

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the “*Agreement*”) is entered into as of the \_\_\_\_ day of \_\_\_\_, 2021 (the “*Effective Date*”), by and between BIG RIVERS ELECTRIC CORPORATION, a Kentucky cooperative corporation having its principal place of business at 201 Third Street, Henderson, Kentucky 42420 (“*Big Rivers*”), and \_\_\_\_\_, a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_ (the “*Receiving Party*”). Big Rivers and the Receiving Party may be referred to herein individually as a “*Party*” or collectively as the “*Parties*.”

WHEREAS, the Parties desire to engage, and may have engaged prior to the date hereof, in discussions regarding \_\_\_\_\_ (the “*Transaction*”);

WHEREAS, in connection with the Transaction, Big Rivers may provide, or may have provided prior to the date hereof, information to the Receiving Party that Big Rivers considers confidential, proprietary, or otherwise commercially sensitive and not publicly available; and

WHEREAS, the Parties have entered into this Agreement to establish the terms and conditions applicable to the exchange of such information,

NOW, THEREFORE, in consideration of the premises, covenants, and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definition of Confidential Information.** The “*Confidential Information*” shall include all information related to the Transaction provided by Big Rivers to the Receiving Party, before or after the date of this Agreement and regardless of form; provided, however, that the term “Confidential Information” shall not include any information which: (i) is or becomes publicly available other than as a result of a disclosure by the Receiving Party in violation of this Agreement; (ii) was already known to the Receiving Party on a non-confidential basis prior to being furnished to the Receiving Party by Big Rivers; (iii) becomes available to the Receiving Party on a non-confidential basis from a source other than Big Rivers, provided that such source is not and was not known by the Receiving Party to be bound by a confidentiality agreement applicable to the information; or (iv) has been independently acquired or developed by the Receiving Party without violating any of its obligations under this Agreement and without use of, or reference to, the Confidential Information.

2. **Representatives.** The terms “Big Rivers” and “Receiving Party” include the respective Party and its directors, officers, employees, members, attorneys, consultants, accountants, financial advisors, auditors, agents, and potential financing sources (“*Representatives*”). The Receiving Party shall ensure that any Representative to whom it discloses Confidential Information: (i) needs to know the Confidential Information in connection with the Transaction; and (ii)

complies with the terms and conditions of this Agreement. Any disclosure by a Representative of the Receiving Party in violation of the provisions of this Agreement shall be a breach of this Agreement by the Receiving Party.

3. **Non-Disclosure of Confidential Information.** Subject to Paragraph 5, and regardless of whether the Transaction is consummated, the Receiving Party shall keep the Confidential Information strictly confidential and shall not disclose any Confidential Information to any person except with Big Rivers' prior written consent or as otherwise expressly permitted herein. The Receiving Party shall safeguard against unauthorized disclosures by employing the same means and degree of care to protect the Confidential Information as it does to protect its own non-public, confidential, or proprietary information. The Receiving Party shall promptly notify Big Rivers of any unauthorized disclosures that it may discover and shall endeavor to prevent further such disclosures.

4. **Use and Ownership of Confidential Information.** The Receiving Party shall use the Confidential Information only for the strictly limited purposes of evaluating and consummating the Transaction. The Receiving Party acknowledges that Big Rivers' Confidential Information (including tangible copies and computerized or electronic versions thereof) is and at all times remains the sole and exclusive property of Big Rivers, and Big Rivers has the exclusive right, title, and interest to the Confidential Information. Nothing in this Agreement shall be construed as granting any rights to the Receiving Party, by license or otherwise, to any of the Confidential Information, except the limited rights of use described in this Agreement.

5. **Required Disclosures.** Notwithstanding any other provision hereof, in the event that the Receiving Party becomes legally compelled (by deposition, interrogatory or information request, request for documents, subpoena, open records request, or otherwise) to disclose any of the Confidential Information, the Receiving Party shall give Big Rivers, to the extent legally permissible, prompt written notice of such requirement prior to any disclosure so that Big Rivers may seek a protective order or other appropriate remedy limiting or restricting the disclosure. If, in the absence of a protective or other such order, the Receiving Party is legally compelled to disclose any Confidential Information, the Receiving Party may provide only that limited portion of the Confidential Information that is legally required to be disclosed, and it shall exercise reasonable efforts to obtain assurance that confidential treatment will be afforded to such Confidential Information.

6. **Provision of Confidential Information.** This Agreement shall not be construed to create any obligation on behalf of Big Rivers to provide any Confidential Information to the Receiving Party.

7. **No Transaction Obligations.** Neither Party is under any obligation to enter into any further agreements with the other Party of any nature whatsoever

as a result of this Agreement, and unless otherwise agreed in a separate agreement, each Party shall be free at all times to hold negotiations or enter into agreements with any other persons or entities whatsoever (including with respect to projects like or similar to any project under discussion by the Parties hereto) in addition to or in lieu of the Transaction. No agency or partnership relationship is created between the Parties by this Agreement.

8. **Return or Destruction of Confidential Information.** Upon written request by Big Rivers, the Receiving Party shall promptly destroy or return to Big Rivers all of the Confidential Information in the Receiving Party's possession and all copies or other reproductions thereof; provided, however, that the Receiving Party may keep a copy of the Confidential Information to the extent required by law and such electronic copies stored on the Receiving Party's electronic records storage system(s) as a result of automated backup systems. Any such retained Confidential Information and any Confidential Information that has been included in analyses, studies, compilations, interpretations, and other documents prepared by or for the Receiving Party shall be held by the Receiving Party subject to the terms of this Agreement. The Receiving Party agrees to represent in writing to Big Rivers that it has complied with the provisions of this paragraph. Notwithstanding any return or destruction of Confidential Information, the Receiving Party shall continue to be bound by this Agreement.

9. **No Representations or Warranties.** Except as otherwise agreed in writing, Big Rivers, by providing Confidential Information to the Receiving Party, shall not be deemed to have made any express or implied representation or warranty in connection with such Confidential Information, including the accuracy or completeness thereof, and Big Rivers shall have no liability to the Receiving Party relating to or arising out of the use of any Confidential Information.

10. **Term and Survival.** This Agreement shall have a term of two (2) years starting on the Effective Date, whether or not the Parties enter into a definitive agreement regarding the Transaction or any other agreement. Expiration of this Agreement shall have no effect upon the rights or obligations relative to the Confidential Information disclosed prior to the date of such expiration.

11. **Notices.** Any notice or other communication required or permitted to be given in connection with this Agreement shall be given in writing either by personal delivery, by a nationally recognized mail or courier service, or by electronic mail, addressed as follows:

**If to Big Rivers:**

Big Rivers Electric Corporation  
Attn: Bob Berry, CEO  
201 Third Street

Henderson, Kentucky 42420  
Phone: 270-993-1561  
Email: [Bob.Berry@bigrivers.com](mailto:Bob.Berry@bigrivers.com)

**If to the Receiving Party:**

\_\_\_\_\_  
Attn: \_\_\_\_\_

\_\_\_\_\_  
Phone: \_\_\_\_\_

\_\_\_\_\_  
Email: \_\_\_\_\_

Either Party may change its address for the purposes hereof by notice given in accordance with this paragraph. Any notice given by personal delivery or by a nationally recognized mail or courier service shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by electronic mail, on the day of transmittal thereof if given during the normal business hours of the recipient and on the day during which such normal business hours next occur if not given during such hours on any day.

12. **Assignment; Successors.** This Agreement is binding upon the Parties and their respective successors and permitted assigns; provided, however, that neither Party may assign this Agreement, whether by operation of law or otherwise, without the prior written consent of the other Party.

13. **Waiver.** No failure or delay by Big Rivers in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder.

14. **Remedies.** The Parties agree that monetary damages are an insufficient remedy in the event of a breach of this Agreement, and that in the event of a breach of this Agreement, or to prevent a breach or contemplated breach, Big Rivers shall be entitled to seek equitable relief, including injunction and specific performance, in addition to all other remedies available at law or equity.

15. **Attorney Fees.** In the event of any legal proceeding by Big Rivers to enforce or protect any rights under this Agreement, Big Rivers shall be entitled to

recover its costs, including reasonable attorney fees, incurred in connection therewith.

16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky without regard to any conflict of laws principles thereof that would result in the application of the laws of any other jurisdiction.

17. **Severability.** In the event that any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall remain in full force and effect.

18. **Entire Agreement; Amendments.** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior and collateral communications and understandings, if any, between the Parties relating to the subject matter of this Agreement. This Agreement may be amended, revised, or modified by, and only by, a written instrument duly executed by both Parties.

19. **Interpretation.** The Parties acknowledge that they have participated equally in the drafting hereof, and no provision of this Agreement shall be construed by any Court or other judicial authority against either Party by reason of such Party's being deemed to have drafted or structured such provision.

20. **Headings.** The headings of the sections of this Agreement are inserted for convenience only and do not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

21. **Counterparts; Execution; Delivery.** This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument. Signatures of representatives of the Parties transmitted by electronic transmission shall be deemed to be their original signatures for all purposes, and the exchange of copies of this Agreement and of the signature page(s) hereto by electronic transmission shall constitute effective execution and delivery of this Agreement.

[SIGNATURE PAGE(S) FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above:

**BIG RIVERS ELECTRIC  
CORPORATION**

\_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_