



**Fuel Supplier: Foresight Coal Sales, LLC**

**Fuel Type: Coal**

**Contract No: BRE-24-001**

**Description: Coal Supply Agreement  
Effective April 16, 2024**

Contract # [BRE-24-001]

**COAL SUPPLY AGREEMENT**

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This Coal Supply Agreement (the "Agreement"), dated and effective as of April [16], 2024 (the "Effective Date"), by and between BIG RIVERS ELECTRIC CORPORATION, a Kentucky rural electric cooperative corporation, 201 Third Street, Henderson, Kentucky 42420 ("Buyer"); and FORESIGHT COAL SALES LLC ("Foresight"), as agent for HILLSBORO ENERGY LLC ("Hillsboro") and SUGAR CAMP ENERGY, LLC ("Sugar Camp"), each a Delaware limited liability company, with an address at 211 North Broadway, Suite 2600, Saint Louis, Missouri (Foresight, Sugar Camp, and Hillsboro are collectively referred to herein as the "Seller"), establishes the terms and conditions pursuant to which the Buyer shall purchase and the Seller shall sell coal of the qualities and quantities described herein. Buyer and Seller are each referred to herein as a "Party," and collectively, the "Parties." The following terms constitute all of the terms and conditions of the binding agreement between the Parties regarding this transaction. Seller agrees to sell and deliver, and Buyer agrees to buy and accept, bituminous coal on the terms and conditions stated in this Agreement.

**WITNESSETH:**

WHEREAS, Buyer is an electric utility company which desires to purchase steam coal;  
and  
WHEREAS, Buyer is party to an existing coal supply agreement, dated November 12, 2021, with ACNR Coal Sales, Inc.; and  
WHAREAS, Buyer is reducing the amount of coal it will purchase under the existing coal supply agreement dated November 12, 2021, with ACNR Coal Sales, Inc.; and

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1           WHEREAS, Buyer and Seller desire to enter into this Agreement pursuant to which Seller  
2 will supply coal to Buyer under the terms as set forth herein.

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

6  
7           **SECTION 1. GENERAL.**

8           (a) The above recitals are true and correct and comprise a part of this Agreement.

9           (b) Seller will sell and deliver to Buyer, and Buyer will buy and receive from Seller,  
10 bituminous steam coal under all the terms and conditions of this Agreement.

11           (c) Each covenant, representation and warranty given by a Party herein is a material  
12 inducement for the other Party to enter into this Agreement.

13           (d) Foresight, Sugar Camp, and Hillsboro are jointly and severally liable for all obligations  
14 and warranties of Seller under this Agreement.

15  
16           **SECTION 2. TERM.** The term of this Agreement shall commence on the Effective Date  
17 and shall continue until the end of the day on December 31, 2024, unless sooner terminated  
18 pursuant to any of the terms set forth herein or extended pursuant to Section 3.2 (the "Term").

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20           **SECTION 3. QUANTITY.**

21           § 3.1 Base Quantity. Subject to the terms and conditions set forth in this Agreement, Seller  
22 shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to

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1 be received, the following annual base quantity of coal (“Base Quantity”) for the indicated calendar  
2 year:

3 <u>YEAR</u>	4 <u>BASE QUANTITY (TONS)</u>
5 [April 1, 2024] to 6 December 31, 2024	7 200,000

8 As used herein, the term “ton” shall mean 2,000 pounds.

9 § 3.2 Make-Up Tons. If Seller or Buyer fails to supply or to take delivery of (as applicable)  
10 the entire Base Quantity scheduled for 2024 for any reason other than a force majeure event (as  
11 provided in Section 10 hereof), then the non-Defaulting Party, may, at its sole option and without  
12 any obligation to do so, elect to make up such undelivered or un-received quantities (“Make-Up  
13 Tons”) by having the Defaulting Party deliver or take delivery of the Make-Up Tons during the  
14 first calendar quarter of 2025 (the “Make-Up Quarter”). Make-Up Tons shall accumulate on a  
15 quarterly basis based upon monthly ratable quantities and actual deliveries. Prior to making such  
16 election, the non-Defaulting Party may request from the Defaulting Party adequate assurances,  
17 reasonably satisfactory to the non-Defaulting Party, that the Defaulting Party is capable of  
18 delivering or receiving, and will deliver or receive, during the Make-Up Quarter, (i) the Base  
19 Quantity (if any) applicable for the Make-Up Quarter under this Agreement and (ii) the Make-Up  
20 Tons.

21 In the event the non-Defaulting Party makes the election to deliver or receive Make-Up  
22 Tons, as applicable, the Term of this Agreement will be automatically extended until the Make-  
23 Up Tons are delivered, and the Defaulting Party shall deliver or receive both the Base Quantity

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1 and the Make-Up Tons during the Make-Up Quarter pursuant to a new, mutually agreed delivery  
2 schedule incorporating the delivery of the additional Make-Up Tons.

3 If the Defaulting Party's failure to deliver or receive all of the Base Quantity during the  
4 Term constitutes a breach of or other violation under this Agreement, the existence of this § 3.2  
5 shall not act as a waiver by the non-Defaulting Party of such breach or violation, nor shall it act as  
6 a limitation on the non-Defaulting Party's remedies. However, if the non-Defaulting Party elects  
7 to deliver or receive the Make-Up Tons as provided in this § 3.2, then such election and the receipt  
8 or delivery of the Make-Up Tons shall be the non-Defaulting Party's sole and exclusive remedy  
9 for the failure to deliver or receive as originally scheduled. Nothing in this § 3.2 shall limit the  
10 remedies of the non-Defaulting Party for failure of the Defaulting Party to perform with regard to  
11 the delivery or receipt of the Make-Up Tons.

12 § 3.3 Delivery Schedule. Deliveries shall commence upon the Effective Date for the Base  
13 Quantity set forth in Section 3 Quantity. Unless otherwise mutually agreed, Seller shall deliver  
14 and Buyer shall take delivery of the Base Quantity on a monthly ratable basis, as adjusted during  
15 the year to reflect Buyer's outages, Seller's annual miner's vacation, and minor delays in  
16 transportation. Time is of the essence with respect to the Seller's deliveries and Buyer's  
17 acceptance of deliveries once a schedule is established. Buyer will advise Seller monthly of its  
18 desired loading dates and delivery schedule. The Parties will cooperate and work together in good  
19 faith to agree on a reasonable and mutually agreeable delivery schedule within the Term and within  
20 each month during the Term. Failure by Seller to deliver or failure by Buyer to provide barges or  
21 accept Shipments in accordance with the foregoing schedules, as mutually agreed, other than a  
22 failure by Buyer resulting from rejection or suspension pursuant to the provisions of Section 6

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1 hereof, or a force majeure event, as defined in Section 10 hereof, shall constitute a material breach  
2 within the meaning of Section 14 of this Agreement.

3  
4 **SECTION 4. SOURCE.**

5 § 4.1 Source. The coal sold hereunder shall be mined, fully washed, and supplied from the  
6 Illinois #5 geological seam from the MC #1 Mine and/or Deer Run Mine underground mining  
7 operations located in Franklin and Montgomery, Illinois, respectively (collectively the "Coal  
8 Properties"). Seller represents that it has title to or legal control over the Coal Properties and the  
9 coal located on the Coal Properties. Buyer shall not re-sell coal under this Agreement without  
10 obtaining prior written consent from Seller; such consent shall not be unreasonably withheld.  
11 Seller also represents and warrants that, when delivered to Buyer, the coal will be free and clear  
12 of all liens and encumbrances whatsoever and Buyer shall have good and marketable title to the  
13 delivered coal.

