

Confidential

PNM EXHIBIT CMO-3 (July 1, 2015 Supplemental)

Consisting of 41 pages

RECLAMATION SERVICES AGREEMENT

THIS **RECLAMATION SERVICES 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 Coal Combustion Residuals Disposal Agreement dated as of the date hereof (the “**CCRDA**”);

WHEREAS, in satisfaction of Utility’s reimbursement obligations pursuant to Section 7.4 of the CSA, the Parties desire for Service Provider to provide reclamation services in connection with the SJCC Site Area (which is designated in **Exhibit B**);

WHEREAS, Utility desires that Service Provider allocate costs invoiced under this Agreement based, in part, on whether such costs relate to Work (as such term is defined herein) performed in connection with Pre-2017YE Disturbances and Post-2017YE Disturbances (both such terms as defined herein).

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 until the full release of all reclamation and similar bonds associated with the U.S. Bureau of Land Management and State of New Mexico Land Office leases and agreements, federal Office of Surface Mining Reclamation and Enforcement permits, New Mexico Mining and Minerals Division, Energy, Minerals and Natural Resources Department permits, and New Mexico Environmental Department permits, ("**Bond Release**") 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 Reclamation Services Agreement in the form of **Exhibit J**, 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 13.1, 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 be responsible for all reclamation obligations applicable to the SJCC Site Area under all present and future applicable laws, ordinances, regulations and directives of any and all governmental authorities having jurisdiction over any aspect of the SJCC Site Area and in conformity with the provisions of all licenses, permits, bond requirements and approvals applicable to the SJCC Site Area or the obligations performed by Service Provider pursuant to this Agreement ("**Applicable Law**") and Prudent Industry Practices (collectively and as further described herein, such obligations being the "**Work**"). "**Prudent**

Industry Practices” shall mean the practices, methods and acts engaged in or approved by a significant portion of those entities performing 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. The Work includes, but is not limited to, the following:

- 2.1.1 Reclamation of the entire SJCC Site Area as shown on **Exhibit B**. Such reclamation activities include all monitoring and necessary remediation to achieve Bond Release, including final reclamation upon mine closure and decommissioning, dismantling and disposal of all facilities, such as buildings, coal handling facilities, ponds, roads, power lines, mine portals and all support shafts and wells.
- 2.1.2 All reclamation activities required under the relevant mine permits except for (i) those activities performed by SJCC pursuant to the CCRDA and (ii) any reclamation activities necessitated by supply of coal other than for purposes of consumption at SJGS or reserves dedicated for consumption at SJGS.
- 2.1.3 Provision of any required spoil/regrade material movement (not already provided pursuant to the CCRDA) and placement, topsoiling, mulching, seeding, and achievement of required plant growth.
- 2.1.4 In coordination with mine closure, demolition and destruction of all mine facilities.
- 2.1.5 Coordinating all Work with operations under the CSA and the CCRDA in accordance with Prudent Industry Practices.
- 2.1.6 Provision of all engineering, technical and other services necessary for all reclamation obligations in conformance with Applicable Law.

2.1.7 Provision of support as required to the holder of the mine permit in its permitting processes and renewals, including preparation and presentation of related material and information to support permit approvals.

2.1.8 Provision of all equipment, materials, supplies (including any necessary water supply and water rights) necessary to perform 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 Law. Service Provider shall perform all Work (i) economically, efficiently and safely, and (ii) in accordance with Prudent Industry Practices. Service Provider shall not perform any act or undertake any activity which would violate any covenant under any of the leases or surface use agreements within the SJCC Site Area or which could have the effect of causing forfeiture of the lessee's right under said leases.

3. ANNUAL OPERATING PLAN

3.1 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 C. "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 the Term ends shall also constitute a Contract Year.

