

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: November 7, 2016

RE: Coal Purchase Agreement with CONSOL Pennsylvania Coal Company, LLC

Attached hereto for your consideration is an Agreement with CONSOL Pennsylvania Coal Company, LLC (CONSOL) to purchase 26,000 tons of coal from its Bailey/Enlow Fork Harvey Mine in Pittsburgh, Pennsylvania. Lakeland Electric's McIntosh power plant has not burned this type of Northern Appalachia coal over the last three (3) years since the City's rail transportation contract with CSXT only included routes in the Illinois basin area.

After soliciting and evaluating bids for coal pursuant to City of Lakeland Request for Proposal #6288 issued on October 3, 2016, staff believes CONSOL's Bailey mine will provide Lakeland Electric with additional fuel flexibility from both a cost and compliance standpoint. Specifically, Lakeland Electric is seeking to test burn (2) two trains of the CONSOL Bailey mine in accordance with an amendment to the City's Solid Fuel Transportation Contract with CSXT that will encompass routes to both the Illinois basin and Appalachia areas. A test burn is required in the month of December to ensure performance of the coal before entering into a longer term two (2) year contract with CONSOL for additional coal purchases.

In accordance with this Agreement, Lakeland Electric Fuels' staff is requesting to purchase 26,000 tons of coal at a cost of \$44.00 per ton. The cost for the coal, including transportation and delivery, is \$73.90 per ton for a total purchase price of \$1,921,400. The term of this Agreement shall be effective November 7, 2016, subject to approval by the City Commission, and continue through December 31, 2016.

It is recommended that the appropriate City officials be authorized to execute a Coal Supply Agreement with CONSOL.

attachment



CONSOL Energy Sales Company
1000 CONSOL Energy Drive
Canonsburg, Pennsylvania 15317

Coal Transaction Confirmation

Transaction Date: November 7, 2016

The following Coal Transaction Confirmation (the "Confirmation") and the attached Additional Coal Confirmation Terms and Conditions shall confirm the agreement reached on the Transaction Date referenced above, between (i) Consol Pennsylvania Coal Company LLC ("Seller"), and (ii) City of Lakeland ("Buyer").

Seller:	Consol Pennsylvania Coal Company LLC	Buyer:	City of Lakeland, on behalf of its municipal utility, Lakeland Electric
Address:	1000 CONSOL Energy Drive Canonsburg, PA 15317	Address:	501 E. Lemon Street Lakeland, FL 33801
Confirmation Contact:	Robert Braithwaite	Confirmation Contact:	Tory Bombard
Contact Phone No.:	724-485-4239	Contact Phone No.:	863-834-6207
Contact Fax No.:	724-485-4811	Contact Fax No.:	863-834-8393

Product Type: Pittsburgh #8 Seam Bituminous Coal

Contract Term: December 1, 2016 – December 31, 2016

Contract Quantity: 2 Trains – Approximately 26,000 tons

Contract Price: \$44.00 per ton FOB mine

BTU Adjustment: N/A

SO₂ Adjustment: N/A

Other Price Adjustments: N/A

Delivery Period: December 1, 2016– December 31, 2016

Shipments: 12,900 ton Trainloads (each a "Shipment")

Source: Bailey/Enlow Fork/Harvey Mine, Enon, PA

Delivery Point: FOB Railcar at the Source

Transportation: Buyer shall arrange and pay for the transportation on CSX from the Delivery Point to Lakeland Electric's McIntosh Station

Scheduling: Seller and Buyer shall mutually agree, in writing, upon the schedule for delivery of the Shipments.

Loading/Discharge Terms: N/A

Specifications: See attached Schedule 1.



CONSOL Energy Sales Company
1000 CONSOL Energy Drive
Canonsburg, Pennsylvania 15317

- Weighing:** Shipment weights will be based on Seller's mine weights determined by a certified batch weigh system. A copy of Seller's most recent batch weigh system certification will be provided to Buyer upon request.
- Sampling and Analysis:** All sampling shall be conducted at the Source using methods recognized by ASTM International ("ASTM"), or in accordance with other methods or standards mutually agreed upon by Buyer and Seller. Seller or Seller's designated laboratory shall analyze all Shipment samples in accordance with ASTM standards as most recently revised.
- Freeze Conditioning:** If requested by Buyer, Seller shall freeze condition the coal delivered under this Agreement in accordance with acceptable industry practice. Prior to freeze conditioning coal at the Source, Seller shall consult with Buyer regarding the freeze conditioning product selected for application, the anticipated cost of the freeze conditioning product to Seller, the application fee, and the application rate (pints/ton) of the product. Side release application to the railcars is available as a customer option. Freeze conditioning shall be applied to all Shipments in the period November 15 through March 15 ("Treatment Season"). Buyer shall provide notice to Seller prior to the commencement of loading any Shipments during the Treatment Season which Buyer elects to exclude from the application of freeze conditioning. This notification shall be in the form of a facsimile transmission sent to Seller's Distribution Manager responsible for the Source. In the absence of notification from Buyer, Seller will apply freeze conditioning at the rate previously agreed. Buyer shall pay to Seller the application fee plus the cost of the freeze conditioning and side release products applied to the coal delivered to Buyer. Prior to the Treatment Season, Material Safety Data Sheets will be provided to Buyer for all products available for application.
- Payment Terms:** Payments are to be made by wire transfer to CONSOL Energy Sales Company at PNC Bank, Pittsburgh, PA, Account No. 1029023948, ABA No. 043000096. Invoices shall be in a form satisfactory to the Buyer and be of sufficient detail to provide the Buyer all reasonable information necessary to confirm their accuracy. Payment of each invoice shall be made by wire or check payable to the Seller within forty-five (45) days after receipt of invoice in accordance with Florida Statute §218.74 et, seq., the Local Government Prompt Payment Act, unless otherwise provided for in this Agreement. Buyer agrees to payment terms of (21) days from receipt of invoice. All such invoices shall be issued at the then current Base Price times the tonnage included on the invoice. Buyer's obligations to pay for coal delivered to Buyer shall survive the expiration or termination of this Agreement. Invoices can be mailed to Buyer address or transmitted electronically to Buyer at the e-mail address fuelinvoices@lakelandelectric.com.
- Shipping Notice:** A "short prox" analysis and a bill of lading or waybill form must be sent by email or facsimile to arrive at the destination plant before coal is received. In the event that telecopy equipment or email is not available to the Seller, a telephone call must be placed to the aforementioned personnel for the purpose of reporting shipments no later than the end of the first working day after shipment takes place. The shipping document for rail coal must give the Purchase Order number, the name of Seller, train number, railcar numbers of each car shipped to Buyer, and the date of shipment. In addition, a copy of this document must be sent by email to Fuelinvoices@lakelandelectric.com and Tory.Bombard@Lakelandelectric.com
- Other:** The attached "Additional Coal Confirmation Terms and Conditions" are incorporated herein and form an integral part of this Confirmation (collectively, the "Agreement").



CONSOL Energy Sales Company
1000 CONSOL Energy Drive
Canonsburg, Pennsylvania 15317

****[SIGNATURE PAGE FOLLOWS]****



CONSOL Energy Sales Company
1000 CONSOL Energy Drive
Canonsburg, Pennsylvania 15317

BUYER
CITY OF LAKELAND

By: _____

Name: R. Howard Wiggs

Title: Mayor

Signature Date: _____

Attest:

By: _____

Kelly S. Koos, City Clerk

Approved as to form and correctness:

By: _____

Timothy J. McCausland, City Attorney

SELLER
Consol Pennsylvania Coal Company, LLC

By: _____

Name: _____

Title: _____

Signature Date: _____

ADDITIONAL COAL CONFIRMATION TERMS AND CONDITIONS

1. **PAYMENT.** The Contract Price specified herein shall be paid in United States funds. Overdue payments shall accrue interest of one percent (1%) in accordance with Florida Statute §218.74 et. seq., the Local Government Prompt Payment Act shall apply to any late payment, starting on the date payment was due. Such late charge by seller shall be in addition to any other available legal remedy and shall not excuse buyer from its obligations under this Contract. Any dispute as to the amount owed to Seller for the delivery of coal hereunder, including without limitation disputes regarding the quality and tonnage of coal loaded for Buyer and/or the parties' submission of samples for a Referee Analysis, shall fall under Florida Statute §218.76, improper payment request or invoice; resolution of disputes.