14 § 4.2 Assurance of Capacity, Operation and Reserves. Subject to the provisions of this  
15 Agreement, Seller represents and warrants that the Coal Properties contains recoverable coal of a  
16 quality and in quantities which will be sufficient to satisfy all the requirements of this Agreement.  
17 Seller agrees and warrants that it or its affiliates will have at the Coal Properties to include, but not  
18 limited to, adequate machinery, equipment, preparatory facilities to include wash plant, and other  
19 facilities to produce, prepare, load-out, and deliver coal in the quantities and of the quality required  
20 by this Agreement. Seller further agrees to operate and maintain such machinery, equipment, wash  
21 plant, and facilities in accordance with good mining practices so as to efficiently and economically  
22 produce, prepare, and deliver such coal.

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1 Seller represents and warrants that it has the right and authority to, and does hereby,  
2 dedicate to this Agreement sufficient reserves of coal meeting the quality specifications hereof  
3 lying on or in the Coal Properties so as to fulfill the quantity and quality requirements hereof.  
4 Seller's dedication of reserves shall not be construed to limit or restrict Seller's ability to claim a  
5 valid force majeure event under provisions of Section 10 herein.

6 Seller agrees that Buyer is not providing any capital for the purchase of such machinery,  
7 equipment and/or facilities and that the Seller shall operate and maintain same at its sole expense.

8 Seller has obtained, or will obtain prior to the Effective Date of this Agreement, and will  
9 maintain, all required permits and licenses for the production and delivery of the coal as required  
10 by this Agreement. Seller and Buyer recognize that the processes of obtaining permits may be  
11 subject to delays and regulatory uncertainties. Seller agrees and covenants to use commercially  
12 reasonable efforts to obtain its permits on a timely basis so as to prevent any interruption in its  
13 planned operations.

14 § 4.3 Non-Diversion of Coal. Seller agrees and warrants that it will not, without Buyer's  
15 express prior written consent, use or sell coal from the Coal Properties so as to reduce the  
16 economically recoverable balance of coal in the Coal Properties to an amount of coal less than that  
17 required to be supplied to Buyer hereunder.

18 § 4.4 Seller's Preparation of Mining Plan. Seller shall prepare a complete mining plan for  
19 the Coal Properties with adequate supporting data to demonstrate Seller's capability to have coal  
20 produced from the Coal Properties which meets the quantity and quality specifications of this  
21 Agreement. Seller shall, upon Buyer's request, provide information to Buyer regarding such  
22 mining plan which shall contain maps and a narrative describing areas and seams of coal to be

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1 mined and shall include (but not be limited to) the following information: (i) reserves from which  
2 the coal will be produced during the Term hereof and the mining sequence, by year (or such other  
3 time intervals as mutually agreed) during the Term of this Agreement; (ii) methods of mining such  
4 coal; (iii) methods of transporting and washing the coal to ensure compliance with the quantity  
5 and quality requirements of this Agreement including a description and flow sheet of the  
6 preparation plant; (iv) quality data plotted on the maps depicting data points and isolines by ash,  
7 sulfur, and BTU/lb.; and (v) quality control plans including sampling and analysis procedures to  
8 ensure individual Shipments meet quality specifications. If delivery of such complete mining plan  
9 is requested by Buyer, it shall be delivered to Buyer on or before thirty (30) days after such request.

10 Buyer's receipt of the mining plan or other information or data furnished by Seller (the  
11 "Mining Information") shall not in any manner relieve Seller of any of Seller's obligations or  
12 responsibilities under this Agreement; nor shall Buyer's review of the Mining Information be  
13 construed as constituting an approval of Seller's proposed mining plan for any purposes. Review  
14 by Buyer of the Mining Information is for Buyer's purposes only and is to allow Buyer to evaluate  
15 Seller's capability to supply coal as required by this Agreement. Buyer shall maintain as  
16 confidential all Mining Information disclosed by Seller and shall not disclose or use such Mining  
17 Information for any purpose other than to evaluate Seller's performance and compliance with the  
18 provisions of this Agreement, subject only to any disclosures which may be required by law or in  
19 connection with a judicial or administrative proceeding before courts, regulatory bodies, or  
20 agencies such as the Kentucky Public Service Commission. Seller, in Seller's sole discretion, may  
21 change all or any portion of the Mining Information at any time based on prudent mining practices;



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1 provided, however, that Seller's right to make such changes does not relieve Seller of any  
2 obligations under this Agreement.

3 Upon request, Buyer shall have the right to request a mining plan update showing progress  
4 to date, Seller's conformity to the original mining plan, then-known changes in reserve data and  
5 planned changes in mining progression, plans, or procedures.

6 § 4.5 Relationship of the Parties. Each Party agrees that it is not and will not hold itself  
7 out as a partner, joint venturer, employee, agent or representative of the other Party. Nothing herein  
8 contained shall be construed as creating a single enterprise, joint venture, agency, partnership, joint  
9 employer, owner-contractor, or lessor-lessee relationship between Buyer and Seller or between  
10 Buyer and the owners or operators of the Coal Properties.

11 Each Party shall have sole and exclusive authority to direct and control its respective  
12 activities and operations, and those of its affiliates and/or any subcontractors, undertaken in the  
13 performance of their respective obligations under this Agreement. Each Party shall exercise full  
14 and complete control over its respective work force and labor relations policies. Each Party shall  
15 have no authority or control over the other Party's operations or work force.

16  
17 **SECTION 5. DELIVERY.**

18 § 5.1 Barge Delivery Point. The coal shall be delivered to Buyer F.O.B. barge at the Sitran  
19 River Dock, mile point 817.5 on the Ohio River (the "Barge Delivery Point"). With Buyer's prior  
20 oral, followed by written consent, Seller may deliver the coal at a location different from the Barge  
21 Delivery Point, provided, however, (i) any increase in transportation expense for the cost of  
22 transporting the coal to the destination(s) designated by Buyer shall be for Seller's account and (ii)

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1 any decrease in transportation expense for the cost of transporting the coal to the destination(s)  
2 designated by Buyer shall be passed back to Seller. In the event Buyer consents to the delivery of  
3 a Shipment at a location different from the Barge Delivery Point, that location shall be the “Barge  
4 Delivery Point” for that Shipment.

5 § 5.2 Title/Risk of Loss. Title to and risk of loss of coal sold hereunder will pass to Buyer  
6 and the coal will be considered to be delivered when Buyer’s barging contractor unloads the barges  
7 at Buyer’s D.B. Wilson Generating Station.

8 § 5.3 Cost of Transportation. Seller shall arrange and pay for all costs of (i) transporting  
9 the coal from the Coal Properties as provided herein to the Barge Delivery Point (including,  
10 without limitation, all washing, blending, loading, rail, truck, barge and trans-loading costs, and  
11 all fleeting, switching, harbor and other port charges) and (ii) blending, loading and trimming the  
12 coal into barges to the proper draft and the proper distribution within the barges. Buyer shall  
13 arrange and pay for transporting the coal by barge from the Barge Delivery Point, with the  
14 exception that Seller shall reimburse Buyer for all Barge Transportation Costs as defined in § 8.3.