3.2 The Annual Operating Plan shall include (i) for Item Numbers 2-5 and 7 in Exhibit D, the projected units of Work to be performed on annual and monthly basis and the associated projected costs; (ii) for Item Numbers 6 and 10 in Exhibit D, the projected amounts of Work to be performed on an annual and monthly basis and the associated projected costs; and (iii) for Item Numbers 13 and 15 in Exhibit D, the projected amounts of taxes, royalties, bond premium and other fees to be incurred in connection with the Work. The Annual Operating Plan

shall also include a “**Reclamation Plan**” component setting forth the specific Work planned for the coming Contract Year and the plan of Work for all activities required through final bond release as well as a bond release schedule for all areas within the SJCC Site Area (including La Plata and La Plata Haul Road). The Reclamation Plan shall include: (i) one or more maps showing all Work planned in the SJCC Site Area specified by each Specified Area (as such term is defined in **Exhibit G**); (ii) all engineering designs and estimates required to complete all planned Work for such Contract Year specified by each Specified Area; and (iii) all units, unit rates, and budgeted costs of performing such Work. The Annual Operating Plan shall separately identify those activities, units and costs attributable to reclamation of Pre-2017YE Disturbances and those attributable to Post-2017YE Disturbances. For purposes of this Agreement, the “**Pre-2017 YE Disturbances**” and the “**Post-2017 YE Disturbances**” shall mean the areas designated as such by Utility on or around January 1, 2018; provided that Utility shall have the right, at its sole discretion, to amend such designations at any time. Service Provider shall provide reasonable assistance and cooperation to Utility in connection with Utility’s performance of a survey of the SJCC Site Area (which survey shall be conducted at Utility’s cost) for purposes of determining the Pre-2017 YE Disturbances and Post-2017 YE Disturbances.

3.3 Review and Approval of Annual Operating Plan.

3.3.1 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 14.

3.3.2 Upon the request of either Party, the Parties shall, no more frequently than once per Contract Year, mutually re-evaluate the actual costs of Work related to Item Numbers 2-5 and 7 on Exhibit D to ensure that they are not grossly inequitable in comparison with the fixed unit costs specified in Exhibit D. In the event of such request, Service Provider shall provide a detailed written explanation along with reasonable supporting documentation regarding the actual costs of performing such portions of the Work. In the event it is determined that such actual costs of Work related to Item Numbers 2-5 and 7 in Exhibit D are grossly inequitable in comparison with the such fixed unit costs, the Parties shall in good faith negotiate an adjustment to such fixed unit costs.

3.4 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 for each Specified Area budget-to-actual Work, units, unit rates and invoiced amounts for the preceding quarter as compared to the Annual Operating Plan and (ii) inapping 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.

4. SERVICE PROVIDER'S COMPENSATION

4.1 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:

4.1.1 For Item Number 1 in Exhibit D, the specified fixed monthly amount with no markup or overhead.

- 4.1.2 For Item Numbers 2-5 and 7 in **Exhibit D**, Utility shall pay Service Provider based on the actual units of Work performed as specified in the Monthly Work Survey.
- 4.1.3 The actual and substantiated costs reasonably incurred by Service Provider in performing the Work in connection with Item Numbers 6 and 10 in **Exhibit D**.
- 4.1.4 For Item Numbers 8-9 and 11 in **Exhibit D**, the specified fixed monthly amount.
- 4.1.5 For Item Number 12 in **Exhibit D**, the specified percentage multiplied by the total of the monthly costs incurred in connection with Item Numbers 2-11.
- 4.1.6 For Item Number 13 in **Exhibit D**, the actual and substantiated premium amount associated with the reclamation bonds in such month with no markup or overhead.
- 4.1.7 For Item Number 15 in **Exhibit D**, the actual and substantiated taxes and royalties costs identified in **Exhibit I** 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 and royalties paid in connection with the Work.

4.2 **One-Time Compensation**. In addition, Utility shall pay to Service Provider for Item Number 14 in **Exhibit D** an incentive bonus for any reduction of bond premium resulting from the reduction of liability from a Phase I, II or III bond release approval equal to ten percent (10%) of the bond premium reduction.

4.3 **Monthly Survey**

- 4.3.1 For purposes of payment in connection with Item Numbers 2-5 and 7 in **Exhibit D**, 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 (delineating Work performed by Specified Area and between Pre-2017YE Disturbances and Post-2017YE Disturbances, if and when applicable) 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 4.3, (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 5.

