

**MEMORANDUM**

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** May 17, 2021

**RE: Agreement with Aglime Sales, Inc. for the Purchase of Gypsum Byproduct from McIntosh Unit 3**

Attached hereto for your consideration is a proposed Agreement with Aglime Sales, Inc. (Aglime) for the purchase of gypsum byproduct from Lakeland Electric's McIntosh Power Plant. Gypsum is a byproduct produced from the burning of coal and the flue gas desulfurization process at McIntosh Unit 3 which can be sold to generate revenue. The byproduct is used in such applications as wallboard for home/commercial construction and for agricultural uses such as neutralizing the pH and supplementing calcium deficiencies in soil.

The City recently was under contract with Charah, Inc. for the sale of all of its byproduct, including gypsum, from Unit 3. Charah's contract with the City expired on April 30, 2021. However, approximately 10,000 tons of gypsum byproduct remains on site at the McIntosh Power Plant and is available for sale. Aglime, a Polk County company, is seeking to remove all of the remaining gypsum byproduct and was the only viable vendor interested in the material. The alternative would be to move the material to the landfill at an estimated cost of \$20,000 to the City.

While the term of the Agreement will be for a period of six (6) months upon Commission approval, with one (1) additional six (6) month option of renewal upon mutual written agreement of the parties, Aglime is prepared to remove the remaining gypsum byproduct within two (2) to four (4) weeks. Pursuant to the Agreement, Aglime will purchase the remaining gypsum byproduct at a price of \$6.00 per ton, which is anticipated to generate gross revenue for the City in the amount of \$60,000. The estimated cost to the City for loading the gypsum byproduct is \$5,000, which results in net revenue to the City of approximately \$55,000.

It is recommended that the City Commission approve this Agreement with Aglime for the sale of gypsum byproduct and authorize the appropriate City officials to execute all corresponding documents to the Agreement.

Attachment

## GYPSUM SALES AGREEMENT

This Agreement (“Agreement”) is entered into as of May 17, 2021 (the “Effective Date”), between the City of Lakeland, a Florida municipal corporation, (the "CITY"), whose address is 228 South Massachusetts Avenue, Lakeland, Florida, 33801, and Aglime Sales, Inc. (“AGLIME”), whose address is 1375 Thornburg Road, Babson Park, Florida 33827. The CITY and AGLIME shall collectively be referred to as “Parties.”

### Recitals:

WHEREAS, the CITY’s McIntosh Power Plant Unit 3 (“Plant”) produced synthetic gypsum (“Gypsum”) as a by-product; and

WHEREAS, AGLIME represents and warrants that it is experienced in the use of Gypsum; and

WHEREAS, CITY desires to sell Gypsum to AGLIME, and AGLIME desires to purchase Gypsum from CITY, under the terms and conditions set forth herein

Now, therefore, for and inconsideration of the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

### 1. Definitions

For the purposes of this Agreement, the following terms shall have the respective meanings indicated below unless the context otherwise requires:

- a) “Product” shall mean Gypsum.
- b) “Gypsum” shall mean Specification Grade Gypsum and Non-Specification Grade Gypsum.
- c) “Specification Grade Gypsum” shall mean byproduct produced from the flue gas desulfurization operation at the Plant that shall comply with the requirements of ASTM C-22 and the requirements stated in this Agreement and shall not contain material quantities of any hazardous materials.
- d) “Non-Specification Grade Gypsum” shall mean byproduct produced from the flue gas desulfurization operation at the Plant that shall comply with the requirements of ASTM C-22 but may not comply with one or more of the requirements stated in this Agreement provided such byproduct shall not contain material quantities of any hazardous materials.
- e) “Ton” shall mean two thousand (2,000) pounds avoirdupois.
- f) “Term” shall mean the Initial Term (as defined in Section 14 below) plus any Extension Terms (as defined in Paragraph 14 below).
- g) “Event(s) of Force Majeure” shall have the meaning ascribed in Paragraph 11 below.
- h) “Initial Term” shall have the meaning ascribed in Paragraph 14 below.
- i) “Extension Term” shall have the meanings ascribed in Paragraph 14 below.
- j) “State” shall mean the State of Florida.

- k) "Hazardous Materials" shall mean those materials included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", "contaminants" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Sections 9601, et seq.); the Hazardous Materials Transportation Act, as amended (49 USC Sections 1801, et seq.); the Resource Conservation and Recovery Act, as amended (42 USC Sections 9601, et seq.); the Toxic Substance Control Act as amended (15 USC Section 2601 et seq.); the Environmental Protection Act, R.S.O. 1990, C.E. 19; the Environmental Protection Act, S.C. 1991 c. 15.3, as amended; and in any of the regulations adopted, published, and promulgated pursuant to said laws, or in any other Laws and Regulations.
2. Right to Purchase Gypsum. CITY grants to AGLIME the right to purchase approximately 10,000 tons of remaining Gypsum produced at the Plant subject to the terms, conditions and limitations contained in this Agreement. In no event shall the CITY be required to provide either a minimum or maximum quantity of Gypsum during the term of this Agreement. The amount of Gypsum set forth herein available for purchase represents only an estimate of remaining Gypsum at the Plant and not shall be construed as a minimum or maximum guarantee regarding the quantity available for purchase.
3. Cooperation between Parties. AGLIME and the CITY shall cooperate to achieve the objectives of this Agreement.
4. AGLIME's Responsibilities. In addition to the other requirements of this Agreement, AGLIME shall have the following responsibilities:
- a) AGLIME shall provide a single point of contact on a 24/7 basis for daily coordination of all matters with the CITY related to this Agreement including, without limitation, contractual and operational issues; and
  - b) AGLIME shall obtain any and all permits or licenses required for transportation of the Products hereunder.
5. CITY's Responsibilities. In addition to the other requirements of this Agreement, the CITY shall have the following responsibilities:
- a) Provide a single point of contact on a 24/7 basis for daily coordination of all matters related to this Agreement with AGLIME including, without limitation, contractual and operational issues;
  - b) Provide all personnel and equipment required to safely load Gypsum.
6. Unloading, Loading, and Transportation Operations.
- a) AGLIME Access - The City shall provide full and convenient access during identified operating hours to and from all Product storage and loading facilities on CITY property to all of the employees, contractors, subcontractors, customers, and guests of AGLIME. Such persons will be subject to CITY's normal and reasonable Plant visitation policies.

b) Transportation- AGLIME will be solely responsible for the transportation of the Products from the Plant.

c) Gypsum Loading Hours

- i. Loading hours shall be Monday through Friday, 6:30 AM to 2:30 PM eastern time (including holidays) during each week that the Plant is operating, unless changed by mutual written agreement of the Parties.
- ii. Any trucks arriving after 2:30 PM will not be loaded. All daily loading operations shall be concluded by 3:00 PM on all identified days unless otherwise changed by the mutual written agreement of the Parties. The CITY reserves the right to extend or otherwise modify loading hours if circumstances require a change.

d) Gypsum Loading

- i. Unless other arrangements are agreed upon by the Parties, the CITY shall be responsible for the proper and safe loading of Gypsum at the Plant in to the trucks that AGLIME has engaged to transport the Products.
- ii. After a truck is properly loaded, AGLIME shall assume all responsibility and liability for clean-up of spills unless caused by the direct negligence or willful misconduct of the CITY or its representatives.
- iii. AGLIME shall assume all responsibility and liability for any damage to persons or property arising from transport of Gypsum, unless caused by the direct negligence or willful misconduct of the CITY or its representatives.

e) Determination of Gypsum Quantities

- i. Specification Grade Gypsum Shipped – To determine quantities of Gypsum loaded for shipment off-site, each truck shall be weighed unloaded and then loaded at the Plant on scales furnished by CITY. If any other forms of transportation are used, Parties will mutually agree on means of establishing weight.
- ii. Non-Specification Grade Gypsum Disposed – To determine quantities of Gypsum loaded for off-site disposal, each truck shall be weighed unloaded and loaded at the Plant on scales furnished by CITY. If any other forms of transportation are used, Parties will mutually agree on means of establishing weight.
- iii. Truck Scales – The CITY shall calibrate the scales as required by applicable laws and regulations to maintain accuracy. Records of the frequency and results of the calibration data will be available upon request.

f) Shipment and Purchase Documentation

The City shall document each shipment of Gypsum including, without limitation:

- i. The CITY shall provide a bill of lading (“BOL”) to each AGLIME transporter before departing the Plant. When the truck is properly loaded, the CITY shall complete the BOL for each truck loaded, including: the product shipped, the tare and loaded weights, signatures of CITY and the truck driver and any other information provided by AGLIME. The CITY will not issue a BOL if the truck is over the legal weight limit as determined by the State.
  - ii. The CITY shall send the original top copy of each BOL by U.S. mail to AGLIME on a weekly basis.
- g) Disclaimer of Warranties