15 § 5.4 Barge Delivery. Buyer and Seller shall work together to reach a mutually agreeable  
16 reasonable quarterly ratable schedule. Buyer or its contractor shall furnish suitable barges in  
17 accordance with such schedule for delivery. Unless instructed otherwise by the barging contractor  
18 or unless river conditions require that lesser amounts must be loaded, Seller shall ensure that rake  
19 barges are loaded to a minimum tonnage of 1,550 tons per barge and box barges are loaded to a  
20 minimum tonnage of 1,650 tons per barge. The Parties shall work together in communication in  
21 regard to any barge and/or river condition(s) which might necessitate lesser loading. Buyer shall  
22 arrange for transporting the coal from the Barge Delivery Point to Buyer’s generating station(s)

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1 and shall pay for the cost of such transportation. Seller will reimburse Buyer for all such Barge  
2 Transportation Costs. Seller shall be granted forty-eight (48) hours free time to load barges, which  
3 free time shall run from the loading date agreed upon by the Parties. Seller shall require of the  
4 loading operator and/or dock that the barges provided by Buyer or Buyer's contractor be provided  
5 convenient and safe ingress, transit, berth, loading, and egress while the barges are at the Barge  
6 Delivery Point. While the barges are in the care and custody of the loading dock at the Barge  
7 Delivery Point, Seller shall ensure, at its expense, that all U.S. Coast Guard regulations and other  
8 applicable laws, ordinances, rulings, and regulations shall be complied with, including adequate  
9 mooring and display of warning lights; and that any water in the cargo boxes of the barges shall  
10 be pumped out by Seller or Seller's contractor prior to loading. Seller represents and warrants and  
11 shall provide acceptable certificates to Buyer that the loading dock operator carries Landing  
12 Owners / Stevedoring / Wharfinger's Liability insurance with basic coverage of not less than  
13 \$2,000,000.00 and Seller shall provide evidence thereof to Buyer in the form of a certificate of  
14 insurance from the insurance carrier or an acceptable certificate of self-insurance with a  
15 requirement for thirty (30) days advance notification to Buyer in the event of a termination or  
16 reduction in coverage under the insurance. Seller shall ensure that barge decks are swept clean of  
17 any debris and ready for Buyer or Buyer's contractor to pick-up the loaded barges upon Seller's  
18 notification.

19 Buyer shall indemnify, save harmless, and defend Seller and its affiliates and their officers,  
20 directors, agents, contractors, and employees (all referred to in this sentence as "Seller") from and  
21 against any liabilities, expenses, losses, claims, damages, penalties, causes of action, or suits, and  
22 all other obligations whatsoever, including without limitation, all judgments rendered against and

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1 all fines and penalties imposed upon Seller (whether severally, or in combination with others) and  
2 any reasonable attorneys' fees and any other costs of litigation arising out of injuries or death to  
3 any person(s), or damage to any property, to the extent caused by Buyer's or Buyer's contractors'  
4 negligence or willful misconduct. Any injury or death to person(s) or damage to property as  
5 hereinbefore described shall be reported to Seller by Buyer immediately upon the occurrence  
6 thereof, and confirmed in writing as soon as possible.

7 Seller shall indemnify, save harmless, and defend Buyer and its affiliates and their officers,  
8 directors, agents, contractors, members, and employees (all referred to in this sentence as "Buyer")  
9 from and against any liabilities, expenses, losses, claims, damages, penalties, causes of action, or  
10 suits, and all other obligations whatsoever, including without limitation, all judgments rendered  
11 against and all fines and penalties imposed upon Buyer (whether severally, or in combination with  
12 others) and any reasonable attorneys' fees and any other costs of litigation arising out of injuries  
13 or death to any person(s), or damage to any property, to the extent caused by Seller's or Seller's  
14 contractors' negligence or willful misconduct. Any injury or death to person(s) or damage to  
15 property as hereinbefore described shall be reported to Buyer by Seller immediately upon the  
16 occurrence thereof, and confirmed in writing as soon as possible.

17

18 **SECTION 6. QUALITY.**

19 § 6.1 Specifications. The coal delivered from the Coal Properties shall conform to the  
20 following specifications on an "as-received" basis:

21	Quality	Guaranteed Monthly	Rejection
22	Limits		
23	<u>Specifications</u>	<u>Weighted Average</u>	<u>(Per Shipment)</u>

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1	BTU/lb.	Min. 11,150	< 11,000
2	Ash	Max. 8.50 lbs./MMBTU	> 9.47 lbs./MMBTU
3	Moisture	Max. 12.30 lbs./MMBTU	> 12.45 lbs./MMBTU
4	Sulfur	Max. 2.75 lbs./MMBTU	> 2.95 lbs./MMBTU
5	Chlorine	Max. 0.22 %	> 0.24 %
6	Mercury (dry basis)	Max. 0.085 ug/g	> 0.090 ug/g
7	Calcium Oxide (ash basis)	Max. 3.80 %	
8	Arsenic	Max. 2.80 ug/g	
9	Vanadium	Max. 36 ug/g	
10			
11	SIZE (2" x 0"):		
12	Top size (inches)*	Max. 2" x 0"	> 4"
13	Fines (% by weight)		
14	passing ¼" screen	Max. 55%	> 60 %
15			
16			

**% BY WEIGHT:**

17			
18			
19	VOLATILE	35	< 32
20	FIXED CARBON	40	< 37
21	GRINDABILITY (HGI)	52	< 50
22	BASE ACID RATIO (B/A)	0.40	> 0.45
23	Fouling Index	0.72	> 0.75
24	Slagging Index	1.40	> 1.45
25			

**ASH FUSION TEMPERATURE (°F) (ASTM D1857)**

27

**REDUCING ATMOSPHERE**

28			
29	Initial Deformation	Min. 2006	
30	Softening (H=W)	Min. 2071	
31	Softening (H=1/2W)	Min. 2133	
32	Fluid	Min. 2286	
33			

**OXIDIZING ATMOSPHERE**

34			
35	Initial Deformation	Min. 2377	
36	Softening (H=W)	Min. 2413	
37	Softening (H=1/2W)	Min. 2452	
38	Fluid	Min. 2542	
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1 the Parties. For rejected barge Shipments, Seller shall be responsible for all transportation costs  
2 associated with the rejected coal including, but not limited to, demurrage, switching charges, and  
3 storage charges associated with the rejected coal from the time the title originally was or would  
4 have been transferred from Seller to Buyer.

5 Whether or not Buyer rejects a Shipment of coal which is otherwise rejectable, such  
6 rejectable shipment shall be a rejectable Shipment for purposes of § 6.4 hereof. Buyer's failure to  
7 reject, within the time periods set forth in this section, any Shipment of coal which is otherwise  
8 rejectable shall not operate as a waiver of any right or remedy of Buyer with respect to such  
9 Shipment other than the right to reject such Shipment.

10 Further, Seller acknowledges its part in reasonable and workmanlike quality control and as  
11 such, Seller shall not take advantage of Buyer's good faith by delivering coal that is substantially  
12 above or below, as applicable, the Guaranteed Monthly Weighted Averages and the per Shipment  
13 Rejection Limits.

14 In the event Buyer rejects coal, replacement of the tonnage of the rejected coal shall be at  
15 Buyer's sole discretion. If Buyer elects not to receive replacement tonnage, the Base Quantity for  
16 the quarter in which the rejected Shipment was to have been delivered shall be reduced by the  
17 tonnage of the rejected Shipment. If Buyer elects to receive replacement tonnage, such tonnage  
18 shall be considered Make-Up Tons pursuant to § 3.2.

19 In the event Buyer fails to reject non-conforming coal which it had the right to reject, then  
20 such non-conforming coal shall be deemed accepted by Buyer, and its quality characteristics and  
21 weight shall be included in calculations for payment. Accepted non-conforming coal shall  
22 nevertheless be considered "rejectable" for purposes of § 6.4.

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1           § 6.4 Suspension and Termination. If the ton-weighted monthly average of coal fails to  
2 meet any one (1) or more of the individual Guaranteed Monthly Weighted Average specifications  
3 set forth in § 6.1 for any two (2) months in any six (6) calendar month period, or if three (3)  
4 Shipments are rejectable in any consecutive thirty (30) day period, then Buyer may upon written  
5 notice delivered in accordance with Section 12, Notices, suspend future Shipments, except those  
6 Shipments which have already been loaded into barges prior to the time notice is received by  
7 Seller. Seller shall, within ten (10) days after receipt of Buyer's notice, provide Buyer with  
8 reasonable assurances that subsequent deliveries of coal shall meet or exceed the Guaranteed  
9 Monthly Weighted Averages set forth in § 6.1 and that the coal from the Coal Properties thereafter  
10 will exceed the Rejection Limits set forth in § 6.1. If Seller fails to provide such assurances to  
11 Buyer's reasonable satisfaction within said ten (10) day period, then Buyer, notwithstanding the  
12 notice and termination provisions contained in Section 14, may terminate this Agreement  
13 immediately and exercise all its other rights and remedies under applicable law and in equity for  
14 Seller's breach. Buyer's failure to terminate after the end of such ten (10) day period shall not  
15 constitute a waiver for a continuing default or for any subsequent defaults. If Seller provides such  
16 assurances to Buyer's reasonable satisfaction, Shipments hereunder shall resume, and any tonnage  
17 deficiencies resulting from suspension may be made up at Buyer's sole option. If Buyer elects not  
18 to receive replacement tonnage, the Base Quantity amount for the quarter(s) in which a suspension  
19 occurs shall be reduced by the tonnage deficiencies resulting from suspension. If Buyer elects to  
20 receive replacement tonnage, such tonnage shall be considered Make-Up Tons pursuant to § 3.2.

21           Buyer shall not unreasonably withhold its acceptance of Seller's assurances, or  
22 unreasonably delay resumption of Shipments. If Seller, after the resumption of Shipments, fails



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1 to meet any one (1) or more of the individual Guaranteed Monthly Weighted Average  
2 specifications for any one (1) calendar month within the next one hundred eighty (180) days or if  
3 three (3) Shipments are rejectable within any consecutive thirty (30) days during such one hundred  
4 eighty (180) day period, then Buyer notwithstanding the notice and termination provisions  
5 contained in Section 14, may terminate immediately this Agreement and exercise all its other rights  
6 and remedies under applicable law. The aforementioned one hundred eighty-day period shall  
7 commence on the date upon which Shipments are resumed.

8 If Buyer refrains from terminating this Agreement as a result of one or more non-  
9 conforming Shipments of coal as provided herein, Buyer shall not be deemed to have waived its  
10 right to terminate this Agreement for any future breach of the Agreement.

11 § 6.5 Warranty. SELLER REPRESENTS AND WARRANTS TO BUYER THAT  
12 ALL COAL PROVIDED PURSUANT TO THIS AGREEMENT WILL MEET THE  
13 APPLICABLE SPECIFICATIONS/REQUIREMENTS, AS SPECIFIED IN SECTION 6.1  
14 FOR THE COAL. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT AND  
15 IN SECTION 6.1, SELLER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES,  
16 ANY AND ALL IMPLIED WARRANTIES OF QUALITY, INCLUDING, WITHOUT  
17 LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A  
18 PARTICULAR PURPOSE.

19

20 **SECTION 7. WEIGHTS, SAMPLING AND ANALYSIS.**

21 § 7.1 Weights for Delivery. The weight of the coal delivered hereunder by barge shall be  
22 determined on a per Shipment basis by Seller on the basis of scale or draft weights, as the case

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1 may be, at the loading point, unless another method is mutually agreed upon by the Parties. Such  
2 draft shall be duly performed by an appropriate independent testing agency and performed in a  
3 workmanlike manner pursuant to methodologies for obtaining such that the weights are deemed  
4 accurate and reliable so as to be used for payment purposes in accordance with the terms and  
5 conditions of this Agreement. In the event that Seller utilizes scales for the purpose of determining  
6 the weight of the coal delivered pursuant to this Agreement, such scales shall be duly and properly  
7 maintained and from time-to-time reviewed by a reputable and skilled independent testing agency.  
8 Such independent agency shall verify and certify via physical material test(s) the scale's accuracy,  
9 reliability, and usage for payment purposes. The standards for the determination of the accuracy  
10 and reliability of the coal scale shall be the standards contained in the Weights and Measures for  
11 the State of Kentucky or the National Institute of Standards and Technology Handbook 44, or  
12 superior standards as determined by the testing agency for such scales, to ensure accuracy and  
13 reliability. Buyer shall have the right, at its expense and upon reasonable notice, to have the draft  
14 process or scales checked for accuracy at any reasonable time or frequency. In the event scales  
15 are utilized, if such scales are found to be over or under the tolerance range allowable for the scale  
16 based on the rules and regulations concerning Weights and Measures for the State of Kentucky or  
17 the National Institute of Standards and Technology Handbook 44 or other superior standard, either  
18 Party shall pay to the other any amounts owed due to such inaccuracy for a period not to exceed  
19 30 days or the time between tests, whichever is shorter. Seller shall, upon request from Buyer,  
20 provide the Buyer adequate and reasonable data or certifications completed by a third party  
21 indicating such scales are operational and performing at a level appropriate for payment purposes.

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1           § 7.2 Sampling and Analysis. The sampling and analysis of the coal delivered hereunder  
2 shall be performed by Seller or Seller's contractor at the Barge Delivery Point and, except as  
3 otherwise provided in this Agreement, the results thereof shall be accepted and used for the quality  
4 and characteristics of the coal delivered under this Agreement unless another method is mutually  
5 agreed upon by the Parties. Seller shall provide a short-proximate analyses from its or its  
6 contractor's laboratory to Buyer at Seller's expense in accordance with industry-accepted  
7 standards. All shipment analyses shall be made in Seller's or Seller's contractor's laboratory at  
8 Seller's expense in accordance with A.S.T.M. practices and procedures. Samples for analyses: (i)  
9 shall be taken by the most current industry-accepted A.S.T.M. standard for the mechanical  
10 sampling system in place; (ii) shall be mutually acceptable to both Parties; (iii) may be composited;  
11 and (iv) shall be taken with a frequency and regularity sufficient to provide reasonably accurate  
12 representative samples of the deliveries made hereunder. Both Parties acknowledge that they are  
13 familiar with the sampling and analysis practices to be utilized hereunder, and confirm that they  
14 are acceptable. Seller shall notify Buyer in writing of any significant changes in its sampling and  
15 analysis practices. Any such changes in sampling and analysis practices shall, except for industry  
16 accepted changes in practices, provide for no less accuracy than the sampling and analysis  
17 practices existing at the time of the execution of this Agreement, unless the Parties otherwise  
18 mutually agree.

19           Seller shall maintain its sampling devices pursuant to the manufacturer's recommendations  
20 and/or industry standard(s) (whichever process is superior pursuant to A.S.T.M.) and shall have  
21 the sampling system inspected by an independent firm to ensure performance at reasonable  
22 frequency to ensure representative samples. Seller shall provide Buyer, upon Buyer's request,

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1 sampler bias test results performed upon the sampling system to ensure the sampling system is  
2 performing without bias of samples.

3 Each sample taken shall be divided into four (4) parts and put into airtight containers,  
4 properly labeled and sealed. One part shall be used for analysis; one part shall be used as a check  
5 sample, if a Party in its sole judgment determines it is necessary; one part shall be retained until  
6 the twenty-fifth (25<sup>th</sup>) of the month following the month of unloading (the "Disposal Date") and  
7 shall be delivered to a requesting Party for analysis if so requested before the Disposal Date; and  
8 one part ("Referee Sample") shall be retained until the Disposal Date. Seller shall provide to Buyer  
9 an electronic or facsimile copy or copies of all analyses within two (2) days of completion. Seller  
10 shall provide a composite of all the analyses for presentation to Buyer by the tenth (10<sup>th</sup>) day of  
11 the month following the month of unloading. Buyer shall, upon reasonable notice to Seller, subject  
12 to Seller's or Seller's contractor's then applicable safety policies and procedures, have the right to  
13 have a representative present to observe the sampling and analyses performed, to observe sampler  
14 inspections, or to observe Seller's bias testing of the sampling system. Unless Buyer requests a  
15 Referee Sample analysis before the Disposal Date, the analyses of the Seller shall be used to  
16 determine the quality of the coal delivered hereunder. The Monthly Weighted Averages shall be  
17 determined by utilizing the individual Shipment analyses and the weight of each Shipment.

18 If any dispute arises before the Disposal Date, the retained Referee Sample shall be  
19 submitted for analysis to an independent commercial testing laboratory ("Independent Lab")  
20 mutually chosen by Buyer and Seller. For each coal quality specification in question, a dispute  
21 shall be deemed not to exist and Seller's analysis shall prevail and the analysis of the Independent

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1 Lab shall be disregarded if the analysis of the Independent Lab differs from the Party obtaining  
2 the analysis by an amount equal to or less than:

- 3 (i) 0.50% moisture
- 4 (ii) 0.50% ash on a dry basis
- 5 (iii) 100 Btu/lb. on a dry basis
- 6 (iv) 0.10% sulfur on a dry basis.

7  
8 For each coal quality specification in question, if the analysis of the Independent Lab  
9 differs from the Seller's analysis by an amount more than the amounts listed above, then the  
10 analysis of the Independent Lab shall prevail and the analysis of the Seller shall be disregarded.  
11 The cost of the analysis made by the Independent Lab shall be borne by Buyer to the extent that  
12 the Seller's analysis prevails and by the Seller to the extent that the analysis of the Independent  
13 Lab prevails.

14

15 **SECTION 8. PRICE.**

16 § 8.1 Base Price. Except as provided in § 8.2, the Base Price of the coal to be sold and  
17 delivered hereunder shall be firm and will be determined by the year in which the coal is delivered  
18 to the Barge Delivery Point as set forth in Section 3, in accordance with the following schedule on  
19 the basis of \$/MMBTU F.O.B. Barge Delivery Point.

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<u>YEAR</u>	<u>BASE QUANTITY TONNAGE</u> <u>BASE PRICE F.O.B. BARGE AT</u> <u>THE DELIVERY POINT (\$/MMBTU)</u>
April 1, 2024 to end of Term	\$1.8504

Notwithstanding the foregoing, the Base Price for the Base Quantity of coal delivered at the Barge Delivery Point, an amount of \$3.82 per ton will be added to the Base Price.

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§ 8.2 Payment Calculation. Payment shall be based solely upon the tonnage and BTU/lb. received pursuant to the terms of Section 6. QUALITY, Section 7. WEIGHTS, SAMPLING AND ANALYSIS, and this Section 8 PRICE. If there are any adjustments pursuant to Section 6. QUALITY, such adjustments shall apply as a credit or debit, as applicable, to amounts owed Seller by Buyer for the month the coal was unloaded.

§ 8.3 Barge Transportation Costs. It is the intent of the Parties that Seller will be responsible for all reasonable and documented costs incurred by either Party to deliver coal under this Agreement from the Barge Delivery Point to Big Rivers' D.B. Wilson plant (the "Barge Transportation Costs"). Barge Transportation Costs shall include, the daily charter costs, fuel and lube costs, and inspection costs charged to Buyer for the Towboat(s) and barges, and routine barge maintenance costs charged to Buyer, used to deliver coal from the Barge Delivery Point to Buyer's D.B. Wilson plant; Barge Transportation Costs shall also include all fees, penalties, and charges for damages, charged to Buyer, but only to the extent such fees, penalties, or charges for damages are caused by Seller's or Seller's contractors or agents. Buyer will invoice Seller monthly for the Barge Delivery Costs. Buyer may offset any amounts due to it from Seller under this Agreement against any amounts due Seller.

**SECTION 9. INVOICES, BILLING AND PAYMENT.**

§ 9.1 Invoicing Address. Invoices will be sent to Buyer at the following address:

Big Rivers Electric Corporation  
710 W 2<sup>nd</sup> Street

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1                   Owensboro, KY  
2                   Attn.: - Fuels Accounting  
3

4                   Inquiries to Seller concerning invoicing shall be to:

5                   Foresight Coal Sales, LLC  
6                   Accounts Receivable Department  
7                   46226 National Road  
8                   St. Clairsville, OH 43950  
9                   Phone: (740) 338-3100  
10                  Email: arinfo@foresight.com  
11  
12

13                  § 9.2 Payment Procedures for Coal Shipments. For all coal delivered and unloaded from  
14 barges at the destination generating station between the first (1<sup>st</sup>) day of the calendar month and  
15 the fifteenth (15<sup>th</sup>) day of the calendar month, Seller shall invoice Buyer by the 20<sup>th</sup> of the month,  
16 based upon the Base Price on a dollar per MMBTU basis as calculated by the as-received weighted-  
17 average BTU/lb. analysis from the 1<sup>st</sup> day of the month through the 15<sup>th</sup> day of the month. Buyer  
18 shall make partial payment for the amount owed for the coal based on the as-received BTU/lb.  
19 analysis through the fifteenth (15<sup>th</sup>) day of the month by the twenty-fifth (25<sup>th</sup>) day of the month,  
20 except that, if the twenty-fifth (25<sup>th</sup>) day of the month is not a regular work day, payment shall be  
21 made on the next regular work day.

22                  For all coal delivered and unloaded at the destination generating station between the  
23 sixteenth (16<sup>th</sup>) day of the calendar month and the last day of the calendar month, Seller shall  
24 invoice Buyer by the fifth (5<sup>th</sup>) day of the following month, based upon the Base Price on a dollar  
25 per MMBTU basis as calculated by the as-received weighted-average BTU/lb. analysis from the  
26 sixteenth (16<sup>th</sup>) day of the month through the end of the calendar month. Buyer shall make a  
27 payment for the amount owed for coal by the tenth (10<sup>th</sup>) day of the month following the month of

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1 delivery and unloading at the destination generating station, except that, if the tenth (10<sup>th</sup>) day of  
2 the month is not a regular work day, payment shall be made on the next regular work day. Also,  
3 by the tenth (10<sup>th</sup>) day of the month following the month of delivery and unloading barges at the  
4 destination generating station, a reconciliation of amounts paid via partial payment and amounts  
5 owed for all coal delivered and unloaded at the destination generating station during said month  
6 shall be made including any applicable discounts or other adjustments provided herein, except that,  
7 if the tenth (10<sup>th</sup>) day of the month is not a regular work day, such reconciliation shall be made on  
8 the next regular work day.

9 Buyer shall provide to Seller monthly Barge Transportation Costs invoices with the  
10 supporting documentation at defined in § 8.3, for the Barge Transportation Costs. Seller shall pay  
11 Buyer within fifteen (15) days after receipt of each Buyer's Barge Transportation Costs invoice.

12 In the event Buyer fails to provide prompt payment pursuant to the timing set forth above,  
13 and such failure is not due to insufficient detail as required to be provided by Seller, any payment  
14 delayed in excess of 5 business days of the payment due date as set forth herein, shall be subject  
15 to interest at four percent (4.0%) per annum from the sixth (6<sup>th</sup>) business day until such time as the  
16 payment is made in full to Seller.

17 Seller shall provide Buyer its bank wiring and A.C.H. instructions upon the execution of  
18 this Agreement.

19 § 9.3 Withholding. Buyer shall have the right to withhold from payment of any billing or  
20 billings (i) any sums which it is not able in good faith to verify or which it otherwise in good faith  
21 disputes; (ii) any damages resulting from any breach of this Agreement by Seller; and (iii) any



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1 amounts owed to Buyer from Seller. Buyer shall notify Seller promptly in writing of any such  
2 issue, stating the basis of its claim and the amount it intends to withhold.

3 Payment by Buyer, whether knowing or inadvertent, of any amount in dispute shall not be  
4 deemed a waiver of any claims or rights by Buyer with respect to any disputed amounts or  
5 payments made. Any disputed amounts withheld by Buyer that are later found to have been  
6 withheld improperly, other than disputed amounts resulting from Seller's errors or lack of  
7 documentation, shall be paid within five (5) business days after such determination. In the event  
8 Buyer has not made such payment within five (5) business days, such unpaid amount shall be  
9 subject to interest at four percent (4.0%) per annum from the sixth (6) business day until such time  
10 as the payment is made in full to Seller.

11

12 **SECTION 10. FORCE MAJEURE.**

13 § 10.1 General Force Majeure. Except as otherwise provided herein, if either Party hereto  
14 is delayed in or prevented from performing any of its obligations under this Agreement (other than  
15 Buyer's obligation to pay for coal delivered hereunder) due to acts of God, war, riots, civil  
16 insurrection, acts of the public enemy, terrorism, nuclear disasters, strikes, lockouts, damage to  
17 mines or plants, breakdown of equipment or facilities, fires, explosions, floods, earthquakes,  
18 damage to or destruction of the mine or preparation plant, or unanticipated geologic conditions  
19 which could not have been discovered by the exercise of reasonable engineering prudence, then  
20 the obligations of both Parties hereto shall be suspended to the extent made necessary by such  
21 event; provided that the affected Party gives prompt oral notice to the other Party followed by  
22 written notification not later than ten (10) days after such commencement or occurrence. The

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1 written notification for force majeure events shall also describe the nature and probable duration  
2 of the force majeure event. Failure to give either of such notices, or the failure to furnish in the  
3 written notice information concerning the nature and probable duration of the force majeure event,  
4 shall be deemed a waiver of the affected Party's rights under this Section 10. The Party declaring  
5 a force majeure event shall exercise due diligence to avoid the force majeure event and shorten its  
6 duration and will keep the other Party advised as to the continuance of the force majeure event,  
7 and in no event may a Party declare a force majeure for any event caused by that Party's willful or  
8 negligent acts or omissions. In the event of force majeure, delivery of the affected quantity of coal  
9 shall be made up at the sole discretion of the non-declaring Party based upon a reasonable delivery  
10 schedule. If the non-declaring Party elects not to receive or deliver the replacement tonnage, as  
11 applicable, the Base Quantity for the quarter(s) in which a force majeure occurs shall be reduced  
12 by the tonnage deficiencies resulting from the force majeure. If the non-declaring Party elects to  
13 receive replacement tonnage, such tonnage shall be considered Make-Up Tons pursuant to § 3.2.

14 Buyer reserves the right to purchase replacement coal from other sources during the  
15 occurrence of a force majeure event affecting Seller. Seller shall have the right to sell coal which  
16 Buyer is unable to accept during an occurrence of force majeure event affecting Buyer.

17 In the event that a situation of force majeure continues for a period exceeding forty-five  
18 (45) days, then the Party not claiming force majeure may elect to terminate this Agreement by  
19 giving written notice to the other Party. In the event of such termination, neither Party shall have  
20 any further liability to the other except for those obligations or liabilities which may have accrued  
21 with respect to performance or defaults prior to said termination.

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1           §10.2 Environmental Law Force Majeure. If a Party concludes that any new environmental  
2 law is enacted or new rule or regulation is promulgated (including without limitation, an  
3 amendment to or a new interpretation of an existing law, rule, or regulation) after the Effective  
4 Date of this Agreement which becomes effective during the Term of this Agreement, which makes  
5 it impossible, commercially impracticable or uneconomical for Seller to deliver or Buyer to utilize  
6 this or like kind and quality coal which thereafter would be delivered under this Agreement, such  
7 Party shall so notify the other Party. Thereupon, Buyer and Seller shall promptly consider whether  
8 corrective actions can be taken in the mining and preparation of the coal at Seller's mine and/or in  
9 the handling and utilization of the coal at Buyer's generating station. If in Buyer's sole judgment  
10 any such actions will not, without unreasonable expense to Buyer, make it possible, commercially  
11 practicable and economical for Buyer to use the coal which would be delivered hereunder without  
12 violating any applicable law, regulation, policy or order, Buyer shall have the right, upon the later  
13 of sixty (60) days' notice to Seller or the effective date of such restriction, to terminate this  
14 Agreement without further obligation hereunder on the part of either Party except for obligations  
15 incurred prior to the time of such termination.

16           If in Seller's sole judgment any such actions will not, without unreasonable expense to  
17 Seller, make it possible, commercially practicable and economical for Seller to produce and deliver  
18 the coal which would otherwise be delivered hereunder without violating any applicable law,  
19 regulation, policy or order, Seller shall have the right, upon the later of sixty (60) days' notice to  
20 Buyer or the effective date of such restriction, to terminate this Agreement without further  
21 obligation hereunder on the part of either Party except for obligations incurred prior to the time of  
22 such termination.

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**SECTION 11. IDLE NOTICE.** In the event that Buyer intends to idle or otherwise cease operating any generating units or stations utilized by it within its system, Buyer shall provide six (6) months' written notice of such event (the "Idle Notice") to Seller to include the date of such actual or planned idling (the "Idle Date"). From and after the Idle Notice and determination of the Idle Date provided to Seller, Buyer shall have no other further obligation to accept delivery of any remaining Quantity under this Agreement, except for Shipments scheduled up to the Idle Date. Buyer may terminate this Agreement following the Idle Notice and Idle Date as provided herein without any further liability other than that which has accrued pursuant to the Agreement prior to the Idle Date, including, without limitation, such payments, fees, costs, expenses, and other charges that are outstanding or that accrue prior to the delivery to Buyer as of the Idle Date.

**SECTION 12. NOTICES.**

§ 12.1 Form and Place of Notice. Any official notice, request for approval or other document required or permitted to be given under this Agreement shall be in writing, unless otherwise provided herein, and shall be deemed to have been sufficiently given when delivered in person, transmitted by facsimile, or other electronic media, delivered to an established mail service for same day or overnight delivery, or dispatched in the United States mail, postage prepaid, for mailing by first class, certified, or registered mail, return receipt requested, and addressed as follows:

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1           If to Buyer:           Big Rivers Electric Corporation  
2  
3                               710 W 2<sup>nd</sup> Street  
4                               Owensboro, KY 42301  
5                               Attn: Chief Operating Officer  
6                               Facsimile: (270) 827-2101  
7                               Electronic mail: nathan.berry@bigrivers.com  
8

9           With a copy to:       Big Rivers Electric Corporation  
10                               710 W 2<sup>nd</sup> Street  
11                               Owensboro, KY 42301  
12                               Attn: Manager, Fuel Procurement  
13                               Facsimile: (270) 827-2101  
14                               Electronic mail: vicky.payne@bigrivers.com  
15

16          If to Seller:           Foresight Coal Sales LLC  
17                               211 North Broadway, Suite 2600  
18                               Saint Louis, Missouri, 63102  
19                               Attn: Assistant Director Contract Administration  
20                               Email: steven.gorecki@foresight.com  
21                               Attn: Todd Adkins  
22                               Email: todd.adkins@foresight.com  
23                               Attn: Nicholas Johnson  
24                               Email: njohnson@baileyglasser.com  
25

26          With a copy to:       Foresight Coal Sales LLC  
27                               Metropolitan Square Building  
28                               211 North Broadway, Suite 2600  
29                               St. Louis, MO 63102  
30                               Attention: Contract Administration  
31                               foresightcoalsales@foresight.com  
32  
33

34           § 12.2 Change of Person or Address. Any Party may change the persons or addresses  
35 specified above upon giving written notice to the other Party of such change.

36           § 12.3 Electronic Data Transmittal. Seller hereby agrees, at Seller's cost, to electronically  
37 transmit shipping notices and/or other data to Buyer in a format acceptable to and established by

Contract # [BRE-24-001]

1 Buyer upon Buyer's request. Buyer shall provide Seller with the reasonable appropriate format  
2 and will inform Seller as to the electronic data transmission requirements at the appropriate time.

3

4 **SECTION 13. INDEMNITY AND INSURANCE.**

5 § 13.1 Indemnity. Seller agrees to indemnify and save harmless Buyer, its officers,  
6 directors, employees and representatives from any responsibility and liability for any and all  
7 claims, demands, costs, charges, losses, legal actions for personal injuries, including death and  
8 property damage or pollution (including reasonable outside attorney's fees), but not including  
9 Buyer's losses resulting from Buyer's indemnification obligations hereunder ("Buyer's Losses");  
10 (i) due to any failure of Seller or its affiliates, or any owner or operator of the Coal Properties, their  
11 respective employees, agents, representatives, contractors or subcontractors, to comply with any  
12 laws, regulations or ordinances, relative to Seller's performance of this Agreement, or (ii) due to  
13 the acts or omissions of Seller or its affiliates, or any owner or operator of the Coal Properties,  
14 their respective employees, agents, representatives, contractors or subcontractors in relation to the  
15 performance of this Agreement. Notwithstanding the foregoing, Seller shall not be liable or have  
16 any obligation to indemnify Buyer for Buyer's Losses arising out of or resulting from Buyer's  
17 negligence, willful misconduct or breach of this Agreement.

18 Buyer agrees to indemnify and save harmless Seller, its officers, directors,  
19 employees and representatives from any responsibility and liability for any and all claims,  
20 demands, losses, legal actions for personal injuries, including death and property damage  
21 (including reasonable outside attorney's fees), but not including Seller's losses resulting from  
22 Seller's indemnification obligations hereunder ("Seller's Losses") (i) due to any failure of Buyer,

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1 their respective employees, agents, representatives, contractors or subcontractors, to comply with  
2 any laws, regulations or ordinances, relative to Buyer's performance of this Agreement, or (ii) due  
3 to the acts or omissions of Buyer in relation to the performance of this Agreement.  
4 Notwithstanding the foregoing, Buyer shall not be liable or have any obligation to indemnify Seller  
5 for Seller's Losses arising out of or resulting from Seller's negligence, willful misconduct or  
6 breach of this Agreement.

7 § 13.2 Insurance. Seller agrees to carry insurance coverage with minimum limits as  
8 follows. Further, Seller shall require that any owner or operator of the Coal Properties procure  
9 and maintain insurance coverage of the type set forth below with coverage limits not less than the  
10 limits set forth below.

11 (a) Commercial General Liability, including Completed Operations and Contractual  
12 Liability, \$2,000,000 single limit liability.

13 (b) Automobile General Liability, \$2,000,000 single limit liability.

14 (c) In addition, Seller shall carry excess liability insurance covering the foregoing perils  
15 in the amount of \$4,000,000 for any one occurrence.

16 (d) Workers' Compensation and Employer's Liability with statutory limits.

17 (e) Landing Owner's / Stevedores / Wharfinger's Liability insurance coverage in the  
18 amount of not less than \$300,000.00 and total of basic coverage and excess liability coverage of  
19 not less than \$1,000,000.00.

20 If any of the above policies are written on a claims-made basis, then the retroactive date of  
21 the policy or policies will be no later than the Effective Date of this Agreement. Within fifteen  
22 (15) days after the execution of this Agreement, Certificates of Insurance satisfactory in form to

**Contract # [BRE-24-001]**

1 Buyer and signed by Seller's insurer shall be supplied by Seller to Buyer evidencing that the above  
2 insurance is in force and that not less than thirty (30) calendar days' written notice will be given  
3 to Buyer prior to any cancellation or material reduction in coverage under the policies. Seller shall  
4 cause its insurer to waive all subrogation rights against Buyer respecting all losses or claims arising  
5 from performance hereunder. Evidence of such waiver satisfactory in form and substance to Buyer  
6 shall be exhibited in the Certificate of Insurance mentioned above. Seller's liability shall not be  
7 limited to its insurance coverage.

8

9 **SECTION 14. TERMINATION FOR DEFAULT.**

10 If either Party hereto commits a material breach of any of its obligations under this  
11 Agreement at any time, including, but not limited to, a breach of a representation or warranty set  
12 forth herein ("Defaulting Party"), then the other Party ("non-Defaulting Party") may give written  
13 notice describing such breach ("Notice of Default"). If such material breach is not curable or the  
14 Defaulting Party fails to cure such material breach within thirty (30) days following receipt of the  
15 Notice of Default then, at the option of the non-Defaulting Party, this Agreement shall terminate  
16 in addition to all the other rights and remedies available to the non-Defaulting Party under this  
17 Agreement and at law and in equity. Notwithstanding the foregoing, this Agreement may be  
18 terminated pursuant to the provisions of §§ 6.4, 8.2, 10.1, 10.2, or 11, and if a Party elects to  
19 terminate this Agreement pursuant to those sections, the terminating Party shall not be required to  
20 comply with the provisions of this Section 14.

21

22 **SECTION 15. TAXES, DUTIES AND FEES.**



Contract # [BRE-24-001]

1 Seller shall pay when due, and the price set forth in Section 8 of this Agreement shall be  
2 inclusive of, all taxes, duties, fees, royalties and other assessments of whatever nature imposed by  
3 governmental authorities relating to the mining, beneficiation, production, sale, loading and  
4 delivery of coal to Buyer or in any way accrued or levied at or prior to the transfer of title to the  
5 coal to Buyer, and including, without limitation, all severance taxes, royalties, black lung fees,  
6 reclamation fees and other costs, charges, and liabilities. Buyer shall be solely responsible for all  
7 taxes, duties, fees and other assessments relating to the coal accrued or levied after the transfer of  
8 title to the coal to Buyer with respect to the transactions contemplated under this Agreement.