4.3.2 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 topsoil 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.

4.4 Cost Recovery. For the avoidance of doubt, no costs may be invoiced hereunder that have been invoiced under the CSA or the CCRDA. In addition, Utility shall not be responsible for or required to compensate Service Provider for the remediation or reclamation of any environmental contamination or other liabilities or any Work that results from Service Provider’s material breach of this Agreement.

4.5 Quarterly Price Adjustment. For Item Numbers 2-5 and 7 in Exhibit D, 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 E. For Item Numbers 8-9 and 11 in Exhibit D, 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 E**.

5. **INVOICE AND SETTLEMENT**

5.1 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.

5.2 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.

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

5.4 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:

5.4.1 For all amounts invoiced in connection with **Section 4.1.3**, **Section 4.1.5**, and **Section 4.1.6**, Service Provider shall provide reasonable supporting documentation regarding the actual costs incurred.

5.4.2 Service Provider shall allocate the invoiced cost for all Work performed in connection with Item Numbers 2-11 in **Exhibit D** ("Direct Costs") to a particular Specified Area (as that term is defined in **Exhibit G**) based on the location in which such Work was actually performed. In addition, for all Direct Costs allocated to the Underground Mine (as that term is defined in **Exhibit G**) and the Surface Mine (as that term is defined in **Exhibit G**), Service Provider shall, commencing with the first invoice issued for work

performed in January 2018, further allocate such Direct Costs between Pre-2017YE Disturbances and Post-2017YE Disturbances based on the location in which such Work was actually performed. Service Provider shall allocate the invoiced cost for all Work performed in connection with Item Numbers 1, Item Number 11-13 and Item Number 15 in **Exhibit D** (“**Indirect Costs**”) to each Specified Area based on the percentage of the total Direct Costs allocated to each Specified Area in such month. Utility shall be permitted to adjust the allocation methodology described in this Section 5.4.2 at its sole discretion.

5.5 Audit and SJCC Site Area Access

- 5.5.1 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.
- 5.5.2 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.

5.6 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 14. 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.

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

6.1 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; or (ii) Utility is entitled to terminate the CSA or CCRDA due to an event of default thereunder by Service Provider.

6.2 Upon the occurrence of a Service Provider Event of Default described in Section 6.1(i), 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 8. Upon the occurrence of a Service Provider Event of Default described in Section 6.1(ii), Utility shall be entitled to either (a) terminate this Agreement in accordance with Section 8 or (b) require that Service Provider assign this Agreement to another party. In the event that Utility elects to require Service Provider to assign this Agreement to another party, Service Provider shall remain liable for any of Service Provider's obligations arising prior to such

assignment and shall provide commercially reasonable assistance in connection with such transition (including the execution of customary documents in such event). 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 14.

7. UTILITY'S EVENT OF DEFAULT AND SERVICE PROVIDER'S REMEDIES

7.1 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 CCRDA due to an event of default thereunder by Utility.

7.2 Upon the occurrence of a Utility Event of Default described in Section 7.1(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 8. Upon the occurrence of a Utility Event of Default described in Section 7.1(ii), Service Provider shall be entitled to terminate this Agreement in accordance with Section 8. 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 14.

8. **TERMINATION FOR EVENT OF DEFAULT** In the event that Utility elects to terminate this Agreement pursuant to Section 6.2, Utility shall provide notice of such termination to Service Provider, and in the event Service Provider elects to terminate this Agreement pursuant to Section 7.2, 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.

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

10. **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 10** shall observe all reasonable safety precautions imposed by Service Provider.

11. **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.

12. NOTICES

12.1 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

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

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

14. **ARBITRATION**

14.1 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.

14.2 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.

14.3 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.

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

14.5 The decision or award of the arbitrators shall be given in writing within thirty 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.

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

15. **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.

16. **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 18 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.

17. **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.

18. **INDEMNIFICATION**

18.1 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.

18.2 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.