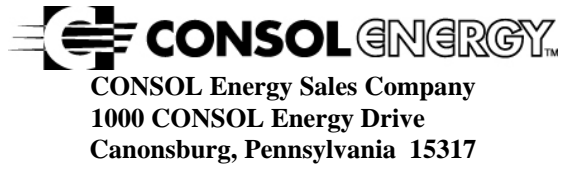
2. **LIMITATION ON WARRANTY.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY WITH RESPECT TO CONFORMITY TO SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

3. **FORCE MAJEURE.** If, because of Force Majeure, either party (the “Non-Performing Party”) is unable to perform any of its obligations, hereunder, and such Non-Performing Party promptly notifies the other party (the “Performing Party”) of its inability to perform its obligations thereof, then the obligations of the Non-Performing Party giving such notice shall be suspended to the extent necessary caused by such Force Majeure. “Force Majeure” means any cause(s) not reasonably within the control, and without the fault or negligence, of the party affected thereby, which wholly or in part prevents the performance by that party of its obligations hereunder (except the remittance of funds due and payable), and includes, by way of illustration and without limitation, acts of God, equipment breakdowns or outages at the Source, insurrections, riots, labor disputes, labor or material shortages, strikes, fires, explosions, floods, adverse geologic or mining conditions, notices or declarations of Force Majeure by transportation carriers, embargoes, legislation, court orders, governmental regulation, orders or acts of any governmental or military authority, or other causes, whether of a similar or dissimilar nature and whether or not foreseeable. In no event shall a Force Majeure be construed to relieve a party of any obligations under this Agreement because of increased costs or other adverse economic consequences that may be incurred by such party through performance of such obligations. During such event of Force Majeure, the Non-Performing Party shall use its reasonable efforts to remedy or eliminate such Force Majeure. During a period of partial Force Majeure experienced by Seller, Seller shall allocate deliveries from the Source among all of its customers from such mine in a fair and reasonable manner. During a period of partial Force Majeure experienced by Buyer, Buyer shall allocate deliveries from all of its suppliers in a fair and reasonable manner. Any deficiencies in deliveries caused by Force Majeure shall not be restored except by mutual agreement between the parties. Should the Force Majeure continue for 90 consecutive days, the Performing Party may, at its option, terminate this Agreement upon three days prior written notice to the other party.

4. **REJECTION.** Buyer may reject any Shipment which fails to meet any of the Trainload Minimum/Maximum Quality Specifications set forth in Schedule 1 attached hereto by providing written notice to Seller prior to unloading the Shipment. If Buyer rejects any Shipment of coal, then title and risk of loss will pass from Buyer to Seller. Seller shall be responsible for all transportation costs and ancillary charges including but not limited to demurrage, switching charges and storage associated with the rejected coal from the time of the original title transfer from Seller to Buyer. Seller shall make up any rejected Shipments within 30 days in accordance with a mutually agreeable delivery schedule. If Seller fails to make up a rejected Shipment, Seller shall be liable for damages determined in accordance with Section 5 below.

5. **DAMAGES.**

(a) Unless excused by Force Majeure or Buyer’s failure to perform, if Seller fails to deliver all or a portion of the specified quantity of coal to be delivered hereunder in accordance with the delivery schedule, and such shortfall is not made up within 30 days, Seller shall pay Buyer for each ton of such deficiency (the “Deficiency Tons”) an amount equal to the positive difference, if any, obtained by subtracting the sum of the Contract Price plus



the cost to transport the Deficiency Tons to Buyer's destination (the "Deficiency Price") from the Replacement Price. "Replacement Price" means the price, FOB at Buyer's destination at which Buyer, acting in a commercially reasonable manner, is able to purchase substitute coal, similar in quality to that provided by Seller in the Confirmation, to replace the Deficiency Tons.

(b) Unless excused by an event of Force Majeure or Seller's failure to perform, if Buyer fails to accept all or a portion of the specified quantity of coal to be delivered hereunder in accordance with the delivery schedule, and such shortfall is not made up within 30 days, Buyer shall pay Seller for each Deficiency Ton an amount equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells the Deficiency Tons, and shall account for additional transportation costs or savings, if any, as a result of delivering coal at a location other than the Delivery Point.

(c) The remedy set forth in this Section 5 shall be the sole and exclusive remedy of the aggrieved party for the failure of the other party to deliver or receive, as the case may be, the quantity of coal specified herein, and all other damages and remedies are hereby waived as to such failure(s). Each party shall be subject to commercially reasonable obligations to mitigate any damages under this Section 5.

6. **LIMITATION ON LIABILITY.** Neither Seller nor Buyer shall be liable to the other for consequential, incidental, punitive, exemplary or indirect damages, lost profits, or business interruption damages, whether by statute, in tort or in contract, under any indemnity provision or otherwise.

7. **TITLE/RISK OF LOSS.** Seller warrants good title to all coal delivered hereunder free and clear of all claims and encumbrances. Title and risk of loss shall pass from Seller to Buyer upon delivery at the specified Delivery Point. Buyer may not trade or resell the coal delivered hereunder.

8. **MODIFICATION OF AGREEMENT.** No modification or amendment of this Agreement shall be effective or binding unless set forth in writing and executed by authorized signatories for each party.

9. **ASSIGNMENT.** Neither party shall assign this Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed.

10. **NO WAIVER.** Waiver of any breach of this Agreement shall not be construed as a waiver of any other breach.

11. **GOVERNING LAW.** THIS AGREEMENT, INCLUDING ALL ISSUES RELATING TO THE EXECUTION, CONSTRUCTION, PERFORMANCE OR BREACH OF THIS AGREEMENT, SHALL BE CONSTRUED AND GOVERNED BY THE LAWS OF THE STATE OF FLORIDA, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. THE PARTIES AGREE TO THE JURISDICTION AND VENUE OF THE COURTS OF POLK COUNTY, FLORIDA OR THE UNITED STATES DISTRICT COURT IN AND FOR THE MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION IN CONNECTION WITH ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

12. **CONFIDENTIALITY.** Each party acknowledges that this Agreement contains confidential information which would put them at a competitive disadvantage if disclosed to the public. Therefore, the terms of this Agreement shall be kept confidential by the parties, except to the extent disclosure may be required by law, regulation, or judicial or administrative order.

13. **NOTICES.** Notices under this Agreement shall be in writing and shall be effective when received by mail or via facsimile at the address shown on the first page of the Confirmation.

14. **FINANCIAL RESPONSIBILITY/DEFAULT.** The remedies stated herein are cumulative and in addition to those provided by law or equity. Waiver of any one or more defaults shall not be deemed a waiver of any prior or subsequent default. The payment terms set forth herein are based on the financial condition of Buyer as of the date of this Agreement. In the event either party (the "Defaulting Party") shall (i) make an assignment or any general



**CONSOL Energy Sales Company
1000 CONSOL Energy Drive
Canonsburg, Pennsylvania 15317**

arrangement for the benefit of creditors; (ii) default in the payment or performance of any obligation to the other party under this Agreement and remain in default for a period of three days after written notice of said default from the other party; (iii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection from creditors or have such petition filed or proceeding initiated against it and such petition is not withdrawn within 30 days; (iv) otherwise become bankrupt or insolvent (however evidenced); (v) be unable to pay its debts as they fall due; or (vi) having defaulted in a performance or payment obligation and not corrected such default following receipt of written notice to the other party as specified in (ii) above, fail to give adequate security for or assurance of its ability to perform its obligations under this Agreement within 48 hours of a reasonable request by the other party; (vii) make a representation or warranty that is false or misleading in any material respect when made or when deemed made or repeated; or (viii) consolidate or amalgamate with, or merge with or into, or transfer all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party, (items (i) – (vii) an “Event of Default”), then such occurrence shall be deemed an Event of Default hereunder.

Upon the occurrence of an Event of Default, and provided such Event of Default is not cured by the Defaulting Party within ten (10) days of written notice of such default, the non-defaulting Party shall be entitled to (i) suspend or withhold performance to the defaulting Party, (ii) liquidate and terminate this Agreement, and (iii) take such other actions as may be permitted at law, in equity or in contract.

15. **GOVERNMENTAL IMPOSITIONS.** In the event that, during the term of this Agreement, any statute or regulation which becomes law on or after January 1, 2017 imposes upon Seller any new or change in any current Federal or State governmental taxes or mandates (i.e. fee, royalty, or other imposition), other than changes in the corporate net income tax laws or regulations, that increases or decreases the cost to Seller to mine, process and/or deliver coal under this Agreement, then, upon presentation by Seller to Buyer of evidence of that change satisfactory to Buyer, the Contract Price shall be adjusted by the amount per ton of such change in the cost to Seller. Any adjustments to the Contract Price shall be effective on the date the adjustment was first requested by Seller, by written notice to Buyer from Seller, or on the effective date of the change in Seller's cost of such imposition, whichever occurs last. The adjustment to the Contract Price so determined shall be in effect for the entire period over which such adjustment is applicable. Notwithstanding the foregoing, if the price adjustment is an increase exceeding 2% of the Contract Price, then Buyer shall have the option, by written notice to Seller, to refuse to pay the portion of the price adjustment which exceeds 2% of the Contract Price. In such event, Seller shall have the right, in its sole discretion, by 30 days written notice to Buyer, to terminate this Agreement upon written notice provided to Buyer.

15. **AUTHORITY REGARDING ADMINISTRATIVE MATTERS.** CONSOL Energy Sales Company shall administer this Agreement on behalf of Seller. Seller agrees that CONSOL Energy Sales Company shall be responsible for, and Buyer shall deal solely with CONSOL Energy Sales Company with respect to all administrative and similar matters under this Agreement, including, but not limited to, invoicing and payment, agreement upon delivery schedules, declaration of or notification of default, and the delivery of any notices required pursuant to this Agreement.

16. **DISCLOSURE OF FINANCIAL INFORMATION.** Unless otherwise available on a party's or its affiliate's website or EDGAR, if requested by either party (the “Petitioning Party”), the other party (“Petitioned Party”) shall deliver: (a) a copy of Buyer's or Seller's, as the case may be, annual report containing audited consolidated financial statements for calendar year 2015 (“Annual Report”); and (b) a copy of a quarterly report containing unaudited consolidated financial statements for each calendar quarter during the Term (“Quarterly Reports”). The Petitioned Party shall deliver the Annual Report as soon as such Report is available, and the Quarterly Reports within thirty (30) days after the end of each calendar quarter during the Term. In all cases the statements shall be prepared in accordance with generally accepted accounting principles. Notwithstanding the foregoing, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the Petitioned Party diligently pursues the preparation, certification and delivery of the statements.

17 Public Records.



CONSOL Energy Sales Company
 1000 CONSOL Energy Drive
 Canonsburg, Pennsylvania 15317

IF THE SELLER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SELLER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK – DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E-MAIL: KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS AVE., LAKELAND, FLORIDA 33801.

In accordance with Florida Statute §119.0701, Seller shall keep and maintain public records required by Buyer in performance of services pursuant to the Agreement. Upon request from Buyer’s custodian of public records, Seller shall provide Buyer with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 or as otherwise provided by law. Seller shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Seller does not transfer the records to Buyer. Seller shall, upon completion of the contract, transfer, at no cost, to Buyer all public records in possession of Seller or keep and maintain public records required by Buyer to perform services pursuant to the Agreement. If Seller transfers all public records to Buyer upon completion of the Agreement, Seller shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Seller keeps and maintains public records upon completion of the Agreement, Seller shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Buyer, upon request from Buyer’s custodian of public records, in a format that is compatible with the information technology systems of Buyer.

Schedule 1 to Confirmation		
Quality Specifications		
Each Shipment of coal delivered hereunder shall conform to the following specifications on an “as received” basis in accordance with ASTM standards:		
Specifications	Trainload Typical As-received	Trainload Minimum/Maximum As-received
Gross Calorific Value (Btu/lb)	12,900	12,750 Min.
Total Moisture (% by weight)	6.30%	8.0% Max.
Ash (% by weight)	8.00%	8.5% Max.
Sulfur (% by weight)	2.6%	2.95%
Volatile Matter (% by weight)	37.5%	N/A
Hardgrove Grindability Index	54	N/A
Mercury	0.127ppm	0.16ppm
Arsenic	11.03ppm	15.00ppm