



**Transportation Supplier: Evansville Marine  
Services, Inc.**

**Fuel Type: Fully Found Tugboat**

**Contract No: BRE 25-004**

**Description: Tugboat Fleeting & Repair  
Agreement  
February 1, 2025 thru  
January 31, 2028**

**BARGE FLEETING AND REPAIR AGREEMENT**

THIS BARGE FLEETING AND REPAIR AGREEMENT (the “Agreement”) effective as of February 1, 2025, by and between BIG RIVERS ELECTRIC CORPORATION, a Kentucky rural electric corporation (“BREC”), which has its principal place of business at 710 W 2<sup>nd</sup> Street, Owensboro Kentucky 42301 (“BREC”) and EVANSVILLE MARINE SERVICES, INC., an Indiana corporation, with its principal place of business at 2300 Broadway Avenue, Evansville, Indiana 47719 (“EMS”) establishes the terms and conditions pursuant to which BREC shall purchase and EMS shall provide the services described herein. The following terms constitute all of the terms and conditions of the binding agreement between the parties regarding this transaction. EMS agrees to barge fleeting and repair services, and BREC agrees to procure and accept such services on the terms and conditions stated in this Agreement. BREC and EMS are each referred to herein as a “Party,” and collectively, the “Parties.” In consideration of the agreements herein contained, the Parties hereto agree as follows:

**WITNESSETH:**

**WHEREAS**, BREC charters jumbo open-top inland river barges (the “BREC Fleet”); and,

**WHEREAS**, EMS is, among other things, in the business of (i) fleeting barges at its owned and/or leased fleeting area(s), to include its dry docks, at or near mile point 784.5 on the Ohio River (collectively the “Dock”); and, (ii) maintaining and repairing barges at its Dock (the services described are herein called the “Barge Services”); and

**WHEREAS**, BREC desires to enter into an agreement with EMS for Barge Services; and

**WHEREAS**, EMS wishes to provide such Barge Services on the terms and conditions as hereinafter set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. GENERAL.**

- (a) The above recitals are true and correct and comprise a part of this Agreement.
- (b) EMS will provide Barge Services to BREC, and BREC will procure such Barge Services under all the terms and conditions of this Agreement.
- (c) Each covenant, representation, and warranty given by EMS herein is a material inducement for BREC to enter into this Agreement, and each covenant, representation, and warranty given by BREC herein is a material inducement for EMS to enter into this Agreement.

**SECTION 2. BARGE SERVICES.**

- (a) General. EMS hereby agrees, upon the request of BREC, to provide the Barge Services, subject to the terms and conditions hereof. EMS shall perform such services in a diligent, efficient, and workmanlike manner and will keep complete and accurate records and books, reflecting the receiving, fleeting, repairs, and discharge from its Dock of each barge of the BREC Fleet for which it provides Barge Services.
- (b) Berthing. BREC requires of EMS that: (i) the BREC Fleet be provided convenient and safe berth; (ii) that while the barges are in the care and custody of EMS at its Dock, and to the extent reasonably within the control and subject to the responsibility of EMS with respect to its Dock, EMS shall comply with all U.S. Coast Guard regulations and other applicable laws, ordinances, rulings, and regulations, including, but not limited to, adequate mooring and display of warning lights as necessary. EMS shall not charge BREC for any switching or other associated costs for placing or removing a barge from its Dock when accomplished by the boat that is on charter to BREC.
- (c) Barge Fleeting. During the term of this Agreement, EMS agrees not to charge Big Rivers for fleeting days in EMS fleets while a BREC barge is in transit and destined for a loading facility or an unloading facility. Should a barge be fleeted in an EMS fleet and not involved in the above referenced movement, EMS will charge BREC for fleeting days at the EMS current published Rate Sheet (the "Rate Sheet") (example attached as Exhibit A) less a ten percent (10%) discount. The current published rate

for EMS fleetings, pursuant to its Rate Sheet, is \$55.00 per day. The current charge for BREC would be calculated as: Jumbo Bulk barge \$55.00 x .90 = \$49.50 per fleetings day.

(d) Barge Repairs. During the term of this Agreement, EMS shall upon BREC request, provide barge repair services to the BREC Fleet. EMS agrees to provide BREC a ten percent (10%) discount to the Rate Sheet on all barge repairs performed upon the BREC Fleet. For example, the current Rate Sheet lists a Laborer per hour as \$55.00. The effective charge to BREC would be \$55.00 x .90 = \$49.50 per hour. Such ten percent discount shall apply for repairs to the BREC Fleet account only, and shall not apply for damages caused by a third party, including EMS.

(e) Rate Sheet. During the term of this Agreement, EMS may in its sole discretion revise its Rate Sheet. Rate Sheet revisions shall not occur in excess of an annual basis during the term of this Agreement. EMS shall provide thirty (30) day's notice prior to any increase or decrease in the Rate Sheet prior to the effective date of such change. The discounts in sub-sections 2(c) and (d) above shall apply to any revised Rate Sheet. To the extent that any provision of the Rate Sheet attached hereto as Exhibit A or any revised Rate Sheet is inconsistent with any other provision of this Agreement, then the provision of this Agreement that is inconsistent with any Rate Sheet shall control.

**SECTION 3. TERM**. The term of this Agreement shall be for the period commencing February 1, 2025, and continuing through January 31, 2028, subject to any express provisions herein which provide for termination (the "Term").

**SECTION 4. NOTIFICATION OF FLEETING AND/OR REPAIRS**. Pursuant to this Agreement, BREC may, from time to time, request that EMS perform for BREC any one of more of the foregoing Barge Services. Any such request may be communicated to EMS by regular mail, facsimile, express mail delivery, electronic mail, or orally, provided however, that any oral request by BREC for Barge Services shall be followed by a written confirmation of the request by facsimile or electronic mail. Any such request, regardless of how communicated, also shall contain

information sufficient for EMS to identify the barge concerning which Barge Services are requested.

**SECTION 5. CONDITIONS OF FORCE MAJEURE.** Neither party shall be liable to the other for any damages for any failure to perform, or for any delays or interruptions beyond a party's reasonable control in performing any of its obligations under this Agreement due to acts of God, fires, floods, earthquakes, riots, civil insurrections, acts of the public enemy, strikes, lockouts, equipment failures, acts or failures to act of civil or military authority, and in the event of any such occurrence the obligations of both parties hereto shall be suspended to the extent made necessary by such event; provided that the affected party gives prompt oral notice to the other party followed by written notification not later than two (2) days after such commencement or occurrence, describing the nature and probable duration of the force majeure event. The party declaring force majeure shall exercise due diligence to avoid the force majeure event or shorten its duration and will keep the other party advised as to the continuance of the force majeure event. In the event that a situation of force majeure continues for a period exceeding thirty (30) days, then the party not claiming force majeure may elect to terminate this Agreement by giving written notice to the affected party. In the event of such termination, neither party shall have any further liability to the other except for those obligations or liabilities which may have accrued with respect to performance or defaults prior to said termination.

**SECTION 6. PAYMENT AND BILLING.** BREC hereby agrees to pay EMS for the Barge Services rendered under this Agreement at the prices stated in the Rate Sheet for services rendered, less BREC discount.

BREC agrees to pay to EMS all Barge Services fees on a net 30-day basis from the date of receipt of EMS's invoice. Any overdue invoice is subject to a two percent (2%) interest charge per month. EMS shall not encumber or permit any liens to be attached to the BREC Fleet, and, if it should permit the attachment of any such lien, BREC shall have the right, but not the obligation, to terminate this Agreement immediately by written notice delivered pursuant to Section 16 hereof. At all times, title to the BREC Fleet shall remain with BREC. Nothing in this Agreement shall be construed as creating an exclusive contract for Barge Services or as a warranty or guarantee of any minimum amount of Barge Services or fees attributable to any such Barge Services.

If there are Barge Services which have not been completed at the end of the Term, as defined herein, the parties agree that the Term hereof shall be extended to March 31, 2028 (the "Extended Term"). During the Extended Term, all the terms and conditions of this Agreement in their entirety, including, but not limited to Barge Services and the Rate Sheet shall apply for all services rendered during the Extended Term.

**SECTION 7. INDEMNIFICATION.** EMS shall be responsible to BREC or BREC's contractor or any other third party for all loss of, or damage to, any barge and/or towboat provided hereunder and occurring after such barge and/or towboat has been delivered to EMS and while in the custody, control, or possession of EMS. In the event a towboat or barge is damaged (beyond normal wear and tear) while it is in the custody or control of EMS, or while operating at the Dock, EMS shall reimburse BREC for any expenses actually incurred by BREC for repairing or replacing any such barge and/or towboat including, but not limited to, reasonable administrative charges for overhead.

**SECTION 8. DELIVERY AND DISCHARGE OF BARGES.** A barge shall be deemed to have been delivered to EMS and be in EMS's custody, control or possession, when the barge is received in seaworthy condition, and has been secured by BREC or BREC's contractor to the Dock in proper placement in the Dock fleet to await Barge Services. A barge shall be deemed to be picked up when untied for pick up by or on behalf of BREC, or BREC's contractor from the Dock.

**SECTION 9. INSURANCE.** EMS shall provide and maintain, and shall require any subcontractor, if permitted, to provide and maintain the following insurance (and, except with regard to Workers' Compensation, naming BREC as an additional insured and waiving rights of subrogation against BREC and BREC's insurance carrier(s)), and shall submit evidence of such coverage to BREC as soon as is practicable upon execution of this Agreement:

- (a) Workers' Compensation and Employer's Liability Policy, which shall include:
  - i) Workers' Compensation (Coverage A), with statutory limits, and in accordance with the laws of the state where the Services are performed;

- ii) Employer's Liability (Coverage B) with minimum limits of One Million Dollars (\$1,000,000) Bodily Injury by Accident, each Accident, \$1,000,000 Bodily Injury by Disease, each Employee;
  - iii) Thirty (30) Day Cancellation Clause; and
  - iv) Broad Form All States Endorsement.
- (b) Commercial General Liability Policy, which shall have minimum limits of One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) General Aggregate; One Million Dollars (\$1,000,000) Products / Completed Operations Aggregate; One Million Dollars (\$1,000,000) Personal and Advertising Injury, and including:
- i) Thirty (30) Day Cancellation Clause;
  - ii) Blanket Written Contractual Liability to the extent covered by the policy against liability assumed by EMS under this Agreement; and
  - iii) Broad Form Property Damage; and
- (c) Commercial Automobile Liability Insurance covering the use of all owned, non-owned, and hired motor vehicles, with a bodily injury, including death, and property damage combined single minimum limit of One Million Dollars (\$1,000,000) each occurrence with respect to EMS's vehicles assigned to or used in performance of barge fleet and repair services under this Agreement.
- (d) Umbrella / Excess Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) per occurrence; Two Million Dollars (\$2,000,000) aggregate, to apply to employer's liability, commercial general liability, and automobile liability.
- (e) Marine Liability, to include Marine exposures, Protection and Indemnity with minimum limits as follows:
- i) Protection and Indemnity coverage, \$1,000,000 combined single limit.

- ii) Stevedores Legal Liability / Wharfingers Legal Liability coverage, \$1,000,000 combined single limit.
- iii) Excess Marine Liability or Excess Liability coverage (to include Marine exposures), \$4,000,000 per occurrence limit.
- iv) U.S. Longshore & Harbor Workers coverage, \$1,000,000 combined single limit.

EMS shall provide thirty (30) day advance notice to BREC in the event of termination of or a material reduction in coverage of any of the foregoing policies of insurance.

**SECTION 10. ADDITIONAL DUTIES.** For the consideration provided in this Agreement EMS hereby also agrees to perform the following obligations and undertakings:

- (a) EMS shall maintain and repair all presently existing private roads which provide access to or from the Dock so as to permit safe and unimpeded access for all vehicles traveling to and from the Dock.
- (b) EMS shall maintain and timely repair any and all equipment used in Barge Services at the Dock and keep same in good working order based on the acceptable customs and standards of the industry.
- (c) EMS shall make reasonable and workmanlike efforts to accept, fleet and repair, and discharge the BREC Fleet in a fashion to create reasonable turnaround time for such barges so as to allow for proper usage of the BREC Fleet.
- (d) EMS shall make reasonable efforts to perform its Barge Services in an efficient and effective manner in order to minimize costs and delays of any nature.

**SECTION 11. COMPLIANCE WITH LAWS.** BREC and EMS shall each comply with the applicable provisions of all Maritime, Federal, State, local and other governmental laws and any applicable orders and/or regulations, or any amendments or supplements thereto, which have been, or may at any time be, issued by any governmental agency.



**SECTION 12. RIGHT OF INSPECTION OF RECORDS.** EMS hereby agrees that BREC and/or its designated representatives shall have, upon reasonable notice to EMS, access to the Dock and to all records pertaining to the transactions contemplated hereunder.

**SECTION 13. ASSIGNMENT.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, but this Agreement may not be assigned by either party, except for purposes of financing, without the written consent of the other which consent may be withheld, in the sole discretion of the non-assigning party.

**SECTION 14. AMENDMENTS; ENTIRE AGREEMENT.** This Agreement shall not be amended or modified and no waiver of any provisions hereof shall be effective unless set forth in a written instrument executed by the parties thereto. This Agreement constitutes the entire agreement between the parties hereto and supersedes all previous agreements or understandings, whether written or oral, with respect to the subject matter hereof.

**SECTION 15. GOVERNING LAW.** This Agreement shall be construed, enforced and performed in accordance with the General Maritime Law of the United States and the laws of the Commonwealth of Kentucky.

**SECTION 16. NOTICES.** Notices provided or required herein as except as otherwise specifically stated, shall be given by confirming facsimile, electronic mail, or by overnight delivery service, addressed as follows:

To BREC: Big Rivers Electric Corporation  
Attn: Fuels Procurement Department  
710 W 2<sup>nd</sup> Street  
Owensboro, Kentucky 42301  
Electronic mail: [vicky.payne@bigrivers.com](mailto:vicky.payne@bigrivers.com)  
Facsimile: 270.827.2101

To EMS: Evansville Marine Services, Inc.  
Attn: President  
P. O. Box 6048  
Evansville, Indiana 47719  
Electronic mail: [kylea@ems-harbors.com](mailto:kylea@ems-harbors.com)  
Facsimile: 812.424.9279

**SECTION 17. CAPTIONS.** The captions of the Paragraphs to this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any of the provisions hereof.

**SECTION 18. DEFAULT.** In the event EMS fails to perform any of the terms and conditions of this Agreement, BREC may give EMS written notice of such nonperformance. Unless EMS cures such nonperformance within thirty (30) days after receipt of such notice, or if the nonperformance cannot be cured, gives reasonable assurances of future performance within thirty (30) days after receipt of such notice, then BREC shall have the right, but not the obligation, to cancel and/or terminate this Agreement. In the event BREC terminates this Agreement as a result of an uncured breach by EMS, or as a result of the failure of EMS to provide reasonable assurances of future performance, then EMS shall indemnify BREC and hold BREC harmless for any and all damages, claims, costs (including attorney fees), expenses, actions, and/or causes of action arising out of or in connection with such termination of the uncured breach by EMS, or the failure of EMS to provide reasonable assurances of future performance, as the case may be. In the event BREC fails to perform any of the terms and conditions of this Agreement, EMS may give BREC written notice of its nonperformance. Unless BREC cures such nonperformance within thirty (30) days after receipt of such notice, or if the nonperformance cannot be cured, gives reasonable assurances of future performance within thirty (30) days after receipt of such notice, then EMS shall have the right, but not the obligation, to cancel and/or terminate this Agreement. In the event EMS terminates this Agreement as a result of an uncured breach by BREC, or as the result of the failure of BREC to provide reasonable assurances of future performance, then BREC shall indemnify EMS and hold EMS harmless from any and all damages, claims, costs (including attorney fees), expenses, actions, and/or causes of actions arising out of or connected with such termination, the uncured breach by BREC, or the failure of BREC to provide reasonable assurances of future performance, as the case may be. The foregoing remedies are in addition to all other remedies at law or in equity available to either party.

**SECTION 19. SEVERABILITY.** Should any provision of this Agreement be held invalid or unenforceable in any jurisdiction, such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof or such provision in any other jurisdiction.

**SECTION 20. COUNTERPARTS.** This Agreement may be executed and conveyed to the other Party by electronic means in any number of counterparts, each executed counterpart constituting as an original but altogether only one Agreement.

**SECTION 21. CONFIDENTIALITY.** The Parties agree to maintain in strict confidence the terms and conditions of this Agreement and any information or data relating hereto exchanged or obtained by the Parties during negotiation and performance of this Agreement. Neither Party shall disclose any of the terms and conditions hereof to any third Party (except (i) to affiliates of Parties, (ii) to their lenders, legal counsel, accountants, or consultants (such external service providers shall be bound by confidentiality statements of a similar nature as this Agreement)) without the prior written consent of the other Party, except where such disclosure may be required by law or in connection with a judicial or administrative proceeding or filing before courts, regulatory bodies, or agencies such as the Kentucky Public Service Commission. The obligations of the Parties arising under this Confidentiality Section shall continue for a period of two (2) years following termination or expiration of this Agreement.

**SECTION 22. ENTIRE AGREEMENT.** All prior negotiations and agreements between the Parties hereto, with respect to the subject matter of this Agreement, are superseded by this certain Agreement and there are no representations, warranties, understandings or agreements of the Parties relating to the subject matter hereof, other than those expressly set forth in this Agreement, or in an Exhibit or Schedule to the Agreement except as modified in writing concurrently herewith or subsequent hereto.

**SECTION 23. ETHICAL DEALING.** Each party represents and warrants that it has not given or received and shall not give or receive any commission, payment, kickback, secret rebate or other thing of value to or from any employee or agent of the other party or to any supplier of services in connection with this Agreement. Each party acknowledges that the giving or receiving of any such commission, payment, kickback, secret rebate or other thing of value constitutes a breach of ethical standards, is potentially violative of applicable law, and may result in the immediate termination of this and other outstanding agreements between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written

BIG RIVERS ELECTRIC CORPORATION

EVANSVILLE MARINE SERVICES, INC.

Signed by:  
By: Don Gulley  
718718E0P859452...  
Date: 1/31/2025

By: Kyle R. Aldrich  
Date: 1/31/2025

Don Gulley  
President and Chief Executive Officer

Kyle R. Aldrich  
President