18.3 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:

18.3.1 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,

18.3.2 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.

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

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **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.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

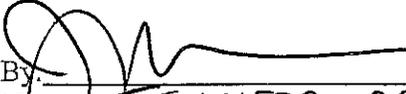
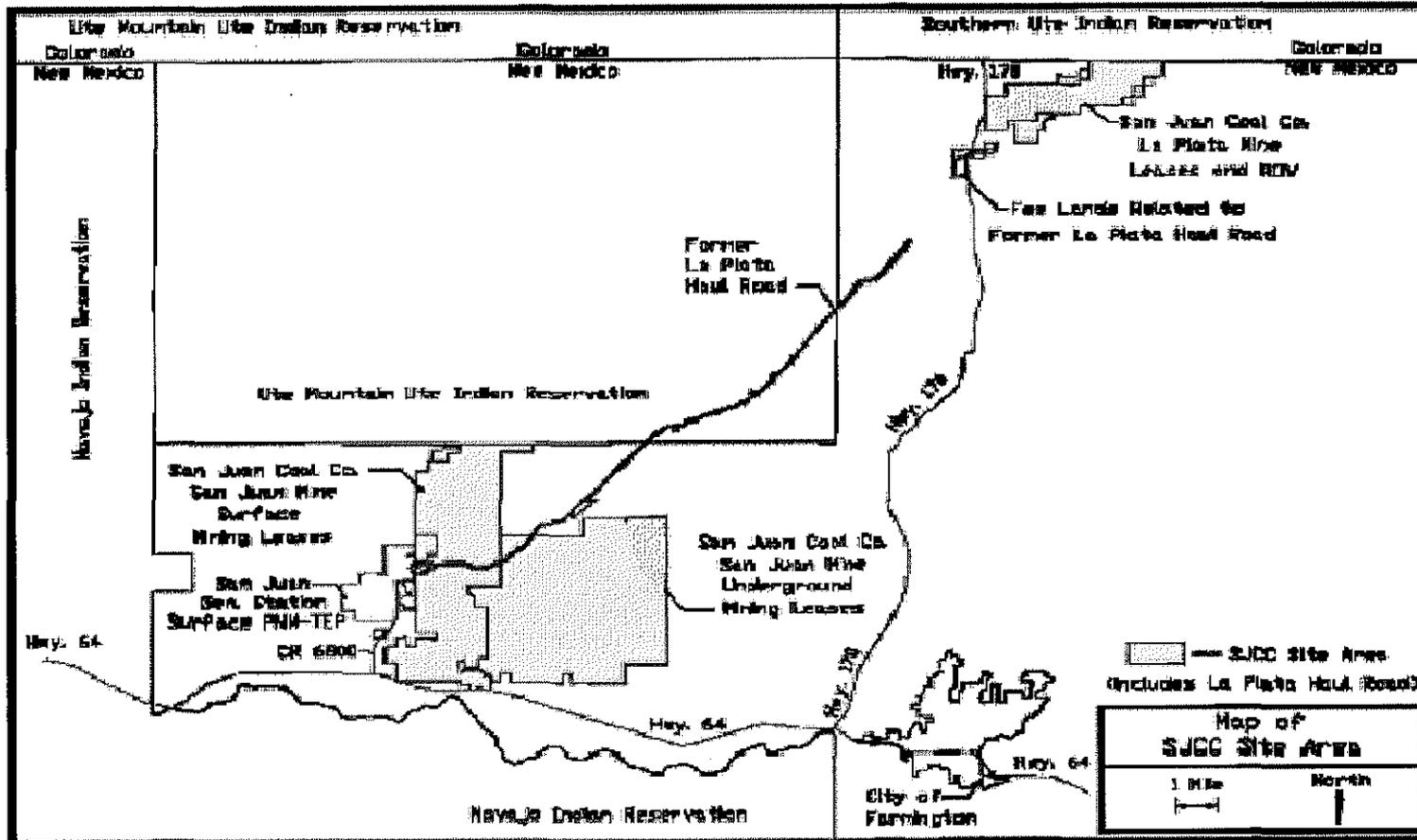

By: _____
Name: JENNIFER GRAPTON
Title: SECRETARY, SR. VP

EXHIBIT B—SJCC SITE AREA

The SJCC Site Area is shown below and this Exhibit B hereby incorporates the legal descriptions of the SJCC Site Area contained in Exhibit E of the CSA.



