

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: March 7, 2016
RE: Coal Supply Purchase with Glencore, Ltd.

Attached hereto for your consideration is a proposed agreement with Glencore, Ltd. (Glencore) to purchase 66,000 tons of low sulfur Colombian coal, which Lakeland Electric will continue to blend with higher sulfur Illinois Basin (IB) coal to maintain reduced sulfur emissions from Unit 3 at the McIntosh Power Plant. The Colombian coal, guaranteed at 12,000 BTU and 0.85% sulfur, will be blended to maintain emission compliance.

A Request for Proposal was issued by the City's Purchasing Department in November 2015 in which Glencore was selected to provide Colombian coal. The term of this Agreement, effective March 7, 2016 and subject to approval by the City Commission, will continue through November 30, 2016. The first vessel delivery is scheduled to begin in July 2016 with the second ship arriving in October 2016. Glencore will provide 66,000 tons of coal at a cost of \$56.90 per ton, which includes delivery to the Port of Tampa. In addition, there is a cost of \$7.12 per ton for coal to be off loaded, stockpiled and reloaded onto trucks, a cost of \$7.20 per ton for the trucking transporter to deliver the coal to the McIntosh Power Plant and a \$0.22 per ton charge for verification of loading and coal sampling. The total cost for the coal purchase will be approximately \$4,715,040 which includes the per ton price of coal, transportation via cargo ship from Colombia and truck hauling from the Port of Tampa to Lakeland. The purchase of the Colombian coal from Glencore is included in Lakeland Electric's FY2016 Fuel Budget.

It is recommended that the appropriate City officials be authorized to negotiate and execute a Coal Supply Agreement with Glencore.

RS
attachment

COAL SALES AND PURCHASE CONTRACT

between

**GLENCORE Ltd.
(hereinafter called “Seller”)**

and

**CITY OF LAKELAND, FLORIDA
(hereinafter called “Buyer”)**

GLENCORE, LTD (SELLER), hereby agrees to sell and deliver and CITY OF LAKELAND (BUYER), a municipality organized and existing in accordance with the laws of Florida, agrees to purchase, take delivery and pay for coal in accordance with the conditions set forth herein.

Term

This Contract shall be in effect from March 7, 2016 and shall continue until November 30, 2016 or until all obligations pursuant to this contract are fulfilled, whichever is the later; unless otherwise terminated as provided herein.

1. Commodity & Coal Source

Colombian Thermal Coal in bulk (loaded at Puerto Nuevo) and coal shall come from the La Jagua mine.

2. Firm Tonnage

2 x 33,000 short tons +/- 10% shipping tolerance at Seller's Option

3. Shipping Period

The shipping period will be as follows with exact 10 day (Load Port) laycan to be mutually agreed.

1st Delivery: 1H July

2nd Delivery: 1H October

Load Port-Puerto Nuevo, Colombia

4. Discharge Port / Delivery Point

Coal shall be Delivered Duty Paid (DDP) Kinder Morgan Terminal, Tampaplex Port.

5. Quality

Coal shall be unwashed, crushed, and shall have the following Guaranteed and Expected specifications on an "as received basis as sampled at the load port. The coal delivered hereunder shall conform to the following specifications As Received.

<u>Description of Coal</u>	<u>Guaranteed Specifications</u>	<u>Expected Specifications</u>	<u>Minimum</u>	<u>Maximum</u>
Heat Content (BTU/lb)	12,000 min	12,400	11,300	13,500
Hardgrove Grindability	45 min	47	41	60
<u>Proximate Analysis (% by Weight)</u>				
Volatile Matter (%)	33.0 min	36.0	27	39
Fixed Carbon (%)		47.25	41	50
Ash (%)	10.0 max	7.5	6	12
Moisture (%)	12.0 max	8.0	4	12
<u>Ultimate Analysis (% by Weight)</u>				
Carbon		64.00	50.0	82.0
Hydrogen		4.50	3.5	6.0
Sulfur	1.00 max	0.85	0.6	3.0
Nitrogen		1.40	0.4	1.7
Chlorine		0.03		0.2
Fluorine (PPM)		45.00		270
<u>Mineral Analysis of Ash (% by Weight)</u>				
Ferric Oxide		8.00	5.0	20.0
Calcium Oxide		2.25	0.8	20.0
Magnesium Oxide		1.60	0.1	2.0
Sodium Oxide		0.55	0.1	1.6

Potassium Oxide	1.50	0.1	5.0
Silcon Oxide	60.00	30.0	
Aluminum Oxide	22.00	18.0	36.0
Titanium Oxide	1.00	0.3	3.0
Sulfur Trioxide	2.00	0.1	7.0
Phos. Pentoxide	0.25	0.1	1.3

Trace Elements (PPM)

Arsenic	3.5	3.5	10
Mercury *	0.09 maximum	0.07	.09
Tungsten			
Vanadium	25	25	300

*BUYER can accept coal with a maximum mercury content of 0.09 PPM. Coal exceeding 0.09 PPM is considered non-conforming and will be rejected as per clause 13.

Ash Fusion Temperature (degrees F)

Reducing Atmosphere

Initial Deformation (IT)	2300	2400
Softening Temp.	2400	2500
Hemispherical	2500	2600
Fluid Temp.	2600	2700

The coal sold and purchased hereunder shall be of high-volatile bituminous grade with 100% free flowing to meet transfer tower to the yard stacker with limitation of 3.0” top-size. Not more than forty percent (40%) by weight of the coal delivered pursuant to this Agreement shall be less than one-quarter inch (1/4”) in size and shall be the whole mine product (or whole washed product) with no intermediate size fractions added or removed. Should oversized coal cause down time on the stacker or potential extra cost of unloading to switch to trucking it to yard, BUYER liability for demurrage cost shall be split with SELLER.

6. Base Price

The Base Price, Delivered Duty Paid (DDP), Tampaplex Port, Tampa, FL, for the coal to be delivered under this contract is USD \$56.90 per short ton.

7. Price Adjustment for Quality

The price per ton of coal shall be increased or decreased to compensate for variations in the calorific value of the coal shipped. The BTU content shall be determined on actual “as received” basis. If the actual average heating value of the coal shipped by SELLER on each shipment is greater than one hundred (100) BTU per pound in excess or fifty (50) BTU per pound below the Guaranteed Specification, the base price per ton will be adjusted in accordance with the following formula:

Actual Btu/lb./Guaranteed 12,000 X Base Price= Net Price Per Ton

Base Price \$56.90 and 12,000 Guaranteed as stated in this Agreement

Example

12,400 Btu/lb/12,000 Btu/lb=1.03 x \$56.90 ton=\$58.61

11,600 Btu/lb/12,000 Btu/lb=0.97 x \$56.90 ton=\$55.19

Ash Adjustment

The price per ton of coal shall be decreased if the vessel’s cargo weighted average percent of ash is greater than the ash guarantee as set forth in the SELLER’S coal specifications. The price per ton reduction shall be \$0.30 per ton for each percent, fractions pro rata, by which the weighted average of the “as received” ash content for the coal delivered that month exceeds the guaranteed level. No credits will be given if the “as received” ash content is less than the guaranteed level. The ash penalty adjustment shall be made in accordance with the following formula:

Actual Ash % – Guaranteed Ash 10.00 % = Excess Ash % x 100 x \$.30 per ton = Ash penalty per ton

Example

11.00% Ash – 10.00% = 1.0% x 100 = 1.00 x \$.30 per ton = \$.30 Ash penalty per ton

Mercury Adjustment

The price per ton of coal shall be decreased if the vessel's cargo mercury result is greater than the expected mercury as set forth in the SELLER'S coal specifications. The price per ton reduction shall be \$1 per ton for each 0.01 PPM, by which the weighted average of the "as received" mercury content for the coal delivered exceeds the expected level. No credits will be given if the "as received" mercury content is less than the expected level. The mercury penalty adjustment shall be made in accordance with the following formula:

Actual Mercury PPM – Expected Mercury PPM = Excess PPM above 0.07 x 100 x \$1 per ton = Mercury penalty per ton

New Example

0.09ppm Mercury – 0.07ppm Mercury = 0.02 x 100 = 2.00 x \$1 per ton = \$2 Mercury penalty per ton

0.08ppm Mercury – 0.07ppm Mercury = 0.01 x 100 = 1.00 x \$1 per ton = \$1 Mercury penalty per ton

All customs, tariffs, taxes, fees, duties and other similar charges (however denominated) imposed on, or arising out of, the mining, sale, transportation or importation of the Commodity shall be for the account of and payable by the SELLER.

8. Payment Terms & Invoicing

SELLER shall invoice BUYER for each shipment of Commodity after completion of discharge at the Delivery Point. The invoice will be based off of the vessel weights taken at the loadport. BUYER shall make payment to SELLER via ACH transfer within twenty (20) days after completion of vessel discharge provided BUYER is in receipt of the documents listed in Section 8.01

Invoices shall be in a form satisfactory to the BUYER and be of sufficient detail to provide the BUYER all reasonable information necessary to confirm their accuracy. SELLER shall prepare and forward to BUYER by mail or electronic means a copy of the commercial invoice and pertinent data from the weight certificate and the certificate of analysis promptly after completion of loading. The invoice amount shall be stated in U.S. dollars and shall be equal to the Adjusted Base Price, Ash Adjustment, determined as specified in section 7.0.

Payment of each invoice shall be made by wire or check payable to the SELLER within forty-five (45) days after receipt of invoice in accordance with Florida Statute §218.74 et, seq., the Local Government Prompt Payment Act, unless otherwise provided for in this Agreement. BUYER'S obligations to pay for coal delivered to BUYER shall survive the expiration or termination of this Agreement. Invoices can be mailed to BUYER'S address or transmitted electronically to BUYER at the e-mail address fuelinvoices@lakelandelectric.com.

8.01 Documentation

Promptly after completion of loading at Puerto Nuevo, SELLER shall forward to BUYER the following:

- 1 original and 3 copies of the SELLER's commercial invoice
- 3 originals and 3 copies of the bill of lading
- 1 original and 2 copies of the weight certificate
- 1 original and 2 copies of the certificate of analysis
- 1 original and 2 copies of the certificate of origin
- 1 original and 2 copies of the stowage plan

In addition, promptly after sailing of each vessel from Puerto Nuevo, SELLER shall forward to BUYER by electronic means a copy of the weight certificate and the certificate of analysis as determined at Puerto Nuevo.

Glencore's payment details are as follows:

Citibank NA, New York
ABA #021000089
F/C Glencore Ltd.
A/C No. 3042-5974

9. Weighing/Sampling/Analysis

Weight determination (by vessel draft survey) of each shipment to be conducted at the loadport by a mutually agreeable qualified surveyor employed by an international independent inspection company, whose results are to be final and binding for settlement absent manifest error.

Samples shall be taken to represent sub-lots of about 10,000 MT or less on an "as-loaded" basis and analyzed on and "as received basis" in accordance with the then current published applicable ASTM standards. Separate sub-lot samples and a physically weighted composite sample obtained from such sub-lot samples shall each be split by riffing into 4 sample splits according to ASTM Standards. One sample split shall be for the BUYER, one for the SELLER, one for the LABORATORY analyses by the mutually agreed independent laboratory in Colombia, and one shall be sealed and retained by the independent laboratory for forty five (45) days from the bill of lading date for REFEREE purposes. The gross calorific value and weight percentages of the total moisture, ash, and sulfur shall be determined by calculating the weighted average of the respective quality parameters obtained by the analysis of the sub-lot samples. The remaining quality parameters under clause 5 of this contract shall be determined by the analyses of the physical composite sample.

Cost for weighing, sampling and analysis to be for Sellers's account, except as otherwise provided herein.

Each party has the right, but not the obligation, to have a representative present, at such party's expense, to observe the loading, sampling, preparation of the sub-lot and physical composite sample, joint sealing of the referee samples and weighing, provided that such attendance complies with the standard tasks and activities allowed to be performed by witnesses at loading port.

The standard tasks and activities allowed to be performed, without exception, by all witnesses at PNSA are as follows:

- Observe reading of initial and final draft and relevant survey procedures to determine the vessel displacement
- Observe holds inspection.
- Observe sampling. Due to safety reasons, observation of sampling for size and quality shall only be performed at the designated areas in the mechanical sampler located on the conveyor belt CV-123.
- Observe temperature monitoring - due to safety reasons, this task may only be carried out at the designated areas in the mechanical sampler located on the conveyor belt CV-123.
- Observe loading operations.

At the laboratory:

Due to confidentiality and corporate policies of the laboratories, the witnesses will only have access to the preparation room for the observation of the gross series of the sizing determination the preparation of the sub-lot and physical composite samples. The witnesses will not have access to the laboratory to observe testing of samples.

Tasks that are not authorized:

- Taking photographs

- Take into the port any devices with cameras.
- Due to safety reasons no one is allowed to come into the stock yard.

Analysis results from the sample(s) taken at the loadport shall be final and binding. The sampling person shall or shall cause the results of the short proximate analysis, mercury content and, size distribution to be reported to the BUYER and SELLER, along with the vessel I.D. number, weight and shipping data ("Shipping Report"), by facsimile, telephone (to be confirmed promptly by facsimile) or other electronic means, as soon as available, but in any event within two (2) business days of the completion of the loading of each shipment.

BUYER or SELLER may challenge the load-port analysis within forty-five (45) days of the bill of lading date the originally obtained value for any quality parameter. The challenging Party shall have the right to have the REFEREE sample(s) analyzed by a commercial testing laboratory. Such laboratory shall be mutually selected by the BUYER and SELLER and shall follow ASTM methods. If the result of the moisture, ash, calorific value and/or sulfur is challenged the sub-lot referee splits shall be analyzed otherwise, for the other parameters listed in Clause 5 of this contract, the physical composite referee can be analyzed. If the results of the referee sample(s) are within ASTM reproducibility limits of the originally obtained value, the original value of the said parameter(s) will be final and, the cost of the analyses of the referee sample will be paid by the challenging party. In those instances where the average result of analyses for the parameters in question is not within ASTM reproducibility limits of the originally obtained value, the cost of such analyses will be paid by the SELLER, and results of the referee sample(s) shall govern and are final and binding.

10. Shipping Terms

10.1 Discharging Port

The BUYER to guarantee 1 safe port 1 safe berth Tampaplex Terminal, Tampa, FL, always accessible, always afloat where vessels with 34ft arrival draft can safely enter, remain, discharge and depart always afloat. BUYER will arrange and pay for discharging from the vessel. BUYER will nominate Inchcape Shipping Services as vessel agent at discharge port with cost of same to SELLER'S/Vessel Owners account.

10.2 Vessel Nomination

SELLER shall nominate the vessel proposed to load the Coal no later than ten (10) days prior to the vessel's ETA at the Loading Port, but shall have the right to substitute the proposed vessel at any time on notice to the BUYER.

Acceptance/ Rejection of Vessel

BUYER shall notify SELLER in writing of its acceptance or rejection of the vessel within one (1) Business Day from the receipt of its nomination, or of notice of a substitute vessel, such acceptance not to be unreasonably withheld. Where a vessel is rejected, BUYER shall provide reasons for such rejection. For the avoidance of doubt, a "**Business Day**" is any day when offices are open for business in the City of Lakeland and Colombia.

BUYER shall incur no liability for rejecting a vessel in good faith and acceptance of a vessel for one shipment shall not be deemed to be continued acceptance of a vessel for further shipments SELLER has the right to substitute the nominated vessel within the agreed laycan provided the vessel meets the requirements of Discharging Port. The Demurrage rate will be declared by SELLER together with vessel nomination.

10.3 Notice for Discharging Port

The SELLER or its agent, upon sailing from loading port, is to advise receivers and discharge port Vessel agents of the expected date and time of arrival at the Discharging Port.

Any alteration in dates or times of arrival of more than 12 hours shall be advised promptly. Furthermore, the owners/masters are to give 5 days', (72 hours, 48 hours', 24 hours' notice of arrival at the discharging port to receivers via the vessel's agent.

10.4 Notice of Readiness

Notice of Readiness (NOR) may be tendered by phone (with confirmation in writing) by vessels ATDNSSHINC (any time day or night, Saturdays, Sundays and holidays included), whether in port or not, whether in berth or not, whether cleared customs or not, whether immigration cleared or not, and whether in free pratique or not provided the vessel is in every respect ready to discharge.

10.5 Discharge

Laytime shall start twelve (12) hours after valid Notice of Readiness has been tendered or on commencement of discharge, whichever earlier. Laytime is to include time when official draft checks and surveys are being conducted (if any). BUYER to discharge the cargo at minimum rate at 5,400 metric tons per day SSHINC (except as noted below), using shore equipment and labor. Laytime is finished when discharging operation and draft surveys are completed whatever is the latest. BUYER to organize discharge of the cargo free of risk and expense to SELLER and Owner.

Kinder Morgan Tampaplex Terminal, Port of Tampa, Florida: Operates twenty-four (24) hours per day SSHINC (except for New Year's Day, Martin Luther King Day, Good Friday, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day or any other holiday granted by Kinder Morgan Tampaplex, Tampa, FL to its employees which may become a non-work holiday by custom in the port of Tampa).

Any time lost due to any of the following shall not count as used Laytime;

- a) Shifting from anchorage until all fast at loading berth;
- b) Owners or operators of the vessel prohibiting discharge;
- c) Breakdown, inefficiency, repairs or inability of the vessel's facilities or equipment to discharge Coal at the stipulated discharge rate; Delays for supplying the vessel with fuel or other supplies that halt the coal discharging operation.

Bulker or grab geared vessel(s) cargo holds will be machined cleaned.

The performing vessels is to be a geared or gearless single deck bulkcarrier with max LOA 750ft and max beam of 105ft. Maximum draft of 34 feet (salt water). Vessels coming and going to the Terminal travel with the tide. Time required for shifting/warping the vessel off the jetty and back due to inability of shore gantry crane to lift its boom and free movement alongside the vessel obstructed by vessel's cranes to count as laytime and cost of tugs (if required) to be for BUYER'S account.

SELLER warrants that the vessels will comply with all applicable requirements, rules and regulations of the port authorities at the Discharge Port, and shall operate according to the safety standards established at the Discharge Port. The vessels will be a maximum of twenty (20) years old.

For all calculations, the available laytime shall be calculated by dividing the B/L weight by the guaranteed discharge rate and will be rounded on 5 decimals.

10.6 Settlement of Demurrage and Despatch

If the time taken for discharge exceeds the laytime allowed in accordance with discharging provisions herein stated BUYER shall pay SELLER demurrage in respect of all time lost after expiry of laytime at a rate as per nomination, fractions pro rata, within 30 days from receipt of SELLER'S final and agreed invoice to BUYER of the total demurrage due, together with customary supporting documents.

If the time taken for discharge is less than the laytime allowed in accordance with discharging provisions herein stated provisions, SELLER shall pay BUYER despatch money in respect of laytime saved at a rate

per day equal to one half of the demurrage rate within thirty (30) days from receipt of Buyer's final and agreed invoice to SELLER of the amount due, together with customary supporting documents.

10.7 Damage by Stevedores

Damage by the stevedores is to be settled directly between the vessel owners and/or the stevedores, and BUYER shall use commercially reasonable efforts to assist in settling any damages without liability to BUYER. For purposes of this Contract assistance from the BUYER with any such claim shall not include payment of any expenses or claims, including litigation costs and/or attorney fees. Time for repairs will count as Laytime.

10.8 ISPS Compliance

The SELLER warrants that any vessel which it nominates in connection with this contract complies with the requirements of the ISPS Code and/or the US Maritime Transportation Security Act 2002 ("MTSA"). The BUYER warrants that any port at which the goods purchased under this contract are or are intended to be unloaded complies with the requirements of the ISPS Code and/or MTSA (if applicable).

SELLER shall be responsible for any and all costs and/or expenses and/or losses and/or damages and/or delay arising out of or in connection with the failure of the vessel or its owners or charterers to comply with the requirements of the ISPS Code or, if applicable, MTSA and any time thereby lost shall not count as laytime or time on demurrage or detention, as the case may be. BUYER shall be responsible for any and all costs and/or expenses and/or losses and/or damages and/or delay arising out of or in connection with any failure by the Discharge Port to comply with the requirements of the ISPS Code and/or MTSA and any time thereby lost shall count as laytime or time on demurrage or detention, as the case may be. The parties' liability for any breach of these clauses is limited to the direct costs and expenses caused thereby and neither party will bear any responsibility for consequential losses, as defined in the Glencore ISPS Clause.

The respective responsibilities and obligations of the BUYER and the SELLER pursuant to this Contract are set out fully in the Glencore ISPS Clause for Discharge port, the terms of which are attached to and incorporated into this contract. In the event of any difference, ambiguity or discrepancy between this section and the Glencore ISPS Clause for Discharge port attached hereto, and then the latter shall prevail.

10.9 Insurance

SELLER shall arrange for the Coal to be insured from Loading Port of Discharge Port.

10.10 Tax

The SELLER shall pay all taxes, duties and fees imposed on or incurred in respect of the shipment of Coal that arise in the country of shipment including, but not limited to, obtaining any export license or other official authorization and carrying out customs formalities necessary for export of the Coal. All other taxes, duties and fees, including but not limited to obtaining any import license or other official authorization and carrying out custom formalities for the import of the Coal, are for the account of and at the risk of BUYER. BUYER is a governmental entity exempt from Florida sales and use tax and shall provide SELLER with a valid certificate of exemption for such taxes upon execution of this Contract.

11. Title and Risk

Title to and risk of loss of or damage to Coal shall pass from SELLER to BUYER under DDP when the vessel arrives at Kinder Morgan Tampaplex Terminal, Port of Tampa. Except as provided otherwise herein, the provisions of INCOTERMS 2010 shall apply.

12. Force Majeure

Neither party shall be liable to carry out its obligations under this contract for any delay or failure whatsoever to make shipment or delivery or receive delivery under this contract caused by or resulting from any contingency beyond their reasonable control, including but not limited to calamities of nature, Acts of God, war (whether declared or undeclared), war-like operations, civil war, civil commotion, act of public enemy, strikes, floods, fires, lockouts, riots, embargoes, decrees and laws by the government, delays of carriers, labour difficulties and any other similar or dissimilar occurrences / obstructions whether legal or

illegal, partial or general (hereinafter "Force Majeure"). Notwithstanding the above, neither party may claim Force Majeure if the same is a result of their negligence or if the force majeure could have been prevented or avoided by such party exercising due diligence. Furthermore, Force Majeure shall specifically exclude (i) the loss of BUYER'S or SELLER'S markets; and (ii) Seller's ability to sell coal at a more advantageous price.

In the event a Force Majeure prevents a party from performing its obligations hereunder, the claiming party shall notify the other party of the Force Majeure as soon as reasonably practicable, but no later than forty-eight (48) hours after it becomes aware of the Force Majeure, such notice to be confirmed in writing. The obligations of both parties shall be suspended for the duration of the Force Majeure but after the expiration of sixty (60) days, the tonnage involved may be cancelled by the party not claiming Force Majeure.

If SELLER'S Force Majeure makes it unable to meet its obligations under other coal agreements involving a similar type and quality, then SELLER shall reduce its deliveries on a pro rata basis among this contract and such other coal agreements.

It is furthermore agreed that any tonnage lost due to such Force Majeure conditions shall only be replaced at the option of the non-claiming party on the terms and conditions for replacing such tonnage.

12.1 Neither Party shall be liable for any delay in performing or failure to perform its obligations (except for delay or failure to pay money when due) due to events of Force Majeure including but not limited to acts of public enemy, war, blockade, revolution, riot, insurrection, civil commotion, strike, lockout, explosion, fire, flood, storm, tempest, earthquake, regulations or orders, including but not limited to prohibition of export or import and/ or any other cause or causes beyond the reasonable control of the SELLER, the SELLER'S supplier, or the BUYER whether or not similar to the causes enumerated above. Failure to deliver or to accept delivery in whole or in part because of the occurrence of an event of a Force Majeure event shall not constitute a default hereunder or subject either party to liability for any resulting loss or damage.

12.2 Upon the occurrence of a Force Majeure event, the Party affected by the Force Majeure shall promptly give the other Party written notice of the event of Force Majeure, and shall specify in reasonable detail the facts constituting the event of Force Majeure. Where such notice is not given promptly, Force Majeure shall not justify the non-fulfillment of any obligations under this contract.

12.3 The Party affected by the Force Majeure shall give the other Party (a) regular written updates during the period of the Force Majeure, and (b) prompt written notice when the Force Majeure circumstances cease to exist.

12.4 Subject to clause 12.5, both Parties agree to use their respective reasonable efforts to cure any event of Force Majeure to the extent that it is reasonably possible to do so, it being understood that the settlement of strikes, lockouts, and any other industrial disputes shall be within the sole discretion of the party asserting Force Majeure.

12.5 The SELLER is not required to provide any of the following as a result of a Force Majeure event: substitute coal; alternate transport for the coal from the mine to the loading port; or alternate loading facilities for the coal.

12.6 In the event of Force Majeure preventing the SELLER from shipping or delivering the material, or preventing the BUYER from accepting such material, respectively, deliveries shall be suspended for the duration of such Force Majeure event but if such Force Majeure shall last more than 60 (sixty) calendar days, the tonnage involved may be cancelled with immediate effect by the Party not having declared Force Majeure by written notice to the other Party.

12.7 Financial or economic circumstances shall not constitute an event of Force Majeure.

13. Rejection Rights.

If the coal triggers any of the Rejection Limits as defined by the minimum and maximum limits of the analytical parameters specified in Clause 5 of this contract (a "Non-Conforming Shipment"), BUYER shall have the option, exercisable by notice to SELLER within one (1) business day of BUYER'S facsimile receipt of the short proximate analysis, of either (a) rejecting such Non-Conforming Shipment at the Delivery Point or en route, but prior to unloading from transporter's equipment or (b) accepting any Non-Conforming Shipment with a price adjustment agreed to in a commercially reasonable manner between SELLER and BUYER. BUYER'S failure to timely provide such notice does not, however, constitute a waiver of its right to any adjustment provided for in this contract with respect to such Non-Conforming Shipment. If BUYER timely rejects the Non-Conforming Shipment, SELLER shall be responsible for promptly transporting the rejected coal to an alternative destination determined by SELLER. Provided that BUYER gives written notice to SELLER of its desire for replacement coal within two (2) business days after rejection of the Non-Conforming Shipment, SELLER shall replace the rejected coal within a reasonable period of time but said period shall not exceed thirty (30) days after the rejection and all other terms in this contract shall remain in full force and effect.

14. Law Governing and Interpretation

All questions relating to the execution, construction, performance, or breach of this Contract shall be resolved under the laws of the State of Florida. The parties agree to the jurisdiction and venue of the Courts of Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division in connection with any action or proceeding arising out of or relating to this Agreement.

15. Mediation

Any dispute, controversy or claim relating to or arising out of this contract or any alleged breach thereof shall be subject to mediation. The parties shall mutually agree to a single mediator carrying on business in Polk County, Florida

16. Assignment or Subcontract

Neither party may assign or subcontract any part of its rights or obligations under this agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Either party may assign its rights or obligations to its direct or indirect parent company, or to any affiliate or subsidiary, or for the purpose of securing indebtedness without the consent of the other party provided such party provide prior written notice of such event.

17. Confidentiality

Except as required by law or regulation, this Contract is private and confidential to the parties name herein and shall not be disclosed to outside parties without the consent of the other party. Such consent shall not be unreasonably withheld. Nothing herein shall be construed to limit disclosure required pursuant to Florida Statute Chapter 119, the Florida Public Records Act or any other applicable law.

18. Public Records

SELLER shall comply with Florida Statute Chapter 119, the Florida Public Records Act as it relates to records kept and maintained by SELLER in performance of services pursuant to this Agreement. In accordance with Florida Statute §119.0701., SELLER shall be required to provide public access to such records at a cost that does not exceed the statutory requirements or as otherwise provided by law. In the event any such records are exempt or confidential from public records disclosure SELLER shall ensure that those records are not disclosed except as authorized by law. SELLER shall meet all requirements for retaining public records and shall transfer at no cost to the BUYER, all public records in possession of the SELLER upon termination of the Agreement and destroy duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the BUYER in a format that is compatible with the information technology system of the BUYER.

19. Notices

All notices required or permitted to be given hereunder shall be in writing in English and shall be deemed properly given when delivered by facsimile machine or other electronic means to the entity to be notified,

or such designee as it may designate by written notice, at its address set forth below, or such other address as the entity to be notified may have designated prior thereto by written notice to the other.

To SELLER
Glencore Ltd.
301 Tresser Blvd.

Stamford, CT 06901
Attn: Coal Dept.

Phone : (203) 328-4943
Email: Jack.Voorhess@glencore-us.com

To BUYER
City of Lakeland,
Lakeland Electric
501 E Lemon Street.
Lakeland, Florida 33801
Attn: Tory Bombard/Fuels Manager
Phone (863) 834-6207
Fax: (863) 834-8393
Email: Tory.Bombard@lakelandelectric.com
Email: Fuelinvoices@Lakelandelectric.com

20. Entire Agreement and Amendment

This Contract contains an entire agreement between SELLER and BUYER in relation to the sale and purchase of coal hereby agreed to be sold and purchased and supersedes all prior negotiations, understandings and agreements written or oral.

This Contract shall not be modified, amended or supplemented except by instrument in writing duly executed by SELLER and BUYER.

Glencore Ltd.

By: _____
Name: _____
Title: _____
Date: _____

City of Lakeland, Florida

By: _____
Name: R. Howard Wiggs
Title: Mayor _____
Date: _____

Attest: _____
Printed Name Kelly Koos
Title: City Clerk

Approved as to form and correctness:

Timothy J McCausland, City Attorney