



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

Fuel Type: Fully Found Tugboat

Contract No: BRE 25-005

**Description: Tugboat Charter Agreement
February 1, 2025 thru
January 31, 2028**

FULLY FOUND TUGBOAT CHARTER AGREEMENT

This FULLY FOUND TUGBOAT CHARTER AGREEMENT (hereinafter the "Charter") is made and effective as of February 1, 2025 (the "Effective Date"), by and between BIG RIVERS ELECTRIC CORPORATION, a Kentucky rural electric cooperative corporation, 710 W 2nd Street, Owensboro, Kentucky 42301 (hereinafter referred to as "Big Rivers") and EVANSVILLE MARINE SERVICES, INC., an Indiana corporation, 2300 Broadway Avenue, Evansville, Indiana 47719 (hereinafter referred to as "EMS"). Big Rivers 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:

RECITALS

WHEREAS, Big Rivers wishes to enter into a fully found charter of a towboat or towboats with EMS and EMS wishes to charter the same to Big Rivers, subject to the terms and conditions set forth herein. The Charter shall be fully found for the purposes of towing barges upon the instruction of Big Rivers to various destinations on the Ohio and Green Rivers and its tributaries (the "Operating Area").

NOW, THEREFORE, in consideration of the premises and the mutual promises hereinafter set forth, the adequacy and sufficiency of which is hereby acknowledged and, intending to be bound, EMS and Big Rivers agree as follows:

1. **Fully Found Charter.** EMS agrees to place in the exclusive service of Big Rivers on a fully found basis, less fuel, lube oil and fuel taxes, one or more of its live aboard vessels (hereinafter the "Towboats"). EMS represents and warrants that the Towboats are in all respects seaworthy and properly manned, equipped, and supplied for the purposes of towing barges in the Operating Area.
2. **Term of Charter.** The term of this Charter shall commence on the Effective Date and shall continue through January 31, 2028 (the "Charter Term"), unless earlier terminated or extended as specifically provided herein. The Charter will commence where the Towboat is located as of midnight on January 31, 2025, and terminate at EMS's facility at the mouth of the Green River or at another mutually agreeable port.
3. **Termination of Charter by Big Rivers.** In addition to, and in no way limiting any other provisions relating to termination set forth herein, Big Rivers may terminate this Charter if EMS:

- (a) Fails to maintain its certification in the American Waterways Operators Inc.'s Responsible Carrier Program or comparable audited Safety Management System;
 - (b) Fails to enforce prohibitions on controlled substances as required under the American Waterways Operators Inc.'s Responsible Carrier Program and the United States Coast Guard;
 - (c) Violates any State, Federal, or Local statute, rule, ordinance or regulation arising out of or related to EMS's acts or omissions relating to this Charter;
 - (d) Makes a material breach of any term of this Charter or related agreements by EMS provided, however, that Big Rivers has given notice to EMS with the opportunity to cure as provided in Section 15;
 - (e) Suffers the total or constructive loss of the Towboat in accordance with Section 14;
 - (f) Undergoes a change in EMS ownership or change in control. EMS shall notify Big Rivers no less than fifteen (15) days before the effective date of the change in ownership or control. Big Rivers, at its sole and exclusive option, may terminate this Charter within thirty (30) days of notice of the change in ownership or control. For the purposes of this Charter, "change in ownership or control" shall mean the sale of all or substantially all of the assets of EMS; the direct or indirect transfer of more than fifty percent (50%) of the combined voting power of the shareholders of EMS; the merger or consolidation of EMS into another entity; or the liquidation of EMS;
 - (g) Makes an assignment for the benefit of its creditors, or if bankruptcy proceedings are instituted by or against EMS, or if EMS becomes insolvent;
4. Termination of Charter by EMS. In addition to, and in no way limiting any other provisions relating to termination set forth herein, EMS may terminate this Charter:

(a) Upon a material breach of any term of this Charter by Big Rivers, provided, however, that EMS has given notice and provided the opportunity to cure as provided in Section 15 herein;

(b) Upon a total or constructive loss of the Towboat(s) in accordance with Section 14.

5. Charter Hire. Big Rivers covenants and agrees to pay EMS, as consideration for hiring a Towboat or more than one Towboat ("Charter Hire"), as outlined below:

One Towboat at \$4,830.00 per day plus lube and fuel inclusive of fuel tax.

Two Towboats at \$4,735.00 per day per boat plus lube and fuel inclusive of fuel tax.

M/ ROBERT R ALDRICH: at \$6,050.00 per day plus lube and fuel inclusive of fuel tax.

During the Charter Term, Big Rivers may elect to have more than one boat in operation under this Charter; but, at no time will it have less than one. If a second or third boat is required and put into service under this Charter, it will be for a minimum of thirty (30) days. If Big Rivers elects to remove a boat from operation, Big Rivers will give a minimum of fifteen (15) days' notice to EMS, and if Big Rivers intends to add a second boat to the operation, it will give EMS a reasonable amount of time, not to exceed fifteen (15) days, to properly crew up the Towboat. In the event Big Rivers elects to have a third boat in service, it shall provide thirty (30) days' notice to EMS of its desire for the third boat. For the purpose of this Charter, when these added Towboats are in operation it will be referred to hereinafter as the "Charter Period".

Further, EMS and Big Rivers may agree to a two Towboat Charter Hire which, from time-to-time, EMS may have need of the second boat for its business purpose(s). EMS shall provide notice of such business purposes(s) need per normal logistics planning between the Parties and upon such agreement between the Parties, utilize the second Towboat for its purposes. When EMS provides such notice and utilizes the second Towboat for its business purposes, it shall continue to charge Big Rivers a Charter Hire at the Two Towboat rate (applied to one Towboat), instead of the one Towboat rate. Once EMS completes its business purpose(s) for the second Towboat, the second boat shall resume charter service to Big Rivers.

6. Billing and Payment. EMS shall bill Big Rivers for Charter Hire by submitting an invoice, in a form mutually approved by EMS and Big Rivers, by facsimile, electronic mail, or other reliable electronic means mutually approved by the Parties, twice monthly on the

fifteenth (15th) and the last day of the month. Big Rivers shall pay approved charges within twenty (20) days after receipt. If Big Rivers adopts an electronic billing process, EMS shall use such a process for all invoicing.

7. Lube and Fuel. EMS shall provide Big Rivers with a fuel inventory/gauging of all Towboats fuel tanks at the start of any Charter Period and the same at the end of any Charter Period. Any surplus will be paid to Big Rivers at the cost of fuel delivered for that day as supplied by EMS's fuel supplier plus the applicable Federal 720 Fuel Tax. Any depletion of original inventories will be billed to Big Rivers in the same manner as surplus. Fuel or Lubes purchased during the Charter Period shall be billed to Big Rivers at the end of each month's calendar and EMS will attach all receipts from its supplier with invoices, plus the Federal 720 Fuel Tax. Big Rivers may be present or have a representative present for all tank/fuel gauging measurements.
8. EMS's obligation to Crew and Supply the Tugboat.
 - (a) EMS shall crew, maintain, operate, navigate and supply each of the Towboats subject to this Charter Hire and shall pay all expenses incident to the crewing, operation, navigation, and supply of such Towboat, except as specifically provided herein.
 - (b) Each Towboat subject to this Charter Hire shall be manned at all times by experienced and qualified personnel. Each "on watch" crew will consist of a, USCG licensed towboat pilot and the appropriately sized crew, at all times. The crew shall be the employees of EMS and shall, at no time, hold themselves out to be or represent Big Rivers. The recruitment, supervision, discharge and discipline, and compensation of the Towboat crews and all other personnel employed by EMS shall be the sole and exclusive responsibility of EMS.
 - (c) EMS shall provide all necessary training (to include safety), supplies, food and items of gear required to operate the Towboat.
9. Operation of the Towboat.
 - (a) EMS shall have the command, possession and control of the Towboat and the direction and supervision of the masters and crew of the Towboat. It is understood and agreed that EMS is in all respects an independent contractor and that Big Rivers shall exercise no control over the operation of the Towboat or other equipment of EMS or over EMS's agents, subcontractors or employees.

- (b) All barges tendered by Big Rivers for towing shall be seaworthy in all respects and fit for the cargo and voyage contemplated. EMS shall have the right to refuse towage for any barge tendered by Big Rivers that is not seaworthy or fit to be towed.
 - (c) Big Rivers shall dispatch the Towboat through EMS's Green River office. During periods of adverse river conditions, EMS and Big Rivers shall mutually agree on tow size. EMS may limit the number of barges towed in consideration of river conditions so long as EMS is performing towing in a like manner as similar towboats in similar river conditions.
10. Maintenance and Downtime. EMS shall have six (6) hours of allowable downtime per month per Towboat. Downtime hours shall be accumulated on a month-to-month basis up to a maximum of 72 hours. Charter Hire will be deducted for downtime in excess of accumulated downtime at a rate of 1/24 of daily Charter Hire for each hour of downtime. Unused downtime upon the termination of this Charter shall not be reimbursed. For the purposes of this Charter, "downtime" shall mean the time the Towboat is incapable of operating because of the requirement to perform necessary maintenance or repairs (whether performed in a shipyard or otherwise), crew shortages or time lost as a result of an accident. If available, EMS will offer Big Rivers a substitute Towboat where downtime for the Towboat is anticipated to last more than twenty-four (24) hours.
11. Insurance. EMS shall obtain and maintain at its cost and expense the following insurance coverage:
- (a) Marine Hull & Machinery insurance as provided by Taylor Form 1953 (Rev. 1970) (SP-39-C) with S.R. & C.C. endorsement in an amount at least equivalent to the fair market value of the Towboat.
 - (b) Collision Liability Insurance shall be maintained by EMS in the amount of at least Thirty Million Dollars (\$30,000,000.00) per occurrence without an aggregate limit of liability.
 - (c) Towers Legal Liability Insurance shall be maintained by EMS in the amount of at least Thirty Million Dollars (\$30,000,000.00) per occurrence without an aggregate limit of liability.
 - (d) Protection and Indemnity Insurance, including crewman and costs of removal of wreck and cargo, provided by Taylor Form SP-23, or equivalent, covering all its

Towboats and Marine activities in amounts of at least Thirty Million Dollars (\$30,000,000.00) per occurrence without an aggregate limit of liability.

- (e) Pollution Liability and Clean-up Insurance as provided by WQIS or equivalent and Third-Party Pollution Liability Insurance covering removal costs, damages, and liabilities under the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, as amended, and under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 in the amount of at least Thirty Million Dollars (\$30,000,000.00) per occurrence.
 - (f) EMS will provide certificates of insurance to Big Rivers, evidencing such coverage and showing Big Rivers, its officers, directors, employees, agents, and Towboats, as additional assureds, with full waiver of subrogation, as its or their interests may appear. All deductibles or self-insured retentions shall be for EMS's account.
12. Liens. Big Rivers will not suffer, nor permit to be continued, any lien or encumbrance incurred by its agents, or under or through its directions or directions of its agents which might have priority over the title and interest of EMS in the Towboat. Big Rivers agrees to indemnify, defend and hold harmless EMS and the Towboat(s) from and against any and all liens of any kind or nature whatsoever (except those caused to be placed thereon by EMS) which attach against the Towboat while under charter to Big Rivers.
13. Assignment and Sub-Charter. Big Rivers may not sell, transfer, or assign this Charter or any interest therein, or sub-charter on a fully found basis the Towboat without the prior written consent of EMS, which consent shall not be unreasonably withheld, provided, however, that Big Rivers may, without the written consent of EMS, unconditionally assign, transfer, mortgage or pledge this Charter to create a security interest for the benefit of the United States of America, acting through the Rural Utilities Service, or other secured Party (directly or through an indenture trustee or other collateral agent). EMS may not sell, transfer, or assign this Charter or any interest therein.
14. Total or Constructive Loss. If the Towboat(s), during the Charter Period, becomes a total or constructive loss, as those terms are generally understood in the towing and marine insurance trades, this Charter shall terminate with respect to that Towboat as of the date of the event causing such total or constructive total loss. Following such total or constructive loss, EMS then may provide Big Rivers with a substitute towboat of substantially similar size and horsepower within five (5) business days of the event causing such a loss.

15. Events of Default and Remedies. In the event a Party to this Charter shall fail to perform any of its duties or obligations hereunder, or shall violate any of the covenants imposed upon it under this Charter and after written notice from the non-defaulting Party to the Party in default, describing the event of default with particularity, the Party in default shall have fifteen (15) business days following receipt of written notice to cure the default. If the default is not timely cured, then the non-defaulting Party, at its option, may (a) proceed by appropriate court action either at law, in equity or admiralty to enforce performance of the applicable covenants in terms of this Charter; or (b) terminate the Charter without prejudice to any of its rights hereunder.
16. Force Majeure. If, because of strikes, accidents, floods, fuel shortages, embargoes, lock restrictions or closures, ice or for other causes beyond the reasonable control of either Party, the terms of this Charter cannot be adhered to, the Parties shall attempt to negotiate suitable amendments to this Charter so as to continue the Charter but, if no resolution is agreed upon within thirty (30) days of the force majeure event, either Party may terminate this Charter.
17. Indemnification. EMS shall protect, defend, indemnify, and hold harmless Big Rivers and its affiliates and/or its or their contractors, subcontractors, and employees from and against any and all losses, damages, injuries, liabilities, judgments, claims, and expenses of any kind or character with respect to the crew of the Towboat. EMS further shall protect, defend, indemnify, and hold harmless Big Rivers and its affiliates and/or its or their contractors, subcontractors, and employees from and against any and all losses, damages, injuries, judgments, claims, and expenses with respect to all claims for injuries or death to its members of the crew of the Towboat and against all claims of any kind or character whatsoever caused by the use and operation of the Towboat by EMS during the term of this Charter except to the extent said claims arise from the negligence or fault of Big Rivers.
18. Notice. Any notice required or permitted hereunder shall be deemed given when delivered in person, by telex, telecopy, facsimile or electronic mail that includes proof of transmission and receipt or by certified mail, return receipt requested, or commercial overnight delivery service addressed as follows:
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| To: Big Rivers Electric Corporation | To: Evansville Marine Service, Inc. |
| 710 W 2 nd Street | P.O. Box 6048 |
| Owensboro, Kentucky 42301 | Evansville, Indiana 47719 |
| Attn: Manager – Fuel Procurement | Attn: Kyle Aldrich |
| Fax: (270) 827-2101 | Fax: (812) 424-9279 |
| Email: vicky.payne@bigrivers.com | Email: kylea@ems-harbors.com |

19. Applicable Law. The General Maritime Law of the United States and the laws of the Commonwealth of Kentucky will govern the construction, interpretation, and performance of this Charter.
20. Successors and Assigns. The terms of this Charter shall be binding upon and shall inure to the benefit of the Parties hereto, their successors and assigns.
21. Time of the Essence. With respect to all notices and deadlines specified in this Charter, the Parties agree that time shall be of the essence in the performance of the terms of this Charter.
22. Ambiguities. Ambiguities in the Charter are not to be construed against any Party.
23. Amendment. This Charter may be amended, modified, or waived, in whole or in part, only by an agreement in writing executed by the Parties hereto and making specific reference to this Charter.
24. Severability. In the event any one or more of the provisions in this Charter or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Charter and any other application thereof, shall not in any way be affected or impaired thereby; provided, however, that to the extent permitted by the applicable law, any invalid, illegal or unenforceable provision may be considered for the purposes of determining the intent of the Parties in connection with the other provision of this Charter.
25. Counterparts. This Charter 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 Charter Agreement.
26. 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.

27. 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 Charter. 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 immediate termination of this and other outstanding agreements between the Parties.

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

IN WITNESS WHEREOF, the Parties have caused this Charter to be executed by their respective officers duly authorized as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION
INC.

Signed by:
By: Don Gulley
718718E0F950452

Don Gulley Date: 1/31/2025

Chief Executive Office and President

EVANSVILLE MARINE SERVICES,

By: Kyle R. Aldrich
Kyle R. Aldrich Date: 1/21/2025

President