**EXHIBIT C—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 C.

EXHIBIT D

Item No.	Work Description	Quantities	Unit	Unit Rates(2016 \$)	Total Monthly Amount (2015 \$)	Total Annual Amount (2015 \$)
1	Capital Recovery Charge	Fixed	Fixed Cost	N/A	1/12 of specified amount	<p>For 2016 through 2018 Contract Years the total is \$540,444</p> <p>If the CSA is extended, then the amount for 2019-2024 Contract Years is \$540,444.</p> <p>Any additional years by mutual agreement of the Parties.</p> <p>If the CSA is not extended, then the amount for 2019-2024 Contract Years is \$1,250,000.</p> <p>Any additional years by mutual agreement of the Parties.</p> <p>Specified annual amounts are only applicable in Contract Years comprised of 12 months.</p>
2	Dozer Regrading	Monthly survey of in place volume.	cubic yards	<p>>500,000 cy \$0.63/cy <500,000 cy: \$0.90/cy</p> <p>(500,000 cy trigger based on total volume on Items 2 and 3 and, if trigger met, lower price applies to all Work performed in Contract Year)</p>	Per Work performed	Per Work performed

3	Excavator/Truck Regrading	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 2 and 3 and, if trigger met, lower price applies to all Work performed in Contract Year)	Per Work performed	Per Work performed
4	Topsoiling	Monthly survey of in place volume.	cubic yards	\$2.25/cy	Per Work performed	Per Work performed
5	Soil Preparation & Amendments, Mulching, Seeding, Irrigation & Plant Growth	Monthly survey of acres.	Per Acre	\$4,500	Per Work performed	Per Work performed
6	Erosion Remediation and Repair	All Materials	N/A	N/A	At Cost as Incurred	At Cost as Incurred
7	Road Reclamation including ripping and grading.	Monthly survey of in place volume.	cubic yards	\$1.08/cy	Per Work performed	Per Work performed
8	Monitoring/Remediation San Juan Mine	All Services Required	N/A	N/A	\$20,833	\$250,000 (only applicable in Contract Years comprised of 12 months)
9	Monitoring/Remediation La Plata Mine and Haul Road	All Services Required	N/A	N/A	\$20,833	\$250,000 (only applicable in Contract Years comprised of 12 months)

10	Facilities Decommissioning	All Services Required	N/A	N/A	At Cost as Incurred	At Cost as Incurred
11	Operation coordination, permitting support, engineering/technical support and records, and shop/facilities	All Services Required	Fixed	N/A	\$24,120	\$289,440 (only applicable in Contract Years comprised of 12 months)
12	Service Provider Management Compensation	All Services Required	Fixed	N/A	7.5% of the monthly costs incurred in connection with Item Numbers 2-11	7.5% of the costs incurred in a Contract Year in connection with Item Numbers 2-11
13	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
14	Reclamation Bond Reduction Incentive	Incentive bonus for reduction of Bond Premium resulting from the reduction of liability from a Phase I, II or III bond release approval.	N/A	N/A	10% of Bond Premium Reduction	10% of Bond Premium Reduction
15	Taxes, Royalties & Other Fees Specified in Exhibit I	As Levied	N/A	N/A	At Cost as Incurred	At Cost as Incurred

EXHIBIT E—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	32.03	20%	December 31, 2015, BLS 1st Published
Medical	CUUR0000SAM	450.00	13%	December 31, 2015, BLS 1st Published
Diesel Fuel	PCU324110324110L2	275.61	36%	December 31, 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		1.032	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 = $((32.03/30.86) \times 20\%) + ((450.00/439.72) \times 13\%) + ((275.61/265.50) \times 36\%) + ((1.025/1.000) \times 31\%) = 1.032$
Index Multiplier = Quarterly Composite Index/Base Index = $1.032/1.000 = 1.032$

