



**RESOLUTION NO. 14-\_\_\_\_\_**

**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, as amended (which contract is hereinafter called the Power Contract); and

**WHEREAS**, PPG Industries, 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 PPG Industries, 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 PPG Industries, Inc., City of Huntsville, Alabama and Tennessee Valley Authority," consisting of eleven (11) pages and the date of \_\_\_\_\_, 2014, 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 \_\_\_\_\_, 2014.

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

**APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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Mayor of the City of Huntsville,  
Alabama

**VALLEY INVESTMENT INITIATIVE  
PARTICIPATION AGREEMENT  
Among  
PPG INDUSTRIES, INC.,  
CITY OF HUNTSVILLE, ALABAMA,  
And  
TENNESSEE VALLEY AUTHORITY**

Date: \_\_\_\_\_

VII Contract No. 9094

TV-54501A, Supp. No. 126

THIS AGREEMENT will confirm the understandings among PPG INDUSTRIES, 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 February 8, 2015. 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	\$241,742.99
2	\$241,742.99
3	\$241,742.99
4	\$241,742.99
5	\$241,742.99

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. The Adjusted Awards will also reflect the recovery of any Bill Credits received by the Company during the Award Period for which the Company was not qualified. 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 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:**  
Economic Investments Manager  
TVA Economic Development  
26 Century Blvd., Suite 100 OCP 6D  
Nashville, Tennessee 37214

**To Company:**  
Plant Manager  
PPG Industries, Inc.  
1719 Highway 72 East  
Huntsville, Alabama 35811

**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**

Notwithstanding the information provided by Company on the attached VII Award Application:

- (a) Attachments 1 and 2 submitted with Company's VII Award Application have been replaced with updated versions herein;
- (b) Company's legal name is PPG Industries, Inc.; and
- (c) Base Year Capital Investment is \$0.00.

**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, which consent shall not be unreasonably withheld. However, Company may, without TVA's prior consent, assign this Agreement to any entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Company (Affiliate). Any such assignment to an Affiliate will constitute a material change in information of which Company shall promptly notify TVA and Distributor pursuant to section 5.2.

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.

**PPG INDUSTRIES, INC.**

By \_\_\_\_\_  
Title:

**CITY OF HUNTSVILLE, ALABAMA**

By \_\_\_\_\_  
Title:

**TENNESSEE VALLEY AUTHORITY**

By \_\_\_\_\_  
Senior Manager  
Power Customer 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:	PPG Industries
Customer contact person:	Brent Burdick
Title:	Project Engineer
Telephone number:	256-859-2500 x2545
E-mail address:	<a href="mailto:bburdick@ppg.com">bburdick@ppg.com</a>

**Project Information**

Use of Funds / Project Description:	Plant / Process Improvements
Estimated Customer decision date:	TBD
Is this a competitive project?	No
If yes, list competing locations:	N/A

**Plant Information**

Plant location:	1719 Highway 72 East	Huntsville	Madison	AL	35811
	<small>Street Address</small>	<small>City</small>	<small>County</small>	<small>State</small>	<small>Zip Code</small>

Plant Book Value: \$11,993,353 Enter \$0 if facility is new. Enter N/A if existing facility is not currently receiving firm power from TVA or TVA-served Local Power Company.

Plant is served by: Huntsville Utilities

What was/will be the Plant's Commercial Operation Date?

5/17/69

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

Does or will the Customer purchase power at Real-Time Prices?

No

Will Customer have a standard firm power contract at least as long as the Customer's VTA Award Period? (if applicable)

Yes

**Power Usage**

Contract Demand from Power Contract: B: Greater than 5,000 kW, but not more than 15,000 kW

Base Year Power Usage: Please input existing Plant's monthly metered demand (kW) and energy usage (kWh)

Consumption Month:	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14
kW:	5,372	5,546	6,022	5,838	6,130	5,906	5,914	5,574	5,196	5,228	5,250	5,172
kWh:	2,612,043	2,742,466	2,938,032	3,069,529	3,284,386	3,334,862	2,935,336	2,336,346	2,590,755	2,561,084	2,676,953	2,407,138

**Year-by-Year 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 kWAC (Annual)
Base Year	5,587	6,130	34,108,930	63.5%	\$3,000,000	686	N/A
Evaluation Period Year 1	5,587	6,130	34,108,930	63.5%	\$9,434,000	686	\$47,230
Evaluation Period Year 2	5,587	6,130	34,108,930	63.5%	\$11,800,000	686	\$48,175
Evaluation Period Year 3	5,587	6,130	34,108,930	63.5%	\$11,200,000	686	\$49,130
Evaluation Period Year 4	5,587	6,130	34,108,930	63.5%	\$7,650,000	686	\$50,121
Evaluation Period Year 5	5,587	6,130	34,108,930	63.5%	\$5,230,000	686	\$51,123

**Award Application Information**

Customer legal name:	PPG Industries			
Customer DUNS number:	1344803			
Customer TAX ID number:	25-0730780			
Person to receive contractual notices:	Tom Meyer			
Title:	Plant Manager			
Mailing address:	1719 Highway 72 East	Huntsville	AL	35811
	Street Address	City	State	Zip Code
E-mail address:	tom.meyer@ppg.com			
Telephone number:	256-859-2500			

**VII Award Payment Schedule**

Select a VII award payment schedule:  (if not applying for VII, select "N/A")  
 Options: 5-Year Load-Tracking | 5-Year Flat | 5-Year Front-Loaded | 8-Year Declining

**To Submit Application and Secure Award:**

Please complete and sign this form where indicated. Obtain the Local Power Company's signature if applicable.

**REQUIRED ATTACHMENTS:**

- (a) copies of Customer's 3 most recent annual reports and most recent quarterly report containing consolidated financial statements
- (b) a copy of Customer's standard firm power contract (if facility is currently receiving firm power from TVA or TVA-served Local Power Company)

Return signed form with required documents listed above:  
**BY EMAIL:** to your TVA Regional Economic Development Consultant  
 OR

**BY MAIL:** Economic Investments Manager, TVA Economic Development, 26 Century Blvd., Suite 100, Nashville, TN 37214  
 Effective date of Application will be established upon receipt of full application package including completed form and required attachments.

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

Name  
  
 Title  
  
 Signature  
  
 Date

I am an authorized representative of the Local Power Company listed below and I certify to TVA that the Plant Information and Base Year Power Usage above is true and correct. I further certify that a copy of Customer's standard firm power contract is attached to this application.  
 Huntsville Utilities

Name  
  
 Title  
  
 Signature  
  
 Date

**For TVA Administrative Purposes Only:**  
 Complete Form  Financial Statements  Power Contract (if Applicable)

Date Complete Application Received: \_\_\_\_\_  
 Economic Investments Consultant Initials: \_\_\_\_\_

TVA RESTRICTED INFORMATION: This Form is the property of TVA and is not intended for further distribution. Except as may otherwise be required by law, (a) neither Customer nor Distributor shall disclose this document or its contents nor use the same 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**" shall mean electrical loads which use power intermittently, subject the TVA system to extreme fluctuations, have a total contract demand of more than 50 MW, and have one or more of the following characteristics:  
 (a) loads with repetitive operating load swings of 50 MW or more, or  
 (b) loads with repetitive operating reactive power swings of 50 MVAR or more, or  
 (c) loads exceeding the limits set out in the Institute of Electrical and Electronics Engineers (IEEE) Standard 1453, or  
 (d) loads 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 month-end 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:  
 1. Investments in the **Plant** made during the **Evaluation Period** 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 during the **Evaluation Period**; and  
 3. Investments in the **Plant** made prior to the **Evaluation Period** and not yet placed in service which **Customer** intends to depreciate for Federal income tax purposes.
- 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  
 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, excluding power purchased at Real Time Prices,  
 (b) contribution towards the **Total Capital Investment**,  
 (c) average number of **Full-Time Equivalent Employees**,  
 (d) **Customer Average Wage**,  
 (e) **Annual Load Factor**.
- 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. 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 \$100 million or 25 percent of its Plant Book Value including minimums of

- a. 5 percent of its Plant Book Value, or \$20 million by the end of the first Evaluation Period year,
- b. 8 percent of its Plant Book Value or \$32 million by the end of the second Evaluation Period year,
- c. 11 percent of its Plant Book Value or \$44 million by the end of the third Evaluation Period year,
- d. 14 percent of its Plant Book Value or \$56 million by the end of the fourth Evaluation Period year, and
- e. 25 percent of its Plant Book Value or \$100 million 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 and/or New Energy Use Requirements.

a) To be a Qualifying Customer, a Customer must project during the Evaluation Period either (i) at least 25 Full-Time Equivalent Employees, or (ii) average annual energy growth of at least 5,000,000 kWh per year. A Qualifying Customer will be eligible to receive an award in any month in which the number of Full-Time Equivalent Employees is below 25 so long as the Qualifying Customer projects and achieves average annual energy growth of at least 5,000,000 kWh during the Evaluation Period.

b) 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, unless Customer is participating in an Instantaneous Response (IR) interruptible product and agrees to a staggered billing demand start time.

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.