9

10 **SECTION 16. DOCUMENTATION AND RIGHT OF AUDIT.**

11 Buyer and Seller shall maintain all records and accounts pertaining to payments, quantities,  
12 quality analyses, and source for all coal supplied under this Agreement for a period lasting through  
13 the Term of this Agreement and for two (2) years thereafter. Buyer or Seller, as applicable, and/or  
14 its designated representatives (including, but not limited to its agents, auditors, consultants, and  
15 engineers), upon reasonable advance notice to the other Party and during the other Party's normal  
16 working hours, shall be granted by the other Party access to and shall be permitted to inspect (i)  
17 the mine or mines producing coal for delivery under this Agreement, (ii) all support facilities  
18 (including, but not limited to coal washing facilities, preparation plants, and load-out facilities),  
19 and (iii) records directly related to the production, weighing, or delivery of coal under this  
20 Agreement. Such audit shall be at the requesting Party's expense during the Term of this  
21 Agreement and for two (2) years thereafter. The requesting Party shall be responsible for all costs  
22 associated with the requesting Party's or the requesting Party's designated representative's travel.

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**SECTION 17. COAL PROPERTIES AND BARGE DELIVERY POINT INSPECTIONS.**

Buyer and Seller, their representatives and others as may be required by applicable laws, ordinances and regulations shall have the right upon reasonable advance notice, but not the obligation, at all reasonable times and at their own expense to inspect the Coal Properties, Barge Delivery Point and the destination generation station including the loading and unloading facilities, scales, sampling system(s), wash plant facilities, and mining equipment for conformance with this Agreement. Seller and Buyer shall undertake reasonable care and precautions to prevent personal injuries to any representatives, agents or employees of either Party (collectively, "Visitors") who inspect the Coal Properties, Barge Delivery Point and/or the destination generation station. Any such Visitors shall make every reasonable effort to comply with Seller's or Buyer's regulations and rules regarding conduct on the work site, made known to Visitors prior to entry, as well as safety measures mandated by state or federal rules, regulations and laws.

**SECTION 18. MISCELLANEOUS.**

§ 18.1 Applicable Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky, and all questions of performance of obligations hereunder shall be determined in accordance with such laws, without regard to choice of law principles. The Parties agree that all actions will be brought in the Commonwealth of Kentucky, and the Parties hereby waive any objections to venue for any such action.

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1           § 18.2 Headings. The paragraph headings appearing in this Agreement are for convenience  
2 only and shall not affect the meaning or interpretation of this Agreement.

3           § 18.3 Waiver. The failure of either Party to insist on strict performance of any provision  
4 of this Agreement, or to take advantage of any rights hereunder, shall not be construed as a waiver  
5 of such provision or right.

6           § 18.4 Remedies Cumulative. Except as otherwise expressly provided in this Agreement,  
7 remedies provided under this Agreement shall be cumulative and in addition to other remedies  
8 provided under this Agreement or by law or in equity.

9           § 18.5 Severability. If any provision of this Agreement is found contrary to law or  
10 unenforceable by any court of law, the remaining provisions shall be severable and enforceable in  
11 accordance with their terms, unless such unlawful or unenforceable provision is material to the  
12 transactions contemplated hereby, in which case the Parties shall negotiate in good faith a  
13 substitute provision.

14           § 18.6 Binding Effect. This Agreement shall bind and inure to the benefit of the Parties  
15 and their successors and assigns.

16           § 18.7 Assignment. Neither Party may assign this Agreement or any rights or obligations  
17 hereunder without the prior written consent of the other Party. Notwithstanding the foregoing  
18 either Party may, without need of consent of the other Party (and without relieving itself from  
19 liability hereunder), (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts,  
20 revenues or proceeds hereof in connection with any financing or other financial arrangements; (b)  
21 transfer or assign this Agreement to an Affiliate to such Party; or (c) transfer or assign this  
22 Agreement to any person or entity succeeding to all or substantially all of the assets of such Party

Contract # [BRE-24-001]

1 by way of merger, reorganization or otherwise; provided, however, that in each such case any such  
2 assignee shall agree in writing to be bound by the terms and conditions hereof and that no such  
3 assignment shall in any way relieve the assignor from liability or full performance under this  
4 Agreement. For purposes of this § 18.7 only, "Affiliate" means, with respect to any entity, any  
5 other entity (other than an individual) that, directly or indirectly, through one or more  
6 intermediaries, controls or is controlled by, or is under common control with, such entity. For this  
7 purpose, "control" means the direct or indirect ownership of 50% or more of the outstanding capital  
8 stock or other equity interests having ordinary voting power. Any attempt to assign this Agreement  
9 other than with the required consent hereunder shall be null and void.

10 § 18.8 Entire Agreement. This Agreement contains the entire agreement between the  
11 Parties as to the subject matter hereof, and there are no representations, understandings or  
12 agreements, oral or written, which are not included herein.

13 § 18.9 Amendments. Except as otherwise provided herein, this Agreement may not be  
14 amended, supplemented or otherwise modified except by written instrument signed by both Parties  
15 hereto.

16 § 18.10 Brokers, Agents, Representatives, and/or Consultants. Seller hereby indemnifies  
17 and holds Buyer harmless from all losses, costs, demands, and expenses Buyer may incur in  
18 connection with any claims made against Buyer by any brokers, agents, or any other  
19 representatives and/or consultants who have been engaged by Seller with respect to this  
20 Agreement. Buyer hereby indemnifies and holds Seller harmless from all losses, costs, demands,  
21 and expenses Seller may incur in connection with any claims made against Seller by any brokers,

**Contract # (BRE-24-001)**

1 agents, or any other representatives and/or consultants who have been engaged by Buyer with  
2 respect to this Agreement.

3 § 18.11 Counterparts. This Coal Supply Agreement may be executed and conveyed to the  
4 other Party by electronic means in any number of counterparts, each executed counterpart  
5 constituting as an original but altogether only one Coal Supply Agreement.

6  
7 **SECTION 19. CONFIDENTIALITY.**

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9 Seller and Buyer agree to maintain in strict confidence the terms and conditions of this  
10 Agreement and any information or data relating hereto exchanged or obtained by the Parties during  
11 negotiation and performance of this Agreement. Neither Buyer nor Seller shall disclose any of the  
12 terms and conditions hereof to any third party (except to (i) affiliates of Buyer or Seller or (ii) to  
13 Buyer's or Seller's lenders, legal counsel, accountants, and consultants of Seller or Buyer) without  
14 the prior written consent of the other Party, except where such disclosure may be required by law  
15 or in connection with judicial or administrative proceedings before courts, regulatory bodies, or  
16 agencies such as the Kentucky Public Service Commission. The obligations of Buyer and Seller  
17 arising under this Confidentiality section shall continue for a period of two (2) years following  
18 termination or expiration of this Agreement.

19  
20 **SECTION 20. ETHICAL DEALING.**

21 Each Party represents and warrants that it has not given or received and shall not give or  
22 receive any commission, payment, kickback, secret rebate or other thing of value to or from any  
23 employee or agent of the other Party or to any supplier of services in connection with this

**Contract # [BRE-24-001]**

1 Agreement. Each Party acknowledges that the giving or receiving of any such commission,  
2 payment, kickback, secret rebate or other thing of value constitutes a breach of ethical standards,  
3 is potentially violative of applicable law and may result in immediate termination of this and other  
4 outstanding agreements between the Parties.

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Contract # [BRE-24-001]

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

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MB

**BIG RIVERS ELECTRIC CORPORATION**

**FORESIGHT COAL SALES LLC**

By: Don Gulley  
Donald Gulley

By: [Signature]  
Robert D. Moore

Title: President and Chief Executive Officer  
4/16/2024

Title: President and Chief Executive Officer  
Date: 4/17/24

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

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

**SUGAR CAMP ENERGY, LLC**

**HILLSBORO ENERGY LLC**

By: [Signature]  
Robert D. Moore

By: [Signature]  
Robert D. Moore

Title: President and Chief Executive Officer

Title: President and Chief Executive Officer

Date: 4/17/24

Date: 4/17/24