of reclamation bond cost - At Cost as Incurred	1/3rd of reclamation bond cost - At Cost as Incurred

EXHIBIT D—QUARTERLY PRICE ADJUSTMENT

Index Values

Sample Calculation of the Base Index (Base date=end of December, 2014)				
Index Description	Index Series ID	Indices	Weights	Basis
Labor and Benefits	CEU1021210008	30.86	20%	December 2014, BLS 1st Published
Medical	CUUR0000SAM	439.72	13%	December 2014, BLS 1st Published
Diesel Fuel	PCU324110324110L2	265.50	36%	December 2014, BLS 1st Published
Fixed Index	0.625% per Quarter	1.000	31%	Fixed Index Base, end of December 2014
Base Index Value		1.000	100%	

Sample Calculation of the Quarterly Composite Index; Quarter 1, 2016				
Index Description	Index Series ID	Indices	Weights	Basis
Labor and Benefits	CEU1021210008	30.25	20%	December 2015, BLS 1st Published
Medical	CUUR0000SAM	450.00	13%	December 2015, BLS 1st Published
Diesel Fuel	PCU324110324110L2	275.61	36%	December 2015, BLS 1st Published
Fixed Index	0.625% per Quarter	1.025	31%	Fixed Index Base x 0.625% per Quarter
Q4 2015 Index for Q1 2016 Pricing		1.021	100%	

Sample Calculation:	
Fixed index Quarterly Calculation = $(1.00625)^4 = 1.025$ [4 represents four subsequent quarters since end of December 2014]	
Base Index = $((30.86/30.86) \times 20\%) + ((439.72/439.72) \times 13\%) + ((265.50/265.50) \times 36\%) + ((1.000/1.000) \times 31\%) = 1.000$	
Quarterly Composite Index = $((30.25/30.86) \times 20\%) + ((450.00/439.72) \times 13\%) + ((275.61/265.50) \times 36\%) + ((1.025/1.000) \times 31\%) = 1.021$	
Index Multiplier = Quarterly Composite Index/Base Index = $1.021/1.000 = 1.021$	

EXHIBIT D—QUARTERLY PRICE ADJUSTMENT

Example of Pricing Increase for CCR Disposal Agreement (Items 2-4; Exhibit C)								
Item No.	Work Description	Base Index	Quarterly Composite Index	Index Multiplier	Unit Rate	Adjusted Q1 2016 Quarterly Unit Rate	Monthly Adjustable Cost (2015\$) Exhibit C	Monthly Adjusted Cost, Quarter 1, 2016
2.000	Exhibit C, >500,000 CY	1.000	1.021	1.021	\$2.91	\$2.97		
2	Exhibit C, <500,000 CY	1.000	1.021	1.021	\$3.50	\$3.57		
3a	Exhibit C, >500,000 CY	1.000	1.021	1.021	\$0.63	\$0.64		
3a	Exhibit C, <500,000 CY	1.000	1.021	1.021	\$0.90	\$0.92		
3b	Exhibit C, >500,000 CY	1.000	1.021	1.021	\$3.03	\$3.09		
3b	Exhibit C, <500,000 CY	1.000	1.021	1.021	\$3.80	\$3.88		
4	Exhibit C	1.000	1.021	1.021			\$42,833.00	\$43,732.49

EXHIBIT E—FORM OF GUARANTY

THIS GUARANTY, made as of July 1, 2015, by Westmoreland Coal Company, a Delaware corporation (“Guarantor”).

WITNESSETH

WHEREAS, as of the “Effective Date” under the Coal Supply Agreement of even date herewith by and between Public Service Company of New Mexico (“Utility”) and Guarantor, San Juan Coal Company, a Delaware corporation (“SJCC”), shall become a wholly owned subsidiary of Guarantor and shall, among other things, transport and bury coal combustion residuals pursuant to that certain Coal Combustion Residuals Disposal Agreement of even date herewith by and between Guarantor and Utility (“Agreement”); and

WHEREAS, prior to entering into the Agreement, Utility required that Guarantor guaranty SJCC’s performance of SJCC’s obligations under the Agreement; and

WHEREAS, Guarantor is willing to Guaranty SJCC’s performance of its obligations under the Agreement;

NOW, THEREFORE, to induce Utility to enter into the Agreement and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees with each of Utility severally as follows:

1. **Guaranty.**

- 1.1. Effective as of the Effective Date (as that term is defined in the Agreement), Guarantor hereby unconditionally and absolutely guaranties to Utility and their respective successors and permitted assigns timely and complete payment and performance of all of SJCC’s obligations under the Agreement and all other present or future agreements and instruments between Utility and Contractors in connection with the performance of the Agreement (all of the foregoing the “**Agreement Documents**”), all whether presently existing or from time to time hereafter created, incurred or arising and including, without limitation, any interest accrued on such amounts pursuant to the Agreement Documents (such obligations of SJCC collectively the “**Obligations**”). This Guaranty is a continuing guarantee, and shall apply to all Obligations whenever arising.
- 1.2. Guarantor hereby agrees that its obligations hereunder shall be absolute and unconditional irrespective of (i) any insolvency, bankruptcy, reorganization or dissolution, or any proceeding in respect of any thereof, of SJCC or Guarantor, (ii) the validity, regularity or enforceability (except to the extent that the Agreement would not have been enforceable against Guarantor had it, rather than SJCC, been the primary obligor thereunder) of obligations of SJCC under the Agreement or the extension or renewal thereof, in whole or in part, with or without notice to or assent from Guarantor, (iii) any alteration, amendment, modification, extension, renewal, release, change, waiver or consent in respect of any of the terms, covenants, or conditions contained in the Agreement, (iv) the absence of notice, other than notice required by the terms of the Agreement, or the absence of or any delay in any action to enforce any obligation or to exercise any right or remedy against SJCC or

Guarantor, whether hereunder or under the Agreement, or any indulgence or extension granted to or compromise with SJCC or Guarantor, or any action or proceedings taken or not taken with respect to or by or on behalf of SJCC or Guarantor or (v) any circumstance whatsoever (including, without limitation, any statute of limitations) or any act of the Utility or any existence of or reliance on any representation by the Utility that might otherwise constitute a legal or equitable defense available to, or a discharge of, the Guarantor.

- 1.3. Guarantor hereby (i) waives diligence, presentment, demand of payment, filing of claims with a court in the event of the merger or bankruptcy of SJCC, any right to require a proceeding first against SJCC, or to realize on any collateral, protest, notice and all demands whatsoever, with respect to the obligations of SJCC, (ii) agrees that its obligations hereunder constitute guaranties of performance and not of collection and are not in any way conditional or contingent upon any attempt to collect from or enforce against SJCC or upon any other condition or contingency, (iii) agrees that its obligations hereunder shall continue to be effective if at any time the obligations of SJCC under the Agreement are rescinded or modified or limited in connection with any bankruptcy or reorganization or other similar proceedings, and (iv) covenants that this Guaranty will not be discharged except by complete performance of SJCC's obligations under and contained in the Agreement. Without limiting the generality of the preceding clause (ii), Guarantor specifically agrees that it shall not be necessary or required and that it shall not be entitled to require that Utility or either of them file suit or proceed to obtain or assert a claim for any judgment against SJCC or make any effort to enforce the Agreement or exercise or assert any other right or remedy to which Utility or either of them is or may be entitled in connection with the Agreement or any security or Guaranty or assert or file any claim against the assets of SJCC or any other person before or as a condition of enforcing the liability of Guarantor under this Guaranty or at any time thereafter.

2. Miscellaneous.

- 2.1. This Guaranty is made to Utility solely for their benefit and may not be assigned by Utility except in connection with and contemporaneously with an assignment of the Agreement as permitted therein, and any other purported assignment shall be void and of no force and effect.
- 2.2. Guarantor agrees that it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation; provided, however, that Guarantor may consolidate with or merge into, or sell or otherwise transfer all or substantially all of its assets as an entirety (and may thereafter dissolve) to, another corporation incorporated and existing under the laws of the United States or one of the states thereof, provided that, in the event that Guarantor is not the surviving, resulting or transferee corporation, as the case may be, such corporation, prior to such merger, consolidation, sale or transfer, assumes, by delivering to Utility an instrument in writing satisfactory in form and substance to Utility, all of the obligations of Guarantor herein.

- 2.3. No remedy herein conferred upon Utility is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity.
- 2.4. The obligations of Guarantor hereunder shall be continuing and irrevocable. This Guaranty constitutes the entire agreement and supersedes all prior agreements and understandings both written and oral among Guarantor and Utility with respect to the subject matter hereof. No modification or waiver hereof shall be binding upon Utility or Guarantor unless such modification or waiver shall be in writing and signed by an officer of each of Utility and of Guarantor.
- 2.5. This Guaranty shall be construed in accordance with and governed by the laws of the State of New Mexico. Wherever possible each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty. THE GUARANTOR HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO, THIS GUARANTY, OR THE ACTIONS OF THE BENEFICIARY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.
- 2.6. Each and every default of SJCC in performance of any obligation under the Agreement shall give rise to a separate cause of action hereunder, and separate suits may, but need not, be brought hereunder as each claim or cause of action arises.
- 2.7. All payments by Guarantor to Utility shall be made in the [] in United States Dollars and shall be paid within fifteen (15) days after receipt by Guarantor from Utility of written demand for such payment and shall not be the subject of any offset against any amounts which may be owed by Utility to Guarantor.
- 2.7. Guarantor agrees to pay all costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by Utility in enforcing this Guaranty, whether by suit or otherwise, to the extent Utility is the prevailing party.
- 2.8. This Guaranty shall terminate automatically in the event the Agreement is terminated prior to the "Effective Date" under the Agreement.
- 2.9. For purposes of notice under this Guaranty, Guarantor's address is as follows:

Westmoreland Coal Company
Attn: Joe Micheletti, EVP US Operations
200, 9540 South Maroon Circle
Englewood, CO 80112-5730

And

Westmoreland Coal Company
Attn: Lynette Stanley-Maddocks, General Counsel
200, 9540 South Maroon Circle
Englewood, CO 80112-5730

The Utility's addresses are as follows:

Public Service Company of New Mexico
Attn: Patrick Apodaca, General Counsel
414 Silver Ave SW
Albuquerque, NM 87102-3289

And

Public Service Company of New Mexico
Attn: Chris Olson, Vice President-Generation
414 Silver Ave SW
Albuquerque, NM 87102-3289


Any notice provided for in this Guaranty shall be in writing, signed by an officer of the party giving such notice and shall be deemed to be properly and sufficiently given or made if sent by registered or certified mail to the above address or such substitute address as provided in writing pursuant to this notice provision.

[Remainder of page intentionally blank]

CONFIDENTIAL

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed on its behalf by its officers thereunto duly authorized.

WESTMORELAND COAL COMPANY

By: 
Name: JENNIFER GRAFTON
Title: SECRETARY, SR. VP

ATTEST:

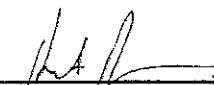
By: 
Name: PAPRZYCKI
Title: CEO

EXHIBIT F—INSURANCE**I. Service Provider's Insurance Requirements**

Service Provider shall, as of the Effective Date, maintain or cause to be maintained the insurance coverages and provisions set forth below. For purposes of this **Exhibit F** only, the term "Utilities" shall mean Utility, Tucson Electric Power, the City of Farmington, New Mexico, the Incorporated County of Los Alamos, New Mexico, Utah Associated Municipal Power Systems, Tri-State Generation and Transmission Association, Inc., City of Anaheim, Southern California Public Power Authority, M-S-R Public Power Agency and PNMR Development and Management Corporation, along with their respective affiliates, subsidiaries, directors, officers, managers, representatives, agents and employees. For purposes of this **Exhibit F**, Public Service Company of New Mexico shall be deemed the "Operator".

A. General Provisions

- (1) To the extent permitted by law, Service Provider waives on behalf of itself and its insurer all rights of recovery by subrogation or otherwise, or to assert claims for any losses, damages, liabilities, and expenses, including but not limited to attorney's fees, against the Utilities for damages. The following policies shall include an endorsement acknowledging such waiver of subrogation: Workers Compensation, Commercial General Liability, Commercial Auto Liability, Umbrella/Excess Liability, and Pollution Liability.
- (2) Each insurance company listed on the Service Provider's certificate of insurance shall be rated by A.M. Best Company as having a financial strength rating of "A- " or better and a financial size category of "VIII" or greater or otherwise be satisfactory to the Utility.
- (3) All policies other than pollution liability policies must be written on an occurrence basis and maintained without interruption from the date of the commencement of services under the Agreement. Required minimum limits can be satisfied with a combination of a primary and either single or combination of excess policies.
- (4) Service Provider shall furnish to the Operator thirty (30) days prior to the Effective Date and thereafter within three (3) days of the renewal of any policy required herein a certificate of liability insurance on ACORD 25 or a substitute equivalent form approved by the Utility (Liability Certificate). The Liability Certificate shall include as evidence of insurance the following for each and every policy providing, Commercial Automobile Liability, Workers' Compensation, Commercial General Liability, Umbrella/Excess Liability, Architects and Engineers Professional Liability, and Pollution Liability coverages required herein: (i) insurance company name, (ii) policy number, (iii) policy period, (iv) per occurrence and aggregate limits, (v) deductibles or self-insured retentions, and (vi) attached copies of all applicable additional insured and waiver of subrogation endorsements.
- (5) Service Provider agrees to send to the Operator, by certified mail, at least ninety (90) days advance written notice of cancellation, non-renewal, or material change with respect to any of the policies required herein. Service Provider shall also endorse its policies to require the insurer to provide advance written notice of cancellation to the Operator. If any of the

above insurance policies are canceled prior to expiration, Service Provider agrees to immediately replace the insurance without lapse of coverage.

- (6) A lack of insurance coverage does not reduce or limit Service Provider's obligation to indemnify the Operator as set forth in the Agreement.
- (7) **Material Breach.** Should any of the policies required to be maintained by Service Provider become unavailable or be canceled for any reason during the period of this Agreement, Service Provider shall immediately procure replacement coverage. The failure of Service Provider to procure such replacement coverage (so as to provide continuous coverage) shall constitute a material breach hereunder.
- (8) Service Provider shall provide to the Operator on an annual basis a schedule of insurance outlining: coverage type, insureds, policy number, policy term, insurer, limits, self-insured retention or deductible, specific exclusions, and premium. In addition, policies of insurance shall be provided upon written request from the Operator. Upon the Operator's written request, Service Provider shall provide to the Operator copies of claim submission information and supporting documents; correspondence with insurers; proposed claim settlement offers; and copies of correspondence with defense counsel for significant claims.
- (9) In the event of a material change to be made to a policy, Service Provider shall give at least 180 days' notice in writing prior to the next incepting coverage term of the respective insurance policy a description of the proposed change to the Operator. Service Provider shall provide additional supporting documentation for proposed change upon written request from the Operator. No material changes are to be made to a policy without the Operator's concurrence, except for minor changes, which shall be outlined in the annual schedule of insurance.

B. Limit and Coverage Requirements:

All coverages required for all work performed under the Agreement. All coverages shall provide coverage for acts of domestic and foreign terrorism meeting the requirements for being certified acts of terrorism by the Terrorism Risk Insurance Act as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2015.

- (1) **Commercial General Liability Insurance**, or the equivalent, with a minimum limit of One Million U.S. Dollars (USD \$1,000,000) combined single limit per occurrence for bodily injury and property damage, One Million U.S. Dollars (USD \$1,000,000) each organization or person for personal and advertising injury, Two Million U.S. Dollars (USD \$2,000,000) general aggregate, and Two Million U.S. Dollars (USD \$2,000,000) products and completed operations aggregate. Such coverage shall also not include any exclusion for mining limitations. Aggregate limits shall reinstate annually. Service Provider's policy shall (i) provide severability of interests or cross liability provisions permitting one insured to bring a claim against another insured, (ii) shall be primary and non-contributory to any other insurance available to the Utilities, and (iii) shall be endorsed to add as additional insured the Utilities (but limited only to the extent required, if applicable, by NMSA 1978 § 56-7-1, as amended).

- (2) **Commercial Automobile Liability Insurance** covering the ownership, maintenance, and use of any vehicle, trailers or attached equipment in performance of the Work, whether such vehicle is owned, hired, or non-owned. Service Provider shall maintain insurance with a combined single limit for bodily injury and property damage of not less than the equivalent of One Million U.S. Dollars (USD \$1,000,000) each accident. Service Provider's policy shall provide coverage in reference to the MCS-90 liability provision and as required by law. Service Provider's policy (i) shall be primary and non-contributory to any other insurance available to the Utilities, and (ii) shall be endorsed to add as an additional insured the Utilities (but limited only to the extent required, if applicable, by NMSA 1978 § 56-7-1, as amended).
- (3) **Workers' Compensation Insurance** covering statutory benefits in each state where the parties contemplate the performance of services under this agreement. The workers' compensation coverage part shall include "other states" insurance, to provide coverage for all states not named on the declarations page of the insurance policy, except for the monopolistic states. Such insurance shall include the **Employer's Liability** coverage part, including stop gap coverage for the monopolistic states, with limits of not less than One Million U.S. Dollars (USD \$1,000,000) each accident for bodily injury by accident and One Million U.S. Dollars (USD \$1,000,000) each employee and policy limit for bodily injury by disease.
- (4) **Umbrella/Excess Liability Insurance** providing coverage in excess of the Commercial General Liability, Commercial Automobile Liability, and Employer's Liability insurance described above on an occurrence basis with limits of at least Fifty Million U.S. Dollars (USD \$50,000,000) per occurrence. Such insurance shall (i) be written in the following form or with a form that provides coverage that is at least as broad as the underlying insurance policies, (ii) can satisfy the required minimum limits either through a single umbrella liability policy or a combination of umbrella liability and excess liability policies, (iii) be primary and non-contributory to any other insurance available to the Utilities, and (iv) shall be endorsed to add as an additional insured the Utilities (but limited only to the extent required, if applicable, by NMSA 1978 § 56-7-1, as amended). Upon the conclusion of the ongoing receipt and transport of Ash and Gypsum and active reclamation work, during the period when only monitoring is being performed to achieve the Office of Surface Mining reclamation bond release, the umbrella/ excess liability insurance limits may be reduced to Ten Million U.S. Dollars (USD \$10,000,000) per occurrence.
- (5) **Architects & Engineers Professional Liability Insurance** with limits of not less than the equivalent of Five Million U.S. Dollars (USD \$5,000,000) per claim and Five Million U.S. Dollars (USD \$5,000,000) annual aggregate covering financial loss, bodily injury and property damage arising from errors and omissions committed in the performance of Professional Services. Contingent liability coverage for bodily injury and property damage shall not be subject to a sublimit. Professional Services shall be defined to include all services to be provided under this Agreement. Such insurance shall provide coverage for Professional Services performed by architects, engineers or other design build professionals employed by or otherwise working on behalf of Service Provider and its subcontractors.

- (6) **Pollution Liability Insurance** covering Service Provider and its subcontractors from claims brought by third parties for bodily injury, property damage and financial loss, including but not limited to cleanup costs, arising from Pollution Conditions caused by Service Provider's operations with limits in the amount of not less than the equivalent of Twenty-Five Million U.S. Dollars (USD \$25,000,000) per occurrence and Twenty-Five Million U.S. Dollars (USD \$25,000,000) general aggregate. Such insurance shall define Pollution Conditions at a minimum, whether sudden or gradual, as the discharge, dispersal, release, or escape of any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the concentration or amounts discovered and shall not include an exclusion for selenium. In the event of a pollution loss, such coverage shall also include coverage for fines and penalties and for transportation and disposal. Policies shall be endorsed to add the Utilities as an additional insured (but limited only to the extent required, if applicable, by NMSA 1978 § 56-7-1, as amended).
- (7) **Commercial Property Insurance** on all Service Provider supplied property for Service Provider's operations or its subcontractor's operations under this Agreement including but not limited to equipment, (stationary or mobile), tools (including employee tools), supplies, materials, or any other property owned, leased, or the legal responsibility of Service Provider or its subcontractors. It is agreed that Service Provider shall bear the risk of loss and hold harmless the Utilities for any loss or damage to property regardless of whether such property damage is valued under the policy deductible or otherwise self-insured at Service Provider's discretion.
- (8) **Subcontractor's Insurance**. Service Provider shall require its subcontractors, if any, to maintain Workers' Compensation and Employer's Liability, Commercial General Liability, and Commercial Automobile Liability coverages set forth above and in compliance with the General Provisions found in Section I.A of this Exhibit with the exception that Paragraph 4 of Section I.A is amended to require that a certificate of liability insurance on ACORD 25 shall be furnished at least 10 days prior to the performance of operations. Architects & Engineers Professional Liability and Contractor's Pollution Liability Insurance are not required where Service Provider and its subcontractors are covered by Service Provider's insurance for losses or claims arising from its subcontractor operations.

EXHIBIT G—TAXES

Description	Current Rate
NM Gross Receipts Tax	6.5625%

**EXHIBIT H—FORM OF ASSIGNMENT AND ASSUMPTION OF COAL
COMBUSTION RESIDUALS DISPOSAL AGREEMENT**

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Westmoreland Coal Company, a Delaware corporation (“Westmoreland”), hereby transfers and assigns to San Juan Coal Company, a Delaware corporation (“SJCC”), and SJCC hereby assumes, all of Westmoreland’s rights and obligations under that certain Coal Combustion Residuals Disposal Agreement, dated as of July 1, 2015, by and between Westmoreland and Public Service Company of New Mexico, a New Mexico corporation. This assignment is effective as of [_____, 20__].

WESTMORELAND COAL COMPANY

By: _____

Name:

Title:

SAN JUAN COAL COMPANY

By: _____

Name:

Title: