

Excerpt of Coyote Creek Mining Company's Lignite Sales Agreement with Coyote Station,  
dated October 10, 2012

Source: [https://www.sec.gov/Archives/edgar/data/789933/  
000078993313000013/ncexh1058201210k.htm](https://www.sec.gov/Archives/edgar/data/789933/000078993313000013/ncexh1058201210k.htm)

---

Section 5. **Development and Operation of the Mine**

5.1. **General**

5.1.1 Seller shall use its "reasonable best efforts" in all phases of its performance under this Agreement. For purposes of this Agreement, "reasonable best efforts" shall mean such efforts as a reasonably prudent Person with requisite skill and experience engaged in surface lignite mining in North Dakota under conditions similar to the conditions at the Mine would undertake to fulfill the relevant obligation in a safe, economic, productive, and workmanlike manner, including possession of marketable title or valid leasehold interests in the Reserves and acting in accordance with Applicable Laws.

5.1.2 The period of time during which the design, development, permitting, construction, start-up, operation and reclamation of the Mine occur shall consist of the Development Period, the Production Period and the Post-Production Period.

- (a) During the Development Period, Seller shall acquire land and reserves, design, engineer, develop, construct, permit and start-up the Mine.
- (b) During the Production Period, Seller shall operate the Mine and perform all land, engineering, geological, operational, administrative and other work required to supply lignite to Buyer under this Agreement.
- (c) During the Post-Production Period, Seller shall perform all work and services required in connection with the final closing of the Mine and completion of final reclamation work.
- (d) WARRANTY AS TO THE SERVICES RENDERED BY SELLER HEREUNDER: EXCEPT THAT SELLER SHALL PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT IN ACCORDANCE WITH THE PERFORMANCE STANDARD SET FORTH IN SECTION 5.1.1, SELLER MAKES NO REPRESENTATIONS OR

WARRANTIES REGARDING ITS PERFORMANCE OF SERVICES UNDER THIS AGREEMENT.

- (e) DISCLAIMER AS TO ALL OTHER WARRANTIES: THE PARTIES AGREE THAT EXCEPT AS PROVIDED IN SECTION 3.3, IN SECTION 5.1.1 AND IN SECTION 19, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE SPECIFICALLY EXCLUDED AND DISCLAIMED.

5.2. Mining Plans

5.2.1 Life-of-Mine Plan

- (a) Seller shall prepare and provide to Buyer in writing a mining plan covering the life-of-mine requirements (the "Life-of-Mine Plan") for the design, development, construction, start-up and operation of the Mine, including the Development Period, the Production Period and the Post-Production Period to furnish from the Reserves the lignite requirements of Buyer under this Agreement. Seller's initial Life-of-Mine Plan shall assume that Buyer's life-of-mine lignite requirements shall be equal to 2,500,000 Tons per Year unless Buyer notifies Seller to use a different assumption. The Life-of-Mine Plan shall be based on the principle of recovering the most economic reserves from within the Reserves over the Term. The Life-of-Mine Plan shall be prepared in accordance with sound engineering and design practices and Applicable Laws and shall include, but not be limited to, production schedules, staffing and equipment requirements, estimated costs per Ton using the cost categories identified in Section 7, a property acquisition plan, schedule and estimated budget, a mine development plan, schedule and budget, method of operation, anticipated lignite quality characteristics, reclamation and permitting schedules, estimated capital budget containing estimates of all capital expenditures, commitments, and loan/lease requirements, operating cost estimates, mine design, mine projection maps, mine progression and reserve studies, and other documentation reasonably requested by Buyer. Seller will permit Buyer's representatives to participate in the development of the Life-of-Mine Plan and any revisions thereto.

- (b) The Life-of-Mine Plan shall be completed and delivered by Seller to Buyer within three hundred sixty-five (365) Days of the Effective Date. Buyer shall review the Life-of-Mine Plan for reasonableness and completeness. Within sixty (60) Days of receipt of the Life-of-Mine Plan, Buyer shall meet with Seller to jointly review the proposed Life-of-Mine Plan. Within forty-five (45) Days of the conclusion of such review, Buyer shall provide notice to Seller of Buyer's approval of, or Buyer's suggested modifications to, the proposed Life-of-Mine Plan. If Buyer suggests modifications to the proposed Life-of-Mine Plan, Buyer shall advise Seller of the reasons for such modifications, and Buyer and Seller shall meet promptly and attempt in good faith to resolve their differences with respect to the proposed Life-of-Mine Plan. If Buyer and Seller are unable to resolve such differences within thirty (30) Days after Buyer proposes such modifications, Seller shall revise and resubmit the proposed Life-of-Mine Plan as requested by Buyer.

#### 5.2.2 Annual Mining Plan

- (a) On or before July 1 of each Year during the Term, including the Development Period, the Production Period and the Post-Production Period, Seller shall provide to Buyer in writing (or in electronic format) a detailed mining plan covering the operation of the Mine for the next Year (the "Annual Mining Plan") that conforms substantially to the Life-of-Mine Plan. If Buyer and Seller agree that current circumstances require that the Annual Mining Plan differ in any material respect from the Life-of-Mine Plan, Seller shall review and revise, if necessary, the Life-of-Mine Plan based on the then-current circumstances including the designation of annual deliveries provided by Buyer in the notice given pursuant to Section 2.6. Seller shall provide documentation of such revised Life-of-Mine Plan consistent with the requirements of Section 5.2.1.
- (b) Such Annual Mining Plan shall include, but not be limited to, the following items for activities during the following Year:
- (i) maps showing planned mine progression, location of infrastructure, and capital project locations;
  - (ii) mining operations schedules showing acres disturbed, overburden removed, lignite recovered by seam, anticipated lignite quality by seam, equipment working schedules, and labor requirements;

- (iii) a reclamation plan showing areas to be regraded, planted or otherwise subject to reclamation activities and a permitting and bonding schedule;
- (iv) an estimated capital budget containing detailed, itemized estimates of all capital expenditures, commitments, and loan/lease requirements, including indicative terms for any proposed acquisition of Capital Assets by Seller;
- (v) an estimate of all operating costs and expenses in such detail as required to estimate the Cost of Production under Section 7.2(a), along with estimated employee headcounts and such other information as Buyer may reasonably request
- (vi) an estimated Monthly cash flow statement containing estimates of the cash requirements for the capital and operating budgets prepared pursuant to this Section 5.2.2;
- (vii) a projection of the next four Years of operations in such detail as directed by Buyer, which shall include assumptions as to lignite stockpile size(s) and location(s), if any; and
- (viii) such other information as directed by Buyer.

### 5.2.3 Approval of Annual Mining Plan

- (a) Within sixty (60) Days after receipt by Buyer of an Annual Mining Plan, and, if applicable, a revised Life-of-Mine Plan, Buyer shall give Seller notice of Buyer's approval or disapproval of such Annual Mining Plan (including specific approval of any acquisition of Capital Assets by Seller) and, if applicable, revised Life-of-Mine Plan.
- (b) If Buyer does not give Seller such notice within sixty (60) Days after Buyer's receipt thereof, Buyer shall be deemed to have approved such mining plan(s).
- (c) If Buyer disapproves an Annual Mining Plan or any portion(s) thereof, Buyer shall advise Seller of the reasons for such disapproval, and Buyer and Seller

shall meet promptly, but no more than ten (10) Business Days after such disapproval was expressed, and attempt in good faith to resolve their differences with respect to the Annual Mining Plan. If Buyer and Seller are unable to resolve such differences within such ten (10) Business Days, Seller shall adopt such changes to the Annual Mining Plan as requested by Buyer, and shall submit a revised Annual Mining Plan within ten (10) Business Days following the failure of Buyer and Seller to resolve such differences.

#### 5.2.4 Mine Development and Operation

- (a) Seller shall consult with and keep Buyer informed of the progress of Seller's activities related to the Mine during the Term in such manner as Buyer may reasonably request.
- (b) Buyer and Seller shall meet quarterly (or at such other times as needed or requested by either Party) to review the progress of Seller's activities related to the Mine during the Term.
- (c) Seller shall not make any capital expenditures unless they are generally reflected in a capital budget approved by Buyer as part of an Annual Mining Plan or unless otherwise specifically approved by Buyer; provided, however, Seller shall have the right during any Year to make capital expenditures required in the event of an Emergency without advance approval by Buyer. If the nature of the Emergency and the time elements involved do not allow sufficient time to obtain Buyer's approval of such capital expenditure before it is incurred, Seller shall subsequently and promptly (but not later than two Business Days after such occurrence) give Buyer notice thereof.
- (d) Seller shall have the right, without the specific written approval of Buyer, to exceed the amount for any specific capital expenditure in any budget approved by Buyer by up to five percent (5%), provided that in no event shall any such excess expenditure exceed One Hundred Thousand Dollars (\$100,000) (the "CapX Cap") (subject to adjustment pursuant to Section 9) or such other amount as mutually agreed to by the Parties in any Year. If Seller desires Buyer's approval to exceed a specific line item, budgeted, capital expenditure by more than five percent (5%) or more than the CapX Cap or such other amount as mutually agreed to by the Parties in any Year, Seller shall make such request by written notice as soon as practicable, and if Buyer neither approves

nor disapproves such request within fifteen (15) Business Days after Seller's delivery thereof, Buyer shall be deemed to have approved such request.

- (e) Except in the event of an Emergency, no material modification of or material deviation from the approved Annual Mining Plan shall be made without the written approval of Buyer, which approval shall not be unreasonably withheld.

### 5.3. Post-Mining Reclamation

5.3.1 Commencing with the issuance of the Mine permit (and thereafter at least as frequently as required by GAAP), Seller shall prepare in accordance with GAAP an estimate of all costs and expenses that will be incurred to finally reclaim and close the Mine in order to obtain the release of the reclamation bond from the North Dakota Public Service Commission (the "Post-Mining Reclamation Costs"), and the Parties shall mutually agree on the appropriate assumptions underlying the accrual of such costs and their inclusion in the Cost of Production under Section 7.2(a).

5.3.2 When requested by Buyer, but no less frequently than five Years after the commencement of the Production Period and every five Years thereafter, Seller shall submit to Buyer for its review and written approval proposed plans and estimated budgets for final reclamation activities during the Post-Production Period. Buyer shall not unreasonably withhold its approval of such plans and budgets as long as Seller utilizes generally accepted reclamation practices in preparing such plans and budgets. After Buyer's written approval of such plans and budgets (or portions thereof), Seller shall seek Buyer's prior written approval of any material changes to or from such final reclamation plans and budgets. Seller shall submit such reports regarding Seller's activities and reclamation costs incurred as Buyer may request from time to time during the Post-Production Period.

5.3.3 Within ten Days of receipt from Buyer, Seller shall deposit all amounts for Post-Mining Reclamation Costs funded by Buyer pursuant to Section 7.2(a), or funded by Seller pursuant to Section 14.4 (third-party sales), in a trust account (the "Reclamation Account") to be managed by a trustee to be proposed by Seller and approved by Buyer, in accordance with the North Dakota version of The Uniform Prudent Investor Act, as may be amended from time to time. Funds held in the Reclamation Account shall only be disbursed by the trustee upon receipt of a joint written disbursement instruction by Buyer and Seller and shall only be expended during the Post-Production Period to complete final Mine closure and reclamation; provided, however, that to the extent Buyer and Seller mutually agree that the

Reclamation Account is over-funded from time-to-time, Buyer and Seller may mutually direct the Reclamation Account trustee to distribute the excess amount to the agent under the Plant Ownership Agreement for distribution to the Utilities. Seller and Buyer shall meet at least one time each Year during the Production Period and the Post-Production Period to discuss such account and any expenditures therefrom, and review related account statements and documents ("Reclamation Account Documentation"). Buyer shall have the right to inspect Reclamation Account Documentation as provided in Section 12.3(a).

5.4. Operating Contracts

Seller may determine that it is appropriate to enter into contracts with third parties to provide services to Seller in connection with performance of Seller's obligations hereunder ("Operating Contracts"). Seller's entry into any such Operating Contracts shall not relieve Seller of any of its obligations hereunder. All Operating Contracts shall provide that the third party that is performing services, and any party that may acquire Seller, may not terminate the Operating Contract in the event of a change-in-control of Seller. Seller shall provide Buyer reasonable advance notice in the event Seller intends to enter into an Operating Contract with total consideration to the third party thereto in excess of \$1,000,000 (the "Operating Contract Threshold") or a term in excess of twenty-four (24) months. Buyer shall have the opportunity to review and comment on such Operating Contracts prior to Seller's execution thereof, and shall provide comments as promptly as reasonably practicable, taking into consideration Seller's obligation to timely perform Seller's obligations hereunder.