

**REDACTED**

WATER 'D' COAL

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**AGREEMENT FOR  
THE SALE AND PURCHASE OF COAL  
BETWEEN  
PROGRESS FUELS CORPORATION  
AND  
PROGRESS FUELS CORPORATION,  
on its own behalf and as agent for  
Diamond May Coal Company;  
Kanawha River Terminals, Inc.;  
Kentucky May Coal Company, Inc.; and  
Powell Mountain Coal Company, Inc.**

2-10-06

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## AGREEMENT FOR THE SALE AND PURCHASE OF COAL

This AGREEMENT (hereinafter the "Agreement") is made and entered into as of the 1<sup>ST</sup> day of JAN, 2005, between PROGRESS FUELS CORPORATION, a Florida corporation, 200 Central Avenue, One Progress Plaza, St. Petersburg, Florida, 33701 (hereinafter "PURCHASER") and PROGRESS FUELS CORPORATION, on its own behalf and as agent for DIAMOND MAY COAL COMPANY; KANAWHA RIVER TERMINALS, INC.; KENTUCKY MAY COAL COMPANY, INC.; AND POWELL MOUNTAIN COAL COMPANY, INC. (hereinafter collectively "SELLER"), located at 410 S. Wilmington Street, Raleigh, NC 27601,

WHEREAS, PURCHASER does supply coal to Progress Energy Florida, Inc., a Florida corporation (hereinafter "PEF"), under a long-term purchase and sale agreement for use as fuel at PEF's Crystal River Units No. 4 and No. 5 near Red Level, Citrus County, Florida (hereinafter "PEF's generating units"); and

WHEREAS, PURCHASER desires to purchase and SELLER desires to sell and deliver coal for use as fuel in PEF's generating units;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereto as herein stated and intending to be legally bound, PURCHASER and SELLER agree as follows:

1.01 Mutual Obligations. SELLER agrees to sell and deliver to PURCHASER, and PURCHASER agrees to buy from SELLER, coal of the quality and in the quantities and on the terms and conditions, set forth below.

2.01 Warranty and Dedication of SELLER'S Reserves. SELLER represents and warrants that SELLER owns, leases or controls mineral interests containing reserves in seams sufficient in quality and quantity to supply the coal covered by this Agreement (hereinafter the "Coal Property"). SELLER hereby expressly dedicates to PURCHASER sufficient reserves of coal meeting the quality specifications hereof and lying on or in the Coal Property so as to fulfill the quantity specifications hereof. SELLER further agrees to reimburse PURCHASER for any increased cost that might be incurred to replace coals that SELLER is unable to ship on this contract. SELLER agrees and warrants that it provide loading facilities capable of loading at the rate required to meet Seller's delivery requirements pursuant to this Agreement.

3.01 Quantity. During each calendar year during the term hereof, the quantity of coal to be delivered hereunder shall be 480,000 tons, prorated for any partial calendar year.

4.01 Term. The term of this Agreement will commence on January 1, 2005, and will continue in effect for a period of twenty-four (24) months, ending on December 31, 2006, inclusive.

5.01 Base Price. The base price per ton of coal, f.o.b. barge at SELLER'S loading site, (hereinafter "base price") shall be fixed at [REDACTED] for the calendar years 2005 and 2006, adjusted monthly for the quality of coal in accordance with the formula and procedures set out in Appendix A hereto, during the term of this Agreement. 1

**6.01 Billing and Payment.** SELLER shall invoice PURCHASER for the coal delivered to PURCHASER during the preceding month at the base price as shown in Section 5.01 hereof. Each invoice shall be paid by PURCHASER within twenty (20) days of the date of the invoice or fifteen (15) days from receipt of the invoice, whichever is later. Adjustments under Appendix A shall be separately stated and if not calculated in time for preparation of the monthly invoice may be stated as a retroactive adjustment on the monthly invoice next following the calculation date. A statement showing the basis for the adjustment shall accompany said invoice.

**7.01 Delivery and Title.** Delivery shall commence on or about January 1, 2005, and shipments shall be as uniform as practicable during contract period, plus or minus ten percent (10%). SELLER and PURCHASER shall mutually agree on actual shipment dates. Title to and risk of loss of the coal shall pass to Buyer when each barge or vessel is fully loaded and trimmed.

**7.02 Shipment.** It is presently contemplated that coal sold hereunder will be shipped by barge from Kanawha River Terminals' Quincy or Marmet river docks.

SELLER warrants its terminals provide adequate and safe dock and harbor facilities for river barges and are free of wharfage, dockage or port charges. SELLER further warrants its terminals are capable of loading a minimum of three (3) 1,500 net ton river barges per day without unusual shifting or loading delay. SELLER shall operate its terminals twenty-four (24) hour per day, seven (7) days per week, if and as needed to load PURCHASER'S barges. PURCHASER shall nominate load dates to SELLER on a month-by-month basis; SELLER'S approval of such not to be unreasonable withheld. SELLER shall be responsible for all loss of, or damage to, any barge provided hereunder and for the loss of any coal in said barge (other than damage or loss due to normal wear and tear, latent or patent defects in the barge existing at the time of delivery)

occurring after such barge has been delivered to SELLER at SELLER'S terminal and while in the custody, control and possession of SELLER, if such loss or damage was caused by SELLER'S negligence. SELLER shall, at its own expense, carry and maintain wharfinger's liability insurance or equivalent coverage for its terminals naming PURCHASER as an additional insured under the policy. SELLER agrees to provide to PURCHASER a copy of this insurance within ten (10) working days from the signing of this Agreement. SELLER shall have the right, but not the duty, to refuse to load any barges which SELLER considers unseaworthy. In such event, SELLER shall promptly notify PURCHASER. The loading and switching of barges between the time PURCHASER delivers the barges and the time PURCHASER picks up the barges shall be SELLER'S risk and expense.

PURCHASER shall be solely responsible for making and providing all necessary arrangements with barge carriers for barges to be loaded hereunder. PURCHASER shall provide or cause its barge carrier to provide SELLER seven (7) and one (1) day advance notices of the estimated time of arrival of barges at the loading origin.

A barge shall be deemed to have been delivered to SELLER and be in SELLER'S custody, control and possession when it has been secured by or on behalf of PURCHASER at SELLER'S terminal to await loading, and shall be deemed to be released when untied for pickup by or on behalf of PURCHASER from SELLER'S terminal.

SELLER agrees to load purchaser's barges in a good and workmanlike manner according to drafts or other instructions as issued by PURCHASER or its agent. Any costs associated with SELLER'S failure to load barges in accordance with instructions issued by PURCHASER or its agent; such as, dead freight or reducing overloaded barges, shall be for SELLER'S account. SELLER shall make every reasonable effort to avoid loading barges which contain excess free water, ice, metal, wood or other debris. SELLER shall not load in each end

piece barge less than 1,400 net tons and in each box barge less than 1,600 net tons unless otherwise instructed by PURCHASER or its agent.

**7.03 Freight Charges.** Subject to reimbursement provided by Sections 7.04, PURCHASER shall pay all freight and other charges imposed by its barge carrier.

**7.04 Excess Loading Costs Chargeable to SELLER.** SELLER shall be responsible for any origin river barge demurrage costs assessed by PURCHASER'S barge contractor provided such demurrage costs are, in fact, incurred by PURCHASER and are not excused pursuant to Section 10.01 hereof. SELLER agrees to exercise its best efforts to load PURCHASER'S barges in an expeditious manner.

**7.05 Payment of Excess Costs to PURCHASER.** Any payments required by Sections 7.04 above shall be promptly paid on receipt by SELLER of a written statement from PURCHASER itemizing such charges and showing facts necessary to permit SELLER to verify such charges. At either party's election, such charges may be credited against amounts then owed by PURCHASER to SELLER hereunder.

**7.06 Freeze Proofing.** When required by the river transfer terminal, PURCHASER-approved freeze proofing material will be applied at a cost, to be determined as required, per pint per ton. Dosage rates will be supplied to shipper based on anticipated weather.

**8.01 Weighing.** The net weight of coal sold and delivered hereunder shall be determined by certified belt scales at the barge loading point or by barge survey if certified scales are not available.



**8.02 Sampling and Analysis.** For all coal delivered under this Agreement, PURCHASER shall appoint a mutually agreeable third party commercial laboratory to collect and analyze a representative sample of each shipment. At PURCHASER'S discretion, sampling may be performed at loading, transloading, or unloading facility.

**A. Standards.** Current versions of the ASTM standards or subsequent revisions thereof shall apply to equipment and methods used for sampling and analyzing coal under this Agreement, unless specifically stated and mutually agreed to otherwise. PURCHASER and SELLER shall agree as required on standard reference materials for use in performing analyses where applicable.

**B. Sampling.** Sampling of coal subject to this Agreement shall be performed by a third party laboratory selected by PURCHASER with an automatic sampling system at the mine, loading point, transloading point, or at Crystal River's unloading facility, at PURCHASER'S discretion, in conformance with the specifications of ASTM Standards D 2234 and D 2013 except for deviations agreed to in writing by PURCHASER and SELLER. In case of failure of the automatic sampler, shipments shall be hand-sampled per ASTM D 4915. SELLER shall perform bias testing on sampling systems at intervals not to exceed two (2) years as a condition for consideration of utilizing loading samples for basis of payment. PURCHASER has the right to perform or cause to be performed bias tests at any time during the period that this Agreement is in effect at PURCHASER'S cost.

Four sub-samples will be divided from each gross sample according to ASTM Standard 2013. All sub-samples shall be placed in suitable containers and distributed as follows:

Sub-sample one shall be for analyses as specified in Sections (c) and (d), and shall be called the Laboratory Sample.

Sub-sample two shall be maintained for a period of thirty days as referee samples as described in Section (e).

Sub-sample three shall be for SELLER'S disposition.

Sub-sample four shall be for PURCHASER'S disposition.

C. Air Drying. The laboratory sample shall be air-dried according to ASTM Standards D 2013 and D 3302 except that new minimum and maximum times or procedures may be employed by mutual agreement. An analysis sample shall be prepared from the air-dried sample for further analyses.

D. Analysis to be Made. The analyses to be made by a third party commercial laboratory, according to methods described in the applicable standards, are as follows:

- Moisture, in weight percentage
- Ash Content, in weight percentage
- Calorific Value, in Btu's per pound
- Sulfur, in weight percentage
- Volatile Matter, in weight percentage

PURCHASER may also request analysis for HGI and Ash Fusion tests from time to time. Upon request, additional sub-sample(s) shall be maintained to allow SELLER to perform additional analysis.

E. Acceptance of Results. The results of the sampling and analysis by third party laboratory shall be accepted as the quality and characteristics of the coal delivered hereunder in the shipments represented by such samples, and the same shall be accepted as the monthly analysis for the shipments delivered during such month; provided, however, that if either party should at any time question the correctness of the original analysis made on the laboratory sample, it shall have the right to have sub-sample two analyzed by a testing laboratory mutually selected by SELLER and PURCHASER. Said laboratory shall use methods approved by ASTM or other mutually-accepted procedures, and mutually-agreeable standard reference materials.

The analysis of sub-sample two as determined by the commercial testing laboratory shall be accepted as being representative for the lot of coal under consideration. The party questioning the correctness of the original analysis shall pay the cost of such analyses, and the price of coal represented by such samples shall immediately be adjusted in accordance with the provisions of this Agreement, and any amounts due either PURCHASER or SELLER shall be paid in accordance with Section 6.01 hereof.

PURCHASER and Seller shall have the right to have a representative present at any and all times to observe said sampling and analysis and to take reasonable samples.

**8.03 Quality Reports.** Notice of the quality of coal delivered hereunder shall be given by telephone and telecopy to PURCHASER the day following the loading of coal at origin.

**9.01 Coal Specifications.** Coal delivered hereunder shall be crushed to two inches (2") by zero inches (0") in size with no intermediate sizes added or removed. It shall be prepared so as to be free of bone, slate, shale, fire clay, wood, metal, rock, loose clay and other impurities, as determined by PURCHASER, shall have a temperature below 131 degrees Fahrenheit and shall have the following per vessel specifications analyzed on an "as-received" basis. SELLER or SELLER'S terminal shall provide magnets and/or metal detectors, as required, to ensure that metal is eliminated from product.

| <b>SPECIFICATION</b>                      | <b>TYPICAL</b>                          | <b>REJECT</b>                          |
|---|---|--|
| Moisture (Total)                          | 7.0%                                    | >9%                                    |
| Ash                                       | 11.0%                                   | >13%                                   |
| Sulfur Dioxide                            | <1.2 LB/SO <sub>2</sub> per Million Btu | >1.2LB/SO <sub>2</sub> per Million Btu |
| Pyritic Sulfur                            | .2%                                     | >.2%                                   |
| Volatile                                  | 32.0% Minimum/36.0% Maximum             | <31%                                   |
| Ash Fusion – Initial Deformation          | 2550°F                                  | <2350°F                                |
| Ash Fusion - Softening (H=1/2W), Reducing | 2700°F                                  | 2500°F                                 |
| Grindability                              | 43 HGI                                  | <40 HGI                                |
| Calorific Value                           | 12,500 Btu/LB                           | <12,200 Btu/LB                         |
| Fines (-1/4")                             | 45%                                     | <50%                                   |

**9.02 Coal Specifications Deficiencies.** For purposes of this Agreement, a "shipment" shall mean the quantity actually received in a barge. If the coal delivered hereunder in any single shipment fails to meet any of the specifications set out in Section 9.01 other than sulfur content, PURCHASER shall have each of the following options to be exercised in its sole discretion:

(1) PURCHASER may notify SELLER that PURCHASER will accept such coal subject to and in accordance with the provisions set forth in this Agreement including Appendix A; provided, however, that PURCHASER'S exercise of this option shall in no way constitute a waiver of PURCHASER'S right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder; or

(2) PURCHASER will have the option to reject any shipment which is below and above any of the minimum/maximum specifications listed in 9.01, and PURCHASER may notify SELLER to suspend further deliveries of coal hereunder until SELLER demonstrates to PURCHASER'S sole satisfaction that it can deliver coal that will conform on a per shipment basis to the specifications set forth in Section 9.01; provided, however, that PURCHASER'S exercise of this option shall in no way constitute a waiver of PURCHASER'S right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal

hereunder. If SELLER fails to make the above demonstration to PURCHASER'S satisfaction within thirty (30) days after notice by PURCHASER, PURCHASER shall have the right to terminate or cancel this Agreement and, in addition, pursue every other remedy provided by law or equity.

**9.03 Sulfur Content Warranty.** SELLER warrants and represents that the average total sulfur content of each shipment shall not contain more than 1.20 LB of sulfur dioxide per million Btu's heat input (the "calculated sulfur limit") and not more than .2 percent pyritic sulfur.

In the event SELLER delivers to PURCHASER any shipment of coal with a total sulfur content or a pyritic sulfur content in excess of the calculated sulfur limits set forth above, the following shall apply:

(1) If, in PURCHASER'S sole determination, PURCHASER is able to use such coal by blending directly with other coal from the active stockpile so that the blended coal shall not exceed 1.20 LB of sulfur dioxide per million Btu's or .2 percent pyritic sulfur, PURCHASER shall accept such coal and the price of the coal delivered in such shipment shall be reduced from the invoice price PURCHASER would otherwise have been required to pay for such coal under this Agreement by the amount of PURCHASER'S cost of blending such coal determined by the following adjustment:

Sulfur Adjustment = 10 percent (I)

Where:

I - Invoice price which would apply excluding the sulfur adjustment.

Such adjusted price shall become the price for purposes of applying any adjustments provided in Appendix A. No Btu premiums shall be allowed on any shipment which received the above sulfur penalty.

(2) If PURCHASER rejects any shipment under 9.02 or is unable to use such coal under any circumstances because the burning of such coal will cause PURCHASER'S buyer's generating unit or units to have emissions that exceed 1.20 LB of sulfur dioxide per million Btu's of heat input, PURCHASER may reject such shipment without payment and SELLER shall be obligated to pay the cost of disposing of such rejected shipment of coal and any other reasonable costs of disposition incurred. If PURCHASER rejects a shipment from SELLER under the provisions of this paragraph, PURCHASER and SELLER shall meet promptly thereafter to see what reasonable steps may be taken on the part of both parties to allow this Agreement to continue. If PURCHASER and SELLER fail to reach agreement within thirty (30) days as to what steps can be taken to correct the situation, then PURCHASER shall have the right to terminate this agreement by giving notice of termination to SELLER and, in addition, pursue every other remedy provided by law or equity.

SELLER shall be permitted to have a representative present to observe tests conducted by PURCHASER'S buyer of burning in PURCHASER'S buyer's facilities, and to observe sampling, analysis and tests conducted to determine the content of flue gases resulting from the burning of such coal. PURCHASER shall also make available to SELLER at reasonable times the results of such tests and analysis, as well as charts and other information resulting from the monitoring of stack gas emissions.

**10.01 Force Majeure.** As used herein, the term "force majeure" shall mean any event beyond the control and without fault or negligence of the party affected thereby and which, by the exercise of reasonable diligence or the incurring of reasonable expense, such party is unable to prevent or overcome, regardless of whether such event was foreseeable, including, without limitation, act of God, act of public authorities (including courts and commissions of competent jurisdiction), act of the public enemy, insurrection, riot, labor dispute, labor or material shortage,

fire, explosion, flood, breakdown of or damage to plant equipment or facilities (including emergency outages of equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto), interruption to transportation or transportation delay, river freeze-up, embargo, order or act of civil or military authority, legislative, regulatory, permitting, judicial rule or order adopted, amended or newly interpreted subsequent to the date of this Agreement and any other event of a similar or dissimilar nature which wholly or partially prevents the mining, hauling, handling, processing or loading of coal by SELLER or the receiving, handling, transporting and/or delivering by PURCHASER'S carrier thereof or the accepting, handling, utilizing and/or unloading thereof by PURCHASER or PURCHASER'S intended buyer, PEF.

In the event performance of SELLER'S obligations hereunder or PURCHASER'S obligations hereunder is made impossible, impractical or illegal by reason of force majeure (other than obligations to pay or expend money for or in connection with the performance of the transactions contemplated by this Agreement) and such party promptly gives to each other party hereto written notice of the details thereof, then the obligations of the parties hereto shall be totally excused to the extent made necessary by such force majeure and during its continuance; provided, however, that such party giving such notice shall use its best efforts to eliminate such force majeure to the extent economically feasible to do so and with a minimum of delay. Any deficiencies in deliveries of coal hereunder as a result of force majeure shall not be made up except at the sole discretion of the PURCHASER. In the event force majeure results in a partial reduction in the total quantity of coal SELLER is obligated to deliver hereunder, Seller shall prorate its sales obligations between this Agreement and any other agreements in effect as of the date of the occurrence of such force majeure regarding coal from the Coal Property that requires substantially similar quality specifications as the coal hereunder so that Purchaser receives its pro-rata share of the coal that is available from the Coal Property that meets the quality specifications hereunder during the continuance of such force majeure. In the event force

majeure results in a partial reduction in the total quantity of coal Purchaser is obligated to receive hereunder, Purchaser shall prorate its purchase obligations between this Agreement and any other agreements in effect as of the date of the occurrence of such force majeure involving coal of other agreements in effect as of the date of the occurrence of such force majeure involving coal of substantially similar quality specifications as the coal hereunder such that Purchaser is purchasing a pro rata share of coal from Seller during the continuation of such force majeure.

In the event that restrictions are imposed during the term of this Agreement by governmental bodies, agencies, entities, officials or courts which preclude or restrict PEF from burning coal of the specifications hereunder, such restriction shall be deemed to be an event of force majeure under this Agreement unless its effect can be avoided in a lawful manner and will not, in PEF's sole judgment, result in unreasonable expense to PEF, the obligations of the parties hereto shall be totally excused during the continuance of such force majeure.

**11.01 Audit.** For a period of two (2) years following receipt by any party of any invoice, statement or calculation hereunder, such party and its representatives shall have the right at its sole expense and upon reasonable advance notice to the other party and during such other party's normal working hours, to examine the records of the other party, but only to the extent reasonably necessary to verify the accuracy of any invoice, statement, or calculation made pursuant to this Agreement. If requested, a party shall provide to the requesting party statements evidencing the quantities of coal delivered or received at the delivery point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statements and the payments thereof will be promptly made and shall bear interest calculated at the prime rate of interest (set forth in the Wall Street Journal under the heading "Money Rates") plus 2 % from and including the date the overpayment or underpayment was made until but excluding the date the underpayment or overpayment is remedied; provided, however, that no



adjustment for any statement or payment will be made unless objection to the accuracy thereof was made in writing prior to the lapse of such two (2) year period.

**12.01 Waiver.** The failure of either party to insist on strict performance of any provisions of this Agreement or to take advantage of any right hereunder shall not be construed as a waiver or relinquishment of such provision or right but the same shall continue and remain in full force and effect.

**12.02 DISCLAIMER OF WARRANTY; LIMITATION OF LIABILITY.** OTHER THAN THOSE EXPRESSLY PROVIDED HEREIN, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SALE AND PURCHASE OF COAL HEREUNDER. ALL WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE SPECIFICALLY DISCLAIMED.

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 IN THIS AGREEMENT, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE HEREBY WAIVED UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABLE PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY

PROVIDED IN THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

THIS SECTION 12.02 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

**13.01 Failure to Deliver or Receive.**

**Seller Failure.** If Seller fails to schedule and/or deliver coal pursuant hereto and such failure is not excused by force majeure or by Purchaser's failure to perform, Seller shall pay Purchaser an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the contract price Purchaser would otherwise have paid for such tonnage from the Replacement Price. "Replacement Price" means the price at which Purchaser, acting in a commercially reasonable manner, purchases replacement for the coal not delivered by Seller hereunder plus any costs reasonably incurred by Purchaser in purchasing such substitute coal including, without limitation, any additional transportation and/or storage charges, if any. Absent such a purchase of substitute coal, the Replacement Price shall be the market price for coal as determined by Purchaser in a commercially reasonable manner.

**Purchaser Failure.** If Purchaser fails to schedule and/or receive coal pursuant hereto and such failure is not excused by force majeure or by Seller's failure to perform, Purchaser shall pay Seller an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the contract price Seller would otherwise have received for such tonnage. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells all or any portion of the coal not received by Purchaser, deducting from such

proceeds any costs reasonably incurred by Seller in reselling such coal including, without limitation, any additional transportation and/or storage charges, if any, reasonably incurred by Seller in delivering such coal to any third party purchasers. Absent such a re-sale the Sales Price shall be the market price for such coal as determined by Seller in a commercially reasonable manner.

**Due Date.** The party to whom such amount is owed shall invoice the other party for such amounts and any payments hereunder shall otherwise be paid in accordance with the provisions of this Agreement.

**Duty to Mitigate.** Each Party covenants and agrees that it has a duty to mitigate any damages hereunder. Notwithstanding the foregoing, neither Purchaser nor Seller shall be required to enter into any actual replacement transaction(s) in order to determine the Replacement Price or the Sales Price, as applicable.

**14.01 Events of Default; Remedies.** An "Event of Default" shall mean, with respect to a party (the "Defaulting Party"), the occurrence of any of the following:

(a) after the effective date of this Agreement such Party, becomes insolvent (however evidenced), or a voluntary or involuntary petition for bankruptcy, receivership or any similar proceeding is filed with respect to such party;

(b) such party fails to make, when due, any payment pursuant to this Agreement and such failure is not remedied within three (3) business days after written notice of such failure; provided that such amount is not the subject of a good faith dispute;

(c) with respect to SELLER, an event as described in the last sentence of Section 9.01 of this Agreement has occurred;

(d) with respect to SELLER, an event as described in Section 9.02 of this Agreement has occurred;

(e) with respect to SELLER, an event as described in Section 9.03 of this Agreement which gives rise to PURCHASER'S right to terminate this Agreement;

(f) such Party consolidates, or amalgamates with, or merges with or into, or transfers 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 of 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;

(g) such party fails to perform any other material covenant or obligation set forth in this Agreement (except for the obligation to deliver or receive coal, the exclusive remedy for which is set forth in Section 13.01 above) and such failure is not remedied within three (3) business days after it receives written notice of such failure; or

(h) any representation or warranty made by such party herein is false or misleading in any material respect when made or when deemed made or repeated;

(i) an event as described in Section 23.01(c) hereof has occurred.

For so long as an Event of Default has occurred and is continuing with respect to a party, the other party (the "Non-Defaulting Party") shall have the right to (i) designate a day (by providing the Defaulting Party written notice thereof), which such day shall be within 20 days after the occurrence of the Event of Default, upon which the Non-Defaulting Party will accelerate all amounts owing between the Parties and liquidate and terminate this Agreement; (ii) withhold any payments due to the Defaulting Party under this Agreement; and/or (iii) suspend performance. If the Non-Defaulting Party chooses to liquidate and terminate this Agreement, the Non-Defaulting Party shall calculate any gains or losses to it resulting from the termination of this Agreement, taking into account any costs reasonably incurred (the "Termination Payment"). The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate and shall be paid within two (2) Business Days after it is communicated in writing to the Defaulting Party by the Non-

Defaulting Party. Upon such termination, the Non-Defaulting Party shall have the right to offset any amounts it owes to the Defaulting Party whether under this Agreement or otherwise, against any amounts owed to the Non-Defaulting Party by the Defaulting Party, whether under this Agreement or otherwise. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

PURCHASER and SELLER agree that this Agreement constitutes a "forward contract" and that each is a "forward contract merchant" as such terms are defined in the United States Bankruptcy Code as amended.

**15.01 Indemnification.** SELLER shall indemnify, defend and hold PURCHASER harmless from and against any claim, demand, loss, damage or injury caused by or resulting from any act or omission, whether negligent or otherwise, of SELLER. PURCHASER shall indemnify, defend and hold SELLER harmless from and against any claim, demand, loss, damage or injury caused by or resulting from any act or omission, whether negligent or otherwise, of PURCHASER.

**15.02 Environment, Health, and Safety.**

**A. Compliance and Indemnification.** SELLER shall comply with all applicable EHS laws and shall indemnify PURCHASER against any EHS claims and costs arising from SELLER'S performance under this Agreement.

**B. Audits.** PURCHASER may audit SELLER'S EHS compliance. Within thirty (30) days of PURCHASER'S request, SELLER shall deliver to PURCHASER (1) all records regarding (a) SELLER'S actual or alleged violations of EHS laws and (b) EHS claims asserted against SELLER, in each case in the five year period preceding PURCHASER'S request and (2) any

executed consent form(s) necessary for PURCHASER to obtain from regulatory agencies and other third parties information regarding SELLER'S EHS compliance.

**D. Definitions (as used in this Agreement).**

1. **Claim** means administrative, regulatory or judicial action, suite, dispute, liability, judgment, penalty, damages, directive, order or claim.

2. **EHS** means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.

3. **Indemnify** means to indemnify, defend, and reimburse the indemnitee and its successors and assigns on an after-tax basis.

4. **Law** means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.

5. **Manage or management, with respect to any material,** means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release, or threatened release thereof.

**16.01 Notice of Problem.** Whenever either party hereto encounters or discovers or reasonably anticipates any problem which could delay or prevent performance of this Agreement, such party shall immediately notify in writing the other party of all relevant circumstances and any remedial steps being taken.

**17.01 Independent Contractor.** The parties recognize and agree that SELLER is not an agent or employee of PURCHASER but is independent of any managerial or other control or direction by PURCHASER in its work hereunder and is free to perform, by such means and in such manner as SELLER may choose, all work in pursuance of commitments hereunder.

**18.01 Binding Effect.** This Agreement shall bind and inure to the benefit of the parties and their successors and assigns. This Agreement shall not create any rights or remedies in any entity not a part hereto.

**19.01 Assignments.** Neither party may assign nor transfer this Agreement nor any rights nor obligations hereunder without the prior written consent of the other party hereto. In the event that there shall be a change of control of SELLER or any company which controls SELLER directly or indirectly (as the term control is defined in the Federal Securities Law), PURCHASER will have the right to terminate this Agreement.

**20.01 Partial Dispute.** Should any bona fide dispute involving the price of coal hereunder extend only to a portion of any amount claimed due hereunder, the undisputed portion shall be paid as and when due. Should it later be determined that additional payments are due from PURCHASER to SELLER, such amount shall be paid together with interest from and including the date payment was due as provided herein, to but excluding the date paid at the prime lending rate set forth in the Wall Street Journal under the heading "Money Rates" plus 2%.

**21.01 Captions.** The captions to sections hereof are for convenience only and shall not be considered in construing the intent of the parties.

**22.01 Applicable Law and Venue.** All questions relating to execution, construction, performance, termination or breach of this Agreement shall be resolved under the laws of the State of Florida without regard to the choice of law provisions thereof. In the event of any lawsuit

filed hereunder, the parties hereto authorize venue in Pinellas County, Florida, and/or the federal court district encompassing said county.

**23.01 Conflict of Interest Policy.** PURCHASER has adopted a conflict of interest policy, applicable to all its full-time employees (hereafter "Employee"), and intended to ensure that all business activities of PURCHASER will be conducted in a manner so as to avoid any conflict of interest or appearance of a conflict.

SELLER agrees to conduct its activities in support of said conflict of interest policy, specifically as follows:

(a) SELLER shall promptly disclose to PURCHASER the existence of any material financial interest in SELLER held, at any time during the term of this Agreement, by any Employee or member of an Employee's immediate family. The holding of publicly traded securities in SELLER need not be disclosed unless the Employee is directly or indirectly involved in dealing with the SELLER.

(b) SELLER shall not accept on its own behalf the service or employment in any capacity (such as director, officer, employee, representative or consultant) of any Employee, unless such service or employment is specifically authorized by the President or Board of Directors of PURCHASER.

(c) SELLER shall not offer to any Employee or member of an Employee's immediate family any gifts of more than token value, special preference loans, lavish entertainment or other substantial favors.

Breach of this provision by SELLER shall constitute a material breach of this Agreement; and in the event thereof, PURCHASER shall have the right to terminate this Agreement and pursue any and all other remedies at law or equity.



**24.01 Entire Agreement.** This instrument contains the entire agreement between the parties and there are no representations, understandings or agreements, oral or written, which are not included herein. This Agreement cannot be changed except by duly authorized representatives of both parties in writing. It is understood that PURCHASER or SELLER from time to time in the administration of this Agreement may issue and transmit each to the other documents designated as "Purchase Orders" and "Change Orders;" these documents serve instructional or accounting functions only and are not amendments to or constructions of this Agreement.

**25.01 Confidentiality.** Each party hereto recognizes that this Agreement contains confidential commercial information, the public disclosure of all or any part of which could be damaging to the parties hereto. Accordingly, each party hereto agrees not to disclose any of the terms or provisions of this Agreement to any person or persons not a part hereto, except for affiliated corporations or unincorporated divisions of the parties hereto, without the prior consent in writing thereto of the other party hereto, which consent shall not be unreasonably withheld, except to the extent such party is legally compelled to make such disclosure pursuant to applicable law or to the extent such disclosure is reasonably necessary in connection with any regulatory, administrative or other legal proceeding in which such party, or any such affiliated corporation or unincorporated division, is involved. When disclosure is made within the terms of the above mentioned exceptions, such disclosure shall be made only to the extent reasonably necessary. It is further understood and agreed that whenever any such information is disclosed by any party hereto in accordance with the above mentioned exceptions, such party will advise each person to whom disclosure is made of the confidential nature of the information disclosed and, except for routine regulatory reporting by PURCHASER, provide written notice of such disclosure, in advance thereof, if possible, to the other party to this Agreement.

**25.02 Imaged Agreement.** Any original executed Agreement or other related document may be photocopied and stored on computer tapes and disks ("Imaged Agreement"). If an Imaged Agreement is introduced as evidence in any judicial, arbitration mediation or administrative proceeding, it shall be considered as admissible evidence; provided that such Imaged Agreement bears the signature of the Party against whom enforcement is sought; and further provided that there is no evidence that such Imaged Agreement has been manipulated or otherwise altered in any way. Neither Party shall object to the admissibility of the Imaged Agreement on the basis that such was not originated or maintained in documentary form under either the hearsay rule, the best evidence rule, or other rule of evidence.

**26.01 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized officers, all as of the date and year first above written.

WITNESSES:

Roberta Q. With  
Carolyn Leonard

WITNESS:

Sam Hensley  
\_\_\_\_\_

~~PROGRESS FUELS CORPORATION~~

BY: [Signature]  
Vice President - Coal Procurement  
Date Executed: 2/10/05

PROGRESS FUELS CORPORATION,  
on its own behalf and as agent for  
DIAMOND MAY COAL COMPANY;  
KANAWHA RIVER TERMINALS, INC.;  
KENTUCKY MAY COAL COMPANY, INC.; and  
POWELL MOUNTAIN COAL COMPANY, INC.

BY: [Signature]  
Title: Progress Fuels Corporation  
Alexander (Sasha) Weintraub  
Date Executed: Dir. - Coal Marketing & Trading

## APPENDIX A

### Adjustments for Calorific Value

Base price is based upon Subject Coal having weighted average calorific value of 12,500 Btu's per pound avoirdupois ("Pound"), "as received" at the point of weighing referred to in Section 2.01. The Base Price shall be subject to adjustment each month in accordance with the following provisions in order to compensate for variations in the calorific value of the Coal delivered during that month, with the result of such adjustment being taken into account in determining the price to be paid for the Coal received during that month. Price adjustments shall be calculated on a per-shipment basis and totaled for the month.

1. The variation of any given month shall be ascertained by comparing the per shipment calorific value of the Coal delivered and accepted that month with the calorific value of 12,500 Btu's per Pound.
2. If the calorific value in any shipment is greater than or less than 12,500 Btu's per Pound, the adjustment to be made therefor shall be computed on the basis of the following formula:

$$(\text{Actual Btu's Per Pound} - \text{Guaranteed Btu's Per Pound}) \div \text{Guaranteed Btu's Per Pound} \times \text{Base Price} = \text{Cents Per Ton (FOB Mine)} \text{ (Premium if positive—penalty if negative.)}$$

Shipments that do not meet one or more contract minimum or maximum specifications will be excluded from premium calculations.

### Adjustments for Ash Content

Base price is based upon Subject Coal having weighted average ash content of eleven percent (11.0%) maximum "as received" at the point of weighing referred to in Section 2.01. The Base Price shall be subject to the following deductions:

| ASH CONTENT      | AMOUNT TO BE DEDUCTED FROM BASE PRICE               |
|------------------|---|
| Greater than 12% | 3% of the Base Price per 1% ash to the nearest 0.1% |

## APPENDIX B

### River Barge Demurrage/Detention Costs

One (1) day free time to load; [REDACTED]/day or portion thereof thereafter. This rate is subject to 1 change.



January 27, 2004

Mr. Michael Gatens  
Progress Fuels Corporation  
Post Office Box 308  
Ceredo, West Virginia 25507

RE: LETTER AGREEMENT DATED DECEMBER 19, 2003  
ADDRESSED TO MR. JOSEPH B. JEFFERSON

Dear Mr. Gatens:

In accordance with our conversation this date, Progress Fuels Corporation's (PFC) agrees to accept your offer to ship, for the next six to eight weeks, Synfuel in place of coal under our Letter Agreement with Mr. Joseph B. Jefferson dated December 19, 2003. PFC accepts this offer based upon agreement by the parties of a  discount on the price set forth in subject Letter Agreement or a total price per ton of . All other terms and conditions as previously set forth will remain in effect.

If the above accurately reflects your understanding of our agreement, please indicate so by signing in the acceptance block provided below and return one original to me for our files.

If you have any questions, please do not hesitate to contact us.

Sincerely,

A. W. Pitcher  
Vice President - Coal Procurement

AWP/ro

cc: Ms. C. R. Clarke, Mrs. D. M. Davis, Mrs. M. J. Kuderick, Mr. F. M. Lelak,  
Ms. C. A. Leonard, Mrs. T. M. McRoberts, Mrs. V. M. Muehlendyck, Mr. R. F. Potter,  
Mr. D. S. Williams, Mr. Steve McComas, Mr. Joseph B. Jefferson

Agreed to and accepted this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Progress Fuels Corporation

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

ORIGINAL



XC: AWP  
DMD  
FML  
MSK  
RFP  
CAL  
VICKY HICKS  
ORIG TO CF

September 8, 2003

Mr. John R. Parker  
Senior Vice President  
Massey Coal Sales Company, Inc.  
Four North Fourth Street  
Richmond, Virginia 23219

Dear John:

In accordance with the *Second Amendment to the Agreement For The Sale and Purchase of Coal* dated June 1, 1999, between Electric Fuels Corporation (Purchaser) and Massey Coal Sales Company, Inc. (Seller), Progress Fuels Corporation (formerly Electric Fuels Corporation) agrees to a "third renewal term" under the following terms and conditions:

- Quantity 900,000 tons total or 50,000 tons per month.
- Term October 1, 2003 through March 31, 2005.
- Price ~~\_\_\_\_\_~~ FOB Seller's mine loading site, adjusted monthly for BTU at ~~\_\_\_\_\_~~ per 100 BTU/LB from 12500 fractions pro rata.

RAP 1  
DMD 2

All other terms and conditions of the contract and all subsequent amendments will remain in effect. If you are in agreement with this memo, please sign one copy and return to me, retaining one copy for your files.

Best regards,

A. W. Pitcher  
Vice President - Coal Procurement

AWP/ro

Agreed to and accepted this the 7th day of ~~September~~ <sup>October</sup> 2003.

Massey Coal Sales Company, Inc.

By: John R. Parker  
Its: Senior Vice President

Progress Fuels Corporation  
200 Central Avenue  
St. Petersburg, FL 33701

ORIGINAL

FIRST AMENDMENT TO THE  
COAL SALES AGREEMENT BETWEEN  
ELECTRIC FUELS CORPORATION AND  
MASSEY COAL SALES COMPANY, INC. DATED  
OCTOBER 30, 2001

xc: DHD  
FML  
HJK  
RFP  
CAL

THIS FIRST AMENDMENT (hereinafter "First Amendment"), effective as of the first day of September 2003, by and between PROGRESS FUELS CORPORATION (formerly ELECTRIC FUELS CORPORATION), a Florida corporation (hereinafter "Purchaser"); and MASSEY COAL SALES COMPANY, INC., a Virginia corporation (hereinafter "Seller"), to the Coal Sales Agreement dated October 30, 2001, by and between Purchaser and Seller (hereinafter the "Agreement").

WHEREAS, Purchaser and Seller are of the opinion that it would be mutually beneficial to extend the Agreement for an additional term of sixteen (16) months;

NOW, THEREFORE, in consideration of the mutual benefits to be derived from extending the Agreement, Purchaser and Seller agree as follows:

Sections 1, 2, and 4 are deleted in their entirety and in substitution thereof the following is added:

1. Term. The extended term of the Agreement shall commence on September 1, 2003, and will continue in effect through December 31, 2004.

2. Quantity. During the extended term hereof, the quantity of coal to be delivered hereunder shall be 320,000 total tons or 20,000 tons per month.

4 Base Price. During the extended term hereof, the base price per ton of coal, f.o.b. railcar CSX Kanawha District (hereinafter "base price") shall be ~~\_\_\_\_\_~~ per ton. Additionally, Seller shall receive a per ton premium of ~~\_\_\_\_\_~~ per 100 Btu for coal shipments with Btu levels above 12,000, fractions pro rata, on a monthly composite and pay a per ton penalty of ~~\_\_\_\_\_~~ per 100 Btu for coal shipments with Btu levels below 12,000, fractions pro rata, on a monthly composite.

1  
2  
3  
4

In all other respects, Purchaser and Seller hereby ratify and reaffirm the Agreement as herein amended.

IN WITNESS WHEREOF, each party has caused this First Amendment to be executed on its behalf by its proper officer thereunto duly authorized, all effective as of the day and year first above written.

WITNESS:  
Roberta Q. [Signature]

PROGRESS FUELS CORPORATION  
(FORMERLY ELECTRIC FUELS CORPORATION)  
By [Signature]  
Vice President—Coal Procurement  
Date Executed 9/16/03

WITNESS:  
Kelly C. [Signature]

MASSEY COAL SALES COMPANY, INC.  
By [Signature]  
Senior Vice President  
Date Executed 9/30/03



XC: AWP  
DHD  
FML  
CRC  
THH  
VHM  
RFP  
CAL  
VICKY HICKS  
ORIG TO CF

## COAL SUPPLY AGREEMENT

Between

**SELLER: GUASARE COAL INTERNATIONAL, NV, ("GCI")** - Boliviastraat - Oranjestad, Aruba, as marketer of coal produced by Carbones del Guasare S.A. CDG ("CDG") hereafter called the Seller.

And

**BUYER: PROGRESS FUELS CORPORATION (PFC)**, St. Petersburg, Florida, U.S.A. hereafter called the Buyer.

IT HAS BEEN AGREED AS FOLLOWS:

This Coal Supply Agreement (the "Agreement") is made this 7<sup>th</sup> day of August 2003, and contains the terms and conditions under which Seller agrees to sell coal to Buyer and Buyer agrees to purchase coal from Seller.

### 1. TERM OF CONTRACT

This Agreement shall be effective from January 1<sup>st</sup>, 2004 and shall terminate on December 31<sup>st</sup>, 2006. The period from the effective date to the expiration date shall be referred to herein as the "Contract Period".

### 2. SOURCE OF COAL

The coal shall be produced by Carbones del Guasare, S.A. ("CdG") from the mine Paso Diablo located near Maracaibo, State of Zulia, Venezuela. All coal shall be loaded into ships at the Bulk WAYUU terminal in Maracaibo Venezuela.

### 3. QUANTITY

Seller shall sell and deliver to Buyer and Buyer shall purchase and accept from Seller as follows:

a) First contractual year (January 1<sup>st</sup>, 2004 to December 31<sup>st</sup>, 2004):  
Thirteen (13) firm cargoes.

b) Second contractual year (January 1<sup>st</sup>, 2005 to December 31<sup>st</sup>, 2005):

Thirteen (13) firm cargoes, however Buyer shall have the option to cancel 5 cargoes evenly spread during the contractual year and shall notify Seller 30 days prior the beginning of each calendar quarter the corresponding vessel(s) cancellation. These cancellations shall only be due to market price alternatives calculated at power plant boiler. Seller shall have the right of first refusal and have the option to match the lowest price.

Additionally Buyer shall have the option to request one firm cargo by no later than March 31<sup>st</sup> 2005. The loading laycan to be mutually agreed.

c) Third contractual year (January 1<sup>st</sup>, 2006 to December 31<sup>st</sup>, 2006):  
Thirteen (13) firm cargoes.

d) The above mentioned cargoes shall be 40 to 50.000 metric tons at Seller's option and each cargo to be +/-10% at Seller's option, evenly spread through the each 12 months period. Loading Laycan of each cargo to be mutually agreed.

#### **4. DELIVERY AND RISK OF LOSS**

Seller shall deliver all coal DES at International Marine Terminal (IMT), New Orleans, USA (Incoterms 2000, except as modified by this agreement), from Seller's self-discharge vessel. Title and risk of loss for the coal shall pass to Buyer upon delivery when coal passes Seller's vessel's rail at discharge port. Buyer to provide safe Berth, and guarantee 38 feet of fresh water in Berth and approaches.

#### **5. SCHEDULING**

Vessels shall be nominated generally evenly spread during each contractual year and each loading laycan shall be mutually agreed at the latest 30 working days prior to the first day of the laycan.

#### **6. SHIPMENTS**

- A. Arriving vessels can tender NOR anytime day/night WIBON (Whether In Berth or Not), WIPON (Whether In Port or Not), WIFPON (Whether In Free Pratique or Not), WCCON (Whether in Custom Clearance or Not) provided that the vessel is in all respects ready upon commencement of discharge. Time to count 12 hours after NOR is accepted unless sooner commenced.
- B. Seller shall nominate a self-discharge belted vessel into IMT terminal hoppers, capable of discharging between 15,000 metric tonnes per day to min. 2,000 metric tonnes/hours. Buyer shall guarantee to receive the above mentioned discharge rate. On each vessel nominated the corresponding discharge rate will be indicated and Buyer shall pay Seller the vessel demurrage as per Charter Party. Buyer will accept or reject the

corresponding vessel nomination presented by Seller within 24 hours of such nomination. There shall be no dispatch.

- C. At discharge Seller will appoint a local Ship-agent, Satisfactory to Buyer, to advise receiving terminal of ETA, etc.
- D. Where not in contradiction to the terms specified in this agreement, the terms of the Americanized Welsh Coal Charter Party (1953 amended 1979) shall apply.

## 7. TAXES AND DUES

Custom Duty, taxes and fees assessed by the United States Government or by any state or local government within the United States for the import of this coal, shall be for the account of Buyer. Seller or Seller's Agent will arrange to clear the cargo with US Customs. Buyer will reimburse Seller for such costs as per Custom Broker Statement. All other costs and fees associated with the supply and delivery of the coal shall be paid by Seller.

## 8. WEIGHT OF SHIPMENT

The weight of shipment shown on the B/L shall be determined by draft survey at load-port. The weight of the loaded coal shall be established by surveys of the vessel's draught and utilizing vessel immersion scale weights, to the nearest ton by a certified Marine Surveyor chosen by the Seller and satisfactory to Buyer. The certificate of weight produced at load port shall be conclusive. Weighing at load-port shall be for the Seller's account.

## 9. COAL QUALITY

The quality characteristics of each shipment of coal shall comply with the typical proximate analysis shown in Appendix 1 – Indicative Specifications for Paso Diablo Premium grade coal on an "as received" basis. All coal shall be substantially free from any extraneous materials (including but not limited to mining debris, bone, slate, iron, steel, petroleum coke, earth, rock, pyrite, wood or blasting wire), and shall be substantially consistent in quality throughout a shipment. All coal must meet the size required and with no intermediate sizes removed.

## 10. REJECTION

A. In addition to any other remedies available by applicable law, Buyer may, but is not obligated to, reject any coal cargoes which composite analysis fails to conform with maximum 1.2 Lb/MM BTU of Sulphur Dioxide as determined at load port by an independent commercial laboratory as per Clause 11.

B. Seller shall notify Buyer by telefax as promptly as possible of the results of the analysis of Part No. 1 as per Clause 11. If the coal does not comply with maximum 1.2 Lb/MM BTU of Sulphur Dioxide, within two (2) working days from the date of Seller's notification, the parties shall seek to solve such problem in good faith. In the event the parties do not reach an agreement, Seller shall retain title of the coal for alternate disposition at Seller's expense. Any make-up of rejected shipments shall be at Buyer's sole discretion and if Buyer does not choose to allow Seller to make-up any such rejected amounts, Buyer shall be released and discharged of its obligation to purchase the tonnage of coal in the amount equal to the tonnage rejected.

## 11. SAMPLING AND ANALYSIS

A. Upon loading at the Bulk Wayuu, an independent testing company appointed by Seller and approved by Buyer shall take representative samples of the coal by automatic samplers on board of the FSTS "Bulk Wayuu" in accordance with ASTM standards during the process of loading the vessel.

B. Each composite sample shall be divided into three equal parts which shall be placed in suitable airtight container, properly labeled and sealed as soon as possible after division and protected against any change in coal characteristics.

**Part No. 1** shall be retained and analyzed in accordance with ASTM standards by Seller's independent commercial analysis laboratory (approved by Buyer) and the results of such analyses shall be used for the governing purposes of this Agreement. The cost of these analyses shall be for the Seller's account.

**Part No. 2** shall be held as an umpire sample and shall be analyzed by a mutually acceptable commercial testing laboratory in the U.S.A. only if Buyer disputes the quality of the coal, as determined by Seller's laboratory for Part No. 1, within thirty (30) days of the date set forth on the Seller's analyses. The parties shall equally share the costs of these analyses. The results of such commercial laboratory's analyses of Part No. 2 shall be accepted as determinative of the quality and characteristics of such coal.

**Part No. 3** shall be retained by Seller's independent commercial laboratory for a minimum of ninety (90) days from the date that the coal is sampled, and shall be made available to Buyer upon request.

C. Buyer's representative may be present at any and all times, at Buyer's sole risk and expense, to observe the loading, weighing, sampling and analysis of the coal. The failure of Buyer's representative to be present during any loading, weighing, sampling or analysis of the coal shall be deemed a waiver of Buyer's representation rights in each instance, but shall not constitute a waiver of any right or remedy under this Agreement or at law.

D. The Certificate of Analysis shall include weight, proximate, ultimate, ash, and screen analysis (expressed in percent by weight) for the following sizes: +50 mm,

50-37.5 mm, 37.5-31.5 mm, 31.5-25.0mm, 25.0-19 mm, 19.0-12.5 mm, 12.5-6.3 mm, < 6.3 mm.

**12. PRICE**

The price of the coal shall be Gross as Received, DES at International Marine Terminal (IMT) hoppers, New Orleans, USA as follows:

- a. First Contractual year (January 1<sup>st</sup> 2004 to December 31<sup>st</sup> 2004) US [REDACTED] per million on BTU. 12800 \$ [REDACTED] 1 2
- b. Second Contractual year (January 1<sup>st</sup> 2005 to December 31<sup>st</sup> 2005) US [REDACTED] per million on BTU. 12300 [REDACTED] 3 4
- c. Third Contractual year (January 1<sup>st</sup> 2006 to December 31<sup>st</sup> 2006) to be mutually agreed prior to August 30<sup>th</sup> 2005. Seller shall have the right of first refusal and Seller shall have the option to match the lowest price calculated at the power plant boiler. ...

The above mentioned prices applicable to each cargo shall be adjusted with a Bunker Clause with a free range between US\$ [REDACTED] to US\$ [REDACTED]/metric tons for IFO Platts Quotation for Norfolk, USA, on the Bill of Lading date. For each dollar increased or decreased outside the free range, the price shall be adjusted by US\$ [REDACTED]/Metric tons. 5 6

**13. NONASSIGNABILITY**

The rights, duties and obligations of each party under this contract shall not be assignable, in whole or in part, to any third party without the express written consent of the other party heretofore which consent shall not be unreasonably withheld or delayed. Any purported assignment in the absence of consent shall be void.

**14. BILLING AND PAYMENT**

A. Buyer shall pay for the shipment of coal at the price specified in Section 12 by electronic transfer in US dollars to Seller's bank in immediate available funds within thirty (30) days of the date set forth on the Bill of Lading and subject to reception of the following documents and conditions:



- 1) Clean, on-board ocean Bill of Lading [three (3) originals plus three (3) non-negotiable]
- 2) Draft Survey Report
- 3) Certificate of Origin
- 4) Seller's commercial invoice [One (1) original plus two (2) copies]
- 5) Certificate of Analysis showing full conformance of the coal to the requirements of this Agreement
- 6) Buyer does not reject the coal.

B. Any other amounts due from one party to the other, including any amounts due for demurrage, shall be paid by electronic transfer within fifteen (15) days upon receipt of billing documents, or shall be offset by Buyer against amounts owed to Seller.

C. If the Buyer and Seller are required to pay any amounts pursuant to this Agreement on the same day or in the same month, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed. Each Party reserves to itself all rights, setoffs, counterclaims, combination of accounts, liens and other remedies and defenses which such Party has or may be entitled to (whether by operation of law or otherwise). The obligations to make payments under this Agreement may be offset against each other, set off or recouped therefrom.

D. If either Party in good faith disputes the amount of any payment pursuant hereto, it shall pay the amount that it concedes to be correct by the due date. The parties shall in good faith attempt to resolve the dispute within three (3) working days. Upon resolution of the dispute any overpayment or underpayment shall be paid to the Party to whom it is owed within three (3) working days along with interest at the Interest Rate (as defined below) to and including the original due date, from but excluding the date paid. For the purpose of this Agreement, "Interest Rate" means the lesser of (i) the prime lending rate as set forth in the *Wall Street Journal* or any successor publication under the heading "Money Rates" plus 2% or (ii) the maximum lawful non-usurious rate permitted by applicable law.

E. In order to expedite discharge of vessel, Seller shall send the Bills of Lading, Stowage Plan, Certificate of Origin and commercial invoice to Buyer within two (2) working days after completion of loading. Seller shall also send to Buyer the Certificate of Analysis at load-port within five (5) working days after completion of loading, and all remaining documents shall be sent as soon as they become available. Buyer will not arrange for vessel discharge if not in receipt of the proximate analyses, and in such case all waiting time of the vessel to be for Seller's account.

F. All payments to Seller shall be made to:  
GUASARE COAL INTERNATIONAL NV  
ACCOUNT NBR: 3696-4696  
CITIBANK N.A., NEW YORK, NEW YORK

## 15. NOTICES

All notices except as otherwise specified, shall be in writing and delivered in person or sent by mail, telex or facsimile to the authorized representative of the other party as shown below.

If to Buyer: PROGRESS FUELS CORPORATION  
One Progress Plaza, Suite 600  
Attention: Mr. A. W. Pitcher / Mr. F. M. Lelak  
200 Central Avenue  
St. Petersburg, Florida 33701  
UNITED STATES OF AMERICA  
Fax: 727-824-6601  
email: [al.pitcher@progressfuels.com](mailto:al.pitcher@progressfuels.com) / [Michael.lalak@progressfuels.com](mailto:Michael.lalak@progressfuels.com)

If to Seller: GUASARE COAL INTERNATIONAL, NV  
Lincoln House  
137 – 143 Hammersmith Road  
London W14 OQL, UK  
Attn: Mr. Eladio Bueno/Miss Catarina Carrasquinho  
Tel: +1(44) 207.471.3806/3807  
Fax: +1(44) 207.471.3809  
email: [e.bueno@gci-uk.net](mailto:e.bueno@gci-uk.net) / [c.carrasquinho@gci-uk.net](mailto:c.carrasquinho@gci-uk.net)

And: CARBONES DEL GUASARE, S.A. Carga de Buques  
Calle 77 (5 de Julio), Edif. Lagoven CP 1200 Maracalbo, Venezuela  
Attn: Mr. Jose Eduardo Rios  
Tel: +1 (58) 261.7906.224  
Fax: +1 (58) 261.7906.222  
email: [jrios@guasare.com](mailto:jrios@guasare.com)

## 16. FORCE MAJEURE

- A. Defined:  
The term "Force Majeure" as used herein shall mean event or events not reasonably within the control of and not caused by the fault or negligence of the party affected, which wholly or partly prevents the mining, loading, or transportation of the coal by Seller, or by CDG, or the loading or discharging or consumption of coal by Buyer, such events including but not limited to acts of God, natural calamities, acts of the public enemy,

blockades, insurrections, strikes, slowdowns, disturbances, fires, explosions, storms, floods, landslides, washouts, boycotts, breakdowns of the power system serving CARBONES DEL GUASARE, S.A.'s facilities, interruptions of ground transportation, embargoes, acts of military authorities, acts of local, state or federal agencies or regulatory bodies, court actions, arrests and restraints, etc.

B. Effect Hereunder:

If because of Force Majeure, either party hereto is unable to carry out its obligations under this Agreement and if such party shall promptly give to the other notice by facsimile, or telephone of such Force Majeure, including a complete description thereof, then the obligations of the party giving such notice shall be suspended to the extent made necessary by Force Majeure and during its continuance; provided, however, that the party giving such notice shall use its best efforts to eliminate such Force Majeure insofar as possible with a minimum of delay. Nothing in this Agreement shall cause the party affected by Force Majeure to submit to what it considers to be unreasonable conditions or restrictions or to submit to an unfavorable labor agreement, and it is agreed that any settlement of labor strikes or other differences with workmen or disputes with governmental entities shall be entirely within the sole discretion of the affected party. No event of Force Majeure shall relieve Buyer of its obligation to make payments due for coal delivered by Seller under this Agreement. Deficiencies in deliveries of coal caused by an event of Force Majeure shall only be made up by mutual consent.

17. LIQUIDATED DAMAGES

- A. As an alternative to the damages provision below, if the Parties mutually agree in writing, the Non-Defaulting Party may schedule deliveries or receipts, as the case may be, pursuant to such terms as the Parties agree in order to discharge some or all of the obligation to pay damages. In the absence of such agreement, the damages provision of this Section 17 shall apply.
- B. Unless excused by Force Majeure or Buyer's failure to perform, if Seller fails to deliver any quantity of coal that has been scheduled hereunder, Seller shall pay to Buyer an amount for each ton of coal of such deficiency equal to (i) the lowest reasonable market price at which Buyer is able, or at the time of Seller's breach, would be able (FOB delivery point) to purchase or otherwise receive comparable supplies of coal of comparable quality ("Replacement Price") minus (ii) the contract price agreed to for the undelivered coal; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.
- C. Unless excused by Force Majeure, Buyer's exercise of its rejection or suspension rights hereunder, or Seller's failure to perform, if Buyer fails to accept delivery of any quantity of coal that has been scheduled pursuant



hereto, Buyer shall pay to Seller an amount for each ton of coal of such deficiency equal to (i) the contract price agreed to for the undelivered coal minus (ii) the highest reasonable market price at which Seller is able, or would be able (FOB delivery point), to sell or otherwise dispose of the coal at the time of Buyer's breach ("Sales Price"); except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

- D. The Parties agree that each is obligated to make commercially reasonable efforts to mitigate any damages hereunder.
- E. Payment of amounts, if any, pursuant to this Section 17 shall be made in accordance with Section 14. All such determinations shall be made in a commercially reasonable manner and the Non-Defaulting Party shall not be required to enter into any actual replacement transaction in order to determine the Replacement Price or Sales Price as appropriate.
- F. If a Party obligated to make a payment under this Section 17 timely makes such payment to the other Party, no failure to perform as described in this Section 17 shall constitute an Event of Default pursuant to Section 18.

## 18. DEFAULT AND REMEDIES

- A. An event of default ("Event of Default") with respect to a Party (the "Defaulting Party") shall mean any of the following:
  - (i) the failure of the Defaulting Party to pay when due any required payment and such failure is not remedied within three (3) working days after its receipt of written notice thereof (provided that payment is not subject to a good faith dispute as described in Section 14(D));
  - (ii) the failure of the Defaulting Party to comply with its other material obligations under this Agreement and such failure continues uncured for ten (10) working days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such ten (10) working day period, the cure period shall be extended for an additional period reasonably necessary to remedy such failure subject to the condition that during the additional period the Defaulting Party shall be diligently pursuing a remedy for such failure;
  - (iii) the Defaulting Party or any credit support provider of the Defaulting Party shall be subject to a Bankruptcy proceeding or otherwise be insolvent or unable to pay its debts as they become due;
  - (iv) the failure of a Party's Guarantor, if any, to perform any covenant in its Guaranty, such Guaranty expires, is terminated or ceases to guarantee the obligations of such Party under this Agreement;
  - (v) an event as described in the last sentence of Section 10(c) occurs with respect to the Seller;
  - (vi) any representation or warranty made by a Party herein shall prove to be untrue in any material respect when made;

- (vii) the Defaulting Party fails to establish, maintain, extend or increase Performance Assurance when required pursuant to this Agreement.
- B. Upon the occurrence and during the continuance of an Event of Default as to the Defaulting Party, the other Party (the "Non-Defaulting Party") may, in its sole discretion,
- (i) accelerate and liquidate the Parties' respective obligations under this Agreement by establishing, and notifying the Defaulting Party of, an early termination date (which shall be no earlier than twenty (20) days after the date of such notice) on which this Agreement and all transactions pursuant hereto shall terminate ("Early Termination Date"), and/or
  - (ii) withhold any payments due to the Defaulting Party until such Event of Default is cured; and/or
  - (iii) suspend performance of its obligations under this Agreement until such Event of Default is cured.

C. If an Early Termination Date is established, the Non-Defaulting Party shall in good faith calculate its Gains or Losses, and Costs (each as defined below) resulting from the termination of this Agreement as of the Early Termination Date, or if that is not possible, as soon thereafter as is reasonably practicable. The Non-Defaulting Party shall aggregate such Gains or Losses, and Costs into a single net amount, and then notify the Defaulting Party of the net amount owed or owing. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such early termination, the Non-Defaulting Party shall pay the net amount to the Defaulting Party in accordance with Section 14 (B) hereunder. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall pay the net amount to the Non-Defaulting Party within three (3) working days of its receipt of notice of such amount. The Non-Defaulting Party shall use commercially reasonable efforts to mitigate any costs and damages resulting from the Defaulting Party's default or nonperformance. "Gains" means, with respect to a Party, an amount equal to the present value of the economic benefit, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to a terminated transaction, determined in a commercially reasonable manner. "Losses" means, with respect to a Party, an amount equal to the present value of the economic loss, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to a terminated transaction, determined in a commercially reasonable manner. "Costs" means any brokerage fees, commissions and other transactional costs and expenses reasonably incurred either by the Non-Defaulting Party as a result of terminating any hedges or other risk management contracts and/or entering into new arrangements in order to replace the early terminated transactions. The Non-Defaulting Party may, at its sole election and to the extent permitted by applicable law, set off any or all amounts which the Defaulting Party owes to the Non-Defaulting Party (under this Agreement or otherwise) against any or all amounts which the Non-Defaulting Party owes to the Defaulting Party (under this Agreement or otherwise).

Notwithstanding the foregoing, or any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be obligated to pay any amounts it owes as a result of an Early Termination until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that (i) all amounts due and payable as of the Early Termination Date by the Defaulting Party have been fully and finally paid, and (ii) all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed. Such right to withhold shall be limited to ninety (90) days from the Early Termination Date; provided, however, that if after the ninety (90) day period the Non-Defaulting Party still in good faith believe that it has not received all payments from the Defaulting Party, the Non-Defaulting Party shall provide written notice to the Defaulting Party with the reasons for its determination and in each such case the period shall be extended for an additional thirty (30) days.

**19. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New York, without regard to the application of such state's choice of laws provisions (except for Sections 5-1401 and 5-1402 of the General Obligations Laws), except as modified by this Agreement, and except that the term "DES" shall be as defined in Incoterms as published by the International Chamber of Commerce, 2000 Edition, International Chamber of Commerce publication No. 350, except as modified by this Agreement.

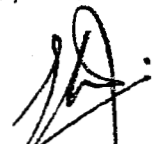
**20. ARBITRATION AND VENUE**

Any controversy or claim arising out of this Agreement or the breach thereof may be settled by binding arbitration in accordance with the terms and conditions set forth below:

- (i) For any controversy or claim arising out of or relating to this Agreement or the breach thereof, and for which the aggregate notional value is less than one million dollars (\$1,000,000.00), such claim or controversy shall be submitted to binding arbitration in accordance with this Section 20(i). Such arbitration shall be submitted to one (1) arbitrator who has not previously been employed by either Party and does not have a direct or indirect interest in either Party or the subject matter of the arbitration, but who is recognized by both Parties as experienced and knowledgeable in the industry. Such arbitrator shall either be as mutually agreed by the Parties within thirty (30) days after written notice from either Party requesting arbitration, or failing agreement shall be selected under the expedited American Arbitration Association Commercial Arbitration ("AAACA") rules.



- (ii) For any controversy or claim arising out of or relating to this Agreement or the breach thereof, and for which the aggregate notional value is equal to or greater than one million dollars (\$1,000,000.00), such claim or controversy shall be submitted to binding arbitration in accordance with this Section 20(ii). Each Party shall select one (1) arbitrator who is recognized as experienced and knowledgeable in the industry but who has not been previously employed by either Party and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. The two (2) arbitrators shall then mutually agree upon and select a third arbitrator that meets the same criteria set forth above, or failing an agreement, the third arbitrator shall then be selected under the expedited AAACA rules.
- (iii) For any arbitration proceeding as set forth in (i) or (ii) above:
- (a) such arbitration shall be held in New York, New York or such other location as mutually agreed between the Parties;
  - (b) both Parties shall be afforded adequate opportunity to present information in support of its position on the dispute being arbitrated;
  - (c) the arbitrator(s) may request additional information from the Parties but shall be bound by the terms of this Agreement and may not amend or modify any of the terms hereof;
  - (d) the arbitrator(s) shall set forth a written decision and the reason therefor;
  - (e) the judgment of the arbitrator(s) may be entered into and enforced by any court having jurisdiction over the subject matter or the Parties;
  - (f) the costs awarded in any arbitration generally will not include attorneys' fees and expert costs of the Parties; provided that in the event that the arbitrator(s) determine by taking into account the particular facts and circumstances of the case that there is sufficient evidence of bad faith, blatant disregard of the law or the terms of this Agreement, or particularly egregious, outrageous or arbitrary behavior, then some or all of the attorney fees or expert costs may be awarded to a Party or apportioned between the Parties and provided further that in any action to collect an amount due under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and collection costs as determined by arbitration under this Section 20 or by a court of competent jurisdiction.
- (iv) Notwithstanding the foregoing or any provision to the contrary, in the event that a Party (the Non-Breaching Party) makes a good faith determination that a breach of the terms of this Agreement (including but not limited to any breach of confidentiality pursuant to Section 27 by the other Party is such that immediate injunctive or equitable relief is appropriate and necessary under the circumstances, the Non-



Breaching Party may file a petition for such relief with any court of competent jurisdiction.

**21. RESTRICTED THIRD PARTY SALE**

Buyer shall not sell this coal to unrelated third parties without prior written authorization from Seller.

**22. CREDITWORTHINESS**

At any time and from time to time during the term of this Agreement, either Party may require the other party to provide financial information reasonably needed to ascertain the other Party's ability to pay for coal to be received under this Agreement or to meet any other obligation which may accrue, including without limitation the obligation to pay damages resulting from its failure to perform its obligations pursuant to this Agreement. If either Party's creditworthiness, in the other Party's reasonable determination, becomes unsatisfactory, then the dissatisfied Party (the "Unsecured Party") may require Performance Assurance (as defined below) of the other Party's ability to perform any obligation hereunder, including but not limited to, its ability to deliver coal or make payment. The Unsecured Party may suspend deliveries or receipts hereunder or terminate this Agreement if the other Party fails to deliver the requested Performance Assurance within two (2) working days of such request. "Performance Assurance" means assurance in the form of (i) cash prepayments, (ii) a Letter of Credit of form, tenor and amount and from a bank in each case reasonably acceptable to the requesting Party, (iii) corporate guarantee in a form reasonably acceptable to the requesting Party; or (iv) other collateral security acceptable to the Unsecured Party. Notwithstanding the foregoing, Performance Assurance in the form of a Letter of Credit shall be valued at zero U.S. Dollars (\$0) if there are 15 days or less remaining before its expiration.

**23. ENTIRE AGREEMENT, AMENDMENT AND NON-WAIVER**

This Agreement contains the entire agreement between the parties with respect to the subject matter, herein and supersedes all previous writings, understandings, negotiations, representation or agreements with respect thereto. This Agreement may be modified or amended only by a written instrument signed by an authorized representative of each party. The failure of either party to require strict performance of any provision of this Agreement shall not operate as a waiver by such party of its right to require strict performance in the future.

**24. TITLE AND INDEMNITY**

Seller warrants that at the time of delivery it will have title to the coal, and will deliver the coal to Buyer, free and clear of all liens, claims and encumbrances arising prior to the transfer of title to Buyer. Seller and Buyer shall each indemnify, defend and



hold harmless the other Party from any claims arising from failure of title or loss of the coal when title to and risk of loss of the coal is vested in the indemnifying Party.

25 ENVIRONMENT, HEALTH AND SAFETY

A. Compliance and Hold Harmless. Seller shall endeavor to comply with all applicable EHS laws and shall hold harmless Buyer against any EHS claims and costs arising from Seller's performance under this Agreement. Buyer shall endeavor to comply with all applicable EHS laws and shall hold harmless Seller against any EHS claims and costs arising from Buyer's performance under this Agreement.

B. Definitions:

1. Claim means administrative, regulatory or judicial action, suite, dispute, liability, judgment, penalty, damages, directive, order or claim.
2. EHS means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.
3. Hold Harmless means to indemnify and defend the other party and its successors and assigns. Seller or Buyer, as the case may be, will notify in writing to the other Party about the existence of the event or circumstance that grants Seller or Buyer, as the case may be, the right to seek indemnification from the other Party under this clause. Without prejudice to the right to indemnity hereunder, Buyer or Seller, as the case may be, will have the right to, and the other Party will have the right to request the former to, assume the defense of any such claim, demand or cause of action for which indemnity is sought under this clause, but Buyer or Seller, as the case may be, shall not settle any such claim, demand or cause of action without the consent of the other Party, such consent not to be unreasonably withheld.

Each Party will use its reasonable endeavours to mitigate any loss, cost, damage, expense or liability for which that Party is entitled to claim indemnity under this clause. The Parties agree that the indemnities contained in this clause will further not apply to the extent that the Party seeking indemnification under this clause has caused any loss, liability or damages for which it is claiming indemnity under this clause through its own negligence or willful misconduct.

4. Law means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.



5. Manage or management, with respect to any material, means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release or threatened release thereof.

## 26. AUDIT

Each Party shall maintain accurate records relating to coal sales and purchases made pursuant to this Agreement. Such records shall be retained for a period of at least two (2) years after completion or termination of this Agreement. Each Party (and its representatives) has the right, at its sole expense, during normal working hours and upon reasonable advance notice, to examine the records of the other Party, but only to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the requesting Party statements evidencing the quantities of coal delivered or received at the delivery point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statements and the payments thereof will be promptly made and shall bear interest at the Interest Rate from and including the date the overpayment or underpayment was made to but excluding the date the refund or remittance is paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made in writing, in reference thereto, prior to the lapse of twelve (12) months from the rendition thereof; and provided further, that for the purpose of such statement and payment objections, this Section 25 will survive any termination of this Agreement.

## 27. REPRESENTATIONS

On the effective date hereof and for the term of this Agreement each Party represents and warrants to the other Party that:

A. 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 organization documents or any order or judgment of a court or other agency or government applicable to it or its assets;

B. Its obligations under this Agreement are legally valid and binding obligations, enforceable in accordance with their terms;

C. That it is subject to service of process in Aruba and/or Venezuela as applicable;

D. That there are no laws under any country relating to its incorporation, formation, or principal place of business that would invalidate or otherwise make unenforceable any of the terms and conditions of this Agreement, including but not exclusive of the terms and conditions relating to governing law, jurisdiction, arbitration, and any awards or decisions rendered by the arbitrators;

E. It has any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Agreement;



F. It is an "eligible contract participant" as defined in Section 1(a) 12 of the Commodity Exchange Act, as amended;

G. This Agreement constitutes a "forward contract" and that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

H. There are no Bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; and

I. There are no legal proceedings pending or to its knowledge threatened against it that would materially adversely affect its ability to perform its obligations under this Agreement.

## 28. CONFIDENTIALITY

"Neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, Affiliates, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, or (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. The parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

## 29. UNIFORM COMMERCIAL CODE

Except as otherwise provided herein, the provisions of the Uniform Commercial Code of the state whose laws shall govern this Contract shall be deemed to apply to this Agreement.

## 30. LIMITATION OF LIABILITY

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURE 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 SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABLE 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 UNLESS OTHERWISE PROVIDED IN THIS AGREEMENT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABLE PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES WHETHER BY STATUTE, IN TORT OR IN CONTRACT, UNDER THIS AGREEMENT, ANY INDEMNITY PROVISION OR OTHERWISE.

**31. GENERAL**

The headings contained herein are for the purposes of convenience and reference purposes only. This Agreement shall be considered for all purposes as prepared through the mutual efforts of the Parties hereto and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events are hereinafter a "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties.

Buyer and Seller have caused this Coal Supply Agreement to be executed, each by its authorized representative, as of the date first set forth above.

Seller: [Signature]  
GUASARE COAL INTERNATIONAL, N.V.

By: Eldio Bravo

Its: C.E.O.

Buyer: [Signature]  
PROGRESS FUELS CORPORATION

By: [Signature]

Its: Vice President-Coal Procurement

PDVSA-CARBOZULIA S.A.

By: [Signature]

Its: Manager Director

Made in three originals on 9<sup>th</sup> October 2003.

## APPENDIX 1

### Paso Diablo Premium Coal Specifications (As Received Basis)

|                                  |  |                |
|----------------------------------|--|----------------|
| <b>PROXIMATE ANALYSIS</b>        |  | <b>Typical</b> |
| Total moisture, %                |  | 7.50           |
| Ash, %                           |  | 6.50           |
| Volatile Matter, %               |  | 35.00          |
| Pyritic Sulphur, %               |  | 0.2            |
| Total Sulphur, %                 |  | 0.70           |
| Gross Calorific Value, BRU/lb    |  | 12800          |
| Kcal/Kg                          |  | 7100           |
| Net Calorific Value, Kcal/Kg     |  | 6810           |
| <b>GRINDABILITY</b>              |  | 47             |
| <b>FREE SWELLING INDEX</b>       |  | 6              |
| <b>ULTIMATE ANALYSIS</b>         |  |                |
| Total moisture, %                |  | 7.50           |
| Carbon                           |  | 71.50          |
| Hydrogen                         |  | 4.80           |
| Nitrogen                         |  | 1.30           |
| Chlorine                         |  | 0.04           |
| Total Sulphur, %                 |  | 0.70           |
| Ash, %                           |  | 6.50           |
| Oxygen (by Diff.)                |  | 7.66           |
| <b>ASH FUSION TEMPERATURE</b>    |  | <b>°C (°F)</b> |
| Red. Atm. Initial Deformation    |  | 1230 (2246)    |
| Softening (H=W)                  |  | 1260 (2300)    |
| Hemispherical (H=1/2W)           |  | 1310 (2390)    |
| Fluid                            |  | 1360 (2480)    |
| Ox. Atm. Initial Deformation     |  | 1280 (2336)    |
| Softening (H=W)                  |  | 1300 (2372)    |
| Hemispherical (H=1/2W)           |  | 1360 (2480)    |
| Fluid                            |  | 1400 (2552)    |
| <b>ASH ANALYSIS</b>              |  |                |
| % SiO <sub>2</sub>               |  | 58.50          |
| % Al <sub>2</sub> O <sub>3</sub> |  | 20.00          |
| % TiO <sub>2</sub>               |  | 0.95           |
| % Fe <sub>2</sub> O <sub>3</sub> |  | 7.00           |
| % CaO                            |  | 4.00           |
| % MgO                            |  | 2.80           |
| % K <sub>2</sub> O               |  | 1.70           |
| % Na <sub>2</sub> O              |  | 0.50           |
| % MnO <sub>2</sub>               |  | 0.10           |
| % P <sub>2</sub> O <sub>5</sub>  |  | 0.20           |
| % S <sub>03</sub>                |  | 3.50           |
| Undetermined                     |  | 0.75           |
| <b>SIZING (0 x 50 mm)</b>        |  |                |
| Role hole screens % + 50 mm      |  | 5.0 % max.     |
| % - 6.3 mm                       |  | 40.0% max.     |



# Progress Energy

January 27, 2004

SENT VIA FAX NO. 276-669-3543

Mr. Clark Wisman  
Director of Marketing & Sales  
Central Coal Company  
148 Bristol East Road  
Bristol, Virginia 24202

*Robin  
pls send  
a letter  
amending MMBtu  
to [redacted]*

1

Dear Clark:

This letter will confirm our acceptance of your offer of January 21, 2004, wherein Central Coal Company offered to sell and Progress Fuels Corporation (PFC) agreed to purchase 10,000 tons in February and 20,000 to 25,000 tons per month during the period of March 1, 2004, through December 31, 2004, of 1.2 LB/SO<sub>2</sub> compliance coal.

This coal shall be prepared so as to be free of excess quantities of bone, slate, shale, fire clay, wood, rock, loose clay, and other impurities and are expected to meet the following specifications on an "as-received" basis:

| SPECIFICATION | QUALITY  |
|---------------|--|
| MOISTURE      | 8.0 MAX.   |
| ASH %         | 14.0 TYPICAL, 15.0 MAX..                         |
| SULFUR %      | 1.2 LB/SO <sub>2</sub> MAX.                      |
| BTU/LB        | 12,000 MIN.                                      |
| VOLATILE %    | 32.00 MIN.                                       |
| GRIND         | 43-45  |
| SIZE          | 2" X 0" WITH MAXIMUM OF 45% LESS THAN 1/4" FINES |

The price on this coal will be [redacted] per ton f.o.b. barge, Marmet Pool, and includes [redacted] for trucking and transloading costs, and will be based on a guarantee of 12,000 Btu/LB. Premium or penalty, if any, will be computed from the guaranteed \$/MMBtu f.o.b. barge price of [redacted] on a per barge basis. Invoices, reflecting premium/penalty calculations, are payable fifteen (15) days from receipt and should be sent to the attention of Ms. Carrie Leonard, Senior Accountant, at Progress Fuels Corporation, Post Office Box 15208, St. Petersburg, Florida, 33733.

*T9PO  
2  
3  
4*

This coal will be sampled by an independent contractor employed by PFC. These samples will govern payment.

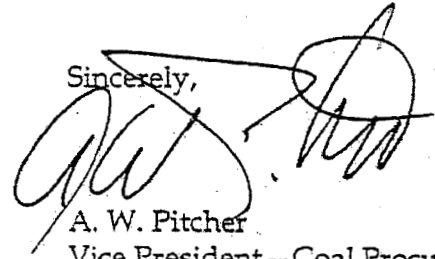
This coal will be shipped barge. Coordination of these shipments will be made with PFC's Mrs. Tina McRoberts at 727/824-6682. Coordination of sampling related matters will be with PFC's Mr. Roy F. Potter at 727/824-6684.

Mr. Clark Wisman  
January 27, 2004  
Page 2

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If you are in agreement with this Letter Agreement and the attached Terms and Conditions, which constitutes our entire agreement, please indicate so by signing in the acceptance block on both documents and returning one original for our files.

Thank you for working with us on this order. If you have any questions, please do not hesitate to contact us.

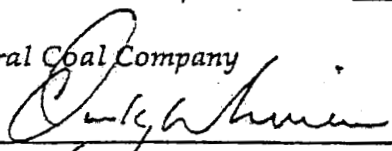
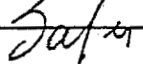
Sincerely,  
  
A. W. Pitcher  
Vice President - Coal Procurement

AWP/ro

Attachment

- cc/att: Ms. C. R. Clarke  
Mrs. D. M. Davis  
Mrs. M. J. Kuderick  
Mr. F. M. Lelak  
Ms. C. A. Leonard  
Mrs. T. M. McRoberts  
Mrs. V. M. Muehlendyck  
Mr. R. F. Potter  
Mr. D. S. Williams

Agreed to and accepted this the 3 day of February, 2004.

Central Coal Company  
By:   
Its: 

TERMS AND CONDITIONS  
MADE A PART OF  
LETTER AGREEMENT DATED JANUARY 27, 2004

These Terms and Conditions shall be a part of, and incorporated in, the above-identified Letter Agreement. Commencement of deliveries by Seller shall constitute acceptance of all the terms stated in the Letter Agreement, as well as all of the following General Terms and Conditions even advance of Seller's signature.

All coal purchased hereunder shall be received subject to Purchaser's right of inspection and rejection. Rejected coal will be held at Seller's risk for a reasonable time and will be returned or disposed of according to Seller's instructions and at Seller's expense. The net proceeds of any such disposition will be credited to Seller's account. Payment in whole or in part by Purchaser for coal purchased hereunder shall not constitute an acceptance of coal, which is rightfully rejected.

Should Seller default in whole or in part as to quantity or quality of coal under this Letter Agreement, Purchaser shall have, in addition to any other rights it may have at law or in equity, the right to acquire suitable substitute or replacement coal. In such event, Seller shall reimburse Purchaser for the amount by which the cost of substitute or replacement coal exceeds the price of coal under the Letter Agreement. The quality analysis performed by an independent certified testing company selected by Purchaser would be final and binding as to all questions of quality.

If shipment is not made of coal to be supplied hereunder by the date specified on the front of the Letter Agreement and deferred shipment has not been approved by Purchaser, Purchaser shall not be required to accept delivery of such shipments or Purchaser may elect to accept such shipments without prejudice to its rights hereunder. If at any time, Seller has reason to believe that deliveries will not be made as scheduled, he shall immediately give written notice setting forth the cause of the anticipated delay. Seller shall be responsible for any demurrage as the result of this delay.

For purposes of these Terms and Conditions, a "shipment" shall mean the quantity actually received in any vessel, barge, or unit train. If the coal delivered hereunder in any single shipment fails to meet any of the specifications set out in the Letter Agreement other than sulfur content, Purchaser shall have each of the following options to be exercised in its sole discretion:

1. Purchaser may notify Seller that Purchaser will accept such coal subject to and in accordance with the provisions set forth in the Letter Agreement; provided, however, that Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder; or
2. Purchaser will have the option to reject any shipment which exceeds any of the minimum/maximum specifications listed in the Letter Agreement, and Purchaser may notify Seller to suspend further deliveries of coal hereunder until Seller demonstrates to Purchaser's sole satisfaction that it can deliver coal that will conform on a per shipment basis to the specifications set forth in Letter Agreement; provided, however, that

Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder. If Seller fails to make the above demonstration to Purchaser's satisfaction within thirty (30) days after notice by Purchaser, Purchaser shall have the right to terminate or cancel this Agreement and, in addition, pursue every other remedy provided by law or equity. Should legal proceedings be instituted by Purchaser to recoup its losses or damage hereunder, it shall, in addition, be entitled to recover from Seller all court costs, reasonable attorney's fees and any expenses incurred by Purchaser, incident to such proceeding.

Should Seller become insolvent, or a voluntary or involuntary petition is filed as to Seller under the United States Bankruptcy Code, or a receivership or similar proceeding be filed as to Seller, the Purchaser may, at its option and in its sole discretion anytime thereafter upon giving written notice, terminate the Letter Agreement in whole or in part. The foregoing remedy of Purchaser is not to be considered exclusive, but shall be cumulative and be in addition to any other remedies of Purchaser as provided herein.

As used herein, the term "force majeure" shall mean any event beyond the control and without fault or negligence of the party affected thereby and which, by the exercise of reasonable diligence or the incurring of reasonable expense, such party is unable to prevent or overcome, regardless of whether such event was foreseeable, including, without limitation, act of God, act of public authorities (including courts and commissions of competent jurisdiction), act of the public enemy, insurrection, riot, labor dispute, labor or material shortage, fire, explosion, flood, breakdown of or damage to plant equipment or facilities (including emergency outages of equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto), interruption to transportation or transportation delay, river freeze-up, embargo, order or act of civil or military authority, legislative, regulatory, permitting, judicial rule or order adopted, amended or newly interpreted subsequent to the date of the Letter Agreement and any other event of a similar or dissimilar nature which wholly or partially prevents the mining, hauling, handling, processing or loading of coal by Seller or the receiving, handling, transporting and/or delivering by Purchaser's carrier thereof or the accepting, handling, utilizing and/or unloading thereof by Purchaser or Purchaser's intended buyer, Progress Energy Florida (PEF).

In the event performance of Seller's obligations hereunder or Purchaser's obligations hereunder is made impossible, impractical or illegal by reason of force majeure (other than obligations to pay or expend money for or in connection with the performance of the transactions contemplated by the Letter Agreement) and such party promptly gives to each other party hereto written notice of the details thereof, then the obligations of the parties hereto shall be totally excused to the extent made necessary by such force majeure and during its continuance; provided, however, that such party giving such notice shall use its best efforts to eliminate such force majeure to the extent economically feasible to do so and with a minimum of delay. Any deficiencies in deliveries of coal hereunder as a result of force majeure shall not be made up except at the sole discretion of the Purchaser. In the event force majeure results in a partial reduction in the total quantity of coal Seller is obligated to deliver hereunder, the quantity of coal Seller shall be obligated to deliver to Purchaser hereunder during the continuance of such force majeure shall be limited to the amount of coal required to be delivered during such period but for this section multiplied by a fraction, the denominator of which is the production capacity of the Coal Property immediately prior to such force majeure and the numerator of which is the production capacity of the Coal Property during the continuance of such force majeure.

In the event that restrictions are imposed during the term of the Letter Agreement by governmental bodies, agencies, entities, officials or courts which preclude or restrict PEF from burning coal of the specifications hereunder, such restriction shall be deemed to be an event of force majeure under the Letter Agreement unless its effect can be avoided in a lawful manner and will not, in PEF's sole judgment, result in unreasonable expense to PEF, the obligations of the parties hereto shall be totally excused during the continuance of such force majeure.

Seller shall not, without Purchaser's prior written consent, which consent will not unreasonably be withheld, (i) make any assignment or transfer of the Letter Agreement, by operation of law or otherwise, including without limitation any assignment, encumbrance or transfer as security for any obligation, or (ii) assign or transfer the right or duty to perform any obligation of Seller hereunder; provided, however, that Seller may assign the right to receive payments for coal sold hereunder directly from Purchaser to a lender as part of any accounts receivable financing or other revolving credit arrangement which Seller may have now or at any time during the term of the Letter Agreement. Seller may assign the Letter Agreement to an affiliate of Seller, or as part of a merger or consolidation, involving Seller, provided, however, that in the case of an assignment to an affiliate, Seller shall remain liable for the performance and for the obligations of the assignee.

The terms and provisions hereof shall be construed and enforced in accordance with the laws of the state of West Virginia.

