

**MEMORANDUM**

**TO:** MAYOR AND CITY COMMISSION  
**FROM:** CITY ATTORNEY'S OFFICE  
**DATE:** July 7, 2014  
**RE:** **Coal Supply Agreement with Foresight Coal Sales, LLC**

Attached hereto for your consideration is a proposed Agreement for the purchase of coal from Foresight Coal Sales, LLC (Foresight) from its Williamson Southern Illinois mine for use in the operation of Unit 3 at Lakeland Electric's McIntosh Power Plant. Since early 2011 and into 2014, McIntosh Power Plant has received increasingly targeted supplies of Illinois Basin source (IB) coals in an effort to continue lowering fuel costs. The City Commission previously approved a purchase of 13,000 tons from the Foresight's Williamson mine on June 2, 2014, with the option to purchase up to 300,000 tons of additional coal at current market prices.

The coal being supplied by Foresight from its Williamson mine has a 2.85% sulfur content which is ideal for blending with other IB coals or burned straight and is consistent with Unit 3's operating limits. The purchase of this coal represents an approximate 6% savings as compared to 2014 pricing for lower sulfur IB coal currently in Lakeland Electric's coal yard. This Agreement provides the City with the ability to continue to expand the range of usable and acceptable coals so that its coal Unit produces competitively priced power, which will effectively enable the City to utilize the McIntosh Unit 3 plant more efficiently and economically. In striving to maintain the lowest cost for its customers, Lakeland Electric will continue utilizing the coal in accordance with its existing environmental permits until pending Environmental Protection Agency (EPA) changes are implemented.

Pursuant to this Agreement, Foresight will provide 300,000 tons at \$46.00 per ton for a total cost of \$13,800,000. Transportation costs are estimated to be \$34.00 per ton, which represents a decrease in cost from last year's transportation costs that ranged between \$38.00 and \$39.00 per ton. Lakeland Electric also has the option to adjust tonnage by a decrease or increase of up to 10%. Any increase in tonnage would require prior approval of the City Commission. Unless otherwise extended or terminated as provided in the Agreement, the term of this Agreement is effective as of June 1, 2014 through December 31, 2014, as was previously approved by the City Commission on June 2, 2014, with coal deliveries commencing in August.

It is recommended that the appropriate City officials be authorized to approve this Agreement with Foresight for the purchase of coal consistent with the above-specified terms/conditions.

RS

attachment

## COAL SALES CONFIRMATION

**Transaction Date:** July 7, 2014

This Coal Sales Confirmation ("Confirmation") and the General Terms and Conditions (collectively, the "Agreement") shall confirm the agreement reached on the Transaction Date referenced above between Foresight Coal Sales LLC, as agent for Sugar Camp Energy LLC ("Seller"), and The City of Lakeland, FL on behalf of its municipal utility, Lakeland Electric ("Buyer").

<b>Seller:</b>	Foresight Coal Sales LLC, as agent for Sugar Camp Energy LLC	<b>Buyer:</b>	The City of Lakeland, FL Electric Department
<b>Address:</b>	One Metropolitan Square 211 North Broadway, Suite 2600 Saint Louis, MO 63102	<b>Address:</b>	501 East Lemon Street Lakeland, Florida 33801-2066
<b>Confirmation Contact:</b>	Jennifer Caldwell Joseph Potwora	<b>Confirmation Contact:</b>	Mike Sofo
<b>Contact Phone No.:</b>	(314) 932-6108 (314) 932-6126	<b>Contact Phone No.:</b>	(863) 834-6586
<b>Contact Fax No.:</b>	(314) 932-6161	<b>Contact Fax No.:</b>	(863) 834-8393
<b>Product Type:</b>	Fully washed steam coal produced from the Source identified below.		
<b>Contract Term:</b>	From the Transaction Date through December 31, 2014, unless earlier terminated or extended as specified herein. The delivery of coal shall commence in August, 2014.		
<b>Contract Quantity:</b>	300,000 tons +/- 10% in Buyer's option.		
<b>Base Price:</b>	\$46.00 per ton FOB railcar at the Delivery Point.		
<b>BTU Premium/Penalty:</b>	The Base Price for the coal supplied hereunder shall be adjusted on a trainload basis (each trainload shall constitute a "Shipment") as set forth below, which shall be the sole and exclusive remedy for quality variations provided that the Shipment meets Rejection Limits or is otherwise accepted by Buyer:  If the actual Btu/lb. gross as received ("GAR") quality of the Shipment is other than 11,800, an adjustment shall be calculated as follows:  Actual Btu/lb. GAR ÷ 11,800 X Base Price		
<b>Delivery Period:</b>	June 1, 2014 through December 31, 2014 in accordance with a mutually agreeable delivery schedule.		
<b>Source/Loading:</b>	The Sugar Camp Mining Complex ("Coal Source"), subject to Seller's right to supply coal from an alternative source as set forth in Section 1 of the General Terms and Conditions.  Seller shall be solely responsible for loading the Shipment into railcars supplied by or on behalf of Buyer. Buyer shall be solely responsible for the transportation of the Shipment from the Delivery Point to the ultimate destination. Buyer shall arrange for necessary trains to make the scheduled Shipments and shall ensure that the same are clean and suitable to accept such Shipments. Buyer shall ensure that the transportation specifications and coal loading requirements of its carrier are made available to Seller.		
<b>Delivery Point:</b>	FOB railcar at the Evansville Western/CSX interchange located in Evansville, Indiana.		
<b>Delivery Schedule:</b>	The Contract Quantity shall be delivered within the Delivery Period in accordance with a Delivery Schedule mutually agreed upon by the parties, taking into consideration the vacation periods and production schedule (including longwall moves) at the Source.		
<b>Specifications:</b>	Each Shipment shall generally conform to the Specifications identified on Schedule 1 attached hereto and incorporated herein by reference.		

**Weighing:**

Weights shall be determined by certified scales at the Source at Seller's expense.

**Sampling and Analysis:**

Sampling shall be performed at the Source by an independent laboratory selected by Seller ("Sampling Person") using a mechanical sampling system in accordance with American Society for Testing and Materials ("ASTM") standards. If mechanical sampling cannot be performed due to equipment unavailability, the Sampling Person shall collect manual samples in accordance with ASTM Standards. Samples shall be taken on an "as loaded" basis. The Sampling Person's samples of coal representing each Shipment, and the analysis thereof as set forth below, shall be used to determine quality adjustments and any rejection rights. All samples collected by the Sampling Person shall be divided into three parts. One (1) part shall be retained by the Sampling Person for a period of thirty (30) days to be used for a Referee Analysis, if necessary; one (1) part shall be analyzed in accordance with this Agreement ("Seller's Sample"); and one (1) part shall be retained by the Sampling Person for a period of thirty (30) days, or shipped at Buyer's expense as Buyer directs ("Buyer's Sample").

Analysis of Seller's Sample shall be performed at the Source by an independent laboratory mutually agreed upon by both Parties (the "Analysis Person") on an "as received" basis in accordance with ASTM standards. The Analysis Person shall cause the results of such analysis ("Certificate of Analysis") to be reported to Buyer and Seller by facsimile, telephone (to be confirmed promptly by facsimile) or other electronic means as soon as available. By notice to the Sampling Person within one (1) Business Day after receipt of the Certificate of Analysis, Buyer shall exercise any rejection rights pursuant to this Agreement and may object to the analysis, and if so, shall notify Seller of the Specification(s) objected to and shall submit Buyer's Sample to an independent testing laboratory selected by and unaffiliated with the Objecting Person for an independent analysis ("Buyer's Analysis"). Any Shipment that is not rejected within the time period specified above or is unloaded by Buyer shall be deemed accepted, subject only to price adjustments based upon coal quality as set forth in the Confirmation. "Business Day" shall mean any day on which Federal Reserve member banks in New York City are open for business.

The costs of Buyer's Analysis shall be paid by Buyer. If the results of Buyer's Analysis establish that the analysis of Seller's Sample for the Specification(s) at issue is within ASTM Reproducibility Limits, the analysis of Seller's Sample shall control. If the results of Buyer's Analysis establish that the analysis of Seller's Sample for the Specification(s) at issue is outside ASTM Reproducibility Limits, Buyer may request that the Sampling Person submit the retained sample to an independent testing laboratory selected by mutual agreement of the Parties for further analysis of such Specification(s) ("Referee Analysis"). If the results of the Referee Analysis establish that the analysis of Seller's Sample for such Specification(s) is within ASTM Reproducibility Limits, the analysis of Seller's Sample shall control, and the costs of the Referee Analysis shall be paid by Buyer. If the results of the Referee Analysis establish that the analysis of Seller's Sample is outside ASTM Reproducibility Limits, the Referee Analysis shall control for purposes of quality price adjustments and the costs of the Referee Analysis shall be paid by Seller. Except as set forth above, all costs associated with sampling and analysis hereunder shall be for Seller's account.

**Rejection Rights:**

Provided that a Shipment triggers any of the Rejection Limits and is rightfully rejected by Buyer, disposal of the Shipment shall be for Seller's account. Title to all coal rejected by Buyer, if already passed, shall revert to the Seller. Buyer and Seller shall use commercially reasonable efforts to replace the rejected Shipment within the same delivery month, or, if not commercially reasonable, within thirty (30) days following Buyer's rejection of the Shipment.

**Payment Terms:**

Buyer shall pay Seller for each Shipment hereunder within thirty (30) days from the date of Seller's invoice or, if such day is not a Business Day, then on the next Business Day. Buyer shall pay to Seller the amount of each invoice by wire transfer of immediately available funds to the following account, with reference to the details of said payment, or such other account as Seller may designate from time to time:

Huntington National Bank  
900 Lee Street  
Charleston, WV25301  
ABA No. 044000024  
Account No. 01221216973  
Account Name: Foresight Coal Sales LLC

In the event any compensation for variations for quality are not known by Seller at the time of submitting any invoice to Buyer, a separate invoice or credit, as the case may be, shall be submitted to Buyer as promptly as practicable. Buyer or Seller shall pay the amount of any such invoice or credit within fifteen (15) days from the date of Seller's invoice.



**Other:**

The attached "General Terms and Conditions" are incorporated herein by reference and form an integral part of the Agreement between the parties. In the event of a conflict between the terms of the General Terms and Conditions and the terms of the Confirmation, the terms of the Confirmation shall prevail.

**Seller:** Foresight Coal Sales LLC, as agent for  
Sugar Camp Energy LLC

**Buyer:** The City of Lakeland, FL  
Lakeland Electric

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: R. Howard Wiggs

Title: \_\_\_\_\_

Title: Mayor

Attest:

By: \_\_\_\_\_  
Kelly S. Koos, City Clerk

Approved as to form and correctness:

By: \_\_\_\_\_  
Timothy J. McCausland, City Attorney

## GENERAL TERMS AND CONDITIONS

1. **PAYMENT.** The Confirmation price specified herein shall be paid in United States funds. Overdue payments shall accrue interest from the due date at the rate of one percent (1%) in accordance with Florida Statute §218.74 et. seq., the Local Government Prompt Payment Act, but in no event shall exceed the maximum lawful rate. 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 not permit any delay in or deduction from the payment of that or of any other invoice(s); provided, however, that if it is later determined that any portion of any payment represents overpayment or is otherwise not due to Seller, then Seller shall promptly refund to Buyer the amount of such overpayment plus interest thereon, calculated from the date of such overpayment to the date of repayment, at the interest rate specified above as of the date of such overpayment.

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. Notwithstanding the foregoing, Force Majeure specifically excludes: (i) the loss of Buyer's markets or Buyer's inability to economically use or resell coal purchased hereunder; (ii) Seller's ability to sell coal at a more advantageous price or Buyer's ability to buy coal at a lower price, whether or not foreseeable. 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 of coal in a fair and reasonable manner. Any deficiencies in deliveries caused by Force Majeure shall be restored upon the request of the Performing Party. Should the Force Majeure continue for sixty (60) consecutive days, the Performing Party may, at its option, terminate this Agreement upon three (3) days prior written notice to the other party. The Parties acknowledge and agree that Seller shall be entitled to exercise all rights under this Section 3 in the event of a Force Majeure encountered or prevailing at any Source Mine identified in the Confirmation, and that such Force Majeure shall be deemed that of Seller.

4. **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 thirty (30) days, Seller shall pay Buyer for each ton of such deficiency (the "Deficiency") an amount equal to the positive difference, if any, obtained by subtracting the specified Base Price for the Deficiency from the Replacement Price, as well as Costs reasonably incurred by Buyer. "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases substitute coal for the Deficiency (plus additional transportation or other reasonable charges, if any, incurred by Buyer as a result of taking delivery of substitute coal at a location other than the specified Delivery Point) or, absent such a purchase, the market price for such quantity of coal (F.O.B., Delivery Point) as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall the Replacement Price include any penalties or similar charges. Such payment shall be paid within ten (10) days after an invoice is received by Seller from Buyer. It is expressly agreed that Buyer shall not be required to enter into a replacement transaction in order to determine the Replacement Price.

(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 thirty (30) days, Buyer shall pay Seller for each ton of the Deficiency an amount equal to the positive difference, if any, obtained by subtracting the Sales Price from the Base Price, as well as Costs reasonably incurred by Seller. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells (if at all) the Deficiency (including additional transportation or other reasonable charges, if any, incurred by Seller as a result of delivering coal at a location other than the specified Delivery Point) or, absent such a sale, the market price for such quantity of coal (F.O.B., Delivery Point), as determined by Seller in a commercially reasonable manner; provided, however, in no event shall the Sales Price include any penalties or similar charges. Such payment shall be paid within ten (10) days after an invoice is received by Buyer from Seller. It is expressly agreed that Seller shall not be required to enter into a replacement transaction in order to determine the Sales Price.

(c) Each party hereby stipulates and agrees that the payment obligations set forth in this Section 4. are reasonable due to the complexities of anticipated damages and the difficulty in determining the estimation or calculation of actual damages; therefore each party hereby waives the right to contest such payment for said damages as unenforceable as a matter of law. The remedy set forth in this Section 4 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), except as set forth in Section 6 below.

(d) Both Parties shall be subject to commercially reasonable good faith obligations to mitigate any damages under this Section 4 or any other provision of this Agreement.

5. **LIMITATION OF LIABILITY.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF THE NON-BREACHING PARTY. THE BREACHING PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE BREACHING PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES, WHICH SHALL BE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO THE NON-BREACHING PARTY AND THE NON-BREACHING PARTY HEREBY WAIVES ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT ARE DEEMED TO BE SUCH DAMAGES.

6. **TITLE.** Seller warrants good title to all coal delivered hereunder free and clear of all claims and encumbrances. Title and risk of loss will pass from Seller to Buyer FOB railcar at the Delivery Point.

7. **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.

8. **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.

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

10. **GOVERNING LAW.** THIS AGREEMENT SHALL BE CONSTRUED AND GOVERNED BY THE LAWS OF THE STATE OF FLORIDA, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW.

11. **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 (x) a party (the "Disclosing Party") may disclose the terms of this Agreement to its directors, officers, employees, agents and advisors (each, a "Representative") so long as the Disclosing Party advises such Representative of the confidential nature of such information and the Disclosing Party will be responsible for, and, to the extent permitted by law, will indemnify the other party against, any losses arising out of or related to, its Representative's breach of this Section and (y) to the extent disclosure may be required by law, regulation, or judicial or administrative order including Florida Statute Chapter 119, the Florida Public Records Act. With respect to such disclosure required by law, regulation or judicial or administrative order, the Parties each agree (a) to appropriately limit their respective disclosure to the minimum necessary to comply with the applicable law, regulation or judicial or administrative order, (b) to provide the other party timely notice of such disclosure requirement so that such party can seek protection of such confidential information by contesting such disclosure requirement, and (c) to undertake such steps as may be available to protect the confidentiality of such confidential information required to be disclosed.

12. **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.

13. **FINANCIAL RESPONSIBILITY/EVENT OF DEFAULT.** The payment terms set forth herein are based on the financial condition of each party as of the date of this Agreement. In the event of a material adverse change in said financial condition of a party, the other party shall be entitled to remedies pursuant to Sections 2-609 and 2-702 of the Uniform Commercial Code as adopted by the State of Florida, including a demand for adequate assurances. In the event either party (the "Defaulting Party") shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment of any obligation to the other party under this Agreement and remain in default for a period of three (3) days after written notice of said default from the other party; (iii) default in the performance of an obligation to the other under this Agreement (other than for a party's failure to deliver or receive coal, the exclusive

remedies for which are provided for under Section 4) and remain in default for a period of ten (10) days after written notice of such default; (iv) 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 involuntary petition is not revoked within thirty (30) days; (v) otherwise become bankrupt or insolvent (however evidenced); (vi) be unable to pay its debts as they fall due; (vii) fail to give adequate security for or assurance of its ability to perform its further obligations under this Agreement within two (2) Business Days of a reasonable request by the other party; (viii) make a representation or warranty that is false or misleading in any material respect when made or when deemed made or repeated; or (ix) 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) – (ix) 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 fifteen (15) days of written notice of such default, the non-defaulting party (the “Non-Defaulting Party”) may do one or more of the following with respect to the Defaulting Party: (i) suspend or withhold performance to the Defaulting Party required under this Agreement, (ii) upon at least five (5) Business Days' written notice to the Defaulting Party, but no more than twenty (20) calendar days after such notice is effective, designate in such written notice a date for the termination of the Parties' obligations under this Agreement (“Early Termination Date”), and (iii) liquidate and terminate this Agreement as of such Early Termination Date, and (iv) take such other actions as may be permitted at law, in equity or in contract.

In the event of termination and liquidation upon the occurrence or designation of an Early Termination Date in accordance with this Section 13, the Non-Defaulting Party shall in good faith calculate its Gains, Losses and Costs resulting from the termination of this Agreement, aggregate such Gains, Losses and Costs and any other amounts due under this Agreement into a single net amount (the “Net Settlement Amount”), and then notify the Defaulting Party of the Net Settlement Amount owed to or by the Non-Defaulting Party. If the calculation of the Net Settlement Amount results in monies owed by the Defaulting Party to the Non-Defaulting Party, payment of the Net Settlement Amount shall be made by the Defaulting Party within ten (10) Business Days after the later of the Early Termination Date or the Defaulting Party's receipt of notice of the Net Settlement Amount. If the calculation of the Net Settlement Amount does not result in monies owed by the Defaulting Party to the Non-Defaulting Party, the Agreement shall terminate as of the Early Termination Date and no payment shall be made to the Defaulting Party.

As used herein: (i) "Costs" shall mean means, with respect to the Non-Defaulting Party, direct costs and expenses reasonably incurred by such party in order to replace or resell the quantity of coal not delivered or received under this Agreement as a result of the early termination of this Agreement; (ii) "Gains" shall mean (1) with respect to Seller, an amount equal to the positive difference between the Sales Price, minus the Base Price; and with respect to Buyer, an amount equal to the positive difference between the Base Price minus the Replacement Price; and (iii) "Losses" shall mean (1) with respect to Seller, an amount equal to the negative difference between the Sales Price minus the Base Price; and (2) with respect to Buyer, an amount equal to the negative difference between the Base Price minus the Replacement Price. In no event, however, shall a party's Gains, Losses or Costs include any penalties or similar charges.

The parties hereby agree that they shall discharge mutual and undisputed debts and payment obligations due and owing to each other on the same day or in the same month in respect of this Agreement (but not in respect of separate agreements) between the parties through netting. All undisputed amounts owed by each party to the other party, including any related liquidated damages, interest, or other amounts, shall be netted so that only the net difference between such amounts shall be payable by the party who owes the greater amount. Each party reserves to itself all rights, set-offs, counterclaims, and other defenses which it is or may be entitled to arising from this Agreement. All undisputed payment obligations hereunder between the parties may be offset against each other, set off or recouped.

14. **COMPLIANCE WITH LAWS.** Notwithstanding anything to the contrary stated or implied in this Agreement, nothing contained in this Agreement is intended to induce or require either party to act in any manner which is or is likely to be inconsistent with, penalized, prohibited or in violation of the laws, regulations or rules (where applicable) of the United States of America. Either party may terminate this Agreement with immediate effect without incurring any liability to the other party if at any time they become aware that performance of this Agreement may involve an act or omission penalized or prohibited under the laws, rules or regulations (where applicable) of the United States of America.

15. **REPRESENTATIONS AND WARRANTIES.** Each party represents and warrants to the other that:

- (i) it is duly organized and validly existing under the law of its place of incorporation or organization;
- (ii) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other organizational action on its part and do not violate or conflict with any law applicable to it, its organizational documents or any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iii) its obligations under this Agreement are, subject to applicable insolvency and bankruptcy laws and similar laws affecting creditors' rights generally and general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law), legally valid and binding obligations, enforceable in accordance with their terms;

(iv) it has or has timely applied for all necessary material governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Agreement;

(v) none of the events set out Sections 13(i), (iv), (v) or (vi) with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and

(vi) there are no actions, suits or proceedings pending, or to the best of its knowledge, threatened, against or affecting it before any court or administrative body or arbitral tribunal that could reasonably be expected to materially adversely affect its ability to meet and perform its obligations under this Agreement.

16. **SURVIVAL**. The following Sections shall survive the termination or expiration of this Agreement: Section 5 (Limitation of Liability); Section 10 (Governing Law); Section 11 (Confidentiality); and Section 13 (Financial Responsibility/Event of Default).

17. **NOTICES**. All notices, invoices, other formal communications which either party may give to the other under or in connection with this Agreement shall be in writing and shall be sent by any of the following methods: hand delivery; reputable overnight courier; or, with respect to communications other than payments, by facsimile or electronic mail transmission, if the original communication is delivered by reputable overnight courier. The communications shall be sent to the following addresses, and shall be effective when delivered, if delivered prior to 5:00 p.m. New York, New York time on any given Business Day, otherwise the subsequent Business Day:

**For all notices to Seller:**

Foresight Coal Sales LLC  
One Metropolitan Square  
211 North Broadway, Suite 2600  
Saint Louis, Missouri 63102  
Telephone: (314) 932-6160  
Facsimile: (314) 932-6161  
Attn: Jennifer Caldwell  
Joseph Potwora  
Email: jennifer.caldwell@foresight.com  
joseph.potwora@foresight.com

**For invoices:**

Attn: Jennifer Caldwell  
Phone: (314) 932-6108  
Fax: (314) 932-6161  
Email: jennifer.caldwell@foresight.com

**For all notices to Buyer:**

The City of Lakeland, FL  
Electric Department  
501 East Lemon Street  
Lakeland, Florida 33801-2066  
Attn: Mike Sofu  
Phone (863) 834-6586  
Fax: (863) 834-8393  
Email: michael.sofu @lakelandelectric.com

**SCHEDULE 1 TO CONFIRMATION**

<b><u>Specification</u></b>	<b><u>Typical*</u></b>	<b><u>Rejection Limits</u></b>
CV (gross as received basis)	11,800 Btu/lb.	Minimum 11,500 Btu/lb.
Total Moisture (as received basis)	12.00%	N/A
Volatile Matter (as received basis)	33-37%	N/A
Ash (as received basis)	9.00%	Maximum 12.00%
Sulfur (as received basis)	2.85%	Maximum 3.05%
Size Distribution	2" X 0"	N/A
HGI	55	N/A
Chlorine (as received basis)	.30%	N/A

\* Typical Specifications shall not be used for determining whether or not a Shipment complies with the Specifications and shall not be used as grounds for rejection.