CITY OF COFFEYVILLE
BOARD OF COMMISSIONERS AGENDA ITEM

MEETING DATE	July 14, 2015	
RESOLUTION OR ORDINANCE NUMBER	R-15-85	
AGENDA TITLE	**Pre-Engineered Metal Building Package– CMLP Generation Facility No. 2**	
REQUESTING DEPARTMENT	Electric	
PRESENTER	Mike Shook, Deputy Director of Electric Utilities	
FISCAL INFORMATION	Cost as recommended:	$ 2,902717.00
	Budget Line Item:	810-5-030-862 PLANT IMPROVEMENTS
	Balance Available	
	New Appropriation Required:	[ ] Yes [X] No
PURPOSE	Execute an agreement with Crossland Construction Company to supply and construct as designed, a pre-engineered metal building for the new generation facility.	
BACKGROUND	The Electric Utility issued a request for bids to supply and construct, as designed by Burns & McDonnell Engineering, a pre-engineered metal building for the Coffeyville Municipal Light & Power's New Generation Project.	
SPECIAL NOTES	N/A	

ANALYSIS	Proposals were received from: • Rick Scott Construction $3,095,500 • Reeder Construction $2,995,000 • Crossland Construction $2,902,717 Proposals were evaluated by Burns & McDonnell Engineers, and City of Coffeyville Electric Utility Staff. The bid summary/analysis is attached for your review.
PUBLIC INFORMATION PROCESS	
BOARD OR COMMISSION RECOMMENDATION	
STAFF RECOMMENDATION	Staff recommends that the Mayor be authorized to enter into an agreement with Crossland Construction Company to supply and construct as designed, a pre-engineered metal building in the amount of $2,902,717 for the Coffeyville Municipal Light & Power's New Generation Project.
REFERENCE DOCUMENTS ATTACHED	Request for Bids Bids Received Bid Summary/Analysis/Recommendation

RESOLUTION NO. R-15-85

A RESOLUTION TO ENTER INTO AN AGREEMENT WITH CROSSLAND CONSTRUCTION COMPANY TO SUPPLY AND CONSTRUCT AS DESIGNED, A PRE-ENGINEERED METAL BUILDING FOR THE CITY OF COFFEYVILLE ELECTRIC UTILITY.

BE IT RESOLVED by the Board of Commissioners of the City of Coffeyville, Kansas that the Mayor be and is hereby authorized to enter into an agreement with Crossland Construction Company to supply and construct as designed, a pre-engineered metal building in the amount of $2,902,717 for the City of Coffeyville Electric Utility.

ADOPTED THIS 14th DAY OF JULY, 2015.

_____
Christopher V. Williams, Mayor

ATTEST:

_____
Cindy Price, City Clerk

APPROVED AS TO FORM AND LEGALITY:

_____
Paul Kritz, City Attorney

BID RESULTS

Bids Received on June 24, 2015

CITY OF COFFEYVILLE

C4310 Pre-Engineered Metal Building

BURNS McDONNELL

No.	Description	RICK SCOTT		REEDER		CROSSLAND	
		Bid Price	Cost / SF	Bid Price	Cost / SF	Bid Price	Cost / SF
1	Division 1/General Conditions	$ 147,000.00	$ 5.75	$ 449,250.00	$ 17.58	$ 506,410.00	$ 19.82
2	Pre-Engineered Metal Building	$ 1,726,000.00	$ 67.54	$ 1,108,150.00	$ 43.36	$ 1,301,571.00	$ 50.93
3	Interior Finished	$ 467,000.00	$ 18.27	$ 748,750.00	$ 29.30	$ 546,398.00	$ 21.38
4	HVAC System	$ 492,000.00	$ 19.25	$ 389,350.00	$ 15.24	$ 440,622.00	$ 17.24
5	Plumbing	$ 87,500.00	$ 3.42	$ 59,900.00	$ 2.34	$ 36,775.00	$ 1.44
6	Masonry Walls	$ 152,000.00	$ 5.95	$ 119,800.00	$ 4.69	$ 50,000.00	$ 1.96
7	Performance and Statutory Bonds	$ 24,000.00	$ 0.94	$ 119,800.00	$ 4.69	$ 20,941.00	$ 0.82
	BIDDER'S TOTAL PRICE	$ 3,095,500.00	$ 121.13	$ 2,995,000.00	$ 117.19	$ 2,902,717.00	$ 113.58

Recommendation of Award: Based on the evaluation criteria provided in the Invitation to Bid it appears that Crossland Construction Company, Inc. is the lowest responsible bidder with the exception of the safety criteria outlined in the bid documents. Crossland does not meet the safety thresholds outlined in the bid documents and evaluation of their OSHA records uncovered a fatality which occurred in 2014 and 2 OSHA citations for struck-by/caught-in-between incedents. For these reason's Crossland could be considered high risk from a safety perspective. However, Crossland has been very responsive to questions and requests for additional information during the bid evaluation process and has committed to provide a full time safety technician throughout the duration of the project to mitigate safety concerns. It is recommended that Crossland Construction Company, Inc. be awarded the contract for C4310 Pre-Engineered Metal Building construction.

CITY OF COFFEYVILLE, KANSAS

REQUEST FOR PROPOSALS
FOR

RECIPROCATING ENGINE POWER PLANT:
C4310 - PRE-ENGINEERED METAL BUILDING

City of Coffeyville
102 W. 7th Street
P.O. Box 1629
Coffeyville, KS 67337
Phone: 620-252-6128

TITLE-SIGNATURE PAGE
REQUEST FOR PROPOSALS

The City of Coffeyville, Kansas, invites you to submit a proposal to furnish and erect a pre-engineered metal building with interior finishes and HVAC systems.

Four (4) SIGNED PROPOSALS

Plus one (1) unbound copy for a total of five (5) copies

MUST BE RECEIVED BY: 2:00 P.M. (CST) on June 17, 2015

PLEASE MARK YOUR SEALED PROPOSAL "Reciprocating Engine Power Plant: C4310 – PRE-ENGINEERED METAL BUILDING" AND SEND IT TO:

City of Coffeyville

Attention: Cindy Price, City Clerk
11 E.2nd St.
P.O. Box 1629
Coffeyville, KS 67337

The City of Coffeyville reserves the right to reject any and all proposals, to waive technical defects, and to select the proposal(s) deemed most advantageous to the City of Coffeyville.

The undersigned certifies that he/she has the authority to bind this company in an agreement to supply the service or commodity in accordance with all terms and conditions specified herein. Please type or print the information below. **Respondent is REQUIRED to complete, sign and return this form with their submittal.**

Company Name		Authorized Person (Print)	
Address		Signature	
City/State/Zip		Title	
Telephone #	Fax #	Date	Tax ID #
E-mail		Entity Type	

City of Coffeyville, Kansas

Request for Proposals
For
Coffeyville Energy Center: C4310 PRE-ENGINEERED METAL BUILDING

I. General Information

City of Coffeyville, Kansas

Located on Highway 169 in Southeast Kansas, Coffeyville originally served as a gateway to the Indian Territory now known as Oklahoma. Because of its location on the Verdigris River and proximity to Native American tribes, the City flourished and quickly became the largest city in the region. As a center for commerce, the city's commercial and residential areas blossomed. Glass manufacturing, brick making, paint manufacturing, and petroleum refining prospered, and large neighborhoods developed to provide workforce housing.

During the past few decades, the community has experienced a slow decline in population, much like the rest of the region. However, anchored by large employers such as Amazon.com, Coffeyville Resources, John Deere, and Acme Foundry, the community is entering a period of economic resurgence. With a 2010 census population of 10,295, the community remains the largest in Montgomery County, and one of the largest in the region. A full-service community, Coffeyville provides residents, businesses, and visitors with police, fire, electric generation and distribution, water, sewer, stormwater, parks and public facilities, general aviation, streets, wireless internet, and community and economic development.

The City of Coffeyville Electric Utility began service in 1901. The Utility owns and operates electric generation with a capacity of 56 MW. This generation includes two (2) Steam Generation Units; 18 MW - 1956 Elliott Steam Turbine/Generator, 38 MW - 1971 General Electric Steam Turbine/Generator, and 2- 2 MW Baldor Diesel Power Generators.

Additional information regarding the City's services is available on the City's website at www.coffeyville.com.

II. Project Overview

The City of Coffeyville is building a 56 MW natural gas fired reciprocating engine power plant. As a part of this project, the successful respondent will contract with OWNER to furnish and erect a Pre-Engineered Metal Building (PEMB), including interior finishes and HVAC systems.

III. Organization of the Proposal

Proposals shall be based on the attached Contract Documents and should include responses to each of the following items. Please construct your proposal with responses in the same order as listed below to facilitate review and comparison by the review committee.

1. Outline your firm's experience in providing similar services as outlined in Section II and briefly summarize three representative projects that illustrate your experience. At least one project shall be a PEMB of at least 25,000 sf. At least one project shall include supply and install, by direct or management of subcontract, of HVAC including a BAS.
2. Submit with proposal, a preliminary schedule confirming the Guaranteed dates in Exhibit 1 of the attached Contract Agreement for Construction Services.
3. Submit with proposal, copies of your OSHA 300-300A logs for the past 3 years.
4. Submit with proposal, estimated building steel column reactions.

5. Submit with proposal, a letter from a surety that is licensed and duly qualified to operate in the state of Kansas, stating that the bidder can provide bonds in the manner required by Article 13 of the attached Contract Agreement for Construction Services.
6. Outline your firm's total cost to provide all Work required by the Contract Documents in the following format:

No.	Description	Cost
1	Division 1/General Conditions	
2	Pre-Engineered Metal Building (F&E)	
3	Interior Finishes (F&E)	
4	HVAC System (F&E)	
5	Plumbing (F&E)	
6	Masonry Walls (F&E)	
7	Performance and Statutory Bonds	

7. Submit with proposal, exceptions to the Contract Documents. If no commercial or technical exceptions are being taken, state so in the proposal.
8. Each bidder shall be required to deposit with such bidder's proposal a good and sufficient surety bond issued by a company authorized to do business in this state, a certified check or a cashier's check in an amount of not less than 5% of such bid proposal, in the discretion of the board, payable to the City of Coffeyville. If the bidder to whom the contract is awarded shall fail to accept and execute the contract and file a bond(s), the bidder's check shall be forfeited and paid to the City of Coffeyville and the board may award the contract to the next lowest responsible bidder

IV. Evaluation of Proposals

An evaluation committee comprised of Electric Utility staff and consultants will be used to evaluate the proposals. The committee will evaluate the proposals based on the following criteria:

1. Schedule (10%): Respondent's ability to meet Guaranteed Dates outlined in Exhibit 1 of the attached contract.
2. Experience (20%): Respondent's credentials and experience in providing similar services.
3. Safety (30%): Respondent's average safety record over the past 3 years meets the following criteria:
    a. TRIR <= 2
    b. DART <= 1
    c. EMR <= 1
    d. No fatalities in the past 3 years
4. Cost (40%): Total cost of services being provided.

The City of Coffeyville ("City") reserves the right to reject any or all bids and to waive any informalities or irregularities therein.

V. Interviews

1. The City may, at its option, request oral presentation or a scope review prior to selection.

VI. Fees

1. Any and all fees shall be included in Respondent's proposal.

VII. Terms and Conditions

1. The City of Coffeyville reserves the right to reject any or all proposals, with no penalty to the City, or to award the contract to the next most qualified contractor if the successful respondent does not execute a contract and all required bonds within thirty (30) days after the award of the proposal.