EXHIBIT E—QUARTERLY PRICE ADJUSTMENT

Example of Pricing Increase for RSA Agreement (Items 2-11; Exhibit D)								
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	Exhibit D, >500,000 CY	1.000	1.032	1.032	\$0.63	\$0.65		
2	Exhibit D, <500,000 CY	1.000	1.032	1.032	\$0.90	\$0.93		
3	Exhibit D, >500,000 CY	1.000	1.032	1.032	\$3.03	\$3.13		
3	Exhibit D, <500,000 CY	1.000	1.032	1.032	\$3.80	\$3.92		
4	Exhibit D	1.000	1.032	1.032	\$2.25	\$2.32		
5	Exhibit D	1.000	1.032	1.032	\$4,500.00	\$4,644.00		
6	Exhibit D	1.000	1.032	1.032	at cost	at cost	at cost	at cost
7	Exhibit D	1.000	1.032	1.032	\$1.08	\$1.11		
8	Exhibit D	1.000	1.032	1.032			\$20,833.00	\$ 21,499.66
9	Exhibit D	1.000	1.032	1.032			\$20,833.00	\$ 21,499.66
10	Exhibit D	1.000	1.032	1.032	at cost	at cost	at cost	at cost
11	Exhibit D	1.000	1.032	1.032			\$24,120.00	\$ 24,891.84

EXHIBIT F—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, provide reclamation services to Utility pursuant to that certain Reclamation Services 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, or (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.

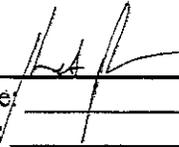
CONFIDENTIAL

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: PAPZYCKI
Title: CRU

[SIGNATURE PAGE TO GUARANTY FOR THE RECLAMATION SERVICES AGREEMENT]

EXHIBIT G—SPECIFIED AREAS

For purposes of this Agreement the Surface Mine, Underground Mine, La Plata Mine and the La Plata Haul Road shall, when referenced individually, be referred to as a “**Specified Area**” and collectively, the “**Specified Areas**”. In addition:

1. “**Surface Mine**” means the former surface mine pits of the San Juan Mine (other than the underground mine portal area of the north Juniper pit) and associated infrastructure, which is shown on **Exhibit A** in the two areas designated as the “San Juan Surface Mine”.
2. “**Underground Mine**” means the underground mine of the San Juan Mine and associated infrastructure, which is shown on **Exhibit A** in the area designated as “Area of San Juan Underground Mine”.
3. “**La Plata Mine**” means that area designated as the “La Plata Mine Leases” in **Exhibit B**.
4. “**La Plata Haul Road**” means that area designated as the “Former La Plata Haul Road” in **Exhibit B**.

Utility shall be entitled to amend the definition of each Specified Area and the Specified Areas at any time. For the avoidance of doubt, the delineation of Specified Areas in this Agreement is intended for invoicing and cost accounting purposes only and does not in any manner abrogate or alter the responsibility of Service Provider to perform the Work with respect to the entire SJCC Site Area or of Utility to compensate Service Provider for that Work as provided in this Agreement.

EXHIBIT H—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 H** 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 H, 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 Operators 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 Five Million U.S. Dollars (USD \$5,000,000) 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). 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 commercial auto liability insurance limits may be reduced to One Million U.S. Dollars (USD \$1,000,000) each accident.
- (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 One Hundred Million U.S. Dollars (USD \$100,000,000) 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 I—TAXES AND ROYALTIES

Description	Current Rate
NM Resource Excise Tax	0.75%
NM Conservation Tax	0.19%
NM Underground Coal Royalty	8.00%
NM Gross Receipts Tax	6.5625%
Federal Underground Coal Royalty	5.00%
Effective Surface Coal Royalty at La Plata Mine	6.625%

**EXHIBIT J—FORM OF ASSIGNMENT AND ASSUMPTION OF
RECLAMATION SERVICES 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 Reclamation Services 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: