



MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is entered into this 21st day of April, 2008 by and between Aquila, Inc. ("Aquila") and Cass County, Missouri ("Cass County" or "County").

The parties are and have been in an extended dispute regarding the legality of the construction and operation of the South Harper Plant and the Peculiar Substation ("Facilities") and have reached this Agreement to address and to resolve their disputes. The parties desire to execute this Agreement to reflect the material terms and conditions agreed to by and among them at a meeting conducted on April 17, 2008.

The parties unconditionally agree as follows:

1. Aquila will reimburse Cass County, within ten (10) days of the date of this Agreement, the full amount of its attorneys' fees and expenses, including expert witness fees, incurred in connection with all related litigation, appeals and PSC proceedings involving the Facilities. The total amount of these fees and expenses through March 30, 2008 is \$587,023.25, inclusive of an allocation of the salary paid by the County to its County Counselor.
2. Aquila will remit to the County, within ten (10) days of the date of this Agreement, a fine of \$1,000 per day (\$500 for the South Harper Plant and \$500 for the Substation), from and after December 1, 2004 through the date of the Agreement, in the total amount of \$1,234,000.00, which fine is being assessed in accordance with the County's authority under its Zoning Order.
3. Aquila will agree to indemnify, defend and to hold harmless Cass County and its officials from any suit, action or proceeding initiated by any person or entity against the County and/or any of its officials relating directly or indirectly to this Agreement, to any agreed modifications to the Judgment issued by the Cass County Circuit Court in favor of Cass County in Case Number CV104-1443CC on January 11, 2005, to the lawfulness or reasonableness of the County's consideration and/or issuance of Special Use Permits ("SUP") for the Facilities, to the enforcement of any SUPs issued for the Facilities, or to any other matter fairly related to the intent and substance of this Agreement.
4. Aquila, and its successors in interests, agree they will at no time hereafter proceed with improvements of any kind or nature within unincorporated Cass County without first securing land use regulatory approval for such

Company Exhibit No. 1
Case No(s). EA-2009-0018
Date 7/2/08 Rptr PR

improvements from the County, whether or not same is required by R.S.Mo. § 64.235, or by any other statute, and whether or not the Public Service Commission could be argued to have concurrent jurisdiction or authority over authorizing such improvements. This provision does not include transmission lines, distribution lines, or poles, but does address, by way of example, and without limitation, gas pipelines, substations, plants, generation facilities or other such improvements.

5. Aquila will immediately seek and secure a stay of pending Motions for Rehearing and/or to Transfer pending before the Missouri Court of Appeals for the Western District in WD67739 and WD67740, pending the County's consideration of the SUP Application hereinafter discussed. Aquila will encourage the other parties to that litigation to join in such motions. If a stay is not issued, or if for any other reason the status of the appellate proceedings as of the date SUP Applications are submitted, as hereinafter described, is such that the Opinion issued in the above referenced matter on March 4, 2008 has been deemed withdrawn (i.e. if transfer to the Supreme Court has already been ordered or accepted) then the parties will cooperate to reinstate the Opinion, it being expressly understood that the finality and continued effectiveness of the Opinion is a condition to the effectiveness of this Agreement and to the issuance of SUPs as described in paragraph 12.f, below.
6. Cass County will not oppose adoption of the House Committee Substitute for House Bill 2279 and the House Committee Substitute for House Bill 2468 (or any equivalent version of the proposed Section 393.171 contained in another bill) in the form voted out of the House Utilities Committee if the proposed additions of Section 393.170.4 and Section 393.170.5 are deleted, and if no other material changes are made to the bill. Ultimate passage of the bill is not a condition, however, to the effectiveness of this Agreement. However, the County (i) agrees it will not impose a condition on SUPs, if any, issued for the Facilities, that Aquila receive regulatory approval from the PSC for the Facilities, and (ii) agrees, if SUPs are issued for the Facilities, that it will not otherwise contest the legality of the Facilities on the basis that the Facilities lack PSC approval under Section 393.170. If the bill is adopted by the legislature, and if Aquila thereafter applies to the PSC for post-construction CCN's for the Facilities in accordance with Section 393.171 of the bill, then the County will not oppose such a request if SUPs are hereinafter issued by the County for the Facilities, though the County will retain and have the right to intervene in any such PSC proceedings.
7. Aquila represents and warrants that (i) KCPL and Great Plains Energy (who are contemplating merger with Aquila) are aware of this Agreement, (ii) the execution of this Agreement by Aquila does not violate any covenant or condition in the merger agreement, and (iii) that Aquila, which will become

a subsidiary of Great Plains following the merger, will continue to be bound by the terms of this Agreement following consummation of the merger.

8. Each party executing this Agreement represents and warrants that they have the requisite legal authority to execute this Agreement and to bind said party to the terms and conditions of this Agreement.
9. Aquila and the County anticipate and intend that a copy of this Agreement will be provided to StopAquila.org to be considered by the members of that organization as a part of, and in conjunction with, settlement negotiations by and among Aquila and StopAquila.org. It is intended that Aquila will extend a monetary offer of settlement to the members of StopAquila.org. It is expected that a meeting of StopAquila.org members for the purpose of discussing this Agreement and the monetary offer from Aquila will occur within the next ten days to two weeks. Though the outcome of that meeting is not a condition to the effectiveness of this Agreement, Aquila understands and agrees that the County expects Aquila to proactively work toward a negotiated settlement with the members of StopAquila.org in advance of any issuance of an SUP by the County for the Facilities. Should an agreement be reached between StopAquila.org and Aquila, then an appropriate Addendum reflecting the terms of any such agreement will be executed by StopAquila.org, Aquila and the County and attached to and made a part of this Agreement.
10. Though not a condition to the effectiveness of this Agreement, Aquila understands and agrees that the County expects Aquila to proactively work toward a negotiated settlement with the neighbors living near the Facilities represented by John Coffman and Matt Uhrig (more specifically identified in paragraph 12.i., below) in advance of any issuance of an SUP by the County for the Facilities. Should an agreement be reached between Aquila and those neighbors, then an appropriate Addendum reflecting the terms of any such agreement will be executed by those neighbors, Aquila and the County and attached to and made a part of this Agreement.
11. All representations and warranties in this Agreement shall survive the execution of this Agreement and shall remain enforceable.
12. ²⁰⁰⁸⁻⁴⁻²⁵⁻² Within ~~five (5)~~ ^{seven (7)} days of the meeting of StopAquila.org members discussed and anticipated in paragraph 9 above, Aquila shall file, and the County will accept an SUP application ("**Application**") for each of the Facilities, in the form required by the County, and accompanied by all required fees, supporting documents and materials required by the County. The Application will not be filed prior to the meeting of the StopAquila.org members anticipated by paragraph 9. The Applications will be considered by the County, in the ordinary course, pursuant to the procedures described in the County's Zoning Order. The County can not and does not assure

Aquila that an SUP will be issued for each of the Facilities, and the effectiveness and enforceability of the terms of this Agreement are not conditioned upon the issuance of SUPs for the Facilities. However, the County and Aquila agree that if the County, following compliance with the procedures in its Zoning Order for consideration of same, agrees to issue an SUP for each of the Facilities, the SUPs will be subject to at least the following conditions, and to such other conditions imposed by the County as the County may deem appropriate:

- a. The Facilities would be permitted to remain in their current locations. The locations would remain zoned "agricultural."
- b. Aquila, and its successors in interests, will not proceed with structural or other material improvements of any kind or nature to the Facilities without first securing land use regulatory approval or an SUP modification from the County, whether or not the Public Service Commission could be argued to have concurrent jurisdiction or authority over authorizing such improvements.
- c. Notwithstanding subsection (b), Aquila will not under any circumstances seek modification of the SUP for the South Harper Plant to request the right or authority to locate additional turbines at the South Harper Plant during the five (5) year period immediately following issuance of the SUP.
- d. Aquila and the County would agree to join and/or to not oppose a Motion to Modify the Judgment in Case No. CV104-1443CC due to a "change in circumstances" as a result of issuance of the SUP as to relieve Aquila of the dismantling order for the Facilities contained in said Judgment.
- e. Aquila would agree to release the \$350,000 Bond posted in connection with the aforesaid Judgment to the County.
- f. Aquila and the PSC will immediately dismiss the appeal pending in WD67739 and WD67740. The Opinion issued in said appeal on March 4, 2008 shall not have been withdrawn as of the date of issuance of SUPs.
- g. Aquila will remit to the County a fine of \$1,000 per day (\$500.00 per day for the Plant, and \$500.00 per day for the Substation) from the date of the Agreement through the date the SUPs are issued.
- h. Aquila will pay any attorneys' fees and expenses incurred by the County in connection with this Agreement and the consideration of the Application from April 1, 2008 through the date of issuance of

the SUP, and will pay, in addition, any attorneys fees and expenses incurred by the County in facilitating the performance of conditions imposed on the SUP, including, without limitation, conditions relating to modification of the Judgment in Case No. CV104-1443CC, and to dismissal of the appeal in WD67739 and WD67740.

- i. Aquila will stipulate in the following cases pending in the Circuit Court of Cass County: *Dillon v. Aquila, Inc., et al.*, Case No. 05CA-CV02172; *Crabtree v. Aquila, Inc., et al.*, Case No. 06CA-CV01494; *Miller v. Aquila, Inc. et al.*, Case No. 06CA-CV01373; *Cooper v. Aquila, Inc., et al.*, Case No. 06CA-CV01367; *Bockelman v. Aquila, Inc., et al.*, Case No. 05CA-CV02290; *Thompson v. Aquila, Inc., et al.*, Case No. CA-CV02894; and *Doll v. Aquila, Inc., et al.*, Case No. 06CA-CV01375, that the Facilities are a private nuisance provided that this stipulation shall only apply to plaintiffs' claims for money damages.
- j. Aquila will stipulate that the issuance of a SUPs for the Facilities shall not be relied on by Aquila to argue mitigation of damages or as a defense in any suit now pending or later filed by any person seeking money damages for nuisance.
- k. Any water supply required by the Facilities for fire protection or for normal operation shall at all times be adequate. In the event that Aquila is notified in writing that such service is or will be curtailed, Aquila will reduce its water consumption consistent with fire protection requirements until the situation has been corrected.
- l. Any non-compliance with the conditions of the SUPs, as determined by the County, shall require the Operator of the Facilities to cease all operations of the offending equipment within 24 hours of notification of the condition by the County. However, if the purported non-compliance is curable within sixty (60) days and the Operator is using reasonable efforts to cure the same, then in lieu of being required to cease operations, the Operator shall be liable for a fine of \$500.00 per day until such time as the non-compliance has been cured. Notification shall be in writing to the Vice President of Power Generator and Energy Resources, whose name shall be on file with the County, and updated by Aquila as necessary.
- m. Exterior lighting shall be kept at a minimum for security of the plant personnel. After sundown, exterior lighting shall not exceed 5 foot-candles in exterior work areas, parking and pedestrian areas and at the perimeter of the tracts, with the intent of minimizing the impact on the adjacent neighborhood.

- n. Sound generation as a result of the operation of the Facilities shall comply with the County's existing residential noise standards. Notwithstanding, sound generated during daylight hours of operation as described below shall not exceed 60 dBA at the property boundary. Sound generated during evening hours of operation as described below shall not exceed 55 dBA at the property boundary.
- o. Additional sound dampening or elimination measures as shall be determined by the County Commission, including that Aquila will use reasonable efforts to obtain the permission of Southern Star to install, at Aquila's expense, air vent silencers on Southern Star's gas compressor facilities adjacent to the South Harper Plant.
- p. Additional trees, berming, landscaping as shall be determined by the County Commission. This shall include, but will not be limited to, Aquila's obligation to work directly with the Missouri Conservation Department to develop a plan acceptable to the County to "forest" the acreage immediately to the north of the South Harper Plant.
- q. Aquila will have retained, in advance of the issuance of an SUP, an independent contractor or contractors acceptable to the County with expertise in sound controls and pollution controls for Facilities of this nature. Said contractors shall evaluate additional controls which are available and which can be reasonably implemented at the Facilities to control or minimize sound and pollutants, and will submit appropriate reports to the County for its consideration. The addition of reasonable and economical controls, if any, identified in these reports will be specified as conditions to the SUP, whether or not the controls are required by applicable Federal, State or agency laws or regulations, provided that in no event shall Aquila be required to expend in excess of \$2 million to implement any such additional sound and pollution controls.
- r. When reasonably requested by the County, the Operator shall monitor and record sound levels at designated positions on each tract. The Operator shall provide the results of such monitoring, obtained by an independent testing firm at Operator's expense.
- s. The Use anticipated by each SUP will be subject to a Road Impact Fee to be established by the County Commission under separate order.
- t. Use of any materials considered by Federal regulatory agencies to pose a hazard shall be allowed as part of the Use permitted by the SUP without specific advance written authorization from the County

Commission only if the use of hazardous materials is in compliance with OSHA, MDNR, and EPA regulations.

- u. Any detrimental health effects of electrical, magnetic or wave action occurring as a result of the Use permitted by the SUP, as hereinafter may be determined by the County Commission, and shall be mitigated using procedures customary in the electrical generation and transmission industry and in accordance with applicable Federal and/or State regulations.
- v. Aquila shall operate the Facilities in accordance with all applicable Federal, State, local and agency laws and regulations at all times.
- w. The Hours of Operation of the Facilities for power generation and/or transmission shall not be limited. However, for purposes of the conditions imposed on the SUPs, hours of daylight operation shall be deemed to be 7:00 a.m. to 7:00 p.m. according to the clock schedule in common use for the area.
- x. Such other routine and ordinary course conditions as are typically imposed by the County on SUP applications as follows:

1. Compliance with the most current Cass County Zoning Order, as amended, and with all applicable State, Federal and local laws, (the "Governing Laws") is a condition of the issuance of this Permit, subject to such variances as the County may deem appropriate. Any non-compliance with the Governing Laws as determined by the County Commission may be grounds for suspension of this Permit upon written notice to the Special Permit Holder, who agrees to cease all operation on the land referenced by this Permit within five (5) days of such notice; however, if the non-compliance is curable within sixty (60) days and the applicable Special Use Permit Holder is using reasonable efforts to cure the non-compliance, then in lieu of being required to cease operations, the Special Use Permit Holder shall be liable for a fine of \$500.00 per day until such time that the non-compliance has been cured. Any Special Use Permit which is suspended shall only be reinstated following the acceptable completion of a Compliance Action Plan with proof acceptable to the County Commission that such non compliance has been corrected. Following such acceptance, the Cass County Zoning Officer will notify the Special Permit Holder of this reinstatement within twenty four (24) hours.

2. All permits when required by State or Federal Authorities shall be obtained prior to commencement of

operations on the property referenced in this Permit, and a copy thereof shall be forwarded to the Cass County Zoning Department. Each time a permit is reissued or renewed, a copy shall be forwarded to the Cass County Zoning Department. Failure to obtain any required permit, or in the event of suspension or revocation of such permit, shall result in a like suspension or revocation of the Special Use Permit by the Cass County Commission. Any Special Use Permit which is suspended or revoked shall only be reissued under the conditions noted above.

3. Special Permit Holder agrees to the provisions governing Special Permits under the most current Cass County Zoning Order as now Amended and the specific provisions of this Permit, and agrees that all of these documents shall be applicable to this Permit and that the County may choose the provisions of any of these documents for purposes of enforcement proceedings.

4. The Cass County Commission, the Cass County Zoning Officer, or representative(s) appointed by these parties, specifically reserve the right to periodic, random, unannounced visits to the property referenced in this Permit, during the business hours established by this Permit, to ascertain whether all provisions of this Permit are current and in compliance. The Operator and their site management personnel agree to allow entry and access upon the property, and the facility, and to assist the inspectors in any manner requested, including but not limited to providing any requested records for review, for purposes of verifying Permit compliance.

5. An annual review of the conditions of the Special Use Permit and of the site shall be performed at the direction of the Cass County Zoning Department on or about the anniversary date of this Permit in order to insure the continued compliance of the Operator. There will be a fee charged for this review and inspection, the amount to be set by the Commission.

6. The Special Use Permits are not perpetual, but shall be granted for a period of twelve (12) months following the original issuance date. The County may at this annual renewal time revoke with cause, continue without change, or modify the terms and conditions of this Permit, subject to other conditions limiting the right to modify the SUPs; however, the Special Use Permits will not be unreasonably revoked or modified if Aquila is in compliance with the conditions of the SUPs at the time of such

renewal, or develops and implements an action plan to obtain compliance following notice by the County of any deficiency.

7. Following the annual review of the site, notification of the Permit will be issued by the Zoning Department. At each renewal period this Permit will be subject to modification for alignment with any Cass County Ordinance which is in effect at that time. The Operator will be provided, for their review, any such modifications prior to the renewal of the Permit. Agreement with any modifications will be a condition of the renewal of the Permit. Should the Permits be renewed with modifications, the renewal period will start over with a new twelve (12) month period. Should the Permits be renewed without modifications, the duration and annual renewal period will remain as originally established.

8. Failure or delay by the County to review or take the proscribed actions at the times indicated on the Permits in the prescribed time shall not act as a waiver by the County to review, revoke, or modify the Permits, shall not act as a renewal for the Permits, nor shall limit the County's remedies against the Operator. Until review and reissue, the Operator shall abide by the terms and conditions of the Permits. The Permits shall not be revoked, modified, or renewed without specific action by the Commission.

13. The parties hereto indicate their acceptance of the terms and conditions of this Agreement by their signatures below, which shall be deemed effective on and as of the date first above written.

CASS COUNTY, MISSOURI

BY:

Gary Mallory 4/25/08
Gary Mallory, Presiding Commissioner

BY:

John Seabaugh 4-29-08
John Seabaugh, Commissioner

BY:

Jim Meara, Commissioner

AQUILA INC.

BY:

Richard C. Heen

ITS:

Chairman & President