

RESOLUTION NO. 13-_____

WHEREAS, the City of Huntsville, Alabama (hereinafter referred to as Distributor), and Tennessee Valley Authority (hereinafter referred to as TVA), have heretofore entered into Power Contract TV54501A, dated May 26, 1980, as amended (which contract is hereinafter called the Power Contract); and

WHEREAS, Toyota Motor Manufacturing, Alabama, Inc. (hereinafter referred to as Company), Distributor and TVA wish to enter into an agreement with respect to Company's participation in the Valley Investment Initiative Participation Agreement (VII Agreement); and

WHEREAS, Company, Distributor and TVA wish to enter into such agreement concerning Company's monthly bill credits under the VII Bill Credits;

WHEREAS, there is now presented to the City Council of the City of Huntsville, Alabama, a proposed tri-party agreement instituting the Valley Investment Initiative Participation Agreement Amendment to be effective upon the date executed by TVA, with the representation that the said agreement has been approved by the Huntsville Electric Utility Board.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that it does hereby approve the aforesaid tri-party Agreement and Tommy Battle, as Mayor of the City of Huntsville, Alabama, be, and he is authorized to execute said tri-party Agreement for and on behalf of the City of Huntsville, Alabama, and the Clerk-Treasurer be and he is hereby authorized to attest the same and to affix thereto the seal of the City of Huntsville, Alabama, all in as many counterparts as may be necessary.

BE IT FURTHER RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an agreement by and between the City of Huntsville, the Tennessee Valley Authority and Toyota Motor Manufacturing, Alabama, Inc., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Valley Investment Initiative Participation Agreement Amendment Among Toyota Motor Manufacturing, Alabama, Inc., City of Huntsville, Alabama and Tennessee Valley Authority," consisting of eleven (11) pages and the date of _____, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the _____ day of _____, 2013.

President of the City Council of the
City of Huntsville, Alabama

APPROVED this the _____ day of _____, 2013.

Mayor of the City of Huntsville,
Alabama



Tennessee Valley Authority, Post Office Box 292409, Nashville, Tennessee 37229

April 11, 2013

Mr. William C. Pippin
President and CEO
Huntsville Utilities
112 Spragins Street
Huntsville, Alabama 35801

Dear Mr. Pippin:

VII PARTICIPATION AGREEMENT

Enclosed are three ⁴ originals of the Valley Investment Initiative Participation Agreement. Upon execution of the ~~three~~ ⁴ duplicate originals of the Participation Agreement by Huntsville Utilities and Toyota Motor Manufacturing, Alabama, Inc., please return them to Carrie Horne for further handling and execution by TVA.

Carrie Horne
Power Contracts
Tennessee Valley Authority
400 West Summit Hill Drive, WT 3D
Knoxville, Tennessee 37902

The signed Participation Agreement originals will need to be returned to TVA no later May 3, 2013. Please note that the Participation Agreement originals will be dated when presented to TVA for execution.

If Toyota Motor Manufacturing, Alabama, Inc., has signed a VII-conforming power contract with Huntsville Utilities but not yet provided a copy to TVA, please send it with the signed Participation Agreement originals. A VII-conforming power contract is one with a term at least as long as the VII Award Period.

Upon execution by TVA, ³ two fully executed Participation Agreement originals will be returned to you for your and Toyota Motor Manufacturing, Alabama, Inc.'s, files.

Sincerely,

John J. Bradley
Senior Vice President
Economic Development

Van M. Wardlaw
Executive Vice President
Customer Relations

Enclosures

**VALLEY INVESTMENT INITIATIVE
PARTICIPATION AGREEMENT**
Among
**TOYOTA MOTOR MANUFACTURING, ALABAMA, INC.,
CITY OF HUNTSVILLE, ALABAMA,
And
TENNESSEE VALLEY AUTHORITY**

Date: _____

VII Contract No. 7282

TV-54501A, Supp. No. 114

THIS AGREEMENT will confirm the understandings among TOYOTA MOTOR MANUFACTURING, ALABAMA, INC. (Company), the CITY OF HUNTSVILLE, ALABAMA (Distributor), and TENNESSEE VALLEY AUTHORITY (TVA) with respect to Company's participation in the Valley Investment Initiative (VII) being jointly conducted by Distributor and TVA.

It is understood and agreed that:

SECTION 1 - DEFINITIONS

Underlined terms used in this Agreement are defined in Company's "Valley Investment Initiative Award Application" (VII Award Application) which is attached to and made a part of this Agreement.

SECTION 2 - TERM

This Agreement shall become effective on the date first written above (Effective Date), and shall continue in effect through the end of the Award Period described below, except that the provisions of sections 3.2, 6.2, 7.3, 7.4, 9.3, and 10 below shall continue in effect until the obligations of the parties under them are fulfilled.

SECTION 3 - ELIGIBILITY FOR VII

3.1 Company's Certification. Company's eligibility for the VII award provided for in section 4 below is based on TVA's determination that Company meets the criteria of a Qualifying Customer at Company's Qualifying Plant. It is expressly recognized that such determination is based on information provided and certified by Company in the VII Award Application.

3.2 Access to Records. Company shall keep and make available accurate records and books of accounts related to Company's VII Metrics, as well as data to support compliance with the terms and conditions of this Agreement subject to the provisions of section 10 of this Agreement. Company shall allow Distributor, TVA, and their agents and employees, access, during normal working hours and upon advance reasonable notice and the signing of any necessary confidentiality documents, to all such books, records, and other documents of Company until the completion of all close-out procedures respecting this Agreement and the final settlement and conclusion of all issues arising out of this Agreement.

SECTION 4 - VII AWARDS

Based on Company's projections and the information contained in the VII Award Application, Company will be eligible to receive a VII award in the form of monthly credits on Company's bill for firm power provided to the Qualifying Plant (Bill Credits) beginning on August 1, 2013. Except as otherwise provided below, Distributor shall apply the monthly Bill Credits for each year of the 5-year period in amounts equal to 1/12 of the Maximum Annual Award amounts set out in the table below.

Year	Maximum Annual Award
1	\$ 187,606.92
2	\$ 187,606.92
3	\$ 187,606.92
4	\$ 187,606.92
5	\$ 187,606.92

Company shall not be eligible for and will not earn or receive any Bill Credits for any amount that exceeds the amount of Company's monthly power bill(s) attributable to Company's Qualifying Plant in any given month. In the event that Company receives more than one power bill in any month for its Qualifying Plant, Distributor may distribute the Bill Credit among multiple power bills to ensure that the VII credit on any power bill does not exceed the total retail amount of that power bill.

SECTION 5 - REPORTING BY COMPANY

5.1 Annual Reporting. Within 60 days after the end of each 12-month period of the Evaluation Period, Company shall provide TVA a report certified by Company's duly authorized officer (Annual Certification), and verified by Distributor pursuant to section 6.1 below, updating the information and projections provided in Company's VII Award Application and showing Company's VII Metrics for the most recent Evaluation Period year. The Annual Certification shall be in a form furnished by TVA.

5.2 Continuing Reporting Obligation. Company shall promptly notify Distributor and TVA of any material changes in the information provided in its VII Award Application or its Annual Certifications. Upon receipt of such notice, TVA may at that time take the steps outlined in section 7 below.

SECTION 6 - DATA SUPPLIED BY DISTRIBUTOR

6.1 Annual Certification. It is recognized that Company's eligibility to receive the Bill Credits provided for in this Agreement is based on information provided by Company and, where applicable, verified by Distributor in Company's VII Award Application and Annual Certifications. Distributor shall review Company's Annual Certification each year and, where requested by TVA, shall certify the accuracy of certain items, including:

- (a) Company's payment history under its power supply contract with Distributor,

- (b) total kWh usage and highest Total Metered Demand of Company's Qualifying Plant for each of the previous 12 months, and
- (c) whether Company's Qualifying Plant is a Nonconforming Load.

6.2 Monthly Data. It is recognized that Distributor may be responsible for providing and maintaining metering facilities which are capable of recording the data specified in items (b) and (c) above. If requested by TVA, Distributor shall make available to TVA any such meter data necessary for TVA to verify Company's eligibility for participation in VII or calculate Bill Credits under this Agreement. Upon request, Distributor shall also furnish to TVA a copy of Company's power bill each month, which shall itemize the amount of any Bill Credit for that month, and any other information related to Company's eligibility for and participation in VII as TVA may reasonably request.

6.3 Other Information. Distributor shall promptly notify TVA if Company (a) gives notice to terminate the power supply contract under which power is supplied to Company's Qualifying Plant or (b) materially breaches the power supply contract under which power is supplied to Company's Qualifying Plant or materially breaches any overlay, supplement, or amendment to that contract, such that Distributor either suspends or terminates power supply, or suspends or terminates any product or other arrangements made available as an overlay, supplement, or amendment to the power supply contract.

SECTION 7 - AWARD ADJUSTMENT AND RECOVERY

7.1 Annual Award Adjustments. Each year, and immediately upon receipt of any notice pursuant to sections 5.1 and 5.2 above, TVA will calculate adjusted Maximum Annual Awards (Adjusted Awards) for the Evaluation Period. The Adjusted Awards will be calculated by applying the information, projections, and VII Metrics provided in Company's Annual Certification or notice to the same formula that was used in calculating the Maximum Annual Awards set out in the tabulation in section 4 above, except that the total kWh usage and highest Total Metered Demand for each month in the previous year will be used in the calculation in place of Company's projections for that period. If the Adjusted Awards are less than the Maximum Annual Awards for those years set out in section 4 above, the sum of Company's monthly Bill Credits in the remaining Award Period years will be equal to the Adjusted Awards for the remaining Award Period minus the difference between the monthly Bill Credits Company received and the amount that the Bill Credits would have been if they had been calculated using the VII Metrics provided in Company's Annual Certification or notice. Notwithstanding TVA's calculation of Adjusted Awards, it is expressly recognized that Company shall neither earn nor receive in any month Bill Credits greater than 1/12 the Maximum Annual Awards set out above.

7.2 Disqualification. During the term of this Agreement, TVA will use Company's VII Metrics and other information available to TVA during the Evaluation Period and Award Period to determine whether Company remains eligible to participate in VII. If at any time during the term of this Agreement TVA determines that Company ceases to qualify for VII, the Bill Credits provided under section 4 above shall be discontinued. At such time, if any, during the Award Period that Company provides certification that it again meets the VII eligibility requirements set forth in the VII Award Application, the Bill Credits will resume. Company shall not be eligible for and will not earn or receive any Bill Credits for those periods when it does not qualify for VII.

It is expressly recognized that (a) should Company provide notice to terminate its power supply contract which would become effective prior to the completion of the Award Period, Company shall cease to qualify for VII pursuant to A.2.2 of the VII Award Application and (b) Company shall not be eligible for and will not earn or receive any Bill Credits for those periods when it does not qualify for VII. It is further recognized that Company shall not be required to repay any award amounts to TVA under 7.3 below solely as a result of such termination notice, so long as Company did not receive Bill Credits during any period when it did not qualify for VII.

7.3 Award Recovery. Company shall not be eligible to receive Bill Credits under section 4 above and this Agreement shall be deemed to have automatically and immediately terminated if at any time any of the following occurs:

- (a) Company fails to make the required Minimum Capital Investment;
- (b) Company provides materially false information on its VII Award Application or Annual Certifications;
- (c) Company fails to notify TVA of material changes in information provided in its VII Award Application or Annual Certification;
- (d) Company materially breaches the power supply contract under which power is supplied to Company's Qualifying Plant or materially breaches any overlay, supplement, or amendment to that contract, such that Distributor either suspends or terminates power supply, or suspends or terminates any product or other arrangements made available as an overlay, supplement, or amendment to the power supply contract;
- (e) Company's power supply contract otherwise expires or is terminated without being renewed or replaced by a power supply contract meeting the requirements of the VII Award Application; or
- (f) Company ceases commercial operation of its Qualifying Plant.

Promptly upon receipt of an invoice, Company shall immediately pay to Distributor any and all award amounts paid to Company during any period when Company was ineligible to receive Bill Credits as well as any and all award amounts in excess of those to which Company was entitled based on its actual VII Metrics.

7.4 Final Adjustment and Recovery. Upon receipt of Company's final Annual Certification and calculation of the corresponding Adjusted Award, Company's remaining monthly Bill Credits will be reduced by the difference between the monthly Bill Credits Company received and the amount that the Bill Credits would have been if they had been calculated using the VII Metrics provided in Company's final Annual Certification. In the event that the remaining Bill Credits are insufficient to recover the difference, Company shall immediately pay to Distributor the unrecovered balance of the difference.

SECTION 8 - ENHANCED GROWTH CREDIT

It is understood and agreed that Company and Distributor shall not enter into an Enhanced Growth Credit (EGC) participation agreement during the term of this Agreement.

SECTION 9 - WHOLESALE ADJUSTMENTS

9.1 Company Credit. Each month Distributor shall apply the Bill Credit to Company's power bill(s). TVA shall notify Distributor of (a) any adjustment to the Bill Credits provided

for under section 7.1 of this Agreement and (b) any discontinuance of Bill Credits in accordance with sections 7.2, 7.3, or 7.4 of this Agreement.

9.2 Distributor Credit. TVA will apply a monthly credit to Distributor's wholesale power bill equal to the Bill Credit applied by Distributor to Company's bill in that month.

9.3 Award Recovery. In the event that under the provisions of section 7.3 of this Agreement it is determined that Company received Bill Credits for which it was not eligible, Distributor and TVA shall fully cooperate in (a) endeavoring to collect from Company any amounts due under said sections 7.3 and/or 7.4 and (b) making appropriate adjustments to Distributor's wholesale power bill to pass through to TVA amounts collected from Company. The obligations of this paragraph shall survive any expiration or termination of the VII Participation Agreement until they are discharged.

SECTION 10 - CONFIDENTIALITY

It is expressly recognized that the VII Award Application and the Annual Certification are the property of TVA and are not intended for further distribution. Except as may be otherwise required by law,

(a) TVA and Distributor will not disclose, except to each other, confidential information provided by Company in those documents or confidential information provided pursuant to 3.2 above without Company's written consent, and

(b) Company shall not disclose those documents or their contents except to the following:

(i) TVA or Distributor;

(ii) Company's employees, representatives, auditors or other consultants so long as the disclosure (1) is not to a competitor of TVA or Distributor, (2) is made subject to a nondisclosure agreement entered into by Company's auditors and consultants who will have access to the documents, (3) is made solely on a "need to know" basis, and (4) is made subject to the requirement that all copies of the disclosed documents and contents be returned to Company or destroyed upon conclusion of an auditor's or consultant's work for Company. Company will make reasonable efforts to minimize the amount of any such information disclosed to its auditors or consultants;

(iii) Company's affiliates, provided that (1) the disclosure is not to a competitor of TVA or Distributor, and (2) Company shall inform its affiliates of the confidential nature of the information and shall be responsible for any breaches of this provision by its affiliates in the same manner and to the same extent as if the breach had been made by Company. As used in the preceding sentence, "affiliates" shall mean, with respect to any entity, any other entity (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

SECTION 11 - NOTICES

11.1 Persons to Receive Notice. Any notice required by this Agreement shall be deemed properly given if delivered in writing to the address specified below: (a) personally, (b) by recognized overnight courier service, or (c) by United States Mail, postage prepaid.

To TVA:

Valley Investment Manager
TVA Economic Development
26 Century Blvd., Suite 100 OCP 6D
Nashville, Tennessee 37214

To Company:

General Manager
Toyota Motor Manufacturing, Alabama, Inc.
1 Cottonvalley Drive Northwest
Huntsville, Alabama 35810

To Distributor:

President and CEO
Huntsville Utilities
Post Office Box 2048
Huntsville, Alabama 35804-2048

11.2 Changes in Persons to Receive Notice. The designation of the person to be so notified, or the address of such person, may be changed at any time and from time to time by any party by similar notice.

SECTION 12 - WAIVERS

A waiver of one or more defaults shall not be considered a waiver of any other or subsequent default.

SECTION 13 - APPLICATION CORRECTION

13.1 VII Application Page Correction. The parties acknowledge and agree that Page 1 of the Company's VII Application has been replaced with the updated version herein.

13.2 Customer's Legal Name. The parties acknowledge and agree that the Customer's legal name is Toyota Motor Manufacturing, Alabama, Inc.

13.3 VII Application Date. The parties acknowledge and agree that the VII Application was signed and submitted on May 4, 2012.

SECTION 14 - ENTIRE AGREEMENT

All terms and conditions with respect to this Agreement are expressly contained herein and Company agrees that no representative or agent of TVA or Distributor has made any representation or promise with respect to this Agreement not expressly contained herein.

SECTION 15 - SUCCESSORS AND ASSIGNS

This Agreement may be assigned by TVA, but shall not be assignable by Company or Distributor without written consent of TVA.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, as of the day and year first above written.

**TOYOTA MOTOR MANUFACTURING,
ALABAMA, INC.**

By _____
Title:

CITY OF HUNTSVILLE, ALABAMA

By _____
Title:

TENNESSEE VALLEY AUTHORITY

By _____
Senior Manager
Power Contracts



Form Instructions:
 To receive a Preliminary Evaluation, a Customer must complete the gray fields below and submit the electronic Form to your TVA Economic Development Regional Consultant. To submit a formal Award Application and secure an award, see instructions below.

Customer Information

Customer or project name:	Project Styx
Customer contact person:	Mark Brazeal
Title:	General Manager Administration
Telephone number:	(256) 746-5401
E-mail address:	mark.brazeal@tema.toyota.com

Project Information

Project/investment description:	Total Project Costs are \$88,302,363 with 126 Jobs for Expansion of the current plant.
Estimated Customer decision date:	Mid-May 2012
Is this a competitive project?	Yes
If yes, list competing locations:	Kentucky
Is the investment related to, or does it depend on another facility closing?	No
If yes, list facilities and locations:	N/A
Is there a need for gap financing?	No
If yes, describe the need including a description of the asset/proposed collateral:	N/A

Plant Information

Plant location:	1 Cottonvalley Drive Northwest	Huntsville	Madison	AL	35810
	Street Address	City	County	State	Zip Code
Plant Book Value:	\$218,031,289				
Plant is served by:	Huntsville Utilities				
What was/will be the Plant's Commercial Operation Date?	Existing Facility				
List the Plant's non-excluded 3-Digit NAICS code (definitions in Attachment 2, section A.2.7 below):	336				
Is the Customer receiving Enhanced Growth Credits (EGC) or participating in the EGC Program?	No				
If Customer is currently receiving EGC, is the Customer more than half-way through its EGC credit period?	N/A				
Will the Customer have a standard firm power contract at least as long as the Customer's VII Award Period?	Yes				

Base Year Power Usage for Existing Plant

Contract Demand from Power Contract:	C: Greater than 15,000 kW, but not more than 25,000 kW											
Base Year Power Usage: Please input existing Plant's monthly metered demand (kW) and energy usage (kWh)												
Meter Read Date:	4/1/12	3/1/12	2/1/12	1/1/12	12/1/11	11/1/11	10/1/11	9/1/11	8/1/11	7/1/11	6/1/11	5/1/11
kW:	11,460	11,488	11,200	10,848	11,910	11,458	11,260	11,296	10,692	9,950	8,596	9,632
kWh:	5,296,293	4,693,024	4,902,404	4,014,406	4,448,563	4,518,188	4,088,724	4,555,013	3,189,606	3,486,578	2,661,879	2,848,331

Year-by-Year VII Projections

	ENERGY				ECONOMIC		
	Average Monthly Total Metered Demand (kW)	Highest Annual Total Metered Demand (kW)	Total Annual Electric Energy (kWh)	Annual Load Factor	Capital Investment (\$)	Average Full-Time Equivalent Employees	Customer Average Wage (Annual)
Base Year	10,816	11,910	48,703,009	46.7%	N/A	1,012	N/A
Evaluation Period Year 1	11,357	11,910	55,227,978	52.9%	\$46,187,500	1,050	\$49,920
Evaluation Period Year 2	11,426	12,117	55,645,902	52.4%	\$42,114,863	1,100	\$52,000
Evaluation Period Year 3	11,564	12,117	56,481,750	53.2%	\$0	1,176	\$54,080
Evaluation Period Year 4	12,443	13,273	81,936,054	70.4%	\$0	1,176	\$56,160
Evaluation Period Year 5	12,443	13,273	81,936,054	70.4%	\$0	1,176	\$58,240

Smart Energy Opportunities				
Category	Program/Contract	Participation Details	Current Participant	Plan to Participate
TVA Renewable	TVA Renewable Standard Offer (> 50 kW, but less than 20 MW)	Install eligible renewable generation system (51 kW to 20 MW) to sell energy to TVA	<input type="checkbox"/>	<input type="checkbox"/>
TVA Energy Efficiency	TVA EnergyRight Solutions for Industry	Participate in TVA's Major Industrial Program; www.EnergyRight.com	<input type="checkbox"/>	<input type="checkbox"/>
	TVA EnergyRight Solutions for Businesses	Participate in TVA's EnergyRight Solutions for Business; www.EnergyRight.com	<input type="checkbox"/>	<input type="checkbox"/>
TVA Rates, Demand Products or Overlays	TVA EnerNOC Demand Response	Participate in this load reduction initiative with TVA and your local Power Distributor	<input type="checkbox"/>	<input type="checkbox"/>
	TVA 5 or 60 Minute Response (5MR or 60MR)	Participate in this load reduction initiative with TVA and your local Power Distributor	<input type="checkbox"/>	<input type="checkbox"/>
	TVA Time of Use (TOU)	Sign up for TOU energy rates with TVA or your local Power Distributor	<input type="checkbox"/>	<input type="checkbox"/>
3rd Party Efficiency	US Green Building Council - LEED Certification	Achieve LEED certification for the building or facility	<input type="checkbox"/>	<input type="checkbox"/>

VII Award Application Information

Customer's legal name for VII Contract: Toyota Motor Manufacturing Alabama, Inc
Matches name on Firm Power Contract

Customer DUNS number: 107978962

Person to receive notices related to any VII contract: Mark Brazeal

Title: General Manager

Mailing address: 1 Cottonvalley Drive Huntsville Al 35810
Street Address City State Zip Code

E-mail address: mark.brazeal@tma.toyota.com

Telephone number: 256-746-5401

Select a VII payment schedule:

5-Yr Front-Loaded
 5-Yr Flat
 5-Yr Load-Tracking
 8-Year Declining

Customer's legal name for VII Contract: Toyota Motor Manufacturing Alabama, Inc. This information is provided for the Power Distributor. Signature of the Customer is required for the award application. The Power Distributor will verify the information provided by the Customer. The Power Distributor will verify the information provided by the Customer. The Power Distributor will verify the information provided by the Customer.

Customer's legal name for VII Contract: Toyota Motor Manufacturing Alabama, Inc. This information is provided for the Power Distributor. Signature of the Customer is required for the award application. The Power Distributor will verify the information provided by the Customer. The Power Distributor will verify the information provided by the Customer. The Power Distributor will verify the information provided by the Customer.

I am an authorized representative of the Customer listed below, and I certify to TVA that the above information is true and correct.

Toyota Motor Manufacturing Alabama, Inc

Name: Mark Brazeal
 Title: General Manager
 Signature: [Handwritten Signature]

Date: 4-May-12

I am an authorized representative of the Power Distributor listed below, and I certify to TVA that the Plant Information and Base Year Power Usage above is true and correct.

Huntsville Utilities

Name: DARREN HUNTER
 Title: CONTRACTS & INDUSTRIES COORDINATOR
 Signature: [Handwritten Signature]

Date: _____

TVA RESTRICTED INFORMATION: This Form is the property of TVA and is not intended for further distribution. Except as may be otherwise be required by law, (a) neither Customer nor Distributor shall disclose this document or its contents except to one another and/or TVA; (b) TVA and Distributor will not disclose confidential information provided by Customer herein without Customer's consent.

TVA RESTRICTED INFORMATION: This Form is the property of TVA and is not intended for further distribution. Except as may be otherwise be required by law, (a) neither Customer nor Distributor shall disclose this document or its contents except to one another and/or TVA; (b) TVA and Distributor will not disclose confidential information provided by Customer herein without Customer's consent.

Attachment 1
Definitions

A.1.1 "Annual Load Factor" shall mean the percentage calculated by dividing a Plant's total metered energy for any year by the product of the highest Total Metered Demand for that year and the number of clock hours in that year.

A.1.2 "Award Period" shall mean the period from the first billing period in which a Customer is scheduled to receive a VII Bill Credit through the 5th anniversary of said billing period.

A.1.3 "Base Year" shall mean the 12-month period immediately preceding the date a Customer submits a VII Award Application.

A.1.4 "Commercial Operation Date" shall mean the date certified by Customer and agreed to by TVA when the Plant achieved Commercial Operation. Factors to be considered by Customer in determining and certifying to TVA that a Plant has achieved Commercial Operation include but are not limited to the following: whether Plant construction is complete; whether testing is complete; whether the Plant is regularly producing goods or services for sale; whether Plant assets have been placed in service for Federal income tax purposes; and whether the Plant is purchasing firm power pursuant to a written power contract conforming with A.2.2.

A.1.5 "Customer" shall mean a company purchasing power for its Plant from TVA or a distributor of TVA power under a written power supply contract(s).

A.1.6 "Customer Average Wage" shall mean the Customer's total annual payroll (minus benefits) for Full-Time Equivalent Employees divided by the number of Full-Time Equivalent Employees.

A.1.7 "Evaluation Period" shall mean the period from either (a) the date of submission of a Customer's completed VII Award Application, or (b) the date on which Customer's Qualifying Plant achieves Commercial Operation, whichever is later, through the 5th anniversary of said date.

A.1.8 "Full-Time Equivalent Employee" for any month shall mean the sum of (a) the number of full-time on-site Plant employees and contractors of a Customer who spend 100% of their work time on Plant-related matters in that month and (b) a number equal to the sum of total hours worked on Plant-related matters in that month by (i) full-time on-site Plant employees of Customer who spend less than 100% of their work time on Plant-related matters and (ii) part-time on-site Plant employees of Customer divided by the number of work hours in that month (based on an 8-hour work day, Monday through Friday).

A.1.9 "Nonconforming Loads" as currently defined, shall mean electrical loads with a total contract demand of more than 50 MW and with one or more of the

- (a) expected load swings of approximately 50 MW or more and ramp rates of approximately 10 MW or more per minute,
- (b) loads with expected daily reactive power ramp rates of 50 MVAR or more per minute,
- (c) loads known to create voltage flicker exceeding the limits set out in the Institute of Electrical and Electronics Engineers (IEEE) Standard 1453, or
- (d) loads known to create harmonic current distortions exceeding the limits set out in IEEE Standard 519.

A.1.10 "Plant" shall mean all (a) physical personal property and (b) things attached, annexed, or fixed to the Customer's real property (such as Customer's building) that are (1) used in the Customer's trade or business characterized by the same NAICS code(s), (2) depreciable for federal income tax purposes, and (3) located on contiguous real property in the TVA service area.

A.1.11 "Plant Book Value" shall mean the most recent depreciated value of a Customer's Plant for Federal income tax purposes, as of the date Customer submits a VII Award Application.

A.1.12 "Qualifying Customer" shall mean a Customer that submits a VII Award Application and is found by TVA to meet the Customer eligibility requirements.

A.1.13 "Qualifying Plant" shall mean a Plant for which a Customer has submitted a VII Award Application and is found by TVA to meet the Plant eligibility requirements.

A.1.14 "Total Metered Demand" shall mean the average during any 30-consecutive-minute period beginning or ending on a clock hour of the total load at the Customer's Plant measured in kW.

A.1.15 "Total Capital Investment" shall mean the sum of the following during the Evaluation Period:

1. investments in the Plant which Customer intends to depreciate for Federal income tax purposes;
2. the depreciated book value of Customer assets transferred to the Plant from outside the TVA service area; and

In the event TVA provides Customer a VII Preliminary Evaluation prior to Customer's Commercial Operation Date, the Total Capital Investment shall also include the sum of the following during the period from the date TVA first provides a VII Preliminary Evaluation through the beginning of the Evaluation Period:

1. investments in the Plant which Customer intends to depreciate for Federal income tax purposes;
2. the depreciated book value of Customer assets transferred to the Plant from outside the TVA service area; and
3. the appraised value of real estate and existing building(s), if any, which are part of the Plant and are acquired by Customer pursuant to a purchase and/or lease or which Customer becomes otherwise legally entitled to occupy.

A.1.16 "VII Metrics" shall mean the information necessary for TVA to determine a Qualifying Customer's monthly award under the VII Program. For any year, the VII Metrics shall include that year's:

- (a) total Plant kWh usage and highest Total Metered Demand for each month,
- (b) contribution towards the Total Capital Investment,
- (c) average number of Full-Time Equivalent Employees,
- (d) Customer Average Wage,
- (e) Annual Load Factor,
- (f) evidence of participation in Smart Energy Commitment programs.

The VII Metrics shall be based on the most current data available and certified by Customer's duly authorized officer.

Attachment 2
Eligibility

A.2.1 A Qualifying Customer with a Qualifying Plant will be eligible for a VII award.

A.2.2 Contractual Requirements. A Customer's power supply contract(s) for power supplied to its Plant must provide for the Customer to purchase firm power for a term at least as long as the Customer's VII Award Period under a general service rate schedule or a manufacturing service rate schedule, or any replacement schedule of the general service or manufacturing service rate schedule. The power supply contract(s) may include a standard pricing overlay under a separate agreement implementing a TVA-approved program, subject to all of the standard terms and conditions under which the program is offered.

A.2.3 Minimum Demand Requirements. A Customer's power supply contract must provide for a firm contract demand of at least 250 kW. Customers with meaningful Base Year data as solely determined by TVA must establish a Total Metered Demand of at least 250 kW in each month of the Base Year. Further, a Customer will not be eligible to receive a monthly award under the VII Participation Agreement in any month where the Total Metered Demand is not at least 250 kW.

A.2.4 Minimum Capital Investment.

A Customer with meaningful Base Year data for its Plant must make a Total Capital Investment of at least 25 percent of its Plant Book Value including minimums of

- a. 5 percent of its Plant Book Value by the end of the first Evaluation Period year,
- b. 8 percent of its Plant Book Value by the end of the second Evaluation Period year,
- c. 11 percent of its Plant Book Value by the end of the third Evaluation Period year,
- d. 14 percent of its Plant Book Value by the end of the fourth Evaluation Period year, and
- e. 25 percent of its Plant Book Value by the end of the fifth Evaluation Period year.

Whether Base Year data for a Plant is meaningful shall be solely determined by TVA.

A.2.5 Minimum Workforce Requirements. A Customer must employ at least 25 Full-Time Equivalent Employees during each month of the Customer's Base Year, if any, and during each month of the Customer's Evaluation Period. Further, a Customer that eliminates, or projects the elimination of, 50% or more of its Full-Time Equivalent Employees during the Evaluation Period shall not be a Qualifying Customer.

A.2.6 Nonconforming Loads. A Plant with Nonconforming Load characteristics shall not be a Qualifying Plant.

A.2.7 Ineligible Industry Sectors. A Plant where the major use of electricity is for activities which are classified with one of the following North American Industry Classification System (NAICS) codes shall not be a Qualifying Plant:

Excluded Sectors - Corresponding NAICS Codes

Agriculture, Forestry, Fishing, and Hunting - 11

Mining - 21

Utilities - 22

Construction - 23

Retail Trade - 44-45

Transportation - 48, 491, 492

Real Estate and Rental and Leasing - 53

Administrative and Support and Waste Management and Remediation Services - 56

Educational Services - 61

Health care and Social Assistance - 62

Arts, Entertainment, and Recreation - 71

Accommodations and Food Service - 72

Other Services - 81

Public Administration - 92

Provided however that a Plant where the major use of electricity is for activities within an excluded NAICS code may participate in the program under the following conditions:

- a. The Plant's sub-sector industry multiplier and Customer Average Wage exceed the Valley average;
- b. The Customer provides documentation demonstrating economic development support and/or incentives being provided by state and/or local economic development partners; and
- c. TVA's VII Committee determines that the Customer meets the above requirements, other VII qualification criteria, and programmatic intent.

A.2.8 Financial Review. A Qualifying Customer must be determined by TVA to be financially viable. In order to facilitate TVA's evaluation of a Customer's financial condition, a Customer will provide, upon request by TVA: (i) a copy of Customer's three most recent annual reports containing consolidated financial statements and its most recent quarterly report containing consolidated financial statements; and (ii) such different or additional financial information as TVA may from time to time request for TVA's use in evaluating Customer's financial condition. The financial statements to be provided by Customer shall be prepared in accordance with generally accepted accounting principles.

A Customer may provide financial statements requested in subsection (i) above for a parent entity of Customer, if Customer-level statements are not available. By signing a Valley Investment Initiative Award Application, such a Customer certifies that Customer is a wholly owned subsidiary of the parent entity and Customer's financial information is consolidated within the financial statements of the parent entity.

TVA will consider a Customer financially unviable and ineligible for the VII program under the following conditions:

- (a) Customer or Customer's parent entity is reorganizing or winding down in bankruptcy as of the date it submits a VII Award Application;
- (b) Customer's risk levels exceed allowable levels as solely determined by TVA; or
- (c) Customer fails to provide adequate power contract performance assurance as required by Distributor.

A.2.9 Meter Data. A Qualifying Customer must have arrangements in place with TVA and/or Customer's Distributor to provide for the collection, processing (if any), and transmission to TVA of total Plant kWh usage and highest Total Metered Demand for each month of the Base Year, if applicable, and Evaluation Period.