AGLIME acknowledges and agrees that it is purchasing Gypsum from the CITY without any representation or warranty by the CITY as to the condition and/or suitability other than the specifications set forth in this Agreement and that the Gypsum shall not contain material quantities of any Hazardous Materials. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE CITY DISCLAIMS ANY WARRANTIES OF ANY NATURE WHATSOEVER, WHETHER STATUTORY, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR USE OR PURPOSE AND WARRANTIES ARISING FROM THE COURSE OF DEALING, OR USAGE OF TRADE.

#### 7. Quality Control Program

- a) To ensure Product quality and to meet any third party specification or governmental requirements, both Parties will perform the functions of the Quality Control Program and provide all personnel and equipment required to accomplish the sampling, testing, and reporting of the Products set forth in Exhibit “A.”
  - b) In addition to the minimum requirements set forth in Exhibit A, both Parties have the right to collect and test samples of the Products at its own discretion and cost.
  - c) An independent third party may be called upon to perform Product testing if there is a dispute between the Parties pertaining to a Product compliance with the specifications set forth in this Agreement that cannot be resolved. Each Party will be initially responsible for costs associated with any third party sampling, testing, and reporting of Product test results that it may request. In the event that the third party testing confirms a deficiency in the Product specifications then the party that is determined to be wrong shall assume all reasonable costs submitted by the third party that performed the product testing.
8. Title and Risk of Loss. Title to and risk of loss with respect to Gypsum shall pass to AGLIME when the Gypsum is properly loaded at the Plant onto the truck owned or engaged by AGLIME to deliver the Gypsum to its desired locations.
9. Compensation to CITY. AGLIME shall purchase Specification Grade Gypsum produced by the CITY at the agreed to unit price of Six Dollars and 00/100 (\$6.00) per wet ton loaded.

The CITY shall prepare a monthly invoice for all Products purchased during the preceding calendar month. AGLIME shall pay all compensation due to the CITY as described by this Agreement within

thirty (30) days after receipt of the CITY's invoice. In the event that AGLIME does not pay an invoice when due, simple interest shall accrue on such overdue amounts at the rate of one per cent (1%) per month.

10. Default. Each of the following shall constitute a default under this Agreement: (a) either Party is adjudged to be bankrupt; (b) either Party makes a general assignment for the benefit of its creditors; (c) either Party fails to comply with any of the terms, conditions or provisions of this Agreement including failure to make timely payments. If, during the term of this Agreement, a Party shall be in default of this Agreement, the other Party may suspend its performance hereunder until such delinquency or the default has been corrected; provided, however that no suspension shall be effective unless and until the affected Party gives written notice of default to the defaulting Party with at least thirty (30) days to cure such default. If the defaulting Party fails to correct such delinquency or default within thirty (30) days of written notice of the default, the aggrieved Party may terminate this Agreement and pursue such remedies as may be available at law or in equity. In addition to the remedies available hereunder, the aggrieved Party shall have the right of offset from sums or payments otherwise due the defaulting Party.
  
11. Force Majeure. Time is of the essence with regard to this Agreement, however, neither Party shall be liable to the other for any damages for any failure to perform or for any delays or interruptions beyond that Party's reasonable control in performing any of its obligations under this Agreement due to acts of God, fires, floods, weather, earthquakes, riots, civil insurrection, terrorism, labor disputes or disturbances, acts of the public enemy, or acts or failures to act of civil or military authority (herein called "Events of Force Majeure"). The claiming Party shall advise the other Party of any anticipated and actual failure, delay, or interruption and the cause and estimated duration of such event. Any such failure, delay, or interruption, even though existing on the date of this Agreement or on the date of the start of the Work, shall require the claiming Party to within seven (7) days submit a recovery plan detailing the manner in which the failure, delay, or interruption shall be remedied and the revised schedule. The claiming Party shall diligently proceed with its obligations hereunder notwithstanding the occurrence thereof. This Paragraph shall apply only to the part of the claiming Party's responsibilities directly affected by the particular failure, delay, or interruption, and shall not apply to the claiming Party's responsibilities as a whole or any other unaffected part thereof.
  
12. Insurance. AGLIME shall not begin any operations under this Agreement until it has obtained all the insurance required herein and has furnished certificates of insurance evidencing such insurance coverage to CITY. Every certificate of insurance required herein shall be endorsed to provide CITY with at least thirty (30) days written notice of change or cancellation. Except for Workers' Compensation, AGLIME's insurance policies shall be endorsed to name the City of Lakeland as additional insured. It is agreed that AGLIME's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the CITY for liability arising out of the operations of this Agreement. AGLIME shall maintain the following coverage for the term of this Agreement:

**Commercial General Liability** - \$1,000,000 combined single limit (bodily injury and property damage) each occurrence.

This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect AGLIME and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than AGLIME's employees or damage to property of the City or others arising out of any act or omission of AGLIME or its agents, employees, or Subcontractors and to be inclusive of property damage resulting from explosion, collapse or underground (xcu)

exposures. This policy shall also include protection against claims insured by usual personal injury liability coverage, and to insure the contractual liability assumed by AGLIME under the article entitled INDEMNIFICATION, and “Products and Completed Operations” coverage.

**Business Automobile Liability** - \$1,000,000 combined single limit (bodily injury and property damage) each occurrence.

**Workers’ Compensation** – Workers’ Compensation coverage to apply for all employees for statutory limits and shall include employer’s liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. (“All States” endorsement is required where applicable.) If exempt from Worker’s Compensation coverage, as defined by Florida State Statue 440, the Other Party will provide a copy of State Worker’s Compensation exemption.

All Subcontractors shall be required to maintain Workers’ Compensation.

**Umbrella Liability** – This insurance shall protect AGLIME and the additional insured against all claims in excess of the limits provided under the employer’s liability, commercial automobile liability, and commercial liability policies. The policy shall be an “occurrence” type policy, and shall follow the form of the general and automobile liability.

13. Compliance with Laws. CITY and AGLIME shall, with regard to their respective obligations under this Agreement, comply with all applicable laws, ordinances, decisions, orders, rules and regulations of the United States and any state, county, township or municipal subdivision thereof, or other governmental agency, including without limitation, any laws pertaining to the generation, transportation, handling, processing, marketing, sale, use or disposal of Products.
14. Term of Agreement. The initial term (“Initial Term”) of this Agreement shall be for a period of six (6) months commencing on the Effective Date, unless otherwise cancelled or terminated as provided herein.

This Agreement may be extended by mutual written agreement of the Parties for one (1) additional six (6) month term following the expiration of the initial term or a shorter term as otherwise agreed to in writing by the parties.

15. Termination for Convenience. Notwithstanding any other provisions of this Agreement, the CITY may, upon providing thirty (30) days prior written notice to AGLIME, terminate this Agreement for the CITY’s convenience and without liability to AGLIME. AGLIME shall pay any outstanding monies due to the CITY within thirty (30) days after the effective date that the Agreement is terminated unless otherwise agreed to by the Parties.
16. Notices. Any notices to be given hereunder shall be deemed sufficiently given when in writing and signed and (i) personally served on the Party to be notified, (ii) one day following deposit for delivery by overnight express courier, or (iii) three (3) business days following deposit in the United States mail, postage prepaid certified delivery, directed to the Party to be notified at the following address:

If to CITY:

McIntosh Power Plant  
3030 East Lake Parker Drive  
Lakeland, Florida 33805

863-834-6600

Attn: Supervisor of Chemical Process  
863-834-5639

With a copy to:

Lakeland Electric  
Attn: Contracts Administrator (LE-Contracts)  
501 East Lemon Street  
Lakeland, FL 33801

If to AGLIME Sales, Inc.:

AGLIME Sales Inc.  
1375 Thornburg Road  
Babson Park, FL 33827-9549  
Attn: Ray L. Bassett  
863-638-1481 office  
863-638-2312 fax

17. Dispute Resolution.

- a) The parties to this Agreement shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between their respective executives who have authority to settle the controversy. Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Within ten (10) days after the date that the notice is deemed to have been delivered, executives of the disputing parties shall agree to meet at a designated time and place or via teleconference and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. The first of those meetings shall take place within thirty (30) days after the date that the notice referred to above has been deemed to be delivered. If the matter has not been resolved within sixty (60) days of the disputing Party's notice, or if the parties fail to agree on a time and place for an initial meeting within ten (10) days of delivery of that notice, either Party may initiate mediation of the dispute pursuant to Paragraph 17(b).
- b) Should the parties fail to resolve a dispute using the procedure set forth in Paragraph 18(a) above, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association in accordance with its Commercial Mediation Rules. If the dispute has not been settled by mediation within ninety (90) days from the date it is submitted to mediation, or if either Party has failed to participate in the mediation, the other Party may immediately initiate the pursuit of any remedy available at law or in equity, subject to limitations set forth herein.

18. Miscellaneous.

- a) This Agreement shall extend to and bind the parties and their respective successors and assigns. Neither Party hereto shall assign this Agreement without the written consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed.



- b) This Agreement including all exhibits constitutes the complete agreement between the parties and contains the entire understanding among the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written. Any amendment to this Agreement shall be in a writing signed by authorized representatives of both parties.
  - c) This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida, without regard to such state's choice of law provisions that may dictate that the law of another state shall prevail. Venue for any litigation will be in Polk County, Florida, or the United States District Court in and for the Middle District of Florida, Tampa Division.
  - d) In the event any portion or part of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts thereof shall otherwise be fully enforceable.
  - e) The headings of the paragraphs, and other parts of this Agreement are for convenience only and do not define, limit, or construe the contents thereof.
  - f) No waiver of any of the terms and conditions of this Agreement shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance. Waiver by either Party of any terms, condition, or provision of this Agreement shall not be considered a waiver of that term, condition, or provision in the future. No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each Party hereto.
  - g) Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other.
  - h) Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the CITY and AGLIME.
19. Indemnification. To the fullest extent permitted by laws and regulations, and in consideration of the terms and conditions set forth in this Agreement, AGLIME shall defend, indemnify, and hold harmless the CITY, its officers, directors, agents, guests, invitees, and employees from and against all liabilities, damages, losses, and costs, direct, indirect, or consequential (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising out of or resulting from any acts of negligence, recklessness or intentional wrongful misconduct in the performance of AGLIME obligations hereunder, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the obligations hereunder or anyone for whose acts any of them may be liable.

In any and all claims against the CITY, or any of its officers, directors, agents, or employees by any employee of AGLIME, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for AGLIME or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the CITY, AGLIME, or any of its Subcontractors. To the extent this Indemnification conflicts with any provision of Florida Law or Statute, this indemnification shall be deemed to be amended in such a manner as to be consistent with such Law or Statute.

20. Subrogation. AGLIME and its Subcontractors agree by entering into this Agreement to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit AGLIME or its Subcontractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then AGLIME or its Subcontractors agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should AGLIME or its Subcontractors enter into such an agreement on a pre-loss basis.

21. Release of Liability. Payment by AGLIME of the CITY's last invoice submitted in accordance with this Agreement shall also be a release of the CITY and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, or relating to this Agreement, or for any act or neglect of the CITY or of any person relating to or affecting the work.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below but it is effective as of the Effective Date:

THE CITY OF LAKE LAND

AGLIME SALES, INC.

By: \_\_\_\_\_  
H. William Mutz, Mayor

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
Kelly S. Koos  
City Clerk

Attest: \_\_\_\_\_  
Its: \_\_\_\_\_

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

Date: \_\_\_\_\_  
(Corporate Seal)

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Palmer C. Davis  
City Attorney

**Exhibit A**

**Data Sheet DS1**

**Gypsum Product Specifications and Testing Requirements**

<b>Item</b>	<b>Specification Quantity</b>	<b>Test Method</b>	<b>Test Frequency</b>
Moisture, Maximum %	15.0	ASTM D 3173	Daily
CaSO <sub>4</sub> 2H <sub>2</sub> O min % DWB	90.0 minimum	EPRI 35	Daily
CASO <sub>3</sub> 1/2H <sub>2</sub> O, maximum % DWB	1.0	EPRI 39	Weekly
CaCO <sub>3</sub> , max % DWB	5.0	EPRI 43	Weekly
MgCO <sub>3</sub> and insoluble Mg Compounds, maximum % DWB	1.5	ASTM C 471	Monthly
Insoluble Residue and Flyash, maximum % DWB	5.0	ASTM C 471 or by TGA	Daily
Chlorides, max ppm DWB	2000 maximum 750 average	ASTM C 471	Daily

**NOTE:** Samples to determine product compliance shall only be taken from the discharge conveyor immediately after the vacuum drum filters where the product is dewatered. Moisture means the moisture in the Products, which is inherent in the material from the manufacturing process. It excludes additional moisture, which may commingle in the Products after manufacture.