Each party shall maintain the terms of the Letter Agreement and any information or data relating hereto, including site visits, in confidence and, except as may be required by law, shall not disclose such information or data or any other information concerning the performance or administration of the Letter Agreement to any other party other than a party's officers, directors, members, employees, contractors, agents, attorneys, accountants or financial advisers who have a need to have access thereto or as required by applicable law, regulation or judicial or governmental order. If either party is required to disclose any information required by this Section to be maintained as confidential in a judicial, administrative or governmental proceeding, such party shall give the other party at least ten (10) days prior written notice (unless less time is permitted by the applicable proceeding) before disclosing any such information in any such said proceeding and, in making such disclosure, the party required to disclose the information shall disclose only that portion thereof required to be disclosed and shall take all reasonable efforts to preserve the confidentiality thereof, including obtaining protective orders and supporting the other party in intervention. Nothing contained herein shall obligate either party to disclose to the other party any information that would be prohibited from disclosure under confidentiality agreements with third parties, including, without limitation, licenses; and any such information shall only be disclosed to the other party after appropriate confidentiality agreements have been entered into or appropriate consents obtained. The terms and provisions of this Section shall survive the termination of the Letter Agreement for a period of two (2) years.

The terms and conditions set forth herein constitute a complete and exclusive statement of agreement between the parties hereto, regardless of any terms contained in any order, acknowledgment or any other instrument. No statements or agreements, oral or written, not contained herein shall vary or modify the terms hereof. Neither party shall claim any amendments, modifications, or release from any provisions hereof unless the same is in writing signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement. Waiver by either party hereto of any breach by the other party of the terms and conditions hereof shall not be construed as a waiver of any other breach.

Seller, for itself and its successors and assigns, agrees to indemnify, defend and hold Purchaser and its affiliates and their respective directors, officers, employees and agents harmless from and against all (a) claims, demands, damages, actions and causes of actions, and costs and expenses in connection therewith or related thereto (including without limitation attorney's fees and court costs) arising from property damage, bodily injury or death of third parties, directly caused by Seller's unlawful or negligent performance under the Letter Agreement, and (b) all fines, penalties, costs, losses or expenses incurred by Purchaser by reason of Seller's violation of any applicable federal, state and local laws, ordinances or regulations directly related to producing, supplying, transporting, delivering or using coal under the Letter Agreement. Purchaser shall give Seller prompt written notice of any claim, demand or suit of which Purchaser receives notice arising out of or in connection with the Letter Agreement and covered by this indemnity. Purchaser shall have the right to reasonably participate in any defense provided by Seller, including the selection of local counsel. The indemnification provision shall survive the expiration or earlier termination of the Letter Agreement.

Seller agrees to conform to Purchaser's environmental, health, and safety standards as follows:

1. **Compliance and Indemnification.** Seller shall comply with all applicable EHS laws and shall indemnify Purchaser against any EHS claims and costs arising from Seller's performance under the Letter Agreement.
2. **Audits.** Purchaser may audit Seller's EHS compliance. Within thirty (30) days of Purchaser's request, Seller shall deliver to Purchaser (1) all records regarding (a) Seller's actual or alleged violations of EHS laws and (b) EHS claims asserted against Seller, in each case in the five year period preceding Purchaser's request and (2) any executed consent form(s) necessary for Purchaser to obtain from regulatory agencies and other third parties information regarding Seller's EHS compliance.
3. **Definitions (as used in the Letter Agreement).**
  - a. **Claim** means administrative, regulatory or judicial action, suite, dispute, liability, judgment, penalty, damages, directive, order or claim.
  - b. **EHS** means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.
  - c. **Indemnify** means to indemnify, defend, and reimburse the indemnitee and its successors and assigns on an after-tax basis.
  - d. **Law** means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.
  - e. **Manage or management, with respect to any material,** means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release, or threatened release thereof.

Further (a) Notwithstanding any provision in the Letter Agreement to the contrary, neither party shall be liable hereunder for incidental, special, punitive, consequential or other indirect loss or damage, or for lost profits, business, tax credits or any other special or incidental loss or



damage. The parties further agree that the waivers and disclaimers of liability expressed in this Letter Agreement shall survive termination of the Letter Agreement, and shall apply whether in contract, equity, tort or otherwise, even in the event of the fault, negligence, including sole negligence, strict liability or breach of warranty of any party released or whose liabilities are waived or disclaimed. Except as otherwise provided, neither party makes any warranties or guarantees to the other, either express or implied, with respect to the subject matter of the Letter Agreement, and both parties disclaim and waive any implied warranties or warranties imposed by law, (b) Notwithstanding any provision of the Letter Agreement to the contrary, the parties recognize the Purchaser is a corporation formed under the laws of the State of Florida and the Seller is a company formed under the laws of the State of Virginia and that no past, present or future shareholder, officer, director, member or manager of either party shall have any personal liability for any obligation whatsoever or howsoever arising (including under contract or in tort or equity) under or with respect to the Letter Agreement or the transaction contemplated hereby, or applicable law with respect thereto. Neither Purchaser nor Seller shall (i) assert or seek to assert any claim against, (ii) name in any civil action or proceeding or arbitration, or (iii) seek or obtain any judgment, order or decree against any member, manager, shareholder, officer, employee, agent or representative of Purchaser or Seller, with respect to Purchaser's or Seller's obligations under the Letter Agreement.

If Purchaser and Seller are each required to pay any amount to each other, then such amounts with respect to each other may be aggregated and the Purchaser and Seller may discharge their obligations to pay through netting, in which case the Purchaser or Seller, if any, owing the greater aggregate amount may pay to the other party the difference between the amounts owed. The Purchaser or Seller reserves to itself all rights, setoffs, counterclaims, and other remedies and defenses consistent with this Letter Agreement, to the extent not expressly herein waived or denied, which the Purchaser or Seller has or may be entitled to arising from or out of this Letter Agreement. The obligations to make payment under this Letter Agreement may be offset against each other, setoff or recouped there from. For the purpose of this section only, Purchaser and Seller shall also mean any affiliates, subsidiaries, or other related entities of Purchaser and Seller.

Additionally, Seller represents to and covenants with Purchaser that it has obtained and will maintain or cause to be maintained at its expense:

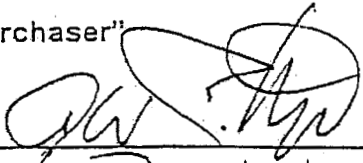
1. At a minimum, Automobile Liability Insurance applying to own, non-owned and hired vehicles with a limit of \$1 Million combined single limit coverage per occurrence. Additionally, Umbrella Liability coverage with a minimum of \$1 Million limit per occurrence is desired.
2. Workers' Compensation, Employees' Liability insurance with a minimum of \$500,000 Accident, \$500,000 Disease and \$500,000 Employee coverage.
3. Employers' Liability Insurance with a minimum of \$1 Million coverage per claim.

The Letter Agreement dated January 27, 2004, and these Terms and Conditions constitute the agreement in total between the parties. Neither party hereto shall claim any amendments, modifications, or release from any of the provisions hereof unless the same is in writing, signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement and these Terms and Conditions. Waiver by either party of any part of the Letter Agreement or these Terms and Conditions shall not be construed as a waiver of any other breach.

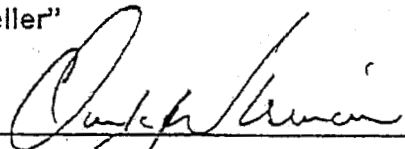
These Terms and Conditions may be executed in any number of counterparts, including by means of facsimile signatures, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Agreed to and accepted this 27<sup>th</sup> day of January, 2004.

"Purchaser"

By:   
Its: Vice President  
Coal Procurement

"Seller"

By:   
Its: Sales



# Progress Energy

March 22, 2004

SENT VIA FAX NO. 276-669-3543

Mr. Clark Wisman  
Director of Marketing & Sales  
Central Coal Company  
148 Bristol East Road  
Bristol, Virginia 24202

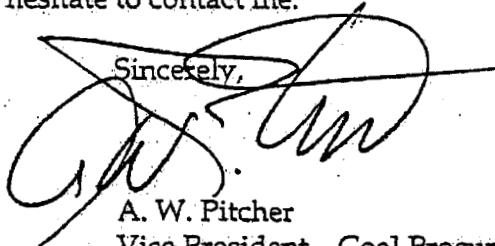
RE: AMENDMENT TO LETTER AGREEMENT DATED JANUARY 27, 2004

Dear Clark:

This letter will serve to amend subject letter agreement. The guaranteed \$/MMBtu f.o.b. barge price was incorrectly recorded as [REDACTED]. The correct guaranteed \$/MMBtu f.o.b. barge price for this order is [REDACTED].

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If you are in agreement with the above, please sign in the acceptance block provided below and return one original to me. I apologize and thank you for bringing this inadvertent error to our attention. If you have any questions, please do not hesitate to contact me.

Sincerely,  


A. W. Pitcher  
Vice President - Coal Procurement

AWP/ro

Attachment

cc/att: Mrs. D. M. Davis, Mrs. M. J. Kuderick, Mr. F. M. Lelak, Ms. C. A. Leonard,  
Mrs. T. M. McRoberts, Mrs. V. M. Muehlendyck, Mr. R. F. Potter, Mr. D. S. Williams

Agreed to and accepted this the 29 day of March, 2004.

Central Coal Company

By: 

Its: \_\_\_\_\_

Sale



# Progress Energy

January 16, 2004

SENT VIA FAX NO. 276-669-3543

Clark Wisman  
Director of Marketing & Sales  
Central Coal Company  
148 Bristol East Road  
Bristol, Virginia 24202

Dear Clark:

This letter will confirm our acceptance of your offer of January 16, 2004, wherein Central Coal Company offered to sell and Progress Fuels Corporation (PFC) agreed to purchase 7,000 tons per month of .68 percent sulfur synfuel during the period of February 1, 2004, through December 31, 2004.

This synfuel shall be prepared so as to be free of excess quantities of bone, slate, shale, fire clay, wood, rock, loose clay, and other impurities and are expected to meet the following specifications on an "as-received" basis:

| SPECIFICATION | QUALITY  |
|---------------|--|
| MOISTURE      | 8.0 MAX.   |
| ASH %         | 12.0 MAX.  |
| SULFUR %      | .68 MAX.   |
| BTU/LB        | 12,800 MIN.                                      |
| VOLATILE %    | 32.00 MIN.                                       |
| GRIND         | 43-45  |
| SIZE          | 2" X 0" WITH MAXIMUM OF 45% LESS THAN 1/4" FINES |

The price on this synfuel will be [redacted] per ton f.o.b. barge, Marnet Pool, Kanawha River and includes [redacted] for trucking and transloading costs, and will be based on a guarantee of 12,800 Btu/LB. Premium or penalty, if any, will be computed from the guaranteed \$/MMBtu f.o.b. barge price of [redacted] on a per barge basis. Invoices, *reflecting premium/penalty calculations*, are payable fifteen (15) days from receipt and should be sent to the attention of Ms. Carrie Leonard, Senior Accountant, at Progress Fuels Corporation, Post Office Box 15208, St. Petersburg, Florida, 33733.

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This synfuel will be sampled by an independent contractor employed by PFC. These samples will govern payment.

This synfuel will be shipped barge. Coordination of these shipments will be made with PFC's Mrs. Tina McRoberts at 727/824-6682. Coordination of sampling related matters will be with PFC's Mr. Roy F. Potter at 727/824-6684.



TERMS AND CONDITIONS  
MADE A PART OF  
LETTER AGREEMENT DATED JANUARY 16, 2004

These Terms and Conditions shall be a part of, and incorporated in, the above-identified Letter Agreement. Commencement of deliveries by Seller shall constitute acceptance of all the terms stated in the Letter Agreement, as well as all of the following General Terms and Conditions even advance of Seller's signature.

All coal purchased hereunder shall be received subject to Purchaser's right of inspection and rejection. Rejected coal will be held at Seller's risk for a reasonable time and will be returned or disposed of according to Seller's instructions and at Seller's expense. The net proceeds of any such disposition will be credited to Seller's account. Payment in whole or in part by Purchaser for coal purchased hereunder shall not constitute an acceptance of coal, which is rightfully rejected.

Should Seller default in whole or in part as to quantity or quality of coal under this Letter Agreement, Purchaser shall have, in addition to any other rights it may have at law or in equity, the right to acquire suitable substitute or replacement coal. In such event, Seller shall reimburse Purchaser for the amount by which the cost of substitute or replacement coal exceeds the price of coal under the Letter Agreement. The quality analysis performed by an independent certified testing company selected by Purchaser would be final and binding as to all questions of quality.

If shipment is not made of coal to be supplied hereunder by the date specified on the front of the Letter Agreement and deferred shipment has not been approved by Purchaser, Purchaser shall not be required to accept delivery of such shipments or Purchaser may elect to accept such shipments without prejudice to its rights hereunder. If at any time, Seller has reason to believe that deliveries will not be made as scheduled, he shall immediately give written notice setting forth the cause of the anticipated delay. Seller shall be responsible for any demurrage as the result of this delay.

For purposes of these Terms and Conditions, a "shipment" shall mean the quantity actually received in any vessel, barge, or unit train. If the coal delivered hereunder in any single shipment fails to meet any of the specifications set out in the Letter Agreement other than sulfur content, Purchaser shall have each of the following options to be exercised in its sole discretion:

1. Purchaser may notify Seller that Purchaser will accept such coal subject to and in accordance with the provisions set forth in the Letter Agreement; provided, however, that Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder; or
2. Purchaser will have the option to reject any shipment which exceeds any of the minimum/maximum specifications listed in the Letter Agreement, and Purchaser may notify Seller to suspend further deliveries of coal hereunder until Seller demonstrates to Purchaser's sole satisfaction that it can deliver coal that will conform on a per shipment basis to the specifications set forth in Letter Agreement; provided, however, that

Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder. If Seller fails to make the above demonstration to Purchaser's satisfaction within thirty (30) days after notice by Purchaser, Purchaser shall have the right to terminate or cancel this Agreement and, in addition, pursue every other remedy provided by law or equity. Should legal proceedings be instituted by Purchaser to recoup its losses or damage hereunder, it shall, in addition, be entitled to recover from Seller all court costs, reasonable attorney's fees and any expenses incurred by Purchaser, incident to such proceeding.

Should Seller become insolvent, or a voluntary or involuntary petition is filed as to Seller under the United States Bankruptcy Code, or a receivership or similar proceeding be filed as to Seller, the Purchaser may, at its option and in its sole discretion anytime thereafter upon giving written notice, terminate the Letter Agreement in whole or in part. The foregoing remedy of Purchaser is not to be considered exclusive, but shall be cumulative and be in addition to any other remedies of Purchaser as provided herein.

As used herein, the term "force majeure" shall mean any event beyond the control and without fault or negligence of the party affected thereby and which, by the exercise of reasonable diligence or the incurring of reasonable expense, such party is unable to prevent or overcome, regardless of whether such event was foreseeable, including, without limitation, act of God, act of public authorities (including courts and commissions of competent jurisdiction), act of the public enemy, insurrection, riot, labor dispute, labor or material shortage, fire, explosion, flood, breakdown of or damage to plant equipment or facilities (including emergency outages of equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto), interruption to transportation or transportation delay, river freeze-up, embargo, order or act of civil or military authority, legislative, regulatory, permitting, judicial rule or order adopted, amended or newly interpreted subsequent to the date of the Letter Agreement and any other event of a similar or dissimilar nature which wholly or partially prevents the mining, hauling, handling, processing or loading of coal by Seller or the receiving, handling, transporting and/or delivering by Purchaser's carrier thereof or the accepting, handling, utilizing and/or unloading thereof by Purchaser or Purchaser's intended buyer, Progress Energy Florida (PEF).

In the event performance of Seller's obligations hereunder or Purchaser's obligations hereunder is made impossible, impractical or illegal by reason of force majeure (other than obligations to pay or expend money for or in connection with the performance of the transactions contemplated by the Letter Agreement) and such party promptly gives to each other party hereto written notice of the details thereof, then the obligations of the parties hereto shall be totally excused to the extent made necessary by such force majeure and during its continuance; provided, however, that such party giving such notice shall use its best efforts to eliminate such force majeure to the extent economically feasible to do so and with a minimum of delay. Any deficiencies in deliveries of coal hereunder as a result of force majeure shall not be made up except at the sole discretion of the Purchaser. In the event force majeure results in a partial reduction in the total quantity of coal Seller is obligated to deliver hereunder, the quantity of coal Seller shall be obligated to deliver to Purchaser hereunder during the continuance of such force majeure shall be limited to the amount of coal required to be delivered during such period but for this section multiplied by a fraction, the denominator of which is the production capacity of the Coal Property immediately prior to such force majeure and the numerator of which is the production capacity of the Coal Property during the continuance of such force majeure.

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  - e. **Manage or management, with respect to any material,** means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release, or threatened release thereof.

Further (a) Notwithstanding any provision in the Letter Agreement to the contrary, neither party shall be liable hereunder for incidental, special, punitive, consequential or other indirect loss or damage, or for lost profits, business, tax credits or any other special or incidental loss or

damage. The parties further agree that the waivers and disclaimers of liability expressed in this Letter Agreement shall survive termination of the Letter Agreement, and shall apply whether in contract, equity, tort or otherwise, even in the event of the fault, negligence, including sole negligence, strict liability or breach of warranty of any party released or whose liabilities are waived or disclaimed. Except as otherwise provided, neither party makes any warranties or guarantees to the other, either express or implied, with respect to the subject matter of the Letter Agreement, and both parties disclaim and waive any implied warranties or warranties imposed by law, (b) Notwithstanding any provision of the Letter Agreement to the contrary, the parties recognize the Purchaser is a corporation formed under the laws of the State of Florida and the Seller is a company formed under the laws of the State of Virginia and that no past, present or future shareholder, officer, director, member or manager of either party shall have any personal liability for any obligation whatsoever or howsoever arising (including under contract or in tort or equity) under or with respect to the Letter Agreement or the transaction contemplated hereby, or applicable law with respect thereto. Neither Purchaser nor Seller shall (i) assert or seek to assert any claim against, (ii) name in any civil action or proceeding or arbitration, or (iii) seek or obtain any judgment, order or decree against any member, manager, shareholder, officer, employee, agent or representative of Purchaser or Seller, with respect to Purchaser's or Seller's obligations under the Letter Agreement.

If Purchaser and Seller are each required to pay any amount to each other, then such amounts with respect to each other may be aggregated and the Purchaser and Seller may discharge their obligations to pay through netting, in which case the Purchaser or Seller, if any, owing the greater aggregate amount may pay to the other party the difference between the amounts owed. The Purchaser or Seller reserves to itself all rights, setoffs, counterclaims, and other remedies and defenses consistent with this Letter Agreement, to the extent not expressly herein waived or denied, which the Purchaser or Seller has or may be entitled to arising from or out of this Letter Agreement. The obligations to make payment under this Letter Agreement may be offset against each other, setoff or recouped there from. For the purpose of this section only, Purchaser and Seller shall also mean any affiliates, subsidiaries, or other related entities of Purchaser and Seller.

Additionally, Seller represents to and covenants with Purchaser that it has obtained and will maintain or cause to be maintained at its expense:

1. At a minimum, Automobile Liability Insurance applying to own, non-owned and hired vehicles with a limit of \$1 Million combined single limit coverage per occurrence. Additionally, Umbrella Liability coverage with a minimum of \$1 Million limit per occurrence is desired.
2. Workers' Compensation, Employees' Liability Insurance with a minimum of \$500,000 Accident, \$500,000 Disease and \$500,000 Employee coverage.
3. Employers' Liability Insurance with a minimum of \$1 Million coverage per claim.

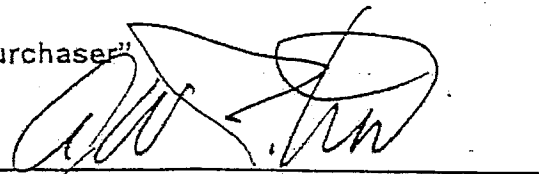
The Letter Agreement dated January 16, 2004, and these Terms and Conditions constitute the agreement in total between the parties. Neither party hereto shall claim any amendments, modifications, or release from any of the provisions hereof unless the same is in writing, signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement and these Terms and Conditions. Waiver by either party of any part of the Letter Agreement or these Terms and Conditions shall not be construed as a waiver of any other breach.

These Terms and Conditions may be executed in any number of counterparts, including by means of facsimile signatures, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Agreed to and accepted this 16<sup>th</sup> day of January, 2004.

"Purchaser"

By:

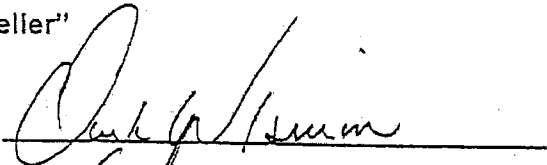


Its:

Vice President  
Coal Procurement

"Seller"

By:



Its:

Safu



# Progress Energy

April 7, 2005

Mr. John R. Parker  
Senior Vice President  
Massey Coal Sales Company, Inc.  
Four North Fourth Street  
Richmond, Virginia 23219

Dear Mr. Parker

This Letter Agreement is being written to amend the following contracts:

1. Agreement for the Sale and Purchase of Coal between Massey Coals Sales Company and Electric Fuels Corporation dated June 1, 1999, as amended (Contract 1), and
2. Agreement for the Sale and Purchase of Coal between Massey Utility Sales Company and Progress Fuels Corporation dated September 8, 2004 (Contract 2).

At the end of calendar year 2004 there were 358,269.75 tons remaining to be shipped on Contract 1. This amount includes 208,269.75 tons of Carry Over Tons and 150,000 tons of contract tons due to be shipped during first quarter 2005. During the first quarter, 126,571.93 tons were shipped on Contract 1, leaving 231,697.82 tons remaining. The price of Contract 1 was [REDACTED] f.o.b. railcar. (See Attachment 1.)

The initial term of Contract 2 is January 1, 2005 through December 31, 2005. The quantity to be shipped is 720,000 tons at a price of [REDACTED] f.o.b. railcar. (See Attachment 1.)

The intent of this amendment is to combine the remaining tons on both Contract 1 and Contract 2 beginning April 1, 2005, continuing through December 31, 2005, or until all of the tonnage is shipped. Further, the intent is to create one billing price for the combined contracts. The combined price of [REDACTED] and the remaining tons as of April 1, 2005 are detailed on Attachment 1 of this Letter Agreement.

Mr. John R. Parker

April 7, 2005

Page 2

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If you are in agreement terms outlined above, please indicate so by having the appropriate individuals sign, on behalf of Massey Coal Sales Company and Massey Utility Sales Company, in the respective signature blocks provided below and return one original to me for our files.

Sincerely,



A. W. Pitcher

Vice President—Coal Procurement

AWP/ro

Attachment

cc: Mrs. D. M. Davis  
Mrs. A. B. Futrell  
Mr. F. M. Lelak  
Ms. C. A. Leonard  
Mrs. T. M. McRoberts  
Mrs. V. M. Muehlendyck  
Mr. R. F. Potter  
Mr. D. S. Williams

AGREED TO AND ACCEPTED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.

MASSEY COAL SALES COMPANY

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

AGREED TO AND ACCEPTED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.

MASSEY UTILITY SALES COMPANY

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

ATTACHMENT 1

MASSEY A RAIL  
2004 CARRYOVER TONS

2004 Contract 1 Price [REDACTED] 1  
 2005 Contract 1 Price [REDACTED] 150,000 tons ends 3/31/05 2  
 2005 Contract 2 Price [REDACTED] 720,000 tons 1/1 - 12/31/05 3

Undership 2004 208,269.75

| 2005 | TONS PURCHASED | YTD        | BALANCE REMAINING |
|------|----------------|------------|-------------------|
| JAN  | 48,509.08      | 48,509.08  | 159,760.67        |
| FEB  | 29,423.05      | 77,932.13  | 130,337.62        |
| MAR  | 48,639.80      | 126,571.93 | 81,697.82         |
| APR  |                |            |                   |
| MAY  |                |            |                   |
| JUN  |                |            |                   |
| JUL  |                |            |                   |
| AUG  |                |            |                   |
| SEP  |                |            |                   |
| OCT  |                |            |                   |
| NOV  |                |            |                   |
| DEC  |                |            |                   |

|                                   | Tons              | Rate       | Dollars                 |
|-----------------------------------|-------------------|------------|-------------------------|
| Remaining 2004 C/O tons           | 81,697.82         | [REDACTED] | \$ [REDACTED]           |
| 2005 Contract 1 tons: 1/1-3/31/05 | 150,000.00        | [REDACTED] | [REDACTED]              |
|                                   | <u>231,697.82</u> |            | [REDACTED]              |
| Contract 2 tons: 1/1 -12/31/05    | 720,000.00        | [REDACTED] | [REDACTED]              |
|                                   | <u>951,697.82</u> | \$         | [REDACTED] Wtd Avg Rate |

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February 4, 2004

Mr. Tom Scholl  
Keystone Coal Company  
1375 Jackson Street, Suite 401  
Ft. Myers, Florida 33901

Dear Mr. Scholl:

This letter will confirm our acceptance of your offer of February 3, 2004, wherein Keystone Coal Company offered to sell and Progress Fuels Corporation (PFC) agreed to purchase 10,000 tons per month of 1.2 LB/SO<sub>2</sub> "compliance" sulfur coal during the period of March 1, 2004, through December 31, 2004.

This coal shall be prepared so as to be free of excess quantities of bone, slate, shale, fire clay, wood, rock, loose clay, and other impurities and are expected to meet the following specifications on an "as-received" basis:

| SPECIFICATION         | GUARANTEE                        |
|-----------------------|----------------------------------|
| TONNAGE               | 10,000 TONS                      |
| SIZE                  | 2" x 0"<br>50% < 1/4"            |
| SULFUR                | 1.2 LB SO <sub>2</sub> MAXIMUM   |
| ASH                   | 14.00% MAXIMUM                   |
| MOISTURE              | 10.0% MAXIMUM                    |
| AFT (H = W REDUCING)) | 2,700 DEGREES FAHRENHEIT MINIMUM |
| VOLATILE              | 30% MINIMUM                      |
| BTU                   | 12,200/LB GUARANTEED             |

The price on this coal will be [REDACTED] per ton f.o.b. barge (Marmet Pool Kanawha River), and will be based on a guarantee of 12,200 Btu/LB. Premium or penalty, if any, will be computed from the guarantee at the rate of [REDACTED] per 100 Btu on a weighted shipment basis. Invoices, *reflecting premium/penalty calculations*, are payable fifteen (15) days from receipt and should be sent to the attention of Ms. Carrie Leonard, Senior Accountant, at Progress Fuels Corporation, Post Office Box 15208, St. Petersburg, Florida, 33733.

These coals will be sampled and weighed as loaded in the barge. Sampling will be performed by an independent contractor employed by PFC. These samples and weights will govern payment. Excess loading costs resulting from your failure to comply with the barge line's loading requirements will be for your account.

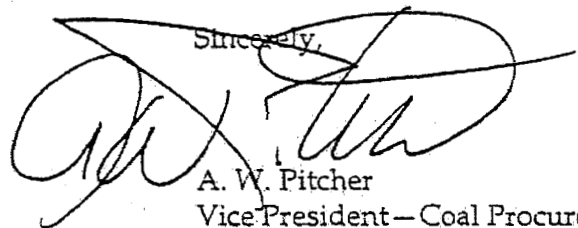
Mr. Tom Scholl  
February 4, 2004  
Page 2

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This coal will be shipped by barge on the river system. Coordination of these shipments will be made with PFC's Mrs. Tina McRoberts at 727/824-6682. Coordination of sampling related matters will be with PFC's Mr. Roy F. Potter at 727/824-6684.

If you are in agreement with this Letter Agreement and the attached Terms and Conditions, which constitutes our entire agreement, please indicate so by signing in the acceptance block on both documents and returning one original for our files.

Thank you for working with us on this order. If you have any questions, please do not hesitate to contact us.

Sincerely,  
  
A. W. Pitcher  
Vice President - Coal Procurement

AWP/ro

Attachment

cc/att: Mrs. D. M. Davis  
Mrs. M. J. Kuderick  
Mr. F. M. Lelak  
Ms. C. A. Leonard  
Mrs. T. M. McRoberts  
Mrs. V. M. Muehlendyck  
Mr. R. F. Potter  
Mr. D. S. Williams

Agreed to and accepted this the 15<sup>th</sup> day of APRIL, 2004.

Keystone Coal Company

By: 

Its: PRESIDENT



TERMS AND CONDITIONS  
MADE A PART OF  
LETTER AGREEMENT DATED FEBRUARY 4, 2004

These Terms and Conditions shall be a part of, and incorporated in, the above-identified Letter Agreement. Commencement of deliveries by Seller shall constitute acceptance of all the terms stated in the Letter Agreement, as well as all of the following General Terms and Conditions even advance of Seller's signature.

All coal purchased hereunder shall be received subject to Purchaser's right of inspection and rejection. Rejected coal will be held at Seller's risk for a reasonable time and will be returned or disposed of according to Seller's instructions and at Seller's expense. The net proceeds of any such disposition will be credited to Seller's account. Payment in whole or in part by Purchaser for coal purchased hereunder shall not constitute an acceptance of coal, which is rightfully rejected.

Should Seller default in whole or in part as to quantity or quality of coal under this Letter Agreement, Purchaser shall have, in addition to any other rights it may have at law or in equity, the right to acquire suitable substitute or replacement coal. In such event, Seller shall reimburse Purchaser for the amount by which the cost of substitute or replacement coal exceeds the price of coal under the Letter Agreement. The quality analysis performed by an independent certified testing company selected by Purchaser would be final and binding as to all questions of quality.

If shipment is not made of coal to be supplied hereunder by the date specified on the front of the Letter Agreement and deferred shipment has not been approved by Purchaser, Purchaser shall not be required to accept delivery of such shipments or Purchaser may elect to accept such shipments without prejudice to its rights hereunder. If at any time, Seller has reason to believe that deliveries will not be made as scheduled, he shall immediately give written notice setting forth the cause of the anticipated delay. Seller shall be responsible for any demurrage as the result of this delay.

For purposes of these Terms and Conditions, a "shipment" shall mean the quantity actually received in any vessel, barge, or unit train. If the coal delivered hereunder in any single shipment fails to meet any of the specifications set out in the Letter Agreement other than sulfur content, Purchaser shall have each of the following options to be exercised in its sole discretion:

1. Purchaser may notify Seller that Purchaser will accept such coal subject to and in accordance with the provisions set forth in the Letter Agreement; provided, however, that Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder; or
2. Purchaser will have the option to reject any shipment which exceeds any of the minimum/maximum specifications listed in the Letter Agreement, and Purchaser may notify Seller to suspend further deliveries of coal hereunder until Seller demonstrates to Purchaser's sole satisfaction that it can deliver coal that will conform on a per shipment basis to the specifications set forth in Letter Agreement; provided, however, that

Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder. If Seller fails to make the above demonstration to Purchaser's satisfaction within thirty (30) days after notice by Purchaser, Purchaser shall have the right to terminate or cancel this Agreement and, in addition, pursue every other remedy provided by law or equity. Should legal proceedings be instituted by Purchaser to recoup its losses or damage hereunder, it shall, in addition, be entitled to recover from Seller all court costs, reasonable attorney's fees and any expenses incurred by Purchaser, incident to such proceeding.

Should Seller become insolvent, or a voluntary or involuntary petition is filed as to Seller under the United States Bankruptcy Code, or a receivership or similar proceeding be filed as to Seller, the Purchaser may, at its option and in its sole discretion anytime thereafter upon giving written notice, terminate the Letter Agreement in whole or in part. The foregoing remedy of Purchaser is not to be considered exclusive, but shall be cumulative and be in addition to any other remedies of Purchaser as provided herein.

As used herein, the term "force majeure" shall mean any event beyond the control and without fault or negligence of the party affected thereby and which, by the exercise of reasonable diligence or the incurring of reasonable expense, such party is unable to prevent or overcome, regardless of whether such event was foreseeable, including, without limitation, act of God, act of public authorities (including courts and commissions of competent jurisdiction), act of the public enemy, insurrection, riot, labor dispute, labor or material shortage, fire, explosion, flood, breakdown of or damage to plant equipment or facilities (including emergency outages of equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto), interruption to transportation or transportation delay, river freeze-up, embargo, order or act of civil or military authority, legislative, regulatory, permitting, judicial rule or order adopted, amended or newly interpreted subsequent to the date of the Letter Agreement and any other event of a similar or dissimilar nature which wholly or partially prevents the mining, hauling, handling, processing or loading of coal by Seller or the receiving, handling, transporting and/or delivering by Purchaser's carrier thereof or the accepting, handling, utilizing and/or unloading thereof by Purchaser or Purchaser's intended buyer, Progress Energy Florida (PEF).

In the event performance of Seller's obligations hereunder or Purchaser's obligations hereunder is made impossible, impractical or illegal by reason of force majeure (other than obligations to pay or expend money for or in connection with the performance of the transactions contemplated by the Letter Agreement) and such party promptly gives to each other party hereto written notice of the details thereof, then the obligations of the parties hereto shall be totally excused to the extent made necessary by such force majeure and during its continuance; provided, however, that such party giving such notice shall use its best efforts to eliminate such force majeure to the extent economically feasible to do so and with a minimum of delay. Any deficiencies in deliveries of coal hereunder as a result of force majeure shall not be made up except at the sole discretion of the Purchaser. In the event force majeure results in a partial reduction in the total quantity of coal Seller is obligated to deliver hereunder, the quantity of coal Seller shall be obligated to deliver to Purchaser hereunder during the continuance of such force majeure shall be limited to the amount of coal required to be delivered during such period but for this section multiplied by a fraction, the denominator of which is the production capacity of the Coal Property immediately prior to such force majeure and the numerator of which is the production capacity of the Coal Property during the continuance of such force majeure.

In the event that restrictions are imposed during the term of the Letter Agreement by governmental bodies, agencies, entities, officials or courts which preclude or restrict PEF from burning coal of the specifications hereunder, such restriction shall be deemed to be an event of force majeure under the Letter Agreement unless its effect can be avoided in a lawful manner and will not, in PEF's sole judgment, result in unreasonable expense to PEF, the obligations of the parties hereto shall be totally excused during the continuance of such force majeure.

Seller shall not, without Purchaser's prior written consent, which consent will not unreasonably be withheld, (i) make any assignment or transfer of the Letter Agreement, by operation of law or otherwise, including without limitation any assignment, encumbrance or transfer as security for any obligation, or (ii) assign or transfer the right or duty to perform any obligation of Seller hereunder; provided, however, that Seller may assign the right to receive payments for coal sold hereunder directly from Purchaser to a lender as part of any accounts receivable financing or other revolving credit arrangement which Seller may have now or at any time during the term of the Letter Agreement. Seller may assign the Letter Agreement to an affiliate of Seller, or as part of a merger or consolidation, involving Seller, provided, however, that in the case of an assignment to an affiliate, Seller shall remain liable for the performance and for the obligations of the assignee.

The terms and provisions hereof shall be construed and enforced in accordance with the laws of the state of West Virginia.

Each party shall maintain the terms of the Letter Agreement and any information or data relating hereto, including site visits, in confidence and, except as may be required by law, shall not disclose such information or data or any other information concerning the performance or administration of the Letter Agreement to any other party other than a party's officers, directors, members, employees, contractors, agents, attorneys, accountants or financial advisers who have a need to have access thereto or as required by applicable law, regulation or judicial or governmental order. If either party is required to disclose any information required by this Section to be maintained as confidential in a judicial, administrative or governmental proceeding, such party shall give the other party at least ten (10) days prior written notice (unless less time is permitted by the applicable proceeding) before disclosing any such information in any such said proceeding and, in making such disclosure, the party required to disclose the information shall disclose only that portion thereof required to be disclosed and shall take all reasonable efforts to preserve the confidentiality thereof, including obtaining protective orders and supporting the other party in intervention. Nothing contained herein shall obligate either party to disclose to the other party any information that would be prohibited from disclosure under confidentiality agreements with third parties, including, without limitation, licenses; and any such information shall only be disclosed to the other party after appropriate confidentiality agreements have been entered into or appropriate consents obtained. The terms and provisions of this Section shall survive the termination of the Letter Agreement for a period of two (2) years.

The terms and conditions set forth herein constitute a complete and exclusive statement of agreement between the parties hereto, regardless of any terms contained in any order, acknowledgment or any other instrument. No statements or agreements, oral or written, not contained herein shall vary or modify the terms hereof. Neither party shall claim any amendments, modifications, or release from any provisions hereof unless the same is in writing signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement. Waiver by either party hereto of any breach by the other party of the terms and conditions hereof shall not be construed as a waiver of any other breach.

Seller, for itself and its successors and assigns, agrees to indemnify, defend and hold Purchaser and its affiliates and their respective directors, officers, employees and agents harmless from and against all (a) claims, demands, damages, actions and causes of actions, and costs and expenses in connection therewith or related thereto (including without limitation attorney's fees and court costs) arising from property damage, bodily injury or death of third parties, directly caused by Seller's unlawful or negligent performance under the Letter Agreement, and (b) all fines, penalties, costs, losses or expenses incurred by Purchaser by reason of Seller's violation of any applicable federal, state and local laws, ordinances or regulations directly related to producing, supplying, transporting, delivering or using coal under the Letter Agreement. Purchaser shall give Seller prompt written notice of any claim, demand or suit of which Purchaser receives notice arising out of or in connection with the Letter Agreement and covered by this indemnity. Purchaser shall have the right to reasonably participate in any defense provided by Seller, including the selection of local counsel. The indemnification provision shall survive the expiration or earlier termination of the Letter Agreement.

Seller agrees to conform to Purchaser's environmental, health, and safety standards as follows:

1. **Compliance and Indemnification.** Seller shall comply with all applicable EHS laws and shall indemnify Purchaser against any EHS claims and costs arising from Seller's performance under the Letter Agreement.
2. **Audits.** Purchaser may audit Seller's EHS compliance. Within thirty (30) days of Purchaser's request, Seller shall deliver to Purchaser (1) all records regarding (a) Seller's actual or alleged violations of EHS laws and (b) EHS claims asserted against Seller, in each case in the five year period preceding Purchaser's request and (2) any executed consent form(s) necessary for Purchaser to obtain from regulatory agencies and other third parties information regarding Seller's EHS compliance.
3. **Definitions (as used in the Letter Agreement).**
  - a. **Claim** means administrative, regulatory or judicial action, suite, dispute, liability, judgment, penalty, damages, directive, order or claim.
  - b. **EHS** means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.
  - c. **Indemnify** means to indemnify, defend, and reimburse the indemnitee and its successors and assigns on an after-tax basis.
  - d. **Law** means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.
  - e. **Manage or management, with respect to any material,** means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release, or threatened release thereof.

Further (a) Notwithstanding any provision in the Letter Agreement to the contrary, neither party shall be liable hereunder for incidental, special, punitive, consequential or other indirect loss or damage, or for lost profits, business, tax credits or any other special or incidental loss or

damage. The parties further agree that the waivers and disclaimers of liability expressed in this Letter Agreement shall survive termination of the Letter Agreement, and shall apply whether in contract, equity, tort or otherwise, even in the event of the fault, negligence, including sole negligence, strict liability or breach of warranty of any party released or whose liabilities are waived or disclaimed. Except as otherwise provided, neither party makes any warranties or guarantees to the other, either express or implied, with respect to the subject matter of the Letter Agreement, and both parties disclaim and waive any implied warranties or warranties imposed by law, (b) Notwithstanding any provision of the Letter Agreement to the contrary, the parties recognize the Purchaser is a corporation formed under the laws of the State of Florida and the Seller is a company formed under the laws of the State of Pennsylvania and that no past, present or future shareholder, officer, director, member or manager of either party shall have any personal liability for any obligation whatsoever or howsoever arising (including under contract or in tort or equity) under or with respect to the Letter Agreement or the transaction contemplated hereby, or applicable law with respect thereto. Neither Purchaser nor Seller shall (i) assert or seek to assert any claim against, (ii) name in any civil action or proceeding or arbitration, or (iii) seek or obtain any judgment, order or decree against any member, manager, shareholder, officer, employee, agent or representative of Purchaser or Seller, with respect to Purchaser's or Seller's obligations under the Letter Agreement.

If Purchaser and Seller are each required to pay any amount to each other, then such amounts with respect to each other may be aggregated and the Purchaser and Seller may discharge their obligations to pay through netting, in which case the Purchaser or Seller, if any, owing the greater aggregate amount may pay to the other party the difference between the amounts owed. The Purchaser or Seller reserves to itself all rights, setoffs, counterclaims, and other remedies and defenses consistent with this Letter Agreement, to the extent not expressly herein waived or denied, which the Purchaser or Seller has or may be entitled to arising from or out of this Letter Agreement. The obligations to make payment under this Letter Agreement may be offset against each other, setoff or recouped there from. For the purpose of this section only, Purchaser and Seller shall also mean any affiliates, subsidiaries, or other related entities of Purchaser and Seller.

Additionally, Seller represents to and covenants with Purchaser that it has obtained and will maintain or cause to be maintained at its expense:

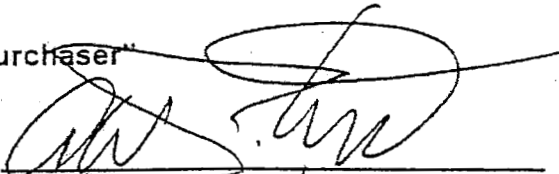
1. At a minimum, Automobile Liability Insurance applying to own, non-owned and hired vehicles with a limit of \$1 Million combined single limit coverage per occurrence. Additionally, Umbrella Liability coverage with a minimum of \$1 Million limit per occurrence is desired.
2. Workers' Compensation, Employees' Liability insurance with a minimum of \$500,000 Accident, \$500,000 Disease and \$500,000 Employee coverage.
3. Employers' Liability Insurance with a minimum of \$1 Million coverage per claim.

The Letter Agreement dated February 4, 2004, and these Terms and Conditions constitute the agreement in total between the parties. Neither party hereto shall claim any amendments, modifications, or release from any of the provisions hereof unless the same is in writing, signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement and these Terms and Conditions. Waiver by either party of any part of the Letter Agreement or these Terms and Conditions shall not be construed as a waiver of any other breach.


These Terms and Conditions may be executed in any number of counterparts, including by means of facsimile signatures, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Agreed to and accepted this 4<sup>th</sup> day of February, 2004.

"Purchaser"

By:   
Its: Vice President  
Coal Procurement

"Seller"

By:   
Its: PRESIDENT



'D' Coal

April 28, 2005

Mr. Mike Gatens  
Keystone Coal Company  
1375 Jackson Street, Suite 401  
Ft. Myers, Florida 33901

Dear Mr. Gatens:

This letter will confirm our acceptance of Keystone Industries' offer of April 27, 2005, wherein Keystone Coal Company offered to sell and Progress Fuels Corporation (PFC) agreed to purchase 10,000 tons of 1.2 LB/SO<sub>2</sub> "compliance" sulfur coal during April of 2005.

This coal shall be prepared so as to be free of excess quantities of bone, slate, shale, fire clay, wood, rock, loose clay, and other impurities and are expected to meet the following specifications on an "as-received" basis:

| SPECIFICATION         | GUARANTEE                       |
|-----------------------|---------------------------------|
| TONNAGE               | 10,000 TONS                     |
| SIZE                  | 2" x 0"<br>50% < 1/4"           |
| SULFUR                | 1.2 LB SO <sub>2</sub> MAXIMUM  |
| ASH                   | 13.00% MAXIMUM                  |
| MOISTURE              | 8.0% MAXIMUM                    |
| AFT (H = W REDUCING)) | 2650 DEGREES FAHRENHEIT MINIMUM |
| VOLATILE              | 32.0 MINIMUM                    |
| BTU                   | 12,000/LB GUARANTEED            |

The price on this coal will be [redacted] f.o.b. gulf barge at International Marine Terminals (IMT) in New Orleans, Louisiana, and will be based on a guarantee of 12,000 Btu/LB. Premium or penalty, if any, will be computed from the guarantee at the rate of [redacted] per 100 Btu on a weighted shipment basis. Invoices, *reflecting premium/penalty calculations*, are payable fifteen (15) days from receipt and should be sent to the attention of Ms. Carrie Leonard at Progress Fuels Corporation, Post Office Box 15208, St. Petersburg, Florida, 33733.

This coal is currently in inventory at IMT and will be sampled as loaded into the barge at IMT by an independent contractor employed by PFC. These samples will govern payment. Weights will be determined by draft survey.

This coal will be shipped by barge. Coordination of these shipments will be made with PFC's Mrs. Tina McRoberts at 727/824-6682. Coordination of sampling related matters will be with PFC's Mr. Roy F. Potter at 727/824-6684.

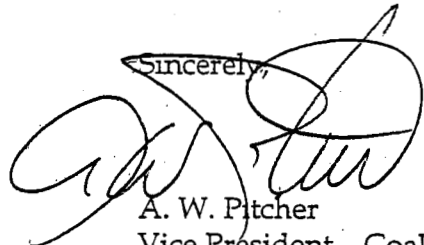
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Mr. Mike Gatens  
April 28, 2005  
Page 2

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If you are in agreement with this Letter Agreement and the attached Terms and Conditions, which constitutes our entire agreement, please indicate so by signing in the acceptance block on both documents and returning one original for our files.

Thank you for working with us on this order. If you have any questions, please do not hesitate to contact us.

Sincerely,  
  
A. W. Pitcher  
Vice President – Coal Procurement

AWP/ro

Attachment

cc/att: Mrs. D. M. Davis  
Mrs. A. B. Futrell  
Mr. F. M. Lelak  
Ms. C. A. Leonard  
Mrs. T. M. McRoberts  
Mrs. V. M. Muehlendyck  
Mr. R. F. Potter  
Mr. D. S. Williams

Agreed to and accepted this the 3<sup>rd</sup> day of May, 2005.

Keystone Coal Company

By: Muehlendyck  
Its: EXECUTIVE VICE PRESIDENT



**TERMS AND CONDITIONS  
MADE A PART OF  
LETTER AGREEMENT DATED APRIL 28, 2005**

These Terms and Conditions shall be a part of, and incorporated in, the above-identified Letter Agreement. Commencement of deliveries by Seller shall constitute acceptance of all the terms stated in the Letter Agreement, as well as all of the following General Terms and Conditions even advance of Seller's signature.

All coal purchased hereunder shall be received subject to Purchaser's right of inspection and rejection. Rejected coal will be held at Seller's risk for a reasonable time and will be returned or disposed of according to Seller's instructions and at Seller's expense. The net proceeds of any such disposition will be credited to Seller's account. Payment in whole or in part by Purchaser for coal purchased hereunder shall not constitute an acceptance of coal, which is rightfully rejected.

Should Seller default in whole or in part as to quantity or quality of coal under this Letter Agreement, Purchaser shall have, in addition to any other rights it may have at law or in equity, the right to acquire suitable substitute or replacement coal. In such event, Seller shall reimburse Purchaser for the amount by which the cost of substitute or replacement coal exceeds the price of coal under the Letter Agreement. The quality analysis performed by an independent certified testing company selected by Purchaser would be final and binding as to all questions of quality.

If shipment is not made of coal to be supplied hereunder by the date specified on the front of the Letter Agreement and deferred shipment has not been approved by Purchaser, Purchaser shall not be required to accept delivery of such shipments or Purchaser may elect to accept such shipments without prejudice to its rights hereunder. If at any time, Seller has reason to believe that deliveries will not be made as scheduled, he shall immediately give written notice setting forth the cause of the anticipated delay. Seller shall be responsible for any demurrage as the result of this delay.

For purposes of these Terms and Conditions, a "shipment" shall mean the quantity actually received in any vessel, barge, or unit train. If the coal delivered hereunder in any single shipment fails to meet any of the specifications set out in the Letter Agreement other than sulfur content, Purchaser shall have each of the following options to be exercised in its sole discretion:

1. Purchaser may notify Seller that Purchaser will accept such coal subject to and in accordance with the provisions set forth in the Letter Agreement; provided, however, that Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder; or
2. Purchaser will have the option to reject any shipment which exceeds any of the minimum/maximum specifications listed in the Letter Agreement, and Purchaser may notify Seller to suspend further deliveries of coal hereunder until Seller demonstrates to Purchaser's sole satisfaction that it can deliver coal that will conform on a per shipment basis to the specifications set forth in Letter Agreement; provided, however, that

Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder. If Seller fails to make the above demonstration to Purchaser's satisfaction within thirty (30) days after notice by Purchaser, Purchaser shall have the right to terminate or cancel this Agreement and, in addition, pursue every other remedy provided by law or equity. Should legal proceedings be instituted by Purchaser to recoup its losses or damage hereunder, it shall, in addition, be entitled to recover from Seller all court costs, reasonable attorney's fees and any expenses incurred by Purchaser, incident to such proceeding.

Should Seller become insolvent, or a voluntary or involuntary petition is filed as to Seller under the United States Bankruptcy Code, or a receivership or similar proceeding be filed as to Seller, the Purchaser may, at its option and in its sole discretion anytime thereafter upon giving written notice, terminate the Letter Agreement in whole or in part. The foregoing remedy of Purchaser is not to be considered exclusive, but shall be cumulative and be in addition to any other remedies of Purchaser as provided herein.

As used herein, the term "force majeure" shall mean any event beyond the control and without fault or negligence of the party affected thereby and which, by the exercise of reasonable diligence or the incurring of reasonable expense, such party is unable to prevent or overcome, regardless of whether such event was foreseeable, including, without limitation, act of God, act of public authorities (including courts and commissions of competent jurisdiction), act of the public enemy, insurrection, riot, labor dispute, labor or material shortage, fire, explosion, flood, breakdown of or damage to plant equipment or facilities (including emergency outages of equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto), interruption to transportation or transportation delay, river freeze-up, embargo, order or act of civil or military authority, legislative, regulatory, permitting, judicial rule or order adopted, amended or newly interpreted subsequent to the date of the Letter Agreement and any other event of a similar or dissimilar nature which wholly or partially prevents the mining, hauling, handling, processing or loading of coal by Seller or the receiving, handling, transporting and/or delivering by Purchaser's carrier thereof or the accepting, handling, utilizing and/or unloading thereof by Purchaser or Purchaser's intended buyer, Progress Energy Florida (PEF).

In the event performance of Seller's obligations hereunder or Purchaser's obligations hereunder is made impossible, impractical or illegal by reason of force majeure (other than obligations to pay or expend money for or in connection with the performance of the transactions contemplated by the Letter Agreement) and such party promptly gives to each other party hereto written notice of the details thereof, then the obligations of the parties hereto shall be totally excused to the extent made necessary by such force majeure and during its continuance; provided, however, that such party giving such notice shall use its best efforts to eliminate such force majeure to the extent economically feasible to do so and with a minimum of delay. Any deficiencies in deliveries of coal hereunder as a result of force majeure shall not be made up except at the sole discretion of the Purchaser. In the event force majeure results in a partial reduction in the total quantity of coal Seller is obligated to deliver hereunder, the quantity of coal Seller shall be obligated to deliver to Purchaser hereunder during the continuance of such force majeure shall be limited to the amount of coal required to be delivered during such period but for this section multiplied by a fraction, the denominator of which is the production capacity of the Coal Property immediately prior to such force majeure and the numerator of which is the production capacity of the Coal Property during the continuance of such force majeure.

In the event that restrictions are imposed during the term of the Letter Agreement by governmental bodies, agencies, entities, officials or courts which preclude or restrict PEF from burning coal of the specifications hereunder, such restriction shall be deemed to be an event of force majeure under the Letter Agreement unless its effect can be avoided in a lawful manner and will not, in PEF's sole judgment, result in unreasonable expense to PEF, the obligations of the parties hereto shall be totally excused during the continuance of such force majeure.

Seller shall not, without Purchaser's prior written consent, which consent will not unreasonably be withheld, (i) make any assignment or transfer of the Letter Agreement, by operation of law or otherwise, including without limitation any assignment, encumbrance or transfer as security for any obligation, or (ii) assign or transfer the right or duty to perform any obligation of Seller hereunder; provided, however, that Seller may assign the right to receive payments for coal sold hereunder directly from Purchaser to a lender as part of any accounts receivable financing or other revolving credit arrangement which Seller may have now or at any time during the term of the Letter Agreement. Seller may assign the Letter Agreement to an affiliate of Seller, or as part of a merger or consolidation, involving Seller, provided, however, that in the case of an assignment to an affiliate, Seller shall remain liable for the performance and for the obligations of the assignee.

The terms and provisions hereof shall be construed and enforced in accordance with the laws of the state of West Virginia.

Each party shall maintain the terms of the Letter Agreement and any information or data relating hereto, including site visits, in confidence and, except as may be required by law, shall not disclose such information or data or any other information concerning the performance or administration of the Letter Agreement to any other party other than a party's officers, directors, members, employees, contractors, agents, attorneys, accountants or financial advisers who have a need to have access thereto or as required by applicable law, regulation or judicial or governmental order. If either party is required to disclose any information required by this Section to be maintained as confidential in a judicial, administrative or governmental proceeding, such party shall give the other party at least ten (10) days prior written notice (unless less time is permitted by the applicable proceeding) before disclosing any such information in any such said proceeding and, in making such disclosure, the party required to disclose the information shall disclose only that portion thereof required to be disclosed and shall take all reasonable efforts to preserve the confidentiality thereof, including obtaining protective orders and supporting the other party in intervention. Nothing contained herein shall obligate either party to disclose to the other party any information that would be prohibited from disclosure under confidentiality agreements with third parties, including, without limitation, licenses; and any such information shall only be disclosed to the other party after appropriate confidentiality agreements have been entered into or appropriate consents obtained. The terms and provisions of this Section shall survive the termination of the Letter Agreement for a period of two (2) years.

The terms and conditions set forth herein constitute a complete and exclusive statement of agreement between the parties hereto, regardless of any terms contained in any order, acknowledgment or any other instrument. No statements or agreements, oral or written, not contained herein shall vary or modify the terms hereof. Neither party shall claim any amendments, modifications, or release from any provisions hereof unless the same is in writing signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement. Waiver by either party hereto of any breach by the other party of the terms and conditions hereof shall not be construed as a waiver of any other breach.

Seller, for itself and its successors and assigns, agrees to indemnify, defend and hold Purchaser and its affiliates and their respective directors, officers, employees and agents harmless from and against all (a) claims, demands, damages, actions and causes of actions, and costs and expenses in connection therewith or related thereto (including without limitation attorney's fees and court costs) arising from property damage, bodily injury or death of third parties, directly caused by Seller's unlawful or negligent performance under the Letter Agreement, and (b) all fines, penalties, costs, losses or expenses incurred by Purchaser by reason of Seller's violation of any applicable federal, state and local laws, ordinances or regulations directly related to producing, supplying, transporting, delivering or using coal under the Letter Agreement. Purchaser shall give Seller prompt written notice of any claim, demand or suit of which Purchaser receives notice arising out of or in connection with the Letter Agreement and covered by this indemnity. Purchaser shall have the right to reasonably participate in any defense provided by Seller, including the selection of local counsel. The indemnification provision shall survive the expiration or earlier termination of the Letter Agreement.

Seller agrees to conform to Purchaser's environmental, health, and safety standards as follows:

1. **Compliance and Indemnification.** Seller shall comply with all applicable EHS laws and shall indemnify Purchaser against any EHS claims and costs arising from Seller's performance under the Letter Agreement.
2. **Audits.** Purchaser may audit Seller's EHS compliance. Within thirty (30) days of Purchaser's request, Seller shall deliver to Purchaser (1) all records regarding (a) Seller's actual or alleged violations of EHS laws and (b) EHS claims asserted against Seller, in each case in the five year period preceding Purchaser's request and (2) any executed consent form(s) necessary for Purchaser to obtain from regulatory agencies and other third parties information regarding Seller's EHS compliance.
3. **Definitions (as used in the Letter Agreement).**
  - a. **Claim** means administrative, regulatory or judicial action, suite, dispute, liability, judgment, penalty, damages, directive, order or claim.
  - b. **EHS** means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.
  - c. **Indemnify** means to indemnify, defend, and reimburse the indemnitee and its successors and assigns on an after-tax basis.
  - d. **Law** means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.
  - e. **Manage or management, with respect to any material,** means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release, or threatened release thereof.

Further (a) Notwithstanding any provision in the Letter Agreement to the contrary, neither party shall be liable hereunder for incidental, special, punitive, consequential or other indirect loss or damage, or for lost profits, business, tax credits or any other special or incidental loss or

damage. The parties further agree that the waivers and disclaimers of liability expressed in this Letter Agreement shall survive termination of the Letter Agreement, and shall apply whether in contract, equity, tort or otherwise, even in the event of the fault, negligence, including sole negligence, strict liability or breach of warranty of any party released or whose liabilities are waived or disclaimed. Except as otherwise provided, neither party makes any warranties or guarantees to the other, either express or implied, with respect to the subject matter of the Letter Agreement, and both parties disclaim and waive any implied warranties or warranties imposed by law, (b) Notwithstanding any provision of the Letter Agreement to the contrary, the parties recognize the Purchaser is a corporation formed under the laws of the State of Florida and the Seller is a company formed under the laws of the State of Florida, and that no past, present or future shareholder, officer, director, member or manager of either party shall have any personal liability for any obligation whatsoever or howsoever arising (including under contract or in tort or equity) under or with respect to the Letter Agreement or the transaction contemplated hereby, or applicable law with respect thereto. Neither Purchaser nor Seller shall (i) assert or seek to assert any claim against, (ii) name in any civil action or proceeding or arbitration, or (iii) seek or obtain any judgment, order or decree against any member, manager, shareholder, officer, employee, agent or representative of Purchaser or Seller, with respect to Purchaser's or Seller's obligations under the Letter Agreement.

If Purchaser and Seller are each required to pay any amount to each other, then such amounts with respect to each other may be aggregated and the Purchaser and Seller may discharge their obligations to pay through netting, in which case the Purchaser or Seller, if any, owing the greater aggregate amount may pay to the other party the difference between the amounts owed. The Purchaser or Seller reserves to itself all rights, setoffs, counterclaims, and other remedies and defenses consistent with this Letter Agreement, to the extent not expressly herein waived or denied, which the Purchaser or Seller has or may be entitled to arising from or out of this Letter Agreement. The obligations to make payment under this Letter Agreement may be offset against each other, setoff or recouped there from. For the purpose of this section only, Purchaser and Seller shall also mean any affiliates, subsidiaries, or other related entities of Purchaser and Seller.

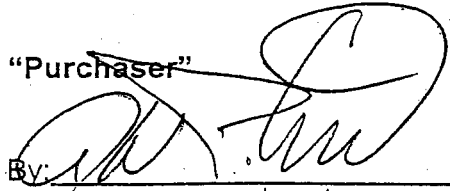
Additionally, Seller represents to and covenants with Purchaser that it has obtained and will maintain or cause to be maintained at its expense:

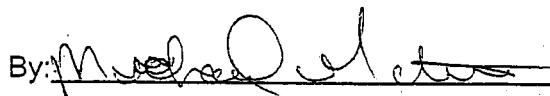
1. At a minimum, Automobile Liability Insurance applying to own, non-owned and hired vehicles with a limit of \$1 Million combined single limit coverage per occurrence. Additionally, Umbrella Liability coverage with a minimum of \$1 Million limit per occurrence is desired.
2. Workers' Compensation, Employees' Liability insurance with a minimum of \$500,000 Accident, \$500,000 Disease and \$500,000 Employee coverage.
3. Employers' Liability Insurance with a minimum of \$1 Million coverage per claim.

The Letter Agreement dated April 28, 2005, and these Terms and Conditions constitute the agreement in total between the parties. Neither party hereto shall claim any amendments, modifications, or release from any of the provisions hereof unless the same is in writing, signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement and these Terms and Conditions. Waiver by either party of any part of the Letter Agreement or these Terms and Conditions shall not be construed as a waiver of any other breach.

These Terms and Conditions may be executed in any number of counterparts, including by means of facsimile signatures, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Agreed to and accepted this 28<sup>th</sup> day of April, 2005.

"Purchaser"  
By:   
Its: Vice President  
Coal Procurement

"Seller"  
By:   
Its: EXECUTIVE VICE PRESIDENT



# Progress Energy

May 3, 2005

SENT VIA FAX NO. 859-525-4052

Mr. Steven E. Weber  
Emerald International Corporation  
6895 Burlington Pike  
Florence, Kentucky 41042

Dear Mr. Weber:

This letter will confirm Progress Fuels Corporation's (PFC) acceptance of Emerald International Corporation's offer made April 12, 2005, wherein PFC agrees to purchase approximately 2,000 tons of compliance sulfur coal for delivery during May 2005.

This coal shall be prepared so as to be free of excess quantities of bone, slate, shale, fire clay, wood, rock, loose clay, and other impurities and are expected to meet the following specifications on an "as-received" basis:

| SPECIFICATION             | REQUIREMENT                     |
|---------------------------|---------------------------------|
| TONNAGE (APPROXIMATE)     | 2,000                           |
| SIZE                      | 2" x 0"                         |
| SULFUR                    | 1.2 LB SO <sub>2</sub>          |
| ASH                       | 8%                              |
| MOISTURE                  | 10%                             |
| ASH SOFTENING TEMPERATURE | 2600 DEGREES FAHRENHEIT MINIMUM |
| VOLATILE                  | 32.0%                           |
| BTU                       | 12,000                          |
| GRIND                     | 45.0 HARDGROVE                  |

The price on this coal will be ████ f.o.b. gulf barge at International Marine Terminals (IMT) in New Orleans, Louisiana. Premium or penalty, if any, will be computed from the guarantee at the rate of ████ per 100 Btu on a weighted shipment basis. Invoices are payable by wire transfer upon receipt and should be sent to the attention of Mrs. Virginia M. Muehlendyck, Progress Fuels Corporation, Post Office Box 15208, St. Petersburg, Florida, 33733.

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This coal is currently in inventory at IMT and will be sampled as loaded into the barge at IMT by an independent contractor employed by PFC, as a quality verification only. Weights will be determined by draft survey.

This coal will be shipped by barge. Coordination of this shipment will be made with PFC's Mrs. Tina McRoberts at 813/824-6682. Coordination of sampling related matters will be with PFC's Mr. Roy F. Potter at 813/824-6684.

Mr. Steven E. Weber

May 3, 2005

Page 2

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If you are in agreement with this Letter Agreement and the attached Terms and Conditions, which constitutes our entire agreement, please indicate so by signing in the acceptance block on both documents and returning one original for our files.

Thank you for working with us on this order. If you have any questions, please do not hesitate to contact us.

Sincerely,



A. W. Pitcher  
Vice President – Coal Procurement

AWP/ro

Attachment

cc: Mrs. D. M. Davis  
Mrs. A. B. Futrell  
Mr. F. M. Lelak  
Ms. C. A. Leonard  
Mrs. T. M. McRoberts  
Mrs. V. M. Muehlendyck  
Mr. R. F. Potter  
Mr. D. S. Williams

Agreed to and accepted this the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

***Emerald International Corporation***

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

Its: \_\_\_\_\_



**TERMS AND CONDITIONS  
MADE A PART OF  
LETTER AGREEMENT DATED MAY 3, 2005**

These Terms and Conditions shall be a part of, and incorporated in, the above-identified Letter Agreement. Commencement of deliveries by Seller shall constitute acceptance of all the terms stated in the Letter Agreement, as well as all of the following General Terms and Conditions even advance of Seller's signature.

All coal purchased hereunder shall be received subject to Purchaser's right of inspection and rejection. Rejected coal will be held at Seller's risk for a reasonable time and will be returned or disposed of according to Seller's instructions and at Seller's expense. The net proceeds of any such disposition will be credited to Seller's account. Payment in whole or in part by Purchaser for coal purchased hereunder shall not constitute an acceptance of coal, which is rightfully rejected.

Should Seller default in whole or in part as to quantity or quality of coal under this Letter Agreement, Purchaser shall have, in addition to any other rights it may have at law or in equity, the right to acquire suitable substitute or replacement coal. In such event, Seller shall reimburse Purchaser for the amount by which the cost of substitute or replacement coal exceeds the price of coal under the Letter Agreement. The quality analysis performed by an independent certified testing company selected by Purchaser would be final and binding as to all questions of quality.

If shipment is not made of coal to be supplied hereunder by the date specified on the front of the Letter Agreement and deferred shipment has not been approved by Purchaser, Purchaser shall not be required to accept delivery of such shipments or Purchaser may elect to accept such shipments without prejudice to its rights hereunder. If at any time, Seller has reason to believe that deliveries will not be made as scheduled, he shall immediately give written notice setting forth the cause of the anticipated delay. Seller shall be responsible for any demurrage as the result of this delay.

For purposes of these Terms and Conditions, a "shipment" shall mean the quantity actually received in any vessel, barge, or unit train. If the coal delivered hereunder in any single shipment fails to meet any of the specifications set out in the Letter Agreement other than sulfur content, Purchaser shall have each of the following options to be exercised in its sole discretion:

1. Purchaser may notify Seller that Purchaser will accept such coal subject to and in accordance with the provisions set forth in the Letter Agreement; provided, however, that Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder; or
2. Purchaser will have the option to reject any shipment which exceeds any of the minimum/maximum specifications listed in the Letter Agreement, and Purchaser may notify Seller to suspend further deliveries of coal hereunder until Seller demonstrates to Purchaser's sole satisfaction that it can deliver coal that will conform on a per shipment basis to the specifications set forth in Letter Agreement; provided, however, that

Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder. If Seller fails to make the above demonstration to Purchaser's satisfaction within thirty (30) days after notice by Purchaser, Purchaser shall have the right to terminate or cancel this Agreement and, in addition, pursue every other remedy provided by law or equity. Should legal proceedings be instituted by Purchaser to recoup its losses or damage hereunder, it shall, in addition, be entitled to recover from Seller all court costs, reasonable attorney's fees and any expenses incurred by Purchaser, incident to such proceeding.

Should Seller become insolvent, or a voluntary or involuntary petition is filed as to Seller under the United States Bankruptcy Code, or a receivership or similar proceeding be filed as to Seller, the Purchaser may, at its option and in its sole discretion anytime thereafter upon giving written notice, terminate the Letter Agreement in whole or in part. The foregoing remedy of Purchaser is not to be considered exclusive, but shall be cumulative and be in addition to any other remedies of Purchaser as provided herein.

As used herein, the term "force majeure" shall mean any event beyond the control and without fault or negligence of the party affected thereby and which, by the exercise of reasonable diligence or the incurring of reasonable expense, such party is unable to prevent or overcome, regardless of whether such event was foreseeable, including, without limitation, act of God, act of public authorities (including courts and commissions of competent jurisdiction), act of the public enemy, insurrection, riot, labor dispute, labor or material shortage, fire, explosion, flood, breakdown of or damage to plant equipment or facilities (including emergency outages of equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto), interruption to transportation or transportation delay, river freeze-up, embargo, order or act of civil or military authority, legislative, regulatory, permitting, judicial rule or order adopted, amended or newly interpreted subsequent to the date of the Letter Agreement and any other event of a similar or dissimilar nature which wholly or partially prevents the mining, hauling, handling, processing or loading of coal by Seller or the receiving, handling, transporting and/or delivering by Purchaser's carrier thereof or the accepting, handling, utilizing and/or unloading thereof by Purchaser or Purchaser's intended buyer, Progress Energy Florida (PEF).

In the event performance of Seller's obligations hereunder or Purchaser's obligations hereunder is made impossible, impractical or illegal by reason of force majeure (other than obligations to pay or expend money for or in connection with the performance of the transactions contemplated by the Letter Agreement) and such party promptly gives to each other party hereto written notice of the details thereof, then the obligations of the parties hereto shall be totally excused to the extent made necessary by such force majeure and during its continuance; provided, however, that such party giving such notice shall use its best efforts to eliminate such force majeure to the extent economically feasible to do so and with a minimum of delay. Any deficiencies in deliveries of coal hereunder as a result of force majeure shall not be made up except at the sole discretion of the Purchaser. In the event force majeure results in a partial reduction in the total quantity of coal Seller is obligated to deliver hereunder, the quantity of coal Seller shall be obligated to deliver to Purchaser hereunder during the continuance of such force majeure shall be limited to the amount of coal required to be delivered during such period but for this section multiplied by a fraction, the denominator of which is the production capacity of the Coal Property immediately prior to such force majeure and the numerator of which is the production capacity of the Coal Property during the continuance of such force majeure.

In the event that restrictions are imposed during the term of the Letter Agreement by governmental bodies, agencies, entities, officials or courts which preclude or restrict PEF from burning coal of the specifications hereunder, such restriction shall be deemed to be an event of force majeure under the Letter Agreement unless its effect can be avoided in a lawful manner and will not, in PEF's sole judgment, result in unreasonable expense to PEF, the obligations of the parties hereto shall be totally excused during the continuance of such force majeure.

Seller shall not, without Purchaser's prior written consent, which consent will not unreasonably be withheld, (i) make any assignment or transfer of the Letter Agreement, by operation of law or otherwise, including without limitation any assignment, encumbrance or transfer as security for any obligation, or (ii) assign or transfer the right or duty to perform any obligation of Seller hereunder; provided, however, that Seller may assign the right to receive payments for coal sold hereunder directly from Purchaser to a lender as part of any accounts receivable financing or other revolving credit arrangement which Seller may have now or at any time during the term of the Letter Agreement. Seller may assign the Letter Agreement to an affiliate of Seller, or as part of a merger or consolidation, involving Seller, provided, however, that in the case of an assignment to an affiliate, Seller shall remain liable for the performance and for the obligations of the assignee.

The terms and provisions hereof shall be construed and enforced in accordance with the laws of the state of West Virginia.

Each party shall maintain the terms of the Letter Agreement and any information or data relating hereto, including site visits, in confidence and, except as may be required by law, shall not disclose such information or data or any other information concerning the performance or administration of the Letter Agreement to any other party other than a party's officers, directors, members, employees, contractors, agents, attorneys, accountants or financial advisers who have a need to have access thereto or as required by applicable law, regulation or judicial or governmental order. If either party is required to disclose any information required by this Section to be maintained as confidential in a judicial, administrative or governmental proceeding, such party shall give the other party at least ten (10) days prior written notice (unless less time is permitted by the applicable proceeding) before disclosing any such information in any such said proceeding and, in making such disclosure, the party required to disclose the information shall disclose only that portion thereof required to be disclosed and shall take all reasonable efforts to preserve the confidentiality thereof, including obtaining protective orders and supporting the other party in intervention. Nothing contained herein shall obligate either party to disclose to the other party any information that would be prohibited from disclosure under confidentiality agreements with third parties, including, without limitation, licenses; and any such information shall only be disclosed to the other party after appropriate confidentiality agreements have been entered into or appropriate consents obtained. The terms and provisions of this Section shall survive the termination of the Letter Agreement for a period of two (2) years.

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Seller, for itself and its successors and assigns, agrees to indemnify, defend and hold Purchaser and its affiliates and their respective directors, officers, employees and agents harmless from and against all (a) claims, demands, damages, actions and causes of actions, and costs and expenses in connection therewith or related thereto (including without limitation attorney's fees and court costs) arising from property damage, bodily injury or death of third parties, directly caused by Seller's unlawful or negligent performance under the Letter Agreement, and (b) all fines, penalties, costs, losses or expenses incurred by Purchaser by reason of Seller's violation of any applicable federal, state and local laws, ordinances or regulations directly related to producing, supplying, transporting, delivering or using coal under the Letter Agreement. Purchaser shall give Seller prompt written notice of any claim, demand or suit of which Purchaser receives notice arising out of or in connection with the Letter Agreement and covered by this indemnity. Purchaser shall have the right to reasonably participate in any defense provided by Seller, including the selection of local counsel. The indemnification provision shall survive the expiration or earlier termination of the Letter Agreement.

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2. **Audits.** Purchaser may audit Seller's EHS compliance. Within thirty (30) days of Purchaser's request, Seller shall deliver to Purchaser (1) all records regarding (a) Seller's actual or alleged violations of EHS laws and (b) EHS claims asserted against Seller, in each case in the five year period preceding Purchaser's request and (2) any executed consent form(s) necessary for Purchaser to obtain from regulatory agencies and other third parties information regarding Seller's EHS compliance.
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  - b. **EHS** means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.
  - c. **Indemnify** means to indemnify, defend, and reimburse the indemnitee and its successors and assigns on an after-tax basis.
  - d. **Law** means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.
  - e. **Manage or management, with respect to any material,** means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release, or threatened release thereof.

Further (a) Notwithstanding any provision in the Letter Agreement to the contrary, neither party shall be liable hereunder for incidental, special, punitive, consequential or other indirect loss or damage, or for lost profits, business, tax credits or any other special or incidental loss or

damage. The parties further agree that the waivers and disclaimers of liability expressed in this Letter Agreement shall survive termination of the Letter Agreement, and shall apply whether in contract, equity, tort or otherwise, even in the event of the fault, negligence, including sole negligence, strict liability or breach of warranty of any party released or whose liabilities are waived or disclaimed. Except as otherwise provided, neither party makes any warranties or guarantees to the other, either express or implied, with respect to the subject matter of the Letter Agreement, and both parties disclaim and waive any implied warranties or warranties imposed by law, (b) Notwithstanding any provision of the Letter Agreement to the contrary, the parties recognize the Purchaser is a corporation formed under the laws of the State of Florida and the Seller is a company formed under the laws of the State of Ohio and that no past, present or future shareholder, officer, director, member or manager of either party shall have any personal liability for any obligation whatsoever or howsoever arising (including under contract or in tort or equity) under or with respect to the Letter Agreement or the transaction contemplated hereby, or applicable law with respect thereto. Neither Purchaser nor Seller shall (i) assert or seek to assert any claim against, (ii) name in any civil action or proceeding or arbitration, or (iii) seek or obtain any judgment, order or decree against any member, manager, shareholder, officer, employee, agent or representative of Purchaser or Seller, with respect to Purchaser's or Seller's obligations under the Letter Agreement.

If Purchaser and Seller are each required to pay any amount to each other, then such amounts with respect to each other may be aggregated and the Purchaser and Seller may discharge their obligations to pay through netting, in which case the Purchaser or Seller, if any, owing the greater aggregate amount may pay to the other party the difference between the amounts owed. The Purchaser or Seller reserves to itself all rights, setoffs, counterclaims, and other remedies and defenses consistent with this Letter Agreement, to the extent not expressly herein waived or denied, which the Purchaser or Seller has or may be entitled to arising from or out of this Letter Agreement. The obligations to make payment under this Letter Agreement may be offset against each other, setoff or recouped there from. For the purpose of this section only, Purchaser and Seller shall also mean any affiliates, subsidiaries, or other related entities of Purchaser and Seller.

Additionally, Seller represents to and covenants with Purchaser that it has obtained and will maintain or cause to be maintained at its expense:

1. At a minimum, Automobile Liability Insurance applying to own, non-owned and hired vehicles with a limit of \$1 Million combined single limit coverage per occurrence. Additionally, Umbrella Liability coverage with a minimum of \$1 Million limit per occurrence is desired.
2. Workers' Compensation, Employees' Liability insurance with a minimum of \$500,000 Accident, \$500,000 Disease and \$500,000 Employee coverage.
3. Employers' Liability Insurance with a minimum of \$1 Million coverage per claim.

The Letter Agreement dated May 3, 2005, and these Terms and Conditions constitute the agreement in total between the parties. Neither party hereto shall claim any amendments, modifications, or release from any of the provisions hereof unless the same is in writing, signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement and these Terms and Conditions. Waiver by either party of any part of the Letter Agreement or these Terms and Conditions shall not be construed as a waiver of any other breach.

These Terms and Conditions may be executed in any number of counterparts, including by means of facsimile signatures, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Agreed to and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

**“Purchaser”**

**“Seller”**

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_



# Progress Energy

May 12, 2005

SENT VIA FAX NO. 859-525-4052

Mr. Steven E. Weber  
Emerald International Corporation  
6895 Burlington Pike  
Florence, Kentucky 41042

"A" DOMESTIC

Dear Mr. Weber:

This letter will confirm our conversation of May 11, 2005, wherein Progress Fuels Corporation's (PFC) agreed to purchase from Emerald International approximately 9,374.10 tons (5 barges) of non-compliance sulfur coal for delivery during May 2005.

This coal shall be prepared so as to be free of excess quantities of bone, slate, shale, fire clay, wood, rock, loose clay, and other impurities and are expected to meet the following specifications on an "as-received" basis:

*Domestic Shawnee town, 16 Gallatin County*

| SPECIFICATION             | AS-LOADED SPECIFICATION         |
|---------------------------|---------------------------------|
| TONNAGE (APPROXIMATE)     | 9,374.10                        |
| SIZE                      | 2" x 0"                         |
| SULFUR                    | 2.87%                           |
| SO <sub>2</sub>           | 4.60LB                          |
| ASH                       | 9.27%                           |
| MOISTURE                  | 7.33%                           |
| ASH SOFTENING TEMPERATURE | 2600 DEGREES FAHRENHEIT MINIMUM |
| VOLATILE                  | 32%                             |
| BTU                       | 12,475                          |
| GRIND                     | 43-45 HARDGROVE                 |

The price on this coal will be [redacted] delivered to International Marine Terminals (IMT) in New Orleans, Louisiana. Premium or penalty, if any, will be computed from the guarantee at the rate of [redacted] per 100 Btu on a weighted shipment basis. Invoices are payable by wire transfer upon receipt and should be sent to the attention of Mrs. Virginia M. Muehlendyck, Progress Fuels Corporation, Post Office Box 15208, St. Petersburg, Florida, 33733.

1  
2

Weights and analyses as loaded at origin will govern for payment.

This coal will be shipped by barge. Coordination of this shipment will be made with PFC's Mrs. Tina McRoberts at 727/824-6682. Coordination of sampling related matters will be with PFC's Mr. Roy F. Potter at 727/824-6684.


Mr. Steven E. Weber  
May 12, 2005  
Page 2

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If you are in agreement with this Letter Agreement and the attached Terms and Conditions, which constitutes our entire agreement, please indicate so by signing in the acceptance block on both documents and returning one original for our files.

Thank you for working with us on this order. If you have any questions, please do not hesitate to contact us.

Sincerely,



A. W. Pitcher  
Vice President – Coal Procurement

AWP/ro

Attachment

cc: Mrs. D. M. Davis  
Mrs. A. B. Futrell  
Mr. F. M. Lelak  
Ms. C. A. Leonard  
Mrs. T. M. McRoberts  
Mrs. V. M. Muehlendyck  
Mr. R. F. Potter  
Mr. D. S. Williams

Agreed to and accepted this the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

*Emerald International Corporation*

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





# Progress Energy

May 19, 2005

SENT VIA FAX NO. 859-525-4052

11A" Domestic

Mr. Steven E. Weber  
Emerald International Corporation  
6895 Burlington Pike  
Florence, Kentucky 41042

Dear Mr. Weber:

This letter will confirm our conversation of May 19, 2005, wherein Progress Fuels Corporation (PFC) agreed to purchase from Emerald International Corporation approximately 21,000 tons (approximately 13 barges) of non-compliance sulfur coal for delivery during May 2005.

This coal shall be prepared so as to be free of excess quantities of bone, slate, shale, fire clay, wood, rock, loose clay, and other impurities and are expected to meet the following specifications on an "as-received" basis:

| SPECIFICATION             | AS-LOADED SPECIFICATION         |
|---------------------------|---------------------------------|
| TONNAGE (APPROXIMATE)     | 21,000                          |
| SIZE                      | 2" x 0"                         |
| SULFUR                    | 3%                              |
| SO <sub>2</sub>           | 5 LB                            |
| ASH                       | 10%                             |
| MOISTURE                  | 10%                             |
| ASH SOFTENING TEMPERATURE | 2600 DEGREES FAHRENHEIT MINIMUM |
| VOLATILE                  | 32%                             |
| BTU                       | 12,000                          |
| GRIND                     | 43-45 HARDGROVE                 |

The price on this coal will be [redacted] delivered to International Marine Terminals (IMT) in New Orleans, Louisiana. Premium or penalty, if any, will be computed from the guarantee at the rate of [redacted] per 100 Btu on a weighted shipment basis. Invoices are payable by wire transfer upon receipt and should be sent to the attention of Mrs. Virginia M. Muehlendyck, Progress Fuels Corporation, Post Office Box 15208, St. Petersburg, Florida, 33733.

1  
2

Weights and analyses at destination will govern for payment.

This coal will be shipped by barge. Coordination of this shipment will be made with PFC's Mrs. Tina McRoberts at 727/824-6682. Coordination of sampling related matters will be with PFC's Mr. Roy F. Potter at 727/824-6684.

Mr. Steven E. Weber  
May 19, 2005  
Page 2

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If you are in agreement with this Letter Agreement and the attached Terms and Conditions, which constitutes our entire agreement, please indicate so by signing in the acceptance block on both documents and returning one original for our files.

Thank you for working with us on this order. If you have any questions, please do not hesitate to contact us.

Sincerely,



A. W. Pitcher  
Vice President – Coal Procurement

AWP/ro

Attachment

cc: Mrs. D. M. Davis  
Mrs. A. B. Futrell  
Mr. F. M. Lelak  
Ms. C. A. Leonard  
Mrs. T. M. McRoberts  
Mrs. V. M. Muehlendyck  
Mr. R. F. Potter  
Mr. D. S. Williams

Agreed to and accepted this the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

*Emerald International Corporation*

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



1+2

January 7, 2005

SENT VIA FAX NO. 859-525-4052

Mr. Steven E. Weber  
Emerald International Corporation  
6895 Burlington Pike  
Florence, Kentucky 41042

*Foreign coal*

Dear Mr. Weber:

This letter will confirm Progress Fuels Corporation's (PFC) acceptance of your verbal offer made December 30, 2004, wherein PFC agrees to purchase approximately 3,623.10 tons of high sulfur coal for delivery during December 2004 and January 2005.

*Jan 05 3623.10*

This coal shall be prepared so as to be free of excess quantities of bone, slate, shale, fire clay, wood, rock, loose clay, and other impurities and are expected to meet the following specifications on an "as-received" basis:

| SPECIFICATION             | REQUIREMENT                     |
|---------------------------|---------------------------------|
| TONNAGE (APPROXIMATE)     | 3,623.10                        |
| SIZE                      | 2" x 0"                         |
| SULFUR                    | 2.92 LB SO <sub>2</sub>         |
| ASH                       | 8.21%                           |
| MOISTURE                  | 8.95%                           |
| ASH SOFTENING TEMPERATURE | 2550 DEGREES FAHRENHEIT MINIMUM |
| VOLATILE                  | 32%                             |
| BTU                       | 12,234                          |
| GRIND                     | 43-45 HARDGROVE                 |

The price on this coal will be ████ f.o.b. gulf barge at International Marine Terminals (IMT) in New Orleans, Louisiana. No premium or penalty will apply. Invoices are payable by wire transfer upon receipt and should be sent to the attention of Mrs. Virginia M. Muehlendyck, Progress Fuels Corporation, Post Office Box 15208, St. Petersburg, Florida, 33733.

1

This coal is currently in inventory at IMT and will be sampled as loaded into the barge at IMT by an independent contractor employed by PFC, as a quality verification only. Weights will be determined by draft survey.

This coal will be shipped by barge. Coordination of this shipment will be made with PFC's Mrs. Tina McRoberts at 813/824-6682. Coordination of sampling related matters will be with PFC's Mr. Roy F. Potter at 813/824-6684.

Mr. Steven E. Weber

January 7, 2005

Page 2

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If you are in agreement with this Letter Agreement and the attached Terms and Conditions, which constitutes our entire agreement, please indicate so by signing in the acceptance block on both documents and returning one original for our files.

Thank you for working with us on this order. If you have any questions, please do not hesitate to contact us.

Sincerely,



A. W. Pitcher  
Vice President – Coal Procurement

AWP/ro

Attachment

cc: Mrs. D. M. Davis  
Mrs. A. B. Futrell  
Mr. F. M. Lelak  
Ms. C. A. Leonard  
Mrs. T. M. McRoberts  
Mrs. V. M. Muehlendyck  
Mr. R. F. Potter  
Mr. D. S. Williams

Agreed to and accepted this the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

*Emerald International Corporation*

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

**TERMS AND CONDITIONS  
MADE A PART OF  
LETTER AGREEMENT DATED JANUARY 7, 2005**

These Terms and Conditions shall be a part of, and incorporated in, the above-identified Letter Agreement. Commencement of deliveries by Seller shall constitute acceptance of all the terms stated in the Letter Agreement, as well as all of the following General Terms and Conditions even advance of Seller's signature.

All coal purchased hereunder shall be received subject to Purchaser's right of inspection and rejection. Rejected coal will be held at Seller's risk for a reasonable time and will be returned or disposed of according to Seller's instructions and at Seller's expense. The net proceeds of any such disposition will be credited to Seller's account. Payment in whole or in part by Purchaser for coal purchased hereunder shall not constitute an acceptance of coal, which is rightfully rejected.

Should Seller default in whole or in part as to quantity or quality of coal under this Letter Agreement, Purchaser shall have, in addition to any other rights it may have at law or in equity, the right to acquire suitable substitute or replacement coal. In such event, Seller shall reimburse Purchaser for the amount by which the cost of substitute or replacement coal exceeds the price of coal under the Letter Agreement. The quality analysis performed by an independent certified testing company selected by Purchaser would be final and binding as to all questions of quality.

If shipment is not made of coal to be supplied hereunder by the date specified on the front of the Letter Agreement and deferred shipment has not been approved by Purchaser, Purchaser shall not be required to accept delivery of such shipments or Purchaser may elect to accept such shipments without prejudice to its rights hereunder. If at any time, Seller has reason to believe that deliveries will not be made as scheduled, he shall immediately give written notice setting forth the cause of the anticipated delay. Seller shall be responsible for any demurrage as the result of this delay.

For purposes of these Terms and Conditions, a "shipment" shall mean the quantity actually received in any vessel, barge, or unit train. If the coal delivered hereunder in any single shipment fails to meet any of the specifications set out in the Letter Agreement other than sulfur content, Purchaser shall have each of the following options to be exercised in its sole discretion:

1. Purchaser may notify Seller that Purchaser will accept such coal subject to and in accordance with the provisions set forth in the Letter Agreement; provided, however, that Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder; or
2. Purchaser will have the option to reject any shipment which exceeds any of the minimum/maximum specifications listed in the Letter Agreement, and Purchaser may notify Seller to suspend further deliveries of coal hereunder until Seller demonstrates to Purchaser's sole satisfaction that it can deliver coal that will conform on a per shipment basis to the specifications set forth in Letter Agreement; provided, however, that

Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder. If Seller fails to make the above demonstration to Purchaser's satisfaction within thirty (30) days after notice by Purchaser, Purchaser shall have the right to terminate or cancel this Agreement and, in addition, pursue every other remedy provided by law or equity. Should legal proceedings be instituted by Purchaser to recoup its losses or damage hereunder, it shall, in addition, be entitled to recover from Seller all court costs, reasonable attorney's fees and any expenses incurred by Purchaser, incident to such proceeding.

Should Seller become insolvent, or a voluntary or involuntary petition is filed as to Seller under the United States Bankruptcy Code, or a receivership or similar proceeding be filed as to Seller, the Purchaser may, at its option and in its sole discretion anytime thereafter upon giving written notice, terminate the Letter Agreement in whole or in part. The foregoing remedy of Purchaser is not to be considered exclusive, but shall be cumulative and be in addition to any other remedies of Purchaser as provided herein.

As used herein, the term "force majeure" shall mean any event beyond the control and without fault or negligence of the party affected thereby and which, by the exercise of reasonable diligence or the incurring of reasonable expense, such party is unable to prevent or overcome, regardless of whether such event was foreseeable, including, without limitation, act of God, act of public authorities (including courts and commissions of competent jurisdiction), act of the public enemy, insurrection, riot, labor dispute, labor or material shortage, fire, explosion, flood, breakdown of or damage to plant equipment or facilities (including emergency outages of equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto), interruption to transportation or transportation delay, river freeze-up, embargo, order or act of civil or military authority, legislative, regulatory, permitting, judicial rule or order adopted, amended or newly interpreted subsequent to the date of the Letter Agreement and any other event of a similar or dissimilar nature which wholly or partially prevents the mining, hauling, handling, processing or loading of coal by Seller or the receiving, handling, transporting and/or delivering by Purchaser's carrier thereof or the accepting, handling, utilizing and/or unloading thereof by Purchaser or Purchaser's intended buyer, Progress Energy Florida (PEF).

In the event performance of Seller's obligations hereunder or Purchaser's obligations hereunder is made impossible, impractical or illegal by reason of force majeure (other than obligations to pay or expend money for or in connection with the performance of the transactions contemplated by the Letter Agreement) and such party promptly gives to each other party hereto written notice of the details thereof, then the obligations of the parties hereto shall be totally excused to the extent made necessary by such force majeure and during its continuance; provided, however, that such party giving such notice shall use its best efforts to eliminate such force majeure to the extent economically feasible to do so and with a minimum of delay. Any deficiencies in deliveries of coal hereunder as a result of force majeure shall not be made up except at the sole discretion of the Purchaser. In the event force majeure results in a partial reduction in the total quantity of coal Seller is obligated to deliver hereunder, the quantity of coal Seller shall be obligated to deliver to Purchaser hereunder during the continuance of such force majeure shall be limited to the amount of coal required to be delivered during such period but for this section multiplied by a fraction, the denominator of which is the production capacity of the Coal Property immediately prior to such force majeure and the numerator of which is the production capacity of the Coal Property during the continuance of such force majeure.

In the event that restrictions are imposed during the term of the Letter Agreement by governmental bodies, agencies, entities, officials or courts which preclude or restrict PEF from burning coal of the specifications hereunder, such restriction shall be deemed to be an event of force majeure under the Letter Agreement unless its effect can be avoided in a lawful manner and will not, in PEF's sole judgment, result in unreasonable expense to PEF, the obligations of the parties hereto shall be totally excused during the continuance of such force majeure.

Seller shall not, without Purchaser's prior written consent, which consent will not unreasonably be withheld, (i) make any assignment or transfer of the Letter Agreement, by operation of law or otherwise, including without limitation any assignment, encumbrance or transfer as security for any obligation, or (ii) assign or transfer the right or duty to perform any obligation of Seller hereunder; provided, however, that Seller may assign the right to receive payments for coal sold hereunder directly from Purchaser to a lender as part of any accounts receivable financing or other revolving credit arrangement which Seller may have now or at any time during the term of the Letter Agreement. Seller may assign the Letter Agreement to an affiliate of Seller, or as part of a merger or consolidation, involving Seller, provided, however, that in the case of an assignment to an affiliate, Seller shall remain liable for the performance and for the obligations of the assignee.

The terms and provisions hereof shall be construed and enforced in accordance with the laws of the state of West Virginia.

Each party shall maintain the terms of the Letter Agreement and any information or data relating hereto, including site visits, in confidence and, except as may be required by law, shall not disclose such information or data or any other information concerning the performance or administration of the Letter Agreement to any other party other than a party's officers, directors, members, employees, contractors, agents, attorneys, accountants or financial advisers who have a need to have access thereto or as required by applicable law, regulation or judicial or governmental order. If either party is required to disclose any information required by this Section to be maintained as confidential in a judicial, administrative or governmental proceeding, such party shall give the other party at least ten (10) days prior written notice (unless less time is permitted by the applicable proceeding) before disclosing any such information in any such said proceeding and, in making such disclosure, the party required to disclose the information shall disclose only that portion thereof required to be disclosed and shall take all reasonable efforts to preserve the confidentiality thereof, including obtaining protective orders and supporting the other party in intervention. Nothing contained herein shall obligate either party to disclose to the other party any information that would be prohibited from disclosure under confidentiality agreements with third parties, including, without limitation, licenses; and any such information shall only be disclosed to the other party after appropriate confidentiality agreements have been entered into or appropriate consents obtained. The terms and provisions of this Section shall survive the termination of the Letter Agreement for a period of two (2) years.

The terms and conditions set forth herein constitute a complete and exclusive statement of agreement between the parties hereto, regardless of any terms contained in any order, acknowledgment or any other instrument. No statements or agreements, oral or written, not contained herein shall vary or modify the terms hereof. Neither party shall claim any amendments, modifications, or release from any provisions hereof unless the same is in writing signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement. Waiver by either party hereto of any breach by the other party of the terms and conditions hereof shall not be construed as a waiver of any other breach.

Seller, for itself and its successors and assigns, agrees to indemnify, defend and hold Purchaser and its affiliates and their respective directors, officers, employees and agents harmless from and against all (a) claims, demands, damages, actions and causes of actions, and costs and expenses in connection therewith or related thereto (including without limitation attorney's fees and court costs) arising from property damage, bodily injury or death of third parties, directly caused by Seller's unlawful or negligent performance under the Letter Agreement, and (b) all fines, penalties, costs, losses or expenses incurred by Purchaser by reason of Seller's violation of any applicable federal, state and local laws, ordinances or regulations directly related to producing, supplying, transporting, delivering or using coal under the Letter Agreement. Purchaser shall give Seller prompt written notice of any claim, demand or suit of which Purchaser receives notice arising out of or in connection with the Letter Agreement and covered by this indemnity. Purchaser shall have the right to reasonably participate in any defense provided by Seller, including the selection of local counsel. The indemnification provision shall survive the expiration or earlier termination of the Letter Agreement.

Seller agrees to conform to Purchaser's environmental, health, and safety standards as follows:

1. **Compliance and Indemnification.** Seller shall comply with all applicable EHS laws and shall indemnify Purchaser against any EHS claims and costs arising from Seller's performance under the Letter Agreement.
2. **Audits.** Purchaser may audit Seller's EHS compliance. Within thirty (30) days of Purchaser's request, Seller shall deliver to Purchaser (1) all records regarding (a) Seller's actual or alleged violations of EHS laws and (b) EHS claims asserted against Seller, in each case in the five year period preceding Purchaser's request and (2) any executed consent form(s) necessary for Purchaser to obtain from regulatory agencies and other third parties information regarding Seller's EHS compliance.
3. **Definitions (as used in the Letter Agreement).**
  - a. **Claim** means administrative, regulatory or judicial action, suite, dispute, liability, judgment, penalty, damages, directive, order or claim.
  - b. **EHS** means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.
  - c. **Indemnify** means to indemnify, defend, and reimburse the indemnitee and its successors and assigns on an after-tax basis.
  - d. **Law** means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.
  - e. **Manage or management, with respect to any material,** means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release, or threatened release thereof.

Further (a) Notwithstanding any provision in the Letter Agreement to the contrary, neither party shall be liable hereunder for incidental, special, punitive, consequential or other indirect loss or damage, or for lost profits, business, tax credits or any other special or incidental loss or



damage. The parties further agree that the waivers and disclaimers of liability expressed in this Letter Agreement shall survive termination of the Letter Agreement, and shall apply whether in contract, equity, tort or otherwise, even in the event of the fault, negligence, including sole negligence, strict liability or breach of warranty of any party released or whose liabilities are waived or disclaimed. Except as otherwise provided, neither party makes any warranties or guarantees to the other, either express or implied, with respect to the subject matter of the Letter Agreement, and both parties disclaim and waive any implied warranties or warranties imposed by law, (b) Notwithstanding any provision of the Letter Agreement to the contrary, the parties recognize the Purchaser is a corporation formed under the laws of the State of Florida and the Seller is a company formed under the laws of the State of Ohio and that no past, present or future shareholder, officer, director, member or manager of either party shall have any personal liability for any obligation whatsoever or howsoever arising (including under contract or in tort or equity) under or with respect to the Letter Agreement or the transaction contemplated hereby, or applicable law with respect thereto. Neither Purchaser nor Seller shall (i) assert or seek to assert any claim against, (ii) name in any civil action or proceeding or arbitration, or (iii) seek or obtain any judgment, order or decree against any member, manager, shareholder, officer, employee, agent or representative of Purchaser or Seller, with respect to Purchaser's or Seller's obligations under the Letter Agreement.

If Purchaser and Seller are each required to pay any amount to each other, then such amounts with respect to each other may be aggregated and the Purchaser and Seller may discharge their obligations to pay through netting, in which case the Purchaser or Seller, if any, owing the greater aggregate amount may pay to the other party the difference between the amounts owed. The Purchaser or Seller reserves to itself all rights, setoffs, counterclaims, and other remedies and defenses consistent with this Letter Agreement, to the extent not expressly herein waived or denied, which the Purchaser or Seller has or may be entitled to arising from or out of this Letter Agreement. The obligations to make payment under this Letter Agreement may be offset against each other, setoff or recouped there from. For the purpose of this section only, Purchaser and Seller shall also mean any affiliates, subsidiaries, or other related entities of Purchaser and Seller.

Additionally, Seller represents to and covenants with Purchaser that it has obtained and will maintain or cause to be maintained at its expense:

1. At a minimum, Automobile Liability Insurance applying to own, non-owned and hired vehicles with a limit of \$1 Million combined single limit coverage per occurrence. Additionally, Umbrella Liability coverage with a minimum of \$1 Million limit per occurrence is desired.
2. Workers' Compensation, Employees' Liability insurance with a minimum of \$500,000 Accident, \$500,000 Disease and \$500,000 Employee coverage.
3. Employers' Liability Insurance with a minimum of \$1 Million coverage per claim.

The Letter Agreement dated January 7, 2005, and these Terms and Conditions constitute the agreement in total between the parties. Neither party hereto shall claim any amendments, modifications, or release from any of the provisions hereof unless the same is in writing, signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement and these Terms and Conditions. Waiver by either party of any part of the Letter Agreement or these Terms and Conditions shall not be construed as a waiver of any other breach.

These Terms and Conditions may be executed in any number of counterparts, including by means of facsimile signatures, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Agreed to and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

**“Purchaser”**

**“Seller”**

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_



February 3, 2005

SENT VIA FAX NO. 304/453-6917

Joseph B. Jefferson  
Progress Fuels Corporation  
Post Office Box 308  
Ceredo, West Virginia 25507

**RE: AGREEMENT FOR THE SALE AND PURCHASE OF COAL BETWEEN PROGRESS FUELS CORPORATION AND PROGRESS FUELS CORPORATION, ON ITS OWN BEHALF AND AS AGENT FOR DIAMOND MAY COAL COMPANY; KANAWHA RIVER TERMINALS, INC.; KENTUCKY MAY COAL COMPANY, INC.; AND POWELL MOUNTAIN COAL COMPANY, INC. EFFECTIVE JANUARY 1, 2005 THROUGH DECEMBER 31, 2006  
MODE OF DELIVERY—WATER**

Dear Mr. Jefferson:

This is to confirm our acceptance of your offer to supply two trains of approximately 12,000 tons each of low-sulfur, Colorado-origin coal during January and February of 2005 under the above referenced contract.

The price of the first trainload will be \$████ per net ton based on 11,871 Btu. The price of the second trainload will be \$████ per net ton based on 11,758 Btu. Prices are f.o.b. barge Mt. Vernon Terminal, Mount Vernon, Indiana.

1  
2

Load origin analysis and supplier certified batch weights shall apply, as adjusted for actual railroad cars dumped. All other aspects of the existing contract shall apply.

As these tons are based on a fixed price already adjusted for load quality and loading point, this coal will be excluded from subsequent premium/penalty calculations.

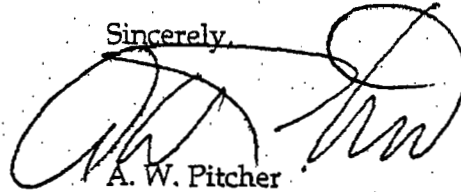
If you are in agreement with the above, please indicate so by signing in the acceptance block provided below and returning one original for our files.

Mr. Joseph B. Jefferson  
February 3, 2005  
Page 2

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Thank you for working with us on this order. If you have any questions, please do not hesitate to contact us.

Sincerely,



A. W. Pitcher  
Vice President - Coal Procurement

AWP/ro

- cc: Mrs. D. M. Davis
- Mrs. A. B. Futrell
- Mr. F. M. Lelak
- Ms. C. A. Leonard
- Mrs. T. M. McRoberts
- Mrs. V. M. Muehlendyck
- Mr. R. F. Potter
- Mr. D. S. Williams

Agreed to and accepted this the 18 day of FEBRUARY, 2005.

*Progress Fuels Corporation, on its own behalf and as agent for Diamond May Coal Company; Kanawha River Terminals, Inc.; Kentucky May Coal Company, Inc.; and Powell Mountain Coal Company, Inc.*

By: 

Its: \_\_\_\_\_

Progress Fuels Corporation  
Alexander (Sasha) Weintraub  
Dir. - Coal Marketing & Trading



# Progress Energy

February 14, 2005

SENT VIA FAX NO. 919/546-7165

Mr. Brett Phipps  
Progress Fuels Corporation  
100 E. Davie Street-TPP9  
Raleigh, NC 27601-1806

**RE: AGREEMENT FOR THE SALE AND PURCHASE OF COAL BETWEEN PROGRESS FUELS CORPORATION AND PROGRESS FUELS CORPORATION, ON ITS OWN BEHALF AND AS AGENT FOR DIAMOND MAY COAL COMPANY; KANAWHA RIVER TERMINALS, INC.; KENTUCKY MAY COAL COMPANY, INC.; AND POWELL MOUNTAIN COAL COMPANY, INC. .  
EFFECTIVE JANUARY 1, 2005 THROUGH DECEMBER 31, 2006  
MODE OF DELIVERY – WATER**

Dear Mr. Phipps:

This is to confirm our acceptance of your offer to supply one train of 12191.73 tons (net dumped) of low-sulfur Colorado origin coal during February 2005 under the above referenced contract.

The price of the trainload will be [REDACTED] per net ton, based on 11,836 Btu. The price is f.o.b. barge Mt. Vernon Terminal, Mount Vernon, Indiana. 1

Load origin analysis and supplier certified batch weights shall apply, as adjusted for actual railroad cars dumped. All other aspects of the existing contract shall apply.

As these tons are based on a fixed price already adjusted for load quality and loading point, this coal will be excluded from subsequent premium penalty calculations.

If you are in agreement with the above, please indicate so by signing in the acceptance block provided below and returning one original for our files.

Mr. Brett Phipps  
February 14, 2005  
Page 2

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Thank you for working with us on this order. If you have any questions, please do not hesitate to contact us.

Sincerely,



A. W. Pitcher  
Vice President – Coal Procurement

AWP/ro

cc: Mrs. D. M. Davis  
Mrs. A. B. Futrell  
Mr. F. M. Lelak  
Ms. C. A. Leonard  
Mrs. T. M. McRoberts  
Mrs. V. M. Muehlendyck  
Mr. R. F. Potter  
Mr. D. S. Williams

Agreed to and accepted this the \_\_\_\_\_ day of \_\_\_\_\_,  
2005.

*Progress Fuels Corporation, on its own behalf and as agent for Diamond May Coal Company; Kanawha River Terminals, Inc.; Kentucky May Coal Company, Inc.; and Powell Mountain Coal Company, Inc.*

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

**Futrell, Amy**

---

**From:** Williams, Dave  
**Sent:** Thursday, August 04, 2005 11:36 AM  
**To:** Futrell, Amy  
**Subject:** FW: Coal Shipping Location Change Request

FYI

David S. Williams  
Regulated Fuels  
(919) 546-3587 T  
(919) 546-3208 F  
David.S.Williams@pgnmail.com

-----Original Message-----

**From:** Pitcher, Al (PFC)  
**Sent:** Thursday, August 04, 2005 11:34 AM  
**To:** Ott, Robin (PFC); Williams, Dave; Lelak, Michael (PFC); Mcroberts, Tina (PFC); Muehlendyck, Virginia (PFC)  
**Subject:** FW: Coal Shipping Location Change Request

Please note the change below. The order will be shipped to the Big Sandy until 75,000 tons are shipped. The current plan is then to move it back to the Kanawha. Please make all of the necessary changes to the contract information.

**A. W. Pitcher**

Vice President-Coal Procurement  
Progress Fuels Corporation  
One Progress Plaza, BT10C  
St. Petersburg, FL 33701  
Phone No. 727-824-6692  
Fax No. 727-824-6601  
E-mail [al.pitcher@progressfuels.com](mailto:al.pitcher@progressfuels.com)

-----Original Message-----

**From:** Pitcher, Al (PFC)  
**Sent:** Wednesday, August 03, 2005 5:21 PM  
**To:** Eisel, Dayton (Energy)  
**Subject:** RE: Coal Shipping Location Change Request

I concur with the switch to the Big Sandy River as noted below. Further, I concur with the pricing outlined below.

**A. W. Pitcher**

Vice President-Coal Procurement  
Progress Fuels Corporation  
One Progress Plaza, BT10C  
St. Petersburg, FL 33701  
Phone No. 727-824-6692  
Fax No. 727-824-6601  
E-mail [al.pitcher@progressfuels.com](mailto:al.pitcher@progressfuels.com)

-----Original Message-----

**From:** Eisel, Dayton  
**Sent:** Wednesday, August 03, 2005 2:11 PM  
**To:** Pitcher, Al (PFC)  
**Subject:** Coal Shipping Location Change Request

Al,

Confirming our discussion, PFC is requesting a change in the shipping location on our current [REDACTED] coal sales agreement, which is effective for the two-year term 2005 - 2006. We would like the right to ship from the Lockwood Dock on the Big Sandy River during the July and August, 2005, in order to continue to supply coal while our Kanawha River coal source is experiencing production shortfalls. We are requesting an increase in the f.o.b. barge price from [REDACTED]/NT to [REDACTED]/NT for the Lockwood shipments. 1

Our first barge from Lockwood loaded on July 6, 2005. Please note that we shipped one barge from the Kanawha on July 8, 2005, which should be priced at [REDACTED]. Al, our intention is to continue shipping from Lockwood during July and August, or until we have delivered the (approx.) 75,000 tons which we have purchased in order to cover our temporary shortfall on the Kanawha. 1

Please advise your agreement with this revision to our contract. Thanks, and call me at 919-546-3434 if you have any questions.

Dayton Eisel  
Progress Fuels Corp.





December 19, 2003

Mr. Joseph B. Jefferson  
Progress Fuels Corporation  
Post Office Box 308  
Ceredo, West Virginia 25507

**This Letter Supercedes  
Letter Agreement Dated  
September 22, 2003**

Dear Mr. Jefferson:

This letter will confirm Progress Fuels Corporation's (PFC) acceptance of your offer dated September 15, 2003, wherein PFC agrees to purchase 600,000 tons of 1.2LB SO<sub>2</sub> compliance coal for delivery on a prorated shipment schedule of 50,000 tons per month from January 1, 2004, through December 31, 2004.

Further, no later than thirty (30) days prior to the expiration of this Letter Agreement, Purchaser and Seller may meet to negotiate a new price and duration of an extended twelve-month term of this agreement.

This coal shall be prepared so as to be free of excess quantities of bone, slate, shale, fire clay, wood, rock, loose clay, and other impurities and are expected to meet the following specifications on an "as-received" basis:

| SPECIFICATION             | GUARANTEE                          | REJECT                  |
|---------------------------|------------------------------------|-------------------------|
| TONNAGE                   | 600,000                            | N/A                     |
| SIZE                      | 2" x 0"<br>50% < 1/4"              | N/A                     |
| SULFUR                    | 1.2 LB SO <sub>2</sub> MAXIMUM     | >1.2 LB SO <sub>2</sub> |
| ASH                       | 12.00% MAXIMUM                     | >13%                    |
| MOISTURE                  | 8.0% MAXIMUM                       | >10%                    |
| ASH SOFTENING TEMPERATURE | 2650 DEGREES FAHRENHEIT<br>MINIMUM | N/A                     |
| VOLATILE                  | 32% MINIMUM                        | <30%                    |
| BTU                       | 12,500/LB MINIMUM                  | <12,200                 |
| GRIND                     | 42 MINIMUM HARDGROVE               | <40                     |

The price on this coal will be [redacted] per ton f.o.b. barge, Marmet Pool, Kanawha River and includes [redacted] for trucking and transloading costs, and will be based on a guarantee of 12,500 Btu/LB. Premium or penalty, if any, will be computed from the guarantee at the rate of [redacted] per 100 Btu on a weighted shipment basis. Invoices, *reflecting premium/penalty calculations*, are payable fifteen (15) days from receipt and should be sent to the attention of Ms. Carrie Leonard, Senior Accountant, at Progress Fuels Corporation, Post Office Box 15208, St. Petersburg, Florida, 33733.

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Mr. Joseph B. Jefferson  
December 19, 2003  
Page 2

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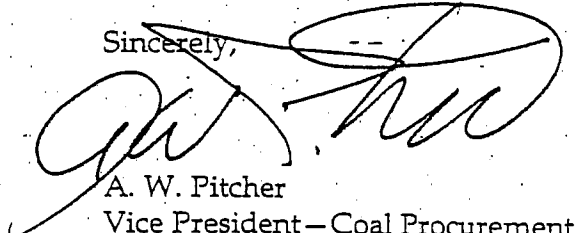
These coals will be sampled by an independent contractor employed by PFC. These samples will govern payment.

This coal will be shipped by barge. Coordination of these shipments will be made with PFC's Mrs. Tina McRoberts at 727/824-6682. Coordination of sampling related matters will be with PFC's Mr. Roy F. Potter at 727/824-6684.

If you are in agreement with this Letter Agreement and the attached Terms and Conditions, which constitutes our entire agreement, please indicate so by signing in the acceptance block on both documents and returning one original for our files.

Thank you for working with us on this order. If you have any questions, please do not hesitate to contact us.

Sincerely,



A. W. Pitcher  
Vice President - Coal Procurement

AWP/ro

Attachment

cc/att: Ms. C. R. Clarke  
Mrs. D. M. Davis  
Mrs. M. J. Kuderick  
Mr. F. M. Lelak  
Ms. C. A. Leonard  
Mrs. T. M. McRoberts  
Mrs. V. M. Muehlendyck  
Mr. R. F. Potter

Agreed to and accepted this the \_\_\_\_\_ day of \_\_\_\_\_, 2003.

*Progress Fuels Corporation*

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

TERMS AND CONDITIONS  
MADE A PART OF  
LETTER AGREEMENT DATED DECEMBER 19, 2003

These Terms and Conditions shall be a part of, and incorporated in, the above-identified Letter Agreement. Commencement of deliveries by Seller shall constitute acceptance of all the terms stated in the Letter Agreement, as well as all of the following General Terms and Conditions even advance of Seller's signature.

All coal purchased hereunder shall be received subject to Purchaser's right of inspection and rejection. Rejected coal will be held at Seller's risk for a reasonable time and will be returned or disposed of according to Seller's instructions and at Seller's expense. The net proceeds of any such disposition will be credited to Seller's account. Payment in whole or in part by Purchaser for coal purchased hereunder shall not constitute an acceptance of coal, which is rightfully rejected.

Should Seller default in whole or in part as to quantity or quality of coal under this Letter Agreement, Purchaser shall have, in addition to any other rights it may have at law or in equity, the right to acquire suitable substitute or replacement coal. In such event, Seller shall reimburse Purchaser for the amount by which the cost of substitute or replacement coal exceeds the price of coal under the Letter Agreement. The quality analysis performed by an independent certified testing company selected by Purchaser would be final and binding as to all questions of quality.

If shipment is not made of coal to be supplied hereunder by the date specified on the front of the Letter Agreement and deferred shipment has not been approved by Purchaser, Purchaser shall not be required to accept delivery of such shipments or Purchaser may elect to accept such shipments without prejudice to its rights hereunder. If at any time, Seller has reason to believe that deliveries will not be made as scheduled, he shall immediately give written notice setting forth the cause of the anticipated delay. Seller shall be responsible for any demurrage as the result of this delay.

For purposes of these Terms and Conditions, a "shipment" shall mean the quantity actually received in any vessel, barge, or unit train. If the coal delivered hereunder in any single shipment fails to meet any of the specifications set out in the Letter Agreement other than sulfur content, Purchaser shall have each of the following options to be exercised in its sole discretion:

1. Purchaser may notify Seller that Purchaser will accept such coal subject to and in accordance with the provisions set forth in the Letter Agreement; provided, however, that Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder; or
2. Purchaser will have the option to reject any shipment which exceeds any of the minimum/maximum specifications listed in the Letter Agreement, and Purchaser may notify Seller to suspend further deliveries of coal hereunder until Seller demonstrates to Purchaser's sole satisfaction that it can deliver coal that will conform on a per shipment basis to the specifications set forth in Letter Agreement; provided, however, that

Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder. If Seller fails to make the above demonstration to Purchaser's satisfaction within thirty (30) days after notice by Purchaser, Purchaser shall have the right to terminate or cancel this Agreement and, in addition, pursue every other remedy provided by law or equity. Should legal proceedings be instituted by Purchaser to recoup its losses or damage hereunder, it shall, in addition, be entitled to recover from Seller all court costs, reasonable attorney's fees and any expenses incurred by Purchaser, incident to such proceeding.

Should Seller become insolvent, or a voluntary or involuntary petition is filed as to Seller under the United States Bankruptcy Code, or a receivership or similar proceeding be filed as to Seller, the Purchaser may, at its option and in its sole discretion anytime thereafter upon giving written notice, terminate the Letter Agreement in whole or in part. The foregoing remedy of Purchaser is not to be considered exclusive, but shall be cumulative and be in addition to any other remedies of Purchaser as provided herein.

As used herein, the term "force majeure" shall mean any event beyond the control and without fault or negligence of the party affected thereby and which, by the exercise of reasonable diligence or the incurring of reasonable expense, such party is unable to prevent or overcome, regardless of whether such event was foreseeable, including, without limitation, act of God, act of public authorities (including courts and commissions of competent jurisdiction), act of the public enemy, insurrection, riot, labor dispute, labor or material shortage, fire, explosion, flood, breakdown of or damage to plant equipment or facilities (including emergency outages of equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto), interruption to transportation or transportation delay, river freeze-up, embargo, order or act of civil or military authority, legislative, regulatory, permitting, judicial rule or order adopted, amended or newly interpreted subsequent to the date of the Letter Agreement and any other event of a similar or dissimilar nature which wholly or partially prevents the mining, hauling, handling, processing or loading of coal by Seller or the receiving, handling, transporting and/or delivering by Purchaser's carrier thereof or the accepting, handling, utilizing and/or unloading thereof by Purchaser or Purchaser's intended buyer, Progress Energy Florida (PEF).

In the event performance of Seller's obligations hereunder or Purchaser's obligations hereunder is made impossible, impractical or illegal by reason of force majeure (other than obligations to pay or expend money for or in connection with the performance of the transactions contemplated by the Letter Agreement) and such party promptly gives to each other party hereto written notice of the details thereof, then the obligations of the parties hereto shall be totally excused to the extent made necessary by such force majeure and during its continuance; provided, however, that such party giving such notice shall use its best efforts to eliminate such force majeure to the extent economically feasible to do so and with a minimum of delay. Any deficiencies in deliveries of coal hereunder as a result of force majeure shall not be made up except at the sole discretion of the Purchaser. In the event force majeure results in a partial reduction in the total quantity of coal Seller is obligated to deliver hereunder, the quantity of coal Seller shall be obligated to deliver to Purchaser hereunder during the continuance of such force majeure shall be limited to the amount of coal required to be delivered during such period but for this section, multiplied by a fraction, the denominator of which is the production capacity of the Coal Property immediately prior to such force majeure and the numerator of which is the production capacity of the Coal Property during the continuance of such force majeure.

In the event that restrictions are imposed during the term of the Letter Agreement by governmental bodies, agencies, entities, officials or courts which preclude or restrict PEF from burning coal of the specifications hereunder, such restriction shall be deemed to be an event of force majeure under the Letter Agreement unless its effect can be avoided in a lawful manner and will not, in PEF's sole judgment, result in unreasonable expense to PEF, the obligations of the parties hereto shall be totally excused during the continuance of such force majeure.

Seller shall not, without Purchaser's prior written consent, which consent will not unreasonably be withheld, (i) make any assignment or transfer of the Letter Agreement, by operation of law or otherwise, including without limitation any assignment, encumbrance or transfer as security for any obligation, or (ii) assign or transfer the right or duty to perform any obligation of Seller hereunder; provided, however, that Seller may assign the right to receive payments for coal sold hereunder directly from Purchaser to a lender as part of any accounts receivable financing or other revolving credit arrangement which Seller may have now or at any time during the term of the Letter Agreement. Seller may assign the Letter Agreement to an affiliate of Seller, or as part of a merger or consolidation, involving Seller, provided, however, that in the case of an assignment to an affiliate, Seller shall remain liable for the performance and for the obligations of the assignee.

The terms and provisions hereof shall be construed and enforced in accordance with the laws of the state of West Virginia.

Each party shall maintain the terms of the Letter Agreement and any information or data relating hereto, including site visits, in confidence and, except as may be required by law, shall not disclose such information or data or any other information concerning the performance or administration of the Letter Agreement to any other party other than a party's officers, directors, members, employees, contractors, agents, attorneys, accountants or financial advisers who have a need to have access thereto or as required by applicable law, regulation or judicial or governmental order. If either party is required to disclose any information required by this Section to be maintained as confidential in a judicial, administrative or governmental proceeding, such party shall give the other party at least ten (10) days prior written notice (unless less time is permitted by the applicable proceeding) before disclosing any such information in any such said proceeding and, in making such disclosure, the party required to disclose the information shall disclose only that portion thereof required to be disclosed and shall take all reasonable efforts to preserve the confidentiality thereof, including obtaining protective orders and supporting the other party in intervention. Nothing contained herein shall obligate either party to disclose to the other party any information that would be prohibited from disclosure under confidentiality agreements with third parties, including, without limitation, licenses; and any such information shall only be disclosed to the other party after appropriate confidentiality agreements have been entered into or appropriate consents obtained. The terms and provisions of this Section shall survive the termination of the Letter Agreement for a period of two (2) years.

The terms and conditions set forth herein constitute a complete and exclusive statement of agreement between the parties hereto, regardless of any terms contained in any order, acknowledgment or any other instrument. No statements or agreements, oral or written, not contained herein shall vary or modify the terms hereof. Neither party shall claim any amendments, modifications, or release from any provisions hereof unless the same is in writing signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement. Waiver by either party hereto of any breach by the other party of the terms and conditions hereof shall not be construed as a waiver of any other breach.

Seller, for itself and its successors and assigns, agrees to indemnify, defend and hold Purchaser and its affiliates and their respective directors, officers, employees and agents harmless from and against all (a) claims, demands, damages, actions and causes of actions, and costs and expenses in connection therewith or related thereto (including without limitation attorney's fees and court costs) arising from property damage, bodily injury or death of third parties, directly caused by Seller's unlawful or negligent performance under the Letter Agreement, and (b) all fines, penalties, costs, losses or expenses incurred by Purchaser by reason of Seller's violation of any applicable federal, state and local laws, ordinances or regulations directly related to producing, supplying, transporting, delivering or using coal under the Letter Agreement. Purchaser shall give Seller prompt written notice of any claim, demand or suit of which Purchaser receives notice arising out of or in connection with the Letter Agreement and covered by this indemnity. Purchaser shall have the right to reasonably participate in any defense provided by Seller, including the selection of local counsel. The indemnification provision shall survive the expiration or earlier termination of the Letter Agreement.

Seller agrees to conform to Purchaser's environmental, health, and safety standards as follows:

1. **Compliance and Indemnification.** Seller shall comply with all applicable EHS laws and shall indemnify Purchaser against any EHS claims and costs arising from Seller's performance under the Letter Agreement.
2. **Audits.** Purchaser may audit Seller's EHS compliance. Within thirty (30) days of Purchaser's request, Seller shall deliver to Purchaser (1) all records regarding (a) Seller's actual or alleged violations of EHS laws and (b) EHS claims asserted against Seller, in each case in the five year period preceding Purchaser's request and (2) any executed consent form(s) necessary for Purchaser to obtain from regulatory agencies and other third parties information regarding Seller's EHS compliance.
3. **Definitions (as used in the Letter Agreement).**
  - a. **Claim** means administrative, regulatory or judicial action, suite, dispute, liability, judgment, penalty, damages, directive, order or claim.
  - b. **EHS** means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.
  - c. **Indemnify** means to indemnify, defend, and reimburse the indemnitee and its successors and assigns on an after-tax basis.
  - d. **Law** means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.
  - e. **Manage or management, with respect to any material,** means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release, or threatened release thereof.

Further (a) Notwithstanding any provision in the Letter Agreement to the contrary, neither party shall be liable hereunder for incidental, special, punitive, consequential or other indirect loss or damage, or for lost profits, business, tax credits or any other special or incidental loss or

damage. The parties further agree that the waivers and disclaimers of liability expressed in this Letter Agreement shall survive termination of the Letter Agreement, and shall apply whether in contract, equity, tort or otherwise, even in the event of the fault, negligence, including sole negligence, strict liability or breach of warranty of any party released or whose liabilities are waived or disclaimed. Except as otherwise provided, neither party makes any warranties or guarantees to the other, either express or implied, with respect to the subject matter of the Letter Agreement, and both parties disclaim and waive any implied warranties or warranties imposed by law, (b) Notwithstanding any provision of the Letter Agreement to the contrary, the parties recognize the Purchaser is a corporation formed under the laws of the State of Florida and the Seller is a company formed under the laws of the State of Florida, and that no past, present or future shareholder, officer, director, member or manager of either party shall have any personal liability for any obligation whatsoever or howsoever arising (including under contract or in tort or equity) under or with respect to the Letter Agreement or the transaction contemplated hereby, or applicable law with respect thereto. Neither Purchaser nor Seller shall (i) assert or seek to assert any claim against, (ii) name in any civil action or proceeding or arbitration, or (iii) seek or obtain any judgment, order or decree against any member, manager, shareholder, officer, employee, agent or representative of Purchaser or Seller, with respect to Purchaser's or Seller's obligations under the Letter Agreement.

If Purchaser and Seller are each required to pay any amount to each other, then such amounts with respect to each other may be aggregated and the Purchaser and Seller may discharge their obligations to pay through netting, in which case the Purchaser or Seller, if any, owing the greater aggregate amount may pay to the other party the difference between the amounts owed. The Purchaser or Seller reserves to itself all rights, setoffs, counterclaims, and other remedies and defenses consistent with this Letter Agreement, to the extent not expressly herein waived or denied, which the Purchaser or Seller has or may be entitled to arising from or out of this Letter Agreement. The obligations to make payment under this Letter Agreement may be offset against each other, setoff or recouped there from. For the purpose of this section only, Purchaser and Seller shall also mean any affiliates, subsidiaries, or other related entities of Purchaser and Seller.

Additionally, Seller represents to and covenants with Purchaser that it has obtained and will maintain or cause to be maintained at its expense:

1. At a minimum, Automobile Liability Insurance applying to own, non-owned and hired vehicles with a limit of \$1 Million combined single limit coverage per occurrence. Additionally, Umbrella Liability coverage with a minimum of \$1 Million limit per occurrence is desired.
2. Workers' Compensation, Employees' Liability insurance with a minimum of \$500,000 Accident, \$500,000 Disease and \$500,000 Employee coverage.
3. Employers' Liability Insurance with a minimum of \$1 Million coverage per claim.

The Letter Agreement dated December 19, 2003, and these Terms and Conditions constitute the agreement in total between the parties. Neither party hereto shall claim any amendments, modifications, or release from any of the provisions hereof unless the same is in writing, signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement and these Terms and Conditions. Waiver by either party of any part of the Letter Agreement or these Terms and Conditions shall not be construed as a waiver of any other breach.

These Terms and Conditions may be executed in any number of counterparts, including by means of facsimile signatures, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Agreed to and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

"Purchaser"

"Seller"

By:

By:

Its:

Vice President - Coal Procurement Its: \_\_\_\_\_





Superseded by  
Dec 19, 2003  
letter  
September 22, 2003

Mr. Joseph B. Jefferson  
Progress Fuels Corporation  
Post Office Box 308  
Ceredo, West Virginia 25507

Dear Mr. Jefferson:

This letter will confirm Progress Fuels Corporation's (PFC) acceptance of your offer dated September 15, 2003, wherein PFC agrees to purchase 600,000 tons of 1.2LB SO<sub>2</sub> compliance coal for delivery on a prorated shipment schedule of 50,000 tons per month from January 1, 2004, through December 31, 2004.

Further, no later than thirty (30) days prior to the expiration of this Letter Agreement, Purchaser and Seller may meet to negotiate a new price and duration of an extended twelve-month term of this agreement.

This coal shall be prepared so as to be free of excess quantities of bone, slate, shale, fire clay, wood, rock, loose clay, and other impurities and are expected to meet the following specifications on an "as-received" basis:

| SPECIFICATION             | GUARANTEE                          | REJECT                  |
|---------------------------|------------------------------------|-------------------------|
| TONNAGE                   | 600,000                            | N/A                     |
| SIZE                      | 2" x 0"<br>50% < 1/4"              | N/A                     |
| SULFUR                    | 1.2 LB SO <sub>2</sub> MAXIMUM     | >1.2 LB SO <sub>2</sub> |
| ASH                       | 12.00% MAXIMUM                     | >13%                    |
| MOISTURE                  | 8.0% MAXIMUM                       | >10%                    |
| ASH SOFTENING TEMPERATURE | 2650 DEGREES FAHRENHEIT<br>MINIMUM | N/A                     |
| VOLATILE                  | 32% MINIMUM                        | <30%                    |
| BTU                       | 12,500/LB MINIMUM                  | <12,200                 |
| GRIND                     | 42 MINIMUM HARDGROVE               | <40                     |

The price on this coal will be [REDACTED] per ton f.o.b. barge, Marmet Pool, Kanawha River and includes [REDACTED] for trucking and transloading costs, and will be based on a guarantee of 12,500 Btu/LB. Premium or penalty, if any, will be computed from the guarantee at the rate of [REDACTED] per 100 Btu on a weighted shipment basis. Invoices, *reflecting premium/penalty calculations*, are payable fifteen (15) days from receipt and should be sent to the attention of Ms. Carrie Leonard, Senior Accountant, at Progress Fuels Corporation, Post Office Box 15208, St. Petersburg, Florida, 33733.

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Mr. Joseph B. Jefferson  
September 22, 2003  
Page 2

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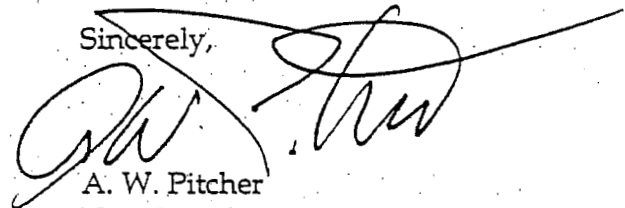
These coals will be sampled by an independent contractor employed by PFC. These samples will govern payment.

This coal will be shipped by barge. Coordination of these shipments will be made with PFC's Mrs. Tina McRoberts at 727/824-6682. Coordination of sampling related matters will be with PFC's Mr. Roy F. Potter at 727/824-6684.

If you are in agreement with this Letter Agreement and the attached Terms and Conditions, which constitutes our entire agreement, please indicate so by signing in the acceptance block on both documents and returning one original for our files.

Thank you for working with us on this order. If you have any questions, please do not hesitate to contact us.

Sincerely,



A. W. Pitcher  
Vice President - Coal Procurement

AWP/ro

Attachment

cc/att: Ms. C. R. Clarke  
Mrs. D. M. Davis  
Mrs. M. J. Kuderick  
Mr. F. M. Lelak  
Ms. C. A. Leonard  
Mrs. T. M. McRoberts  
Mrs. V. M. Muehlendyck  
Mr. R. F. Potter

Agreed to and accepted this the \_\_\_\_\_ day of \_\_\_\_\_, 2003.

*Progress Fuels Corporation*

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

**TERMS AND CONDITIONS  
MADE A PART OF  
LETTER AGREEMENT DATED SEPTEMBER 22, 2003**

These Terms and Conditions shall be a part of, and incorporated in, the above-identified Letter Agreement. Commencement of deliveries by Seller shall constitute acceptance of all the terms stated in the Letter Agreement, as well as all of the following General Terms and Conditions even advance of Seller's signature.

All coal purchased hereunder shall be received subject to Purchaser's right of inspection and rejection. Rejected coal will be held at Seller's risk for a reasonable time and will be returned or disposed of according to Seller's instructions and at Seller's expense. The net proceeds of any such disposition will be credited to Seller's account. Payment in whole or in part by Purchaser for coal purchased hereunder shall not constitute an acceptance of coal, which is rightfully rejected.

Should Seller default in whole or in part as to quantity or quality of coal under this Letter Agreement, Purchaser shall have, in addition to any other rights it may have at law or in equity, the right to acquire suitable substitute or replacement coal. In such event, Seller shall reimburse Purchaser for the amount by which the cost of substitute or replacement coal exceeds the price of coal under the Letter Agreement. The quality analysis performed by an independent certified testing company selected by Purchaser would be final and binding as to all questions of quality.

If shipment is not made of coal to be supplied hereunder by the date specified on the front of the Letter Agreement and deferred shipment has not been approved by Purchaser, Purchaser shall not be required to accept delivery of such shipments or Purchaser may elect to accept such shipments without prejudice to its rights hereunder. If at any time, Seller has reason to believe that deliveries will not be made as scheduled, he shall immediately give written notice setting forth the cause of the anticipated delay. Seller shall be responsible for any demurrage as the result of this delay.

For purposes of these Terms and Conditions, a "shipment" shall mean the quantity actually received in any vessel, barge, or unit train. If the coal delivered hereunder in any single shipment fails to meet any of the specifications set out in the Letter Agreement other than sulfur content, Purchaser shall have each of the following options to be exercised in its sole discretion:

1. Purchaser may notify Seller that Purchaser will accept such coal subject to and in accordance with the provisions set forth in the Letter Agreement; provided, however, that Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder; or
2. Purchaser will have the option to reject any shipment which exceeds any of the minimum/maximum specifications listed in the Letter Agreement, and Purchaser may notify Seller to suspend further deliveries of coal hereunder until Seller demonstrates to Purchaser's sole satisfaction that it can deliver coal that will conform on a per shipment basis to the specifications set forth in Letter Agreement; provided, however, that

Purchaser's exercise of this option shall in no way constitute a waiver of Purchaser's right at any time thereafter to exercise any of the other options set forth herein with respect to subsequent deliveries of coal hereunder. If Seller fails to make the above demonstration to Purchaser's satisfaction within thirty (30) days after notice by Purchaser, Purchaser shall have the right to terminate or cancel this Agreement and, in addition, pursue every other remedy provided by law or equity. Should legal proceedings be instituted by Purchaser to recoup its losses or damage hereunder, it shall, in addition, be entitled to recover from Seller all court costs, reasonable attorney's fees and any expenses incurred by Purchaser, incident to such proceeding.

Should Seller become insolvent, or a voluntary or involuntary petition is filed as to Seller under the United States Bankruptcy Code, or a receivership or similar proceeding be filed as to Seller, the Purchaser may, at its option and in its sole discretion anytime thereafter upon giving written notice, terminate the Letter Agreement in whole or in part. The foregoing remedy of Purchaser is not to be considered exclusive, but shall be cumulative and be in addition to any other remedies of Purchaser as provided herein.

As used herein, the term "force majeure" shall mean any event beyond the control and without fault or negligence of the party affected thereby and which, by the exercise of reasonable diligence or the incurring of reasonable expense, such party is unable to prevent or overcome, regardless of whether such event was foreseeable, including, without limitation, act of God, act of public authorities (including courts and commissions of competent jurisdiction), act of the public enemy, insurrection, riot, labor dispute, labor or material shortage, fire, explosion, flood, breakdown of or damage to plant equipment or facilities (including emergency outages of equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto), interruption to transportation or transportation delay, river freeze-up, embargo, order or act of civil or military authority, legislative, regulatory, permitting, judicial rule or order adopted, amended or newly interpreted subsequent to the date of the Letter Agreement and any other event of a similar or dissimilar nature which wholly or partially prevents the mining, hauling, handling, processing or loading of coal by Seller or the receiving, handling, transporting and/or delivering by Purchaser's carrier thereof or the accepting, handling, utilizing and/or unloading thereof by Purchaser or Purchaser's intended buyer, Progress Energy Florida (PEF).

In the event performance of Seller's obligations hereunder or Purchaser's obligations hereunder is made impossible, impractical or illegal by reason of force majeure (other than obligations to pay or expend money for or in connection with the performance of the transactions contemplated by the Letter Agreement) and such party promptly gives to each other party hereto written notice of the details thereof, then the obligations of the parties hereto shall be totally excused to the extent made necessary by such force majeure and during its continuance; provided, however, that such party giving such notice shall use its best efforts to eliminate such force majeure to the extent economically feasible to do so and with a minimum of delay. Any deficiencies in deliveries of coal hereunder as a result of force majeure shall not be made up except at the sole discretion of the Purchaser. In the event force majeure results in a partial reduction in the total quantity of coal Seller is obligated to deliver hereunder, the quantity of coal Seller shall be obligated to deliver to Purchaser hereunder during the continuance of such force majeure shall be limited to the amount of coal required to be delivered during such period but for this section multiplied by a fraction, the denominator of which is the production capacity of the Coal Property immediately prior to such force majeure and the numerator of which is the production capacity of the Coal Property during the continuance of such force majeure.

In the event that restrictions are imposed during the term of the Letter Agreement by governmental bodies, agencies, entities, officials or courts which preclude or restrict PEF from burning coal of the specifications hereunder, such restriction shall be deemed to be an event of force majeure under the Letter Agreement unless its effect can be avoided in a lawful manner and will not, in PEF's sole judgment, result in unreasonable expense to PEF, the obligations of the parties hereto shall be totally excused during the continuance of such force majeure.

Seller shall not, without Purchaser's prior written consent, which consent will not unreasonably be withheld, (i) make any assignment or transfer of the Letter Agreement, by operation of law or otherwise, including without limitation any assignment, encumbrance or transfer as security for any obligation, or (ii) assign or transfer the right or duty to perform any obligation of Seller hereunder; provided, however, that Seller may assign the right to receive payments for coal sold hereunder directly from Purchaser to a lender as part of any accounts receivable financing or other revolving credit arrangement which Seller may have now or at any time during the term of the Letter Agreement. Seller may assign the Letter Agreement to an affiliate of Seller, or as part of a merger or consolidation, involving Seller, provided, however, that in the case of an assignment to an affiliate, Seller shall remain liable for the performance and for the obligations of the assignee.

The terms and provisions hereof shall be construed and enforced in accordance with the laws of the state of West Virginia.

Each party shall maintain the terms of the Letter Agreement and any information or data relating hereto, including site visits, in confidence and, except as may be required by law, shall not disclose such information or data or any other information concerning the performance or administration of the Letter Agreement to any other party other than a party's officers, directors, members, employees, contractors, agents, attorneys, accountants or financial advisers who have a need to have access thereto or as required by applicable law, regulation or judicial or governmental order. If either party is required to disclose any information required by this Section to be maintained as confidential in a judicial, administrative or governmental proceeding, such party shall give the other party at least ten (10) days prior written notice (unless less time is permitted by the applicable proceeding) before disclosing any such information in any such said proceeding and, in making such disclosure, the party required to disclose the information shall disclose only that portion thereof required to be disclosed and shall take all reasonable efforts to preserve the confidentiality thereof, including obtaining protective orders and supporting the other party in intervention. Nothing contained herein shall obligate either party to disclose to the other party any information that would be prohibited from disclosure under confidentiality agreements with third parties, including, without limitation, licenses; and any such information shall only be disclosed to the other party after appropriate confidentiality agreements have been entered into or appropriate consents obtained. The terms and provisions of this Section shall survive the termination of the Letter Agreement for a period of two (2) years.

The terms and conditions set forth herein constitute a complete and exclusive statement of agreement between the parties hereto, regardless of any terms contained in any order, acknowledgment or any other instrument. No statements or agreements, oral or written, not contained herein shall vary or modify the terms hereof. Neither party shall claim any amendments, modifications, or release from any provisions hereof unless the same is in writing signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement. Waiver by either party hereto of any breach by the other party of the terms and conditions hereof shall not be construed as a waiver of any other breach.

Seller, for itself and its successors and assigns, agrees to indemnify, defend and hold Purchaser and its affiliates and their respective directors, officers, employees and agents harmless from and against all (a) claims, demands, damages, actions and causes of actions, and costs and expenses in connection therewith or related thereto (including without limitation attorney's fees and court costs) arising from property damage, bodily injury or death of third parties, directly caused by Seller's unlawful or negligent performance under the Letter Agreement, and (b) all fines, penalties, costs, losses or expenses incurred by Purchaser by reason of Seller's violation of any applicable federal, state and local laws, ordinances or regulations directly related to producing, supplying, transporting, delivering or using coal under the Letter Agreement. Purchaser shall give Seller prompt written notice of any claim, demand or suit of which Purchaser receives notice arising out of or in connection with the Letter Agreement and covered by this indemnity. Purchaser shall have the right to reasonably participate in any defense provided by Seller, including the selection of local counsel. The indemnification provision shall survive the expiration or earlier termination of the Letter Agreement.

Seller agrees to conform to Purchaser's environmental, health, and safety standards as follows:

1. **Compliance and Indemnification.** Seller shall comply with all applicable EHS laws and shall indemnify Purchaser against any EHS claims and costs arising from Seller's performance under the Letter Agreement.
2. **Audits.** Purchaser may audit Seller's EHS compliance. Within thirty (30) days of Purchaser's request, Seller shall deliver to Purchaser (1) all records regarding (a) Seller's actual or alleged violations of EHS laws and (b) EHS claims asserted against Seller, in each case in the five year period preceding Purchaser's request and (2) any executed consent form(s) necessary for Purchaser to obtain from regulatory agencies and other third parties information regarding Seller's EHS compliance.
3. **Definitions (as used in the Letter Agreement).**
  - a. **Claim** means administrative, regulatory or judicial action, suite, dispute, liability, judgment, penalty, damages, directive, order or claim.
  - b. **EHS** means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.
  - c. **Indemnify** means to indemnify, defend, and reimburse the indemnitee and its successors and assigns on an after-tax basis.
  - d. **Law** means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.
  - e. **Manage or management, with respect to any material,** means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release, or threatened release thereof.

Further (a) Notwithstanding any provision in the Letter Agreement to the contrary, neither party shall be liable hereunder for incidental, special, punitive, consequential or other indirect loss or damage, or for lost profits, business, tax credits or any other special or incidental loss or

damage. The parties further agree that the waivers and disclaimers of liability expressed in this Letter Agreement shall survive termination of the Letter Agreement, and shall apply whether in contract, equity, tort or otherwise, even in the event of the fault, negligence, including sole negligence, strict liability or breach of warranty of any party released or whose liabilities are waived or disclaimed. Except as otherwise provided, neither party makes any warranties or guarantees to the other, either express or implied, with respect to the subject matter of the Letter Agreement, and both parties disclaim and waive any implied warranties or warranties imposed by law, (b) Notwithstanding any provision of the Letter Agreement to the contrary, the parties recognize the Purchaser is a corporation formed under the laws of the State of Florida and the Seller is a company formed under the laws of the State of Florida, and that no past, present or future shareholder, officer, director, member or manager of either party shall have any personal liability for any obligation whatsoever or howsoever arising (including under contract or in tort or equity) under or with respect to the Letter Agreement or the transaction contemplated hereby, or applicable law with respect thereto. Neither Purchaser nor Seller shall (i) assert or seek to assert any claim against, (ii) name in any civil action or proceeding or arbitration, or (iii) seek or obtain any judgment, order or decree against any member, manager, shareholder, officer, employee, agent or representative of Purchaser or Seller, with respect to Purchaser's or Seller's obligations under the Letter Agreement.

If Purchaser and Seller are each required to pay any amount to each other, then such amounts with respect to each other may be aggregated and the Purchaser and Seller may discharge their obligations to pay through netting, in which case the Purchaser or Seller, if any, owing the greater aggregate amount may pay to the other party the difference between the amounts owed. The Purchaser or Seller reserves to itself all rights, setoffs, counterclaims, and other remedies and defenses consistent with this Letter Agreement, to the extent not expressly herein waived or denied, which the Purchaser or Seller has or may be entitled to arising from or out of this Letter Agreement. The obligations to make payment under this Letter Agreement may be offset against each other, setoff or recouped there from. For the purpose of this section only, Purchaser and Seller shall also mean any affiliates, subsidiaries, or other related entities of Purchaser and Seller.

Additionally, Seller represents to and covenants with Purchaser that it has obtained and will maintain or cause to be maintained at its expense:

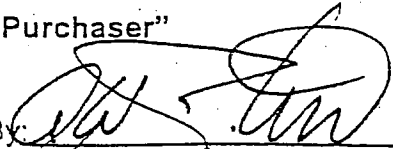
1. At a minimum, Automobile Liability Insurance applying to own, non-owned and hired vehicles with a limit of \$1 Million combined single limit coverage per occurrence. Additionally, Umbrella Liability coverage with a minimum of \$1 Million limit per occurrence is desired.
2. Workers' Compensation, Employees' Liability insurance with a minimum of \$500,000 Accident, \$500,000 Disease and \$500,000 Employee coverage.
3. Employers' Liability Insurance with a minimum of \$1 Million coverage per claim.

The Letter Agreement dated September 22, 2003, and these Terms and Conditions constitute the agreement in total between the parties. Neither party hereto shall claim any amendments, modifications, or release from any of the provisions hereof unless the same is in writing, signed by each of the parties hereto and specifically states the same is an amendment to the Letter Agreement and these Terms and Conditions. Waiver by either party of any part of the Letter Agreement or these Terms and Conditions shall not be construed as a waiver of any other breach.

These Terms and Conditions may be executed in any number of counterparts, including by means of facsimile signatures, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Agreed to and accepted this 22<sup>nd</sup> day of September, 2003.

“Purchaser”

By: 

Its: Vice President Coal Procurement

“Seller”

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

Its: \_\_\_\_\_