2. Bidder must submit five (5) copies of each of its proposals to the City of Coffeyville not later than 2:00 P.M., June 17, 2015. The address and telephone number for proposal submission is:

   Attn: Cindy Price, City Clerk
   11 E. 2nd St.
   PO Box 1629
   Coffeyville, KS 67337
   (620) 252-6108

   Proposals should be in a sealed package, clearly marked "Reciprocating Engine Power Plant: C4310 – Pre-Engineered Metal Building" on the exterior of the package. Proposals received after the specified date and time, or unsealed or unmarked proposals, **WILL NOT BE CONSIDERED.**

   All proposals must be signed by a duly authorized individual. All proposals shall become the property of the City of Coffeyville and the City may, at its option, request oral presentation prior to selection; notification in writing will be given if such meetings are required.

3. Chris Guggino shall be the primary source of contact for your contractor during the Request for Proposals and selection process.

   Chris Guggino
   Assistant Project Manager
   Burns & McDonnell
   Email: cguggino@burnsmcd.com
   Phone: 303-474-2299

4. The City of Coffeyville reserves the right to request clarification of the information submitted and to request additional information of one or more respondents.

5. Any proposal may be withdrawn up until the date and time set above for the opening of the proposals. Any proposals not withdrawn shall constitute an irrevocable offer, for a period of 90 days, to provide the services set forth in the proposal.

6. If, through any cause, Successful Bidder shall fail to fulfill in a timely and proper manner the obligations agreed to, the City of Coffeyville shall have the right to terminate its contract by specifying the date of termination in a written notice to the firm at least thirty (30) working days before the termination date. In this event, the contractor shall be entitled to just and equitable compensation for any satisfactory work completed.

7. Any agreement or contract resulting from the acceptance of a proposal shall be on forms either supplied by or approved by the City of Coffeyville, and shall contain, as a minimum, applicable provisions of the Request for Proposals. The City reserves the right to reject any agreement that does not conform to the Request for Proposals and any City requirements for agreements and contracts.
8. The selected contractor shall not subcontract or assign any interest in the contract and shall not transfer any interest in the same without prior written consent of the City of Coffeyville.
9. All data, documents and other information provided to the City of Coffeyville by the contractor as a result of this Request for Proposals shall become the property of the City and subject to its disposal.
10. All costs associated with the preparation of a proposal in response to the Request for Proposals shall be the responsibility of the contractor submitting the proposal.
11. Should the contractor merge or be purchased by another individual or firm, contract continuation would be at the City of Coffeyville's option.
12. The City of Coffeyville, being an equal opportunity employer, will not discriminate against any respondent because of race, color, religion, sex or national origin; any person or group which enters into a contract with the City of Coffeyville must agree to comply with any and all applicable federal and state laws regarding the prohibition of discrimination. All respondents, by placing a proposal, shall accept the affirmative duty to ascertain and comply with such laws.
13. The following documents shall be a part of this Request for Proposal
    - Attachment A – Contract Agreement for Construction Services
    - Attachment B – Specifications and Contract Drawings
    - Attachment C – Site Specific Safety & Health Plan
    - Attachment D – Engineering, Procurement and Construction Management Quality Plan

VIII. Schedule of Events

The City of Coffeyville has developed the following schedule of events for selection:

RFP Schedule	Timing
Send out Request for Proposals	May 14, 2015
Pre-Bid Meeting	May 21, 2015 2:00-5:00 p.m. CST
Receive proposals from contractors	June 17, 2015 (2:00 p.m. CST)
Select contractor	On or before July 8, 2015
Recommendation to City Commission	July 14, 2015 or July 28, 2015

All questions regarding this request for Proposal are to be directed to:

Chris Guggino Assistant Project Manager	(303) 474-2299 Phone Number	cguggino@burnsmcd.com E-Mail Address

The cutoff date for questions is 3 working days prior to the due date of proposals.

Please contact Chris Guggino for and invitation to the Pre-Bid Meeting.

DOCUMENT 00 43 13 – BID BOND

KNOW ALL MEN BY THESE PRESENTS: that we

[_____]
[_____]
[_____]

as Principal, hereinafter called the Principal, and

[_____]
[_____]
[_____]

a corporation duly organized under the laws of the State of [_____] as Surety, hereinafter called Surety, are held and firmly bound unto

[_Coffeyville Municipal Light & Power_____]
[_____]
[_____]

as Obligee, hereinafter called the Owner, in the penal sum of (5% of bid price)
[_____ _____] dollars
[$_____], for the payment of which sum, well and truly to be made, Principal and said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
WHEREAS, the Principal has submitted a Bid for
[_____]
[_____
_____
_____]

NOW, THEREFORE, if the Owner shall accept the Bid of Principal and the Principal shall enter into a Contract with the Owner in accordance with the terms of such Bid, and give such Bond or Bonds as may be specified in the Bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of Principal to enter such Contract and give such Bond or Bonds, if the Principal shall pay to the Owner the difference, not to exceed the penal sum hereof, between the amount specified in said Bid and such larger amount for which the Owner may in good faith contract with another party to perform the Work covered by said Bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this [_____] day of [_____] 20[___].

PRINCIPAL (CORPORATE SEAL)

_____

By _____

_____

SURETY

_____

By _____

_____

ATTORNEY-IN-FACT (CORPORATE SEAL)

_____

_____

(This Bond shall be accompanied with
Attorney-in-Fact's authority from Surety)

END OF SECTION 00 43 13

City of Coffeyville

C4310 Pre Engineered Metal Building

ATTACHMENT A

CONTRACT AGREEMENT FOR CONSTRUCTION SERVICES

CONTRACT AGREEMENT FOR
CONSTRUCTION SERVICES

THIS CONTRACT AGREEMENT ("Agreement") is made this XXth day of April, 2013, by and between the City of Coffeyville, KS, hereinafter referred to as "Owner", and {CONTRACTOR}, hereinafter referred to as "Contractor", to perform part of the work on the following Project.

PROJECT:

Pre-Engineered Metal Building at
Generation Facility Number 2
2601 N 5th St,
Liberty, Montgomery County, Kansas 67351

OWNER:

City of Coffeyville, KS
P.O. Box 1629
Coffeyville, KS 67337

CONTRACTOR:

XXX
XXX
XXX

For valuable consideration as set forth herein, Owner and Contractor agree as set forth herein.

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Exhibit 1 – Guaranteed Dates
Exhibit 2 – Contractor Verification Form
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Exhibit 4 – Conditional Waiver & Release Upon Final Payment
Exhibit 5 – Performance Bond
Exhibit 6 – Statutory Bond

ARTICLE 0 DEFINITIONS

"Alternate" means an amount proposed by Bidder as stated on the *Summary Bid Form* for certain Work activities that may be added to or deducted from the Bid amount if Owner decides to accept a corresponding change in the Work.

"Bid" means the formal offer of the Bidder submitted on the prescribed bid forms together with the required Bid security and all information submitted with the Bid that pertains to performance of the Work.

"Bidder(s)" means any person(s), firm(s), or corporation(s) submitting a Bid for the Work, or their duly authorized representatives.

"Bidder's Total Price" means the total price in the Bid for the Work without Alternates.

"Change Order(s)" means any change(s) made to the Contract in accordance with Article 11 CHANGES.

"Closeout" means the contractual requirements that apply after Substantial Completion of the Work and before final payment, as described in Specification SECTION 017800

"Contract" or "Agreement" means the contract and agreement made and entered on the Effective Date by and between the Owner and Contractor, including all appendices, attachments, exhibits, Change Orders and all amendments and modifications agreed to and signed by both Owner and Contractor.

"Contract Documents" means those documents listed in Article 1.3

"Contract Drawings" or "Plans" means those drawings and other data designated as Contract Drawings prepared by Engineer for this Contract which show the character and scope of the Work to be performed and are referred to in the Contract Documents.

"Contract Price" means the total price for the Work agreed between the Parties, as modified by Change Orders.

"Contractor" means the Successful Bidder that has entered into the Contract with Owner.

"Day(s)" means (a) calendar day(s) of 24 hours measured from midnight to the next midnight.

"Deliverables" means the Submittals and other documents delivered to the Owner in performance of Work hereunder including, without limitation, design plans, models, drawings, prints, samples, transparencies, specifications, reports, manuscripts, working notes, documentation, manuals, photographs, negatives, tapes, discs, databases, software, and other information, data, and items embodied in any tangible form.

"Engineer" means Burns & McDonnell Engineering Company, Inc., a Missouri Corporation, or its duly authorized representatives.

"Resident Project Representative" or " CM Agent" means Burns & McDonnell Engineering Company, Inc., a Missouri Corporation, or its duly authorized representatives. The authorized representative of Owner who is assigned to the construction Site or any part thereof.

"Effective Date" means the date that the Parties entered into the Contract.

"Equipment" means a Product supplied by Contractor, with operational or nonoperational parts, whether motorized or manually operated, that may require service connections, such as wiring or piping.

"Guaranteed Dates" means the 'No Later Than' dates as guaranteed by Contractor in Exhibit 1.

"Goods" means Submittals, supplies, Materials, Equipment, consumables, reports, documents, drawings, specifications and all other items that Contractor is required to furnish to complete this Contract.

"Liquidated Damages" means sums due from Contractor in lieu of actual damages in accordance with Article 4 LIQUIDATED DAMAGES.

"Materials" means Products that must be substantially cut, shaped, worked, mixed, finished, refined or otherwise fabricated, processed, or installed to form parts of the Work.

"Owner" means the City of Coffeyville/Coffeyville Municipal Light & Power, Coffeville, Kansas.

"Party" or "Parties" means the Owner or Contractor, or both together, as the context or the usage of such term(s) may require.

"Product(s)" means item(s) purchased by Contractor for incorporation in the Work, regardless of whether they were specifically purchased for the Project or taken from the previously purchased stock, and includes Material, Equipment, system, and other terms of similar intent.

"Project" means the total construction of which the Work to be provided under this Contract is a part.

"Project Site" or "Site" means the Project location as indicated in Specifications SECTION 011100, 1.02, B.

"Point of Delivery" means the Project Site.

"Repair Work" means the materials, labor, equipment and supervision required to refinish, redesign, repurchase, repair or replace non-conforming Goods or Work including, without limitation, the disassembling, removing, replacing and re-inspecting of any equipment or

obstruction preventing such Work and re-performance, repair, replacement or testing such other part of the Work, the Site or work performed by others as shall be necessary to cause the applicable portion of the Work to conform to the Contract.

"Specifications" means those portions of the contract documents in Attachment B, consisting of written technical descriptions of the Work, and covering the Goods, workmanship, and certain administrative details applicable thereto.

"Submittals" means all shop drawings, product data, and samples which are prepared by Contractor, a Subcontractor, or manufacturer, and submitted by Contractor to Owner as a basis for approval of the use of Equipment and materials proposed for incorporation in the Work or needed to describe proper installation, operation and maintenance, or technical properties.

"Submittal Schedule" means the table in the Specifications SECTION 013301 Appendix A.

"Substantial Completion" means the time at which the Work (or specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be used for the purposes for which it was intended. Completion of procedures identified in 1.02 A and 1.02 B of Specifications SECTION 017800 – CONTRACT CLOSE OUT shall be a prerequisite for Substantial Completion..

"Subcontractor" means an individual, firm, or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work, on or off the Site.

"Successful Bidder" means the bidder selected by the Owner for award of the Contract.

"Work" means any and all labor, supervision, services, Goods, consumables, valuations, inspections, engineering, delivery, testing, and all other activities performed by Contractor (or the subcontractors of Contractor at any tier) in connection with the execution and timely completion of Contractor's obligations under this Contract, including incidental Work such as start-up, inspections, programming, installation, erection or assembly of the Goods.

ARTICLE 1 SCOPE OF WORK

1.1 CONTRACTOR'S WORK. Contractor shall perform all work (hereinafter called the "Work") described in the Bid and Attachment B Specifications & Contract Drawings under the general direction of Owner and in accordance with this Agreement and Contract Documents.

1.2 CONTRACT AMOUNT. Owner agrees to pay to Contractor for the satisfactory performance of the Work the sum of *(in words)* U.S. Dollars ( ) (not including sales tax), in accordance with Article 3, subject to authorized additions or deductions per Article 5.

1.3 CONTRACT DOCUMENTS.

1.3.1 Contractor acknowledges that it is familiar with the Contract; Contract Drawings; Specifications; and other documents constituting, or by reference made a part of, this Agreement (hereinafter called the "Contract Documents"). The Contract Documents, which are binding on Contractor under this Agreement, except for modifications issued after execution of this agreement are as follows:

a) Performance Bond

b) Statutory Bond

c) Contract Agreement for Construction Services

d) Attachment B –Specifications & Contract Drawings

e) Attachment C – Site Specific Safety and Health Plan

f) Attachment D – Engineering, Procurement, Construciton Management Quality Plan

1.3.2 Conditions of Contractor's proposal are not Contract Documents unless specifically incorporated in this Agreement.

1.4 CONFLICTS. In the event of a conflict between this Agreement and the Contract Documents, this Agreement shall control except as otherwise stated herein. The Contract Drawings and Specifications are intended to complement one another, what is called for by one is as binding as if called for by all. Conflicts in the Contract Documents brought to the attention of Owner after this Agreement becomes effective shall not be considered as a basis for price adjustments. In the case of conflicting or incomplete technical information, it is the responsibility of Contractor to bring such conflicts or deficiencies to Owner's attention, in writing, prior to the award of the Contract.

1.4.1 Before starting construction and undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, or discrepancy in the Contract Documents, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

1.5 INTENT. This Agreement and the Contract Documents comprise the entire agreement between Owner and Contractor concerning the Work.

1.5.1 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with this Agreement. The Work includes labor, materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result and Contractor shall furnish and perform such Work whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment such words or phrases shall be interpreted in accordance with that meaning. Captions and titles in this Agreement are for convenience only, and are not to be used as an interpretation of any provisions.

1.5.2 Specifications and detailed drawings which may be prepared or approved by Owner after the signing of this Agreement are a part of this Agreement if the Work shown or indicated could have been fairly inferred from the original Contract Documents, and that Work shall be performed for the Contract Amount.

1.5.3 Contractor acknowledges that the Contract Documents are sufficient for their intended purpose.

1.6 REFERENCE. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code, or Laws or Regulations in effect on the earlier of the date of the start of the Work or date of the execution of this Agreement, except as may be otherwise specifically stated in the Contract Documents.

1.6.1 Except as otherwise specifically stated in this Agreement or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 5.1, the provisions of this Agreement shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of this Agreement and: (1) the provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in this Agreement); or (2) the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of this Agreement would result in violation of such Law or Regulation).

ARTICLE 2 SCHEDULE OF WORK

2.1 TIME IS OF THE ESSENCE. Contractor acknowledges that the time for performance of the Work set forth in the Schedule of Work is of the essence of this Agreement, and Contractor agrees to see to the performance of the Work, including the Work performed by Contractor's sub-contractors so that the entire Project may be completed in accordance with the Contract Documents, the Schedule of Work and Exhibit 1 Guaranteed Dates.

2.2 NOTICE TO PROCEED. Contractor is obligated to maintain work force, equipment, and material to keep pace with other trades and the pace of the overall Project as required by Owner and Schedule of Work. Contractor shall commence its Work immediately upon receipt of Notice to Proceed from Owner and shall complete the Work by the time required in the Schedule of Work. If such Work is interrupted for any reason, Contractor shall resume such Work within two (2) working days from Owner's notice to do so.

2.3 SCHEDULE OF WORK. Contractor shall advise Owner in writing of the status of the Work as frequently as requested by Owner, but not less than once each month. Contractor confirms and acknowledges that the time agreed in the Schedule of Work is a reasonable period for performing the Work, and Contractor shall be bound by the Schedule of Work and all changes thereto.

2.3.1 Contractor shall submit for Owner approval, within seven (7) calendar days of contract award, a preliminary schedule defining Contractor's planned operations for the first sixty (60) calendar days.

2.3.2 Contractor shall submit for Owner approval, within thirty (30) days of contract award, a CPM project schedule showing the sequence and the due date of data Submittals, Owner approvals, procurement, fabrication, payment milestones, contractual milestones, and all construction activities to coincide with the Schedule of Work. The project schedule shall include an appropriate level of detail. Reasonable durations are those that allow the progress of activities to be accurately determined between update periods.

2.3.3 Contractor shall update the submitted Schedule on a weekly basis at the Construction Coordination Meetings or as otherwise directed by Owner. The complete updated schedule will be issued to Owner, in the approved electronic format, by 8:00 am the business day prior to the weekly Construction Coordination Meeting. This update will include a "Three-Week Lookahead" bar-chart format listing those activities that are in progress or will begin within three (3) weeks of the current status date.

2.3.4 Contractor shall submit an update of Contractor's complete schedule with the monthly Application for Payment. The status date of the schedule and activity progress therein will coincide with the progress payments requested in the Application for Payment. Receipt of the Schedule by Owner shall be a condition precedent to processing and paying Applications for Payment.

2.3.5 All printed updates of the schedule will be in the form of a bar-chart containing the following information: Activity ID, Activity Description, Original Duration, Remaining Duration, Percent Complete, Planned/Actual Start Date, Planned/Actual Finish Date, Late Start Date, Late Finish Date, and Total Float. The original approved schedule shall be referenced as the "Baseline" schedule. All printed update submittals of the schedule shall reflect the Baseline schedule planned start and finish dates for like activities as target bars. Open-ended activities and artificial constraint dates shall be minimized. Mandatory constraint dates and hammock activities may only be used with Owner approval.

2.3.6 Owner intends to use Primavera software for the integrated project schedule. Other scheduling software or manual methods used by Contractor to produce required information shall require approval by Owner. All schedules prepared with Primavera software shall be configured to calculate data as follows:

(a) Contiguous scheduling
(b) Total float calculations based upon finish dates
(c) Start-to-start lags calculated from actual start dates

(d) Percent complete and remaining duration not linked

2.4 PRIORITY OF WORK. Owner will have the right to decide the time, order, and priority in which the various portions of the Work shall be performed by Contractor and Others. Contractor agrees to comply with any changes by Owner in the Schedule of Work. Contractor shall give the Work the highest priority. No other activities of Contractor shall take precedence over the Work.

2.5 LIQUIDATED DAMAGES. If Contractor fails to deliver the Submittals noted as "subject to LDs" in the Submittal Schedule within the time therein specified, or fails to meet the Guaranteed Dates in Exhibit 1, the parties agree that the Owner would be damaged. As it would be almost impossible to ascertain the actual damages precisely, Contractor agrees to pay Liquidated Damages in the amounts listed in Exhibit 1. Any sums payable under this Article are in the nature of Liquidated Damages and not a penalty. Liquidated damages may be deducted first from the remaining Contract balance, but the Contractor (and its surety, if any) remains responsible for all such damages. The assessment of any liquidated damages against Contractor under this paragraph shall not limit or restrict Owner's rights and remedies against Contractor to recover damages suffered by Owner as a result of any breach or delay caused by Contractor.

2.6 INCLEMENT WEATHER. Allowances shall be made by Contractor to include seasonal weather impacts in all activity durations.

ARTICLE 3 PAYMENT

3.1 GENERAL PROVISIONS.

3.1.1 CONTRACT SUBMITTALS. Contractor shall submit to Owner the following documents with the signed copy of this Agreement:

(a) A milestone-based Schedule of Values, which breaks down the Contract Amount with separate values for material, labor, and contracted work by trade;

(b) A cash flow projection of Contractor's periodic pay requests;

(c) A complete list of all subcontractors and suppliers to be used by Contractor;

(d) 24-hour/day, 7-day/week Contact List showing names and home and mobile telephone numbers of Contractor's Project Manager, Field Superintendent, and a senior officer or owner of Contractor;

(e) Certificates of Insurance in compliance with Article 13;

(f) Performance and Statutory Bonds;

(g) Staff and craft labor rates, time & material rates, unit price rates, and equipment rates;

3.1.2 PAYMENT USE VERIFICATION. Owner shall have the right at all times to contact Contractor's sub-contractors and suppliers to verify that such persons are being paid currently by Contractor for labor, materials, or equipment on this Project. When requested by Owner, the Contractor shall furnish copies of subcontracts in effect, with confidential information removed.

3.1.3 LIEN WAIVERS. Lien waivers, properly executed by Contractor and its subcontractors and suppliers, shall be furnished with each payment. Progress payment lien waivers shall be in the form of the lien waiver set forth as Exhibit 3. Final payment lien waivers shall be in the form as set forth as Exhibit 4.

3.1.4 CONTRACTOR PAYMENT FAILURE. If Owner has reason to believe that obligations incurred by Contractor are not being paid, Owner shall give written notice of such claim or lien to Contractor and may take any steps Owner deems necessary to see that progress payments are utilized to pay such obligations. If within five (5) days after mailing or delivery of said notice, Contractor does not:

(a) supply evidence to the satisfaction of Owner that the monies owing to the claimant have been paid; or

(b) post a bond indemnifying Owner, Owner's surety if any, and the premises from such claim or lien;

then Owner shall have the right but not the obligation to:

i. retain out of any payments then or thereafter due Contractor a reasonable amount to protect Owner from any and all loss, damage, or expense, including attorney's fees, arising out of or relating to any such claim or lien until the claim or lien has been satisfied by Contractor;
ii. contact any person who furnished the labor, services, material, equipment, fixtures, apparatus or machinery, or the person otherwise entitled to payment to ascertain the status of any payment due and owing by the Contractor;
iii. require Contractor to supply adequate assurance and protection, that Contractor will pay the person who furnished the labor, services, material, equipment, fixtures, apparatus or machinery, or the person otherwise entitled to payment to ascertain the status of any payment due and owing by the Contractor; or
iv. after notice to Contractor, contact Contractor's accountant or financial institution to determine if Contractor has adequate capital to make payment to the person who furnished the labor, services, material, equipment, fixtures, apparatus or machinery, or the person otherwise entitled to payment; or

v. Further, Owner shall have the right to pay such claimant direct out of funds then or thereafter due Contractor, or to issue joint checks to Contractor and claimant at Owner's sole option.

3.1.5 RIGHT TO WITHHOLD PAYMENT. Owner may in good faith withhold any payment to Contractor to the extent necessary to protect Owner from loss on account of (a) defective Work not remedied; (b) claims filed or evidence reasonably indicating the probable filing of claims; (c) the failure of Contractor to make payments either to its subcontractors, or for materials, equipment, or labor, or to provide evidence that such payments have been made; (d) damage to another party; (e) any cost for which Contractor is responsible under this Agreement; or (f) a breach by Contractor of any term, condition or provision of this Agreement. When the grounds for withholding payments are removed, payment of such withheld amounts shall be made. No interest shall be payable by Owner on sums withheld in good faith by Owner, pursuant to this Section.

3.1.6 RIGHT TO OFFSET. If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Amount and any amounts otherwise held by Owner on Contractor's account, including amounts on other contracts, and may, in Owner's sole discretion, elect either to: (1) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (2) issue a written notice to Contractor reducing the Contract Amount by an amount equal to that which Owner is entitled.

3.1.7 PAYMENT NOT ACCEPTANCE. Payment to Contractor does not constitute or imply acceptance by Owner of any portion of the Work and shall not constitute a waiver of any claims against Contractor.

3.1.8 PAYMENTS HELD IN TRUST. Contractor hereby acknowledges that any payments made to Contractor under this Agreement shall be held in trust as trustee for the person who furnished the labor, services, material, equipment, fixtures, apparatus or machinery, or the person otherwise entitled to payment, to the extent that such payments are comprised of amounts earned by or due on account to any person who furnishes labor, services, material, equipment, fixtures, apparatus, or machinery for the improvements, or such person otherwise entitled to payments relating to the Work.

3.2 PROGRESS PAYMENTS.

3.2.1 SUBMITTALS. No payment shall be due, nor made, to Contractor unless the Schedule of Values; cash flow projection; list of subcontractors and suppliers; Contact List; Certificates of Insurance; Payment and Statutory Bonds; Payment Schedule; labor rates, unit price rates, and equipment rates; current approved Contract schedule; and lien waivers have been received and approved by Owner.

Prior to submitting the first invoice for Work performed under this Agreement, Contractor shall submit a detailed construction schedule for review and approval of Owner. Owner's written approval of a detailed construction schedule prepared by Contractor shall precede any payment under this Agreement.

3.2.2 APPLICATION. Applications for monthly progress payments shall be submitted in writing using the AIA Application and Certificate for Payment or in a form acceptable to Owner on or before the first day of each month. Each Application for Payment shall be accompanied by

(a) a duly executed and acknowledged sworn statement (Exhibit 3) showing all sub-contractors and suppliers with whom Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any sub-contractor and supplier in the requested progress payment, and the amount to be paid to Contractor from such progress payment, together with similar sworn statements from all such sub-contractors and suppliers; and

(b) duly executed current waivers of mechanics' and suppliers' liens by Contractor and its sub-contractors and suppliers (Exhibit 3).

3.2.3 RETAINAGE/SECURITY. Each monthly progress payment made to Contractor will be reduced at the time of payment by ten percent (10.00%).

3.2.4 LATE APPLICATIONS. Any progress Application for Payment received <u>after</u> the first day of each month shall be deemed late, and may be considered for payment with the following month's Application.

3.2.5 STORED MATERIALS. Unless otherwise provided in the Contract Documents, and if approved in advance by Owner, Applications for Payment may include materials and equipment not incorporated in the Work but delivered and suitably stored at the Project Site or at some other location agreed upon in writing. Approval of Applications for such stored items on or off the Project Site shall be conditioned upon submission by Contractor of bills of sale and applicable insurance or such other procedures satisfactory to Owner to establish title to such materials and equipment or to otherwise protect Owner's interests therein, including transportation to the Project Site.

3.2.6 TIME OF PAYMENT. Payment shall be made within 30 days after the owner receives a timely, properly completed, undisputed request for payment according to terms of the Contract, unless extenuating circumstances exist which would preclude approval of payment within 30 days. If such extenuating circumstances exist, then payment shall be made within 45 days after the owner receives such payment request.

3.3 FINAL PAYMENT.

3.3.1 APPLICATION. Following final completion of all Work required under this Agreement, as modified from time to time, Contractor shall submit its Final Application for Payment to Owner.

3.3.2 CONDITIONS PRECEDENT. The retained percentage and/or final progress payment shall be paid to Contractor only after: (a) Work performed by Contractor is completed satisfactorily and accepted by Owner; (b) Contractor has paid all creditors for those obligations arising from or relating to Contractor's performance of this Agreement; (c) Contractor completes, executes, and files with Owner all submittals and waivers required by Paragraph 3.3.3; and (d) all disputes, claims, liens, causes of action, and/or lawsuits which are related in any way to this Agreement or to Contractor's performance of the Work are resolved.

3.3.3 SUBMITTALS. Before Owner approves Contractor's Final Application for Payment, Contractor shall submit to Owner:

(a) a duly executed and acknowledged sworn statement (Exhibit 4) showing all sub-contractors and suppliers with whom Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any subcontractor and supplier in the requested final payment and the amount to be paid to Contractor from such payment, together with similar sworn statements from all subcontractors and suppliers; and

(b) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or its property, or Owner or Owner's surety might in any way be liable, have been paid or otherwise satisfied; and

(c) consent of surety to final payment, if required; and

(d) satisfaction of required closeout procedures; and

(e) final lien waivers, properly executed, from Contractor and its sub-contractors and suppliers as set forth in Exhibit 4; and

(f) any warranties, operations manuals, maintenance bonds, record drawings, or other documents required by Contract Documents; and

(g) other data if required by Owner, such as receipts, releases, and similar items to the extent and in such form as may be designated by Owner.

3.3.4 WAIVER. Final payment shall constitute a waiver and release of all claims by Contractor relating to the Work, but shall in no way relieve Contractor of liability for the obligations assumed hereunder or for faulty or defective work appearing after final payment, or for any warranty obligations.

ARTICLE 4 MECHANIC'S LIENS

4.1 INDEMNITY. If a mechanic's lien or bond claim is filed against Owner, its surety, and/or the property, which in any way relates to this Agreement, Contractor agrees to defend against any such claim, lien, proceeding, or suit at Contractor's sole cost and expense and to indemnify and hold harmless Owner from all losses, damages and expenses, including attorney's fees and other legal costs which Owner may incur as a result of such mechanic's lien, bond claim, or suit. In the event that any such claim shall be filed, Owner shall have the right to direct Contractor to promptly remove or discharge it or demand that Contractor provide security in a form acceptable to Owner sufficient to protect against any liabilities and expenses associated with the claim. If Contractor shall fail to do so within five (5) calendar days after delivery of written notice from Owner, Owner shall, in addition to its other rights hereunder, have the right to remove and discharge it at Contractor's expense.

ARTICLE 5 CHANGES, CLAIMS, AND DELAYS

5.1 CHANGES. Without invalidating this Agreement, Owner may, by issuance of a written order (each such order, a "Change Order"), (a) instruct Contractor to make certain changes to the Work, including any addition to, deletion from, suspension of or other modification to the quality, function, or intent of the Work, and (b) to the extent specifically provided for in this Article 5, adjust the Schedule of Work and/or the Contract Amount (all of the foregoing "Changes"). All claims by Contractor for adjustments to the Contract Amount and\or the Schedule of Work as a result of Changes under this Article 5 shall be supported by such documentation as Owner may require to verify, to its satisfaction, the accuracy thereof. Changes may only be authorized by Change Orders issued in accordance with this Article 5. Change Orders will constitute the exclusive remedy to Contractor for any Changes.

5.1.1 Except as otherwise set forth in this Article 5, Contractor shall not be entitled to payment, damages, monies, or compensation from Owner of any kind for direct, indirect, or consequential damages (including, but not limited to costs of acceleration) arising because of hindrance or delay from any cause whatsoever, whether such hindrances or delays be reasonable or unreasonable, foreseeable or unforeseeable, contemplated or not contemplated, or avoidable or unavoidable, and any Change Orders shall be Contractor's sole and exclusive remedy for any increased costs and/or delays resulting from a Change, and Contractor will not be entitled to any payment, damages, or other compensation in connection with any such Change, except to the extent set forth in the Change Order.

5.2 PROCEDURE FOR CHANGES.

5.2.1 CHANGES INITIATED BY CONTRACTOR. As soon as Contractor becomes aware of any circumstances which Contractor has reason to believe may necessitate a Change, Contractor will issue to Owner a "Change Order Request." All Change Order Requests shall include documentation sufficient to enable Owner to determine (a) the factors necessitating the possibility of a Change, (b) the impact which the Change is likely to have on the Contract Amount, (c) the impact which the Change is likely to have on the timely achievement of Schedule of Work (including the Project Completion Date), and (d) such other information which Owner or Owner may request in connection with such Change. If Contractor fails to notify Owner of a circumstance necessitating a Change within five (5) business days after Contractor knew about such circumstance, then notwithstanding anything in this Article 5 to the contrary, Contractor will be deemed to have waived any right to receive a Change Order based upon such circumstance, such five (5) business day requirement being an essential term of this Agreement. Owner shall have no obligation to compensate Contractor for any change or extra work unless Contractor obtains Owner's written authorization for the performance of such work prior to the performance of the work. Owner may, except as provided in Paragraph 5.3 below, not be obligated to issue a Change Order pursuant to a Change Order Request. Unless otherwise stated by Owner in writing, any work outside the Work described in the Contract Documents performed by Contractor prior to Contractor having received a Change Order from Owner will be considered unauthorized work and will be at Contractor's sole risk and expense*; provided, however*, the foregoing shall not inhibit Owner's right to issue a Change Order reducing the Contract Amount if and to the extent that the result of such unauthorized work results in a decrease to Contractor's direct costs.

5.2.2 CHANGE INITIATED BY OWNER. If Owner desires to make a Change constituting a modification to the quality, function, intent, or scope of the Work, it will submit a "Change Order Notice" to Contractor. Contractor will promptly review the Change Order Notice and notify Owner in writing within five (5) business days of the options for implementing the proposed change (including, if possible, any option that does not involve an extension of time) and the estimated effect (s), if any, that each such option would have on the Contract Amount and the Schedule of Work. Based upon such information, Owner may, but shall not be obligated to, issue a Change Order making a Change based upon such Change Order Notice.

5.3 PERMITTED CHANGE ORDERS. No adjustment to the Contract Amount or the Schedule of Work will be made as a result of a Change to the extent necessitated by Contractor's default, delay, mistake, failure of performance, or failure to comply with a requirement of the Contract Documents. However, Contractor may be entitled to receive Change Orders for the following events described in this Paragraph 5.3, but only to the extent that such event increases Contractor's costs in performing the Work, or causes Contractor to suffer a delay in its performance of the Work, and provided that Contractor has used all reasonable efforts to mitigate any potential delays to the Schedule of Work and/or potential increases to the Contract Amount:

(a) A Change initiated by Owner, in accordance with Paragraph 5.2.2, or

(b) A Change Order Request accepted by Owner in accordance with Paragraph 5.2.1.

5.4 CHANGE ORDER DUE TO NON-PERFORMANCE BY OWNER. If Owner fails to perform any material obligation of Owner under this Agreement (and to the extent that such failure increases Contractor's costs in performing the Work), then Owner may, via Change Order, (a) increase the Contract Amount by an amount calculated pursuant to Paragraph 5.6, and (b) to the extent that such failure causes Contractor to suffer a delay in its performance of the Work, then Owner may issue a Change Order extending the Schedule of Work as set forth in Paragraph 5.7. Such Change Orders shall be Contractor's sole and exclusive remedy for any increased costs and/or delays resulting from Owner's failure to perform its material obligations under this Agreement, and Contractor will not be entitled to any payment, damages, or other compensation in connection with any such delays or increased costs.

5.5 CHANGE ORDER DUE TO HAZARDOUS SUBSTANCES. Contractor shall take all measures necessary to prevent the release of any hazardous substances at the Project Site or adjacent areas. Contractor shall immediately notify Owner of any spills, emissions, or other releases of hazardous substances that occur in connection with the performance of the Work. Contractor shall be responsible for removing from the Project Site and areas adjacent thereto, and for properly disposing of, in a manner acceptable to Owner and in compliance with the Contract Documents, all Applicable Laws and Applicable Permits, all hazardous substances generated, released, or accumulated by Contractor in the course of performing the Work. In the event Contractor encounters on the Project Site material reasonably believed to be a hazardous substance that existed prior to the date of this Agreement, Contractor will immediately cease performance of any Work in the area affected and report the condition to Owner in writing. Contractor will not thereafter resume performance of the Work in the affected area except with the prior written permission of Owner. If and when Contractor is instructed to resume performance of the Work, and if and to the extent Owner instructs Contractor (consistent with Applicable Law) to take actions in connection with such hazardous substance in order to allow continued performance of the Work, Contractor may be entitled to a Change Order as set forth in this Article 5.

5.6 CHANGES TO THE CONTRACT AMOUNT. An increase (or decrease, in the context of a Change Order decreasing the amount of Work to be performed) in the Contract Amount, if any, resulting from a Change shall be determined and shall be payable by Owner as follows:

5.6.1 by lump sum payment in an amount proposed by Contractor and accepted by Owner (to be payable as the Parties may agree); or

5.6.2 if Owner does not accept the lump sum amount proposed by Contractor, by unit prices agreed upon by the Parties (to be payable as the Parties may agree); or

5.6.3 if none of the methods set forth in Paragraphs 5.6.1 or 5.6.2 is agreed upon after good faith negotiation by the Parties, Contractor will provide Owner with such purchase orders, invoices, sub-contractor quotes, and other documents and records as Owner may require to verify, to its satisfaction, Contractor's additional direct costs associated with effecting such Change or resulting from the event necessitating such Change ("Contractor's additional costs"). Contractor shall purchase all equipment, materials, labor, equipment rental, and other items associated with such Change at competitive market prices. Owner will, upon verifying Contractor's additional costs associated with such Change, adjust the Contract Amount by an amount equal to such Contractor's additional costs, plus five percent (5%) thereof. Owner will make appropriate adjustments to the amount of subsequent payments due to Contractor under this Agreement.

5.7 CHANGES INVOLVING SCHEDULE EXTENSIONS. To the extent that Contractor demonstrates to Owner's reasonable satisfaction that a Change will delay Contractor in complying with the Schedule of Work, then Owner may cause the Change Order directing such Change to extend the dates in the Schedule of Work by a number of calendar days, at a maximum, equal to the number of calendar days of delay in the critical path progress of the Work so demonstrated by Contractor as being associated with effecting such Change.

5.8 CONTINUED PERFORMANCE PENDING RESOLUTION OF DISPUTES. Notwithstanding and pending resolution of any dispute with respect to a Change, Contractor must proceed, upon written notice from Owner, with the performance of any Change ordered by Owner.

5.9 OWNER'S RIGHT TO OFFSET CHANGES. Whenever it is determined that any Changes will require an increase in the Contract Amount, Owner may at its sole discretion and to the extent possible, elect to offset all or any part of such increase with other Changes that will maintain the Contract Amount and/or Schedule of Work.

5.10 FORCE MAJEURE. Should Contractor be delayed by any cause beyond Contractor's control and if the cause for the delay is not due to an act or omission of Contractor, Contractor shall be entitled to request a reasonable time extension for completion of the Work. However, no such request for an extension of time shall be granted unless (a) a written notice has been delivered to Owner within forty-eight (48) hours of the commencement of the event claimed to be a cause of the delay, stating the nature thereof and the time extension requested; (b) such extension of time request is approved in writing by Owner. No payment of any kind, for compensation, or for damages, or otherwise, shall be made to Contractor because of any such delay even though Contractor's extension of time may be granted. Contractor shall receive that share of such compensation or damages paid by Owner which can be agreed to or proven to have been directly attributable to such delay.

ARTICLE 6 OWNER'S OBLIGATIONS

6.1 AUTHORIZED REPRESENTATIVE. Owner shall designate one or more persons who shall be Owner's authorized representative. Such authorized representative shall be the person(s) Contractor shall look to for instructions, orders, and/or directions. Owner may authorize Engineer or CM Agent to provide instructions, orders, and/or directions.

6.2 SITE SPACE ALLOCATION. Owner shall allocate Contractor's office trailer space, materials & equipment storage, and parking area(s), if available, and shall determine the placement of trailer and storage facilities.

6.3 CONSTRUCTION DRAWINGS. Upon award of a Contract, Owner will reissue Contract Drawings and Specifications stamped "For Construction" for Contractor's use. Contractor shall ensure that the current revisions of the Contract Drawings stamped "For Construction" are used for the Work.

ARTICLE 7 CONTRACTOR'S OBLIGATIONS

7.1 PERFORMANCE OF CONTRACT. Contractor agrees to perform the Work in a prompt, continuous, and diligent manner, and complete the Work in accordance with the provisions of the Contract Documents as applicable to the Work. Unless otherwise provided herein, Contractor agrees to furnish all materials, supplies, tools, equipment, supervision, labor, utilities, testing, certifications, shop drawings and other items necessary to fully perform all of the Work and complete said Work in accordance with the Drawings and Specifications and other Contract Documents pertaining thereto, including the payment of all insurance, taxes, licenses, bond premiums (as applicable), and guarantees or warranties. Contractor shall commence Contractor's Work in accordance with Contract Documents; and agrees to complete the Work in accordance with the Schedule of the Work, including revisions. Contractor further represents that by execution of this Agreement:

7.1.1 Contractor is duly qualified, registered, and licensed to do business in the state or states where the Work is to be performed.

7.1.2 Contractor has the required skills and capacity to perform the Work in a highly professional manner using sound engineering principles, sound construction practices, and sound project management and supervisory procedures, all in accordance with the Contract Documents and accepted practices in the construction of the type of facility described in the Contract Documents.

7.1.3 Contractor knows the availability, skill, and efficiency of labor in the area of the Work, and the conditions under which such labor can be hired and maintained for the duration of the Work.

7.1.4 Contractor is aware of the existing facilities at the Project Site and shall provide the means for delivery, unloading handling, and storage of equipment and materials for the Work. All equipment or material previously received and stored on the Project Site by the Owner or Owner for installation by Contractor shall become the responsibility of Contractor as soon as Contractor arrives on the Project Site and any such equipment shall be subject to Owner's Quality Assurance Program and the Contract Documents. Before Contractor makes any shipment to the Project Site, Contractor shall first communicate with, and receive instruction from, Owner. Contractor acknowledges that Owner will not accept shipments for Contractor. Receiving and storage of equipment shall be in accordance with the Contract Documents. Contractor shall consign any shipment of materials, supplies, or consumables required to perform the Work to itself (in care of Owner), at the Project shipping address. All shipping costs are to Contractor's account.

7.1.5 Contractor shall expeditiously prepare reports as reasonably requested by Owner that address Contractor's progress, Schedule (including manpower loading and staffing summaries), progress projections, work in place, equipment and material procurement or delivery (including plans for expediting), productivity, and other reports pertinent to establish Contractor's performance. Contractor shall provide Daily Field Reports identifying the number of employees on the Project Site by designated craft or titles, work starting and completed times, equipment on site, safety problems, and related items. Such Daily Reports shall be turned in to Owner every day and may be on Contractor's normally used forms, unless otherwise directed by Owner.

7.1.6 Contractor will comply with all local, state, and national Laws, rules, and Regulations.

7.1.7 Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. If Contractor's work shall fall behind schedule for reasons that are not excused unser the terms of the Contract, Contractor shall add additional workers or shifts and/or work overtime as necessary to maintain the Construction Schedule.

7.1.8 Contractor agrees that it has considered all conditions affecting execution of the Work in accordance with the terms and conditions of this Agreement and the Contract Amount reflects these considerations.

7.2 COOPERATION/SUPERVISION. If there are other contractors or parties authorized by Ownert working in the same area where Contractor is performing the Work, Contractor agrees to fully cooperate with Owner to reduce and eliminate delays or hindrances in the orderly progress of the Work and to assure orderly and expeditious performance and completion of the entire Project. Contractor agrees all Work performed by it shall be executed by skilled and reputable personnel. If Contractor's supervisor or employees refuse or neglect to comply with requirements of this Agreement, or if any of them be riotous, disrespectful, intemperate, or disorderly, Contractor agrees to discharge said person or persons and not employ them again on any portion of the Work.

7.3 INSPECTION OF WORK BY CONTRACTOR. If any part of the Work depends upon the work of Others, Contractor shall promptly inspect such work and promptly provide Owner written report of any defects which prevent Contractor from properly performing the Work. If Contractor fails to promptly inspect and report defects, Contractor shall be deemed by Owner to have accepted such other work as satisfactory and proper.

7.4 INSPECTION OF WORK BY OWNER AND CM AGENT.

7.4.1 All Work and materials shall be subject to Owner's and CM Agents's right of inspection and approval, before and after installation, and Contractor shall notify Owner when portions of the Work are ready for inspection. At their option, Owner and CM Agent may inspect the Work and/or materials either at Contractor's or supplier's shops, or at the Site of the Work, or both. Contractors or suppliers shall provide access to the Work and/or materials and reasonable facilities, and assistance for the safety and convenience of Owner's and Owner's representatives, for these activities. If any Statute, Regulation, code, or legal agency requires any of the Work to be tested, inspected, or approved, Contractor shall give Owner reasonable notice of the time and place for inspection and testing. Inspection or testing shall be included in the Contract Amount for performing the Work.

7.4.2 Within a reasonable time after receipt of notice from Contractor that the Work is completed and ready for inspection, testing, and acceptance, Owner and/or Owner shall make their inspection, and may request any additional test(s) required by the Contract Documents.

7.4.3 No inspection or testing of the Work, or acceptance of the Work, or any payment (including final payment), under this Agreement shall be construed to be an acceptance of defective material or workmanship, nor shall any such act be evidence of Contractor's satisfactory performance of the Work, and shall not relieve Contractor of its obligations hereunder.

7.5 DIMENSIONS/MATERIALS. Contractor shall be solely responsible for taking any necessary field dimensions required to satisfactorily perform Contractor's work, provide tests, order materials, and all other actions as required to meet the requirements of the Contract Documents.

7.5.1 All survey and layout work required to perform the Work outlined herein shall be provided and maintained by Contractor from control points established by Owner. Owner will replace, or cause to replace, at the expense of Contractor, any of its control points lost or damaged by Contractor. Upon approval by Owner, Contractor shall relocate or transfer any control points that become an impedance to Contractor. Owner may perform random layout and field survey checks during the course of Contractor's performance.

7.6 TEMPORARY SERVICES. Contractor shall furnish all temporary services and/or facilities necessary to perform Contractor's Work, except as provided in Article 16 and Specification SECTION 01560 Temporary Utilities and Facilities. Article 16 and Specification SECTION 01560 Temporary Utilities and Facilities also identify common temporary services (if any) which are to be furnished by Contractor.

7.7 AUTHORIZED REPRESENTATIVE. Contractor shall designate and assign to the Work a person or persons who shall be Contractor's authorized representative(s).

7.7.1 Contractor's authorized representative(s) shall be in full charge of the Work. All instructions, orders, or directions given by Owner's authorized representative to Contractor's authorized representative(s) shall be binding upon Contractor. Contractor's authorized representative(s) shall be experienced in performing at the Superintendent level or higher, and should have performed such on similar construction projects.

7.7.2 An authorized representative of Contractor shall be on the Site at all times when Contractor's workforce is performing any Work under this Agreement until written final acceptance of the Work has been obtained from Owner.

7.7.3 Contractor's representative(s) and key personnel assigned to the Work shall not be changed without written notice to, and consent of, Owner. Replacements shall be submitted for approval within five (5) days of notification of replacement.

7.8 OVERTIME/ACCELERATION. Owner may direct Contractor to take measures necessary to accelerate the progress of the Work including, without limitation, extending the work week, working additional shifts or overtime, and\or supplying additional manpower, equipment, and facilities and other similar measures. Provided that such acceleration is not necessitated by Contractor's failure to maintain the Schedule or properly execute the Work, or Contractor's material breach of the Contract Documents, Owner shall pay approved overtime charges, which shall consist of the premium or extra hourly wage incurred by Contractor. Written authorization for overtime or acceleration must be obtained from Owner prior to performing the Work.

7.8.1 Contractor, prior to commencement of Work hereunder and from time to time thereafter, shall submit to Owner, promptly upon request therefore, any and all data and information required or requested by Owner, relating to the order, timing, and nature of Work to be performed hereunder, to be organized in such form or manner as Owner shall require, whether in a so-called "Critical Path" or "Network Analysis System," or otherwise, and all such submissions shall reflect completion of the Work required hereunder within the time for completion required hereunder. Contractor understands that Owner will rely on such data and information, and Contractor accepts responsibility for errors therein and will perform its Work in accordance therewith. In the event Contractor does not carry out such Work at such rates of progress or fails to meet such schedules or sequences as required, Owner may, at its option and without any obligation to pay Contractor additional compensation therefore, require Contractor to increase its work schedule, its hours worked and the number of qualified supervisory personnel and workers, and the amount of equipment employed in the performance of the Work to such extent as Owner may deem necessary or desirable, or Owner may exercise any other remedy provided in this Agreement or available at law.

7.8.2 Any overtime worked, shall be to the account of Contractor, unless the overtime is authorized by Owner pursuant to the Change Order requirements of this Agreement.

7.8.3 Reimbursement of the additional costs of any overtime performed by Contractor (in accordance with written authorization from Owner), shall be limited to the employer's portion of F.I.C.A; state and federal unemployment taxes; group insurance premiums; vacation, holiday, and sick pay; retirement plan contributions; Workers Compensation insurance; and union benefits (where applicable).

7.8.4 Contractor shall not be entitled to recover any other costs or assert any other claims in connection with overtime work including, but not limited to, overhead, profit, fees, additional supervision, additional construction tools and equipment, or loss of productivity.

7.8.5 Contractor's invoices for premium payments must be substantiated in accordance with the Contract Documents and this Agreement.

7.8.6 Reimbursement for shift work shall be mutually agreed upon in writing prior to starting shift work.

7.9 SAFETY AND CLEANUP. Contractor shall at all times keep the work area and premises free from debris and unsafe conditions resulting from the Work. Contractor shall remove all waste material and trash generated from all its work areas, storage areas, office areas, and common use areas as required to maintain, at all times, a clean, orderly, and safe construction site. Owner will notify Contractor of any failures to maintain clean, orderly, and safe areas that come to the attention of Owner. If Contractor fails, within twenty-four (24) hours of notification by Owner, to maintain its areas in the prescribed manner, as determined by Owner, then Owner may implement any required safety and/or cleanup measures without further notice and deduct the costs thereof from any amounts then or thereafter due Contractor.

7.10 PROTECTION OF THE WORK. Contractor shall take necessary precautions to protect the Work and work of Others from damage caused by Contractor's operations. Should Contractor cause damage to the Work or property of Owner, CM Agent or Others, Contractor shall promptly remedy such damage to satisfaction of Owner; if not, Owner may so remedy and deduct the cost thereof from any amounts then or thereafter due Contractor.

7.11 PERMITS, FEES, AND LICENSES. Contractor shall give any required notices to authorities pertaining to the Work and secure and pay for all permits, fees, licenses, assessments, inspections and taxes necessary to complete the Work in accordance with the Contract Documents.

7.12 SAFETY PRECAUTIONS AND PROCEDURES.

7.12.1 Contractor shall take necessary safety precautions with respect to performance of the Work, shall comply with safety measures initiated by CM Agent or Owner and with applicable Laws, ordinances, rules, Regulations, and orders of public authorities for the safety of persons or property and with the requirements of the Owner's operations and safety procedures, and shall submit information to Owner which fulfills the requirements as indicated in the Site Specific Safety and Health Program. Failure to comply with safety provisions outlined in the Site Specific Safety and Health Program may result in back charges to Contractor or withholding of payment until safety violations or inadequacies are abated or corrected.

7.12.2 Verbal notification shall immediately be corresponded to Owner of any workplace near miss, incident, accident, injury, illness, death, or related hospitalization of Contractor's employees or agents at the Site of the Project, and a written report shall be made to Owner within twenty-four (24) hours of the occurrence using the *Incident/Accident Investigation Form* contained in the Site Specific Safety and Health Program.

7.12.2.1 Contractor's Project Manager shall attend an incident review meeting at the Project Site within forty-eight (48) hours of the occurrence of a recordable incident (as defined by OSHA) or a property damaging incident which results in a loss of $5000 or more. The President or Senior Officer of Contractor shall attend an incident review meeting within forty-eight (48) hours of a DART (as defined by OSHA) or near miss incident that may have produced an injury (at the discretion of Owner). At the time of this meeting, the Project Manager and/or Senior Officer for the Contractor shall present a recovery plan of action to prevent such occurrences in the future. Failure to comply with this provision may result in financial penalties including withholding of payment due Contractor.

7.12.3 All Contractor employees shall attend Owner's project orientation training and any site-specific training required by Owner, prior to the employees being allowed to work on the Site. If Owner does not provide project orientation training, Contractor shall provide such training that meets or exceeds the requirements outlined in the *Project Orientation Training Report* found in the Site Specific Safety and Health Program, and the report shall be submitted to Owner. Contractor shall document the subject, date, time, and attendance for these safety meetings, with copies sent to Owner.

7.12.4 Contractor shall conduct weekly safety training (e.g., toolbox meeting) with its employees. Contractor shall document the subject, date, time, and attendance for these safety meetings, with copies sent to Owner.

7.12.5 Contractor shall provide a full-time qualified and experienced Safety and Health Representative, acceptable to Owner, when the total number of employees of Contractor and its sub-contractors on the Project Site reaches twenty-five (25), and an additional Safety and Health Representative for each seventy-five (75) employees thereafter. Contractor's Safety and Health Representative shall attend all Project meetings. Contractor's Safety and Health Representative shall have the authority to (1) have unsafe conditions corrected and (2) direct that the work be stopped in the area of the unsafe condition if deemed necessary. Contractor shall provide additional full time safety and health manager(s) at the discretion of the Owner if the OSHA Total Recordable Incident Rate (T.R.I.R.) and/or the Days Away, Restricted, Transferred (DART) rate of the Contractor or its sub-contractor(s) exceeds the national average posted by the Construction Industry Institute (CII). Any costs associated with these requirements shall be the responsibility of Contractor, and no additional claim shall be made to Owner.

7.12.6 Contractor shall submit the *Contractor Verification Form*, located in the Site Specific Safety and Health Program (Exhibit 2) to Owner prior to the start of Work. Contractor shall submit the *Competent Person Designation Form* located in the Site Specific Safety and Health Program to Owner prior to the start of Work. Contractor shall submit to Owner all Safety and Health documentation as described in the Site Specific Safety and Health Program.

> **7.12.6.1** Contractor shall immediately correct any unsafe conditions identified by Owner. In the event Contractor fails to immediately correct such unsafe conditions, Owner may either (1) have the unsafe conditions corrected by Others at Contractor's expense, or (2) direct that the Work be stopped in the area of the unsafe condition; however, this right to stop the Work shall not give rise to any duty to Contractor or to any third party on the part of Owner to exercise this right.

7.12.7 Contractor is required to discipline employees who violate established rules and regulations of the Project. Contractor's disciplinary procedures will meet or exceed those provided for in the Site Specific Safety and Health Program. Contractor shall forward to Owner all Safety and Health disciplinary actions.

7.12.8 Contractor shall be held responsible for its sub-contractors' compliance with the Site Specific Safety and Health Program and all applicable rules, Laws, Regulations and policies, and this Agreement.

7.12.9 Contractor shall submit to Owner any required notices to perform Work activities, as applicable to its Scope of Work and prior to the start of the work operation, as found in the Site Specific Safety and Health Program. Furthermore, Contractor shall comply with any permitting required by Owner or Owner for construction activities.

7.12.10 Contractor shall provide all OSHA-required training and other training as outlined in the Site Specific Safety and Health Program and maintain records of such training on Site as required. Contractor shall conduct inspections as outlined in the Site Specific Safety and Health Program and maintain/supply records of such inspections on Site as required by Owner.

7.12.11 The personal protective equipment (PPE) provisions outlined in the Site Specific Safety and Health Program shall be enforced by Contractor. The following are minimum requirements for all personnel on the Project Site:

(a) Safety Glasses ANSI Z-87.1
(b) Safety Toe work boots with leather upper (no tennis shoe styles)
(c) Hard Hat
(d) Shirt with 4 inch minimum sleeves
(e) Long Pants (no shorts)

7.12.12 Contractor shall provide, or cause to be provided, to each worker on the Project Site, the proper safety equipment for the duties being performed by that worker and shall not permit any worker on the Project Site who fails or refuses to use the same. Owner shall have the right, but not the obligation, to order Contractor to remove the worker from the Project Site for failure to comply with safe job procedures/requirements.

7.12.13 Contractor shall defend, indemnify, and hold harmless Owner and CM Agent from, and be responsible for all claims, damages, and the payment of all fines levied to Contractor, Owner or CM Agent related in any way to safety, health, fire, or environmental violations or deficiencies in the planning or execution of the Work, caused in whole or in part by the conduct or failure to act by Contractor, Contractor's employees, or anyone for whom Contractor is responsible or may be liable.

7.12.14 Owner may request and Contractor agrees to the removal from the Project of any Contractor's or its subcontractor's personnel, management, supervision, equipment, tools, or craft for noncompliance with the Site Specific Safety and Health Program or non-correction of hazards. Owner's request for removal may also apply to any individual who consistently, in the opinion of Owner, exhibits an unsafe behavior attitude. Owner or CM Agent shall not be liable for any damages experienced by Contractor due to removal of Contractor's or its sub-contractor's personnel, management, supervision, equipment, tools, or craft from the Site.

7.12.15 Owner or CM Agent has the authority and may stop work in progress when necessary to enforce safety requirements. Owner or CM Agent shall not be liable for any damages experienced by Contractor due to stoppage. No part of the time lost due to any such stop work order shall be made the subject of a claim for extension of time or increased costs by Contractor.

7.12.16 In the event the Project Site, or any portion of the Work at the Project Site, is stopped or shut down by Owner or CM Agent or,, any outside agency, caused in whole or in part due to any act, error, or omission of Contractor or its sub-contractors, including, but not limited to, those activities related to safety or health; Contractor shall be responsible for all impact costs and damages suffered by Owner and CM Agentdue to such delay or disruption.

7.12.17 Contractor shall institute and maintain a substance and alcohol abuse prevention program which meets or exceeds the requirements outlined in the Site Specific Safety and Health Program.

7.12.18 Contractor, its agents, employees, sub-contractors, and suppliers shall not take cell phones onto the Site without the express written permission of Owner's authorized representative.

7.13 SHOP DRAWINGS. Contractor shall promptly submit Shop Drawings and Samples required, in accordance with the Contract Documents, or as Owner may otherwise require, in order to perform the Work efficiently, expeditiously, and in a manner that will not cause delay in the progress of the work of Owner or other subcontractors. Any specifications or drawings prepared by Contractor in connection with the Work shall be supplementary to the Contract Documents. In case of discrepancy between the two, the Contract Documents shall take precedence. The approval by Owner of Contractor's drawings shall be construed to apply only to the general arrangement, and shall not relieve Contractor from sole responsibility for adequacy and correctness of the design details or dimensions, and compliance with the requirements of this Agreement and Contract Documents. No portion of the Work requiring Shop Drawing or Sample Submittals shall be commenced until approved in writing by Owner. Any Work done in advance of Owner's approval of Contractor's Shop Drawings or Sample Submittals shall be done entirely at Contractor's risk.

7.13.1 Contractor shall provide Owner one reproducible of all drawings, and the required number of copies of drawings, samples, bills of materials, specifications, and documents that it is required to furnish in connection with the Work as defined in the Contract Documents.

7.14 NOTICE OF DEFICIENCY. Contractor shall respond to a twenty-four (24) hour written notice of a deficiency in Contractor's performance by Owner. Contractor acknowledges that failure to satisfactorily respond by remedying the deficiency or by making acceptable arrangements to do so within twenty-four (24) hours of notice will constitute a material breach of this Agreement.

7.15 CUTTING AND PATCHING.

7.15.1 Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

7.15.2 Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of Owner or Others by cutting, patching or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter such construction by the Owner or Others, or except with prior written consent of Owner. Contractor shall not unreasonably withhold from Owner, CM Agent, or Others consent to cutting or otherwise altering the Work. Contractor shall not alter or modify any equipment without the express written consent of Owner.

7.16 CONTRACTOR'S SUB-CONTRACTORS/SUPPLIERS.

7.16.1 Selection of sub-contractor(s) shall require Owner's written approval. Owner's refusal to approve any sub-contractor(s) shall not be considered as justifiable reason for either affecting the Contract Amount and/or Schedule of Work. Approval to subcontract shall not relieve Contractor from any liability or obligation under this Agreement. Unapproved sub-contractor(s) shall not enter upon the premises to perform any Work which Contractor has agreed to perform. When requested by Owner, Contractor shall provide copies of all subcontracts and purchase orders pertaining to the Work. This requirement shall be incorporated into all of Contractor's subcontracts and purchase orders.

7.16.2 Contractor shall be liable to Owner for the acts and omissions of Contractor's sub-contractors and the employees and agents of these sub-contractors.

7.16.3 Nothing contained in this Agreement (or any other contract), shall create any contractual relationship between Owner or CM Agent and any of Contractor's sub-contractors or suppliers. Contractor shall protect, indemnify, and hold harmless Owner and CM Agent, their officers, agents, and employees from damages, lawsuits, expenses, demands, claims, and causes arising against Owner or CM Agent, their officers, agents, and employees, and their other sub-contractors, their officers, agents, and employees, or other persons, firms, or corporations whatsoever, arising out of the payment or non-payment of any funds to any sub-contractor or supplier.

7.16.4 If labor difficulties develop as a result of a sub-contractor performing Work for Contractor under this Agreement, Contractor shall immediately take whatever actions are required for resolution.

7.16.5 Contractor shall require each of its sub-contractors, to the extent of the Work to be performed by each sub-contractor, to comply with the terms of this Agreement.

7.16.6 Contractor shall include in all subcontracts the right of unilateral written cancellation, with or without cause, by Contractor, of all or any portion of such subcontract or purchase order. Each subcontract shall state that in the event of a total or partial cancellation, sub-contractor or supplier may claim only its properly supported costs, as defined by this Agreement.

7.16.7 Contractor shall promptly advise Owner in writing of any sub-contractor or supplier who is in default no later than the first day of the payment period following the default.

7.17 PARKING. Parking for all of Contractor's employees shall be limited to designated area(s). No private vehicle of any kind will be allowed in the vicinity of construction activities without Owner's prior approval.

7.18 RECORD DRAWINGS. Contractor shall ensure that the current revisions of the Drawings stamped "For Construction" are used for the Work. The As-Constructed and Record Drawings shall be updated regularly by Contractor, maintained by Contractor, and kept at the Project Site. These Drawings shall be made available for Owner's inspection or use upon request.

ARTICLE 8 MISCELLANEOUS

8.1 SUBSTITUTIONS. No substitutions shall be made in Contractor's Work unless permitted in the Contract Documents and only then upon Contractor first providing a written request for substitution and receiving Owner's written approval thereof.

8.2 USE OF OWNER'S EQUIPMENT. Contractor, its agents, employees, sub-contractors, or suppliers shall not use Owner's equipment without the express written permission of Owner's authorized representative. If Contractor or any of its agents, employees, sub-contractors, or suppliers uses any machinery, equipment, tools, or similar items owned, leased, or under the control of Owner, Contractor shall be liable to Owner as provided in Article 12 except where such loss or damage is found to have been due solely to the negligence of Owner's employees operating such equipment.

8.3 Not Used.

8.4 INTELLECTUAL PROPERTY. Contractor agrees to defend, indemnify, and hold harmless Owner and CM Agent, their agents, officers, employees, or representatives, from all costs, expenses, or damages arising out of any claim of infringement of patents, copyright, or trade secret with respect to any items furnished by Contractor.

8.5 PUBLICITY. Contractor shall not engage in any publicity, advertising, or other promotional activities with respect to the Work, without prior written consent of Owner. Under no circumstance shall Contractor approach the Owner to obtain publicity privileges.

8.6 POLICY ON ETHICS. Contractor agrees to perform the Work and to conduct its affairs in respect to this Agreement as follows:

8.6.1 Wherever located, Contractor is expected to conduct its operations in a lawful manner and in a manner which is consistent with the highest ethical standards.

8.6.2 Contractor agrees that all of its sub-contractors and suppliers performing Work under this Agreement adopt and enforce this policy.

8.7 CONFIDENTIALITY. To the extent the Contract Documents provide for the confidentiality of any of the Owner's or CM Agent's proprietary or otherwise confidential information, in connection with the performance of this Agreement, Contractor shall be equally bound to such confidentiality requirements.

8.8 TAXES. The Owner is a municipal corporation exempt from taxation under the laws of the State of Kansas. Taxes payable for the sale, purchase, or use of materials or equipment should not be included in the bid price. However, any tariff, duty, impost, fee, or any similar assessment or tax imposed by a governmental entity that does not recognize Owner's sovereign tax exempt status, should be included in the bid as a separate item in the form of a schedule indicating the name and address of the governmental entity and the specific nature and amount of each such tariff, duty, impost, fee, or any similar assessment or tax thereof.

ARTICLE 9 WARRANTY

9.1 TERMS. Contractor warrants to Owner that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work under this Agreement will be performed according to sound construction practices, shall be free from defects in materials and workmanship, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to, and not in limitation or in lieu of, any other warranty or remedy required by Law or by the Contract Documents. Contractor agrees to satisfy such warranty obligations, which appear within the guarantee or warranty period established in the Contract Documents without cost to Owner.

9.2 CORRECTION OF WORK. If any Work is found to be defective within the time period of twelve (12) months following Substantial Completion, Contractor shall promptly without cost to Owner correct such defective Work or, if it has been rejected by Owner, remove it from the Project Site and replace it with Work that is not defective and satisfactorily correct or remove and replace any damage to other Work or the work of Others resulting therefrom. Any Work re-performed and any part of the Project that is reworked, repaired, or replaced in satisfaction of Contractor's obligations in connection with the warranty shall be automatically re-warranted by Contractor in accordance with the same warranty set forth in Paragraph 9.1, and Contractor will have the same obligations in relation thereto as set forth in Paragraph 9.1.

9.3 OTHER WARRANTIES. Contractor agrees to execute and deliver any special guarantees or warranties required by the Contract Documents for the Work prior to final payment.

ARTICLE 10 OWNER REMEDIES AND TERMINATION

10.1 TERMINATION FOR CONVENIENCE. Owner shall have the right to terminate this Agreement or any portion thereof at any time for any reason whatsoever upon written notice to Contractor specifying the extent to which this Agreement is terminated and the date upon which such termination becomes effective. After receipt of Owner's Notice of Termination, and unless otherwise directed, Contractor agrees to (a) stop work on the date and to the extent specified; (b) place no further orders or contracts for materials, services, or equivalent except as may be necessary for completion of that portion of Work that is not terminated; (c) transfer title and deliver to Owner any materials, work in process, completed work, and supplies for which Contractor has been paid; and (d) complete performance of any part of the Work required by this Agreement that is not terminated by Owner's Notice of Termination. If Owner terminates this Agreement for its convenience, Owner's liability to Contractor for said termination shall be limited to (a) those reasonable costs which Contractor has incurred for Work performed prior to effective date of termination; (b) those reasonable costs which are necessary and unavoidably incurred by Contractor relating to the termination of

the Work pursuant to Owner's Notice of Termination; (c) the reasonable cost of Work performed after termination at Owner's direction pursuant to the Notice of Termination; and (d) reasonable overhead and profit not to exceed 10 percent of the total amount paid Contractor hereunder as allowable costs. In no event shall Owner be liable for the loss of anticipated profits on work not performed or any special or consequential damages arising from said termination. Contractor agrees to promptly remove its tools, equipment, and employees from the Project Site upon the stated termination date. In no event shall "reasonable costs" exceed Contractor's actual cost to perform such Work.

10.2 REMEDIES ON DEFAULT. If Contractor refuses or fails to supply enough properly skilled workers, competent supervision, proper materials, or equipment, or maintain the Schedule of Work, or if Contractor disregards Laws, ordinances, rules, Regulations, or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of any provision of this Agreement, and fails within two (2) working days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Owner, without prejudice to any rights or remedies, will have the right to any or all of the following remedies:

(a) Take over all or any part of the Work and supply such number of workers and quantity of materials, equipment and other facilities as Owner deems necessary for the completion of the Work, or any part thereof, which Contractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to Contractor, who shall be liable for the payment of all costs incurred by Owner, including reasonable overhead, profit and attorney's fees;

(b) contract with one or more additional contractors to perform such part of the Work as Owner shall determine will provide the most expeditious completion of the total Work and charge the cost thereof to Contractor;

(c) withhold payment of any monies due Contractor pending corrective action to the extent required by, and to the satisfaction of, Owner;

(d) call on Performance Bond;

(e) in the event of an emergency affecting the safety of persons or property, Owner may proceed as above without notice.

10.3 TERMINATION FOR CAUSE. If Contractor fails to commence and satisfactorily continue correction of a default within two (2) working days after receipt by Contractor of the Notice issued under Paragraph 10.2, then Owner may, in lieu of, or in addition to, Paragraph 10.2, issue a second written notice by certified mail to Contractor and its surety, if any. If Contractor fails to commence and continue correction of a default within three (3) working days after receipt by Contractor of the second notice, Owner may terminate this Agreement without further notice and use any materials, implements, equipment, appliances, or tools furnished by or belonging to Contractor to complete the Work. Owner may employ such workers or subcontractors as Owner deems necessary to maintain the orderly progress of the Work. All costs incurred by Owner in so performing the Work, including reasonable overhead, profit, and attorney's fees, shall be deducted from any monies due or to become due Contractor. Contractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Amount.

10.4 USE OF CONTRACTOR'S EQUIPMENT. If Owner performs work under this Article or contracts such work to be so performed, Owner and/or persons to whom work has been contracted shall have the right to take and use any materials, implements, equipment, appliances, or tools furnished by, belonging, or delivered to Contractor and located at the Project Site.

10.5 BANKRUPTCY. Upon the appointment of a receiver for Contractor or upon Contractor making an assignment for the benefit of creditors, Owner may terminate this Agreement upon giving two (2) working days' written notice, by certified mail, to Contractor and its surety, if any. If an order for relief is entered under the bankruptcy code with respect to Contractor, Owner may terminate this Agreement by giving two (2) working days' written notice, by certified mail, to Contractor, its trustee, and its surety, if any, unless Contractor, the surety, or the trustee:

(a) promptly cures all defaults;

(b) provides adequate assurances of future performance;

(c) compensates Owner for actual pecuniary loss resulting from such defaults; and

(d) assumes the obligations of Contractor within the statutory time limits.

If Contractor is not performing in accordance with the Schedule of Work at the time of entering an order for relief, or at any subsequent time, Owner, while awaiting the decision of Contractor or its trustee to reject or to accept this Agreement and provide adequate assurance of Contractor's ability to perform hereunder, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Schedule of Work.

10.6 Not Used

10.7 Not Used

10.8 COOPERATION. Owner agrees to cooperate with Contractor, at Contractor's expense, in the prosecution of any Contractor claim arising out of an Owner suspension or termination.

10.9 LIMITATION OF LIABILITY.

10.9.1 Neither Contract Amount nor Schedule of Work shall be adjusted for any suspension, delay, or interruption to the extent that performance is suspended, delayed, or interrupted by the fault or negligence of Contractor.

10.9.2 If Owner wrongfully exercises any option under this Article, as determined by a court of proper jurisdiction or by arbitration award, then such termination shall be deemed one for convenience under Paragraph 10.1, and Owner shall be liable to Contractor for only the reasonable value of work performed by Contractor prior to Owner's wrongful action, including a total of 10 percent for overhead and profit, less prior payments made.

10.9.3 Neither Owner nor CM Agent, nor Owner's agents, representatives, or employees shall be liable to Contractor for any indirect, special, reliance, incidental, consequential, or exemplary damages arising from or in connection with such action, whether in an action based on contract (including breach of representation or warranty), delay, negligence (active or passive), strict tort liability, or otherwise.

ARTICLE 11 LABOR RELATIONS

11.1 HIRING PRACTICES. Contractor understands that contracts will be awarded and labor will be employed on the Project without discrimination as to whether employees of any Owner or any Contractor are members of any labor organization, and Contractor accepts this Agreement with that understanding. Contractor further agrees to recruit and hire all employees without unlawful regard to race, creed, color, religion, national origin, sex, age, non-disqualifying disability, or other reason prohibited by applicable governmental Law and Regulations, and not to unlawfully discriminate against any employee with regard to employment, compensation, advancement, upgrading, promotion, demotion, termination, training, and transfers, and to require its sub-contractors and suppliers to do the same.

11.2 WAGES AND HOURS. Contractor agrees to comply with, and to require its sub-contractors and suppliers to comply with, all labor relations requirements applicable to the Work, including governmental Laws and Regulations including work hours and wage scales. Contractor also agrees to maintain and furnish to Owner all reports and/or certificates of compliance applicable to this Agreement which are required for Owner to meet the requirements of either Owner or a governmental agency having jurisdiction.

11.3 LABOR DISPUTES. Contractor will use all remedies available to prevent disputes between any labor organization(s) and Contractor, or to allow such to occur or to be manifested on the Project, and Contractor agrees to use employees for the Work who will work at all times in harmony with other employees on said Project. Contractor agrees not to participate in or accede to any work stoppage, which may occur as a result of any secondary boycott or dispute. Notwithstanding the provisions of this Agreement, should there be a work stoppage caused by a strike, picketing, boycott, or by any voluntary or involuntary cessation of Work by employees of Contractor or its sub-contractors and suppliers, which in the judgment of Owner will cause, or is likely to cause, unreasonable delay in the process of construction, then upon twenty-four (24) hours written notice Owner shall have the right to declare Contractor in default of this Agreement and take such steps as are necessary to finish the uncompleted portion of the Work. In event of such default, Owner shall have the right to take possession and use all of Contractor's materials (exclusive of tools) intended for use on the Work. The cost of completion shall be charged against Contractor's remaining interest in the Contract Amount.

11.4 LOWER-TIER SUBCONTRACTORS. Contractor agrees that this Article shall be a requirement in all lower-tier subcontracts.

ARTICLE 12 INDEMNIFICATION AND LIABILITY

12.1 CONTRACTOR'S PERFORMANCE. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner, CM Agent, and Owner's other laborers, contractors, or suppliers and all of their agents and employees from and against all claims (including claims of Contractor's employees and its sub-contractor's and supplier's employees), damages, loss, liability, fines, payments, attorney's fees and expenses, arising out of and in connection with injuries (including death), or damage to property (including materials, machinery, tools, equipment, or the Work) resulting from performance of the Work whether or not caused or alleged to be caused in whole or in any part by a violation of any Law, ordinance, or Regulation or by any act or omission, or any claim of strict liability, arising out of Work by Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable. The provisions of this Article shall also include damage suffered by reason of theft or loss. Such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person described in this Paragraph 12.1.

12.2 NO LIMITATIONS. In any and all claims against CM Agent, Owner, or any of their agents or employees, by any employee of Contractor, or anyone for whose acts Contractor may be liable, the indemnification obligation under this Article 12 shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable by or for Contractor under Workers or Workman's Compensation acts, disability benefit acts, or other employee benefit acts.

12.3 LOWER-TIER SUBCONTRACTORS. Contractor agrees that this Article shall be a requirement in all lower-tier subcontracts.

ARTICLE 13 BONDS AND INSURANCE

13.1 **BONDS**. Coincident with the execution of Contract, the Successful Bidder shall furnish good and sufficient Surety company **Performance** and **Statutory Bond**.

13.1.1 The **Performance Bond** shall guaranty the faithful performance of all the covenants, stipulations and agreements of the Contract, including the guarantying or warranting of all Work and all material included in the Contract against defects in both workmanship and materials; any replacement because of defective materials and workmanship including freight, hauling and installation charges for the Warranty Period to be entirely at Contractor's expense.

13.1.2 The **Statutory Bond** shall guaranty payment of all bills and obligations arising from the execution of the Contract, which bills and obligations might or will in any manner become a claim against the Owner. All provisions of the bond shall be complete and in full accordance with Statutory requirements.

13.1.3 All bonds shall be executed with the proper sureties through a company licensed and duly qualified to operate in the State of Kansas, and approved by the Owner.

13.1.4 Bonds shall be signed by an agent resident with the State of Kansas who shall furnish evidence of his authority to bind the Surety as valid to the date of the bond. The date of the bond shall be the date of execution of the Contract. If at any time during the continuance of the Contract the Surety on the Company's bond becomes irresponsible, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) Days after notice to do so. In default thereof, the Contract may be suspended and all payments or money due the Contractor withheld.

13.1.5 All bonds shall be U. S. Treasury listed (Circular #570) as acceptable to the US Government. Acceptable bonds shall only be those supplied by "on shore" corporations.

13.2 **INSURANCE.** Coincident with the execution of Contract, the Successful Bidder shall purchase and maintain such **Liability Insurance** as will protect it from claims set forth below which may arise out of or result from its operations under the Contract, whether such operations be by itself or by a sub-Contractor or by anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable:

13.2.1 Claims under Workers' Compensation, disability, benefits and other similar employee benefits acts: For the duration of this Contract, Contractor shall maintain statutory **Workers' Compensation** and shall maintain **Employer's Liability Insurance** with minimum limits to one million dollars ($1,000,000). Contractor shall require subcontractors to provide Workers' Compensation and Employer's Liability Insurance with the same minimum limits.

13.2.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of his Employees, and his claims insured by usual personal injury liability coverage: For the duration of this Contract, Contractor shall maintain statutory **Workers' Compensation** and shall maintain **Employer's Liability Insurance** with minimum of one million dollars ($1,000,000).Contractor shall require Subcontractors to provide Workers' Compensation and Employer's Liability Insurance with the same minimum limits.

13.2.3 Claims for damages because of bodily injury, sickness or diseases or death of any person other than his employees, and claims insured by usual personal injury liability coverage: For the duration of this Contract, Contractor shall maintain occurrence-based **Comprehensive General Liability Insurance** with minimum bodily injury limits of five-hundred thousand dollars ($500,000.00) for each person and one million dollars ($1,000,000.00) for each occurrence. Contractor shall maintain property damage insurance with minimum limits of five hundred thousand dollars ($500,000.00) for each occurrence and one million dollars ($1,000,000.00) aggregate. The policy shall include Contractor's Protective Liability Insurance with the same minimum limits. Contractor shall require subcontractors to provide Comprehensive General Liability Insurance with the same minimum limits.

13.2.4 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from: For the duration of this Contract, Contractor shall maintain occurrence-based **Comprehensive Liability Insurance** with minimum bodily injury limits of five hundred thousand dollars ($500,000.00) for each person and one million dollars ($1,000,000.00) for each occurrence. Contractor shall maintain property damage insurance with minimum limits of five hundred thousand dollars ($500,000.00) for each occurrence and one million dollars ($1,000,000.00) aggregate. The policy shall include Contractor's Protective Liability Insurance with the same minimum limits. Contractor shall require subcontractors to provide Comprehensive Liability Insurance with the same minimum limits.

13.2.5 For the duration of this Contract, Contractor shall maintain **Comprehensive Automobile Liability Insurance** for all owned, non-owned, and hired vehicles with minimum limits for bodily injury of five hundred thousand dollars ($500,000.00) for each person and one million dollars ($1,000,000.00) for each accident and property damage minimum limits of five hundred thousand dollars ($500,000.00). Contractor shall require Subcontractors to provide Comprehensive Automobile Liability Insurance with the same limits

13.2.6 Umbrella or Excess Liability: Contractor shall purchase and maintain occurrence-based **Umbrella or Excess Liability Insurance** written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above in the amount of five million dollars ($5,000,000). Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.

13.2.7 Certificates of Insurance acceptable to the Owner shall be filed by Successful Bidder with the Owner prior to commencement of the Work. These certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least fifteen (30) days prior written notice has been given to the Owner. Copies of certificates of insurance shall be filed with the Owner prior to commencing Work. The required insurance must be written by a company licensed to do business in the state where the Work is located, at the time the policy is issued. In addition, the company must be acceptable to the Owner. The City of Coffeyville/Coffeyville Municipal Light & Power, its officers, employees, and agents, shall be named as an additional insured on all liability insurance policies in amounts equal to the liability limits. Engineer, Burns and McDonnell Engineering Company, Inc. shall be endorsed as an additional insured on CGL, Automotive and any Umbrella insurance to the policy limits. All liability insurance shall include a waiver of subrogation in favor of the additional insured.

ARTICLE 14 DISPUTE RESOLUTION

14.1 INITIAL DISPUTE RESOLUTION. In the event of any claim, dispute or controversy arising out of or relating to this Contract or the breach thereof which the Parties have been unable to settle or agree upon within a period of thirty (30) Days after the dispute arises, each Party shall nominate a senior officer of its management to meet at a mutually agreed time and place not later than forty-five (45) Days after the dispute has arisen to attempt to resolve such matter. Should a resolution of such dispute not be reached within fifteen (15) Days after the date that such senior officers meet, then either Party may, by written notice to the other, submit the dispute to non-binding mediation.

14.2 GOVERNING LAW. The rights of all Parties hereunder and the construction of every provision hereof shall be governed by the laws of the State of Kansas, without giving effect to principles of conflicts of law.

14.3 VENUE. The Parties agree that any action arising out of this Contract or in connection with the Work shall be brought in the District Court of Montgomery County, Kansas and the parties hereby consent to personal jurisdiction in said court and waive any objection to jurisdiction or venue of any such action.

14.3 WORK CONTINUATION AND PAYMENT. Contractor shall carry on the Work and maintain the Schedule of Work pending mediation or litigation and, if so, Owner shall continue to make payments in accordance with this Agreement, except for the disputed amount, which may be withheld.

14.4 CLAIMS AGAINST OTHERS. Contractor agrees that Contractor may sue or be sued by any other subcontractor or supplier on the Project and that in any such action, Owner shall not be a necessary party.

ARTICLE 15 CONTRACT INTERPRETATION

15.1 INCONSISTENCIES AND OMISSIONS. Should inconsistencies or omissions appear in Contract Documents, it shall be the duty of Contractor to so notify Owner in writing immediately upon Contractor's discovery thereof. Upon receipt of said notice, Owner shall instruct Contractor as to the measures to be taken, and Contractor shall comply with Owner's instructions.

15.2 CAPTIONS. Captions and titles in this Agreement are for convenience only, and are not to be used as an interpretation of any provisions.

15.3 LAW AND EFFECT. This Agreement shall be governed by the law of the State of Kansas.

15.4 SEVERABILITY. The partial or complete invalidity of any provision of this Agreement shall not affect the validity or continuing force and effect of any other provision.

15.5 WAIVER. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with regard to further performance.

15.6 ENTIRE AGREEMENT. This Agreement is solely for the benefit of the signatories hereto and represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, proposals, bids, or agreements, either written or oral.

15.7 INDEPENDENT CONTRACTOR. Contractor acknowledges that it is an independent contractor and that Contractor's relationship to Owner shall be that of an independent contractor.

15.8 NON-ASSIGNMENT. Contractor shall not assign or transfer this Agreement or any part thereof, nor any claims, account, debt or proceeds hereunder, in part or in whole, to any other party without the prior written consent of Owner and any such action or attempt to do so without Owner's written consent shall be void and of no binding effect upon Owner. Any breach of this provision by Contractor shall require Contractor to indemnify Owner for all claims made by any purported assignee, including attorney's fees incurred by Owner in defending against such claims.

15.9 ACCEPTANCE. If Contractor fails to execute this Agreement, Contractor's performance of Work or providing of materials after receipt of this Agreement shall be deemed conclusive acceptance of its terms.

ARTICLE 16 SPECIAL PROVISIONS

16.1 TEMPORARY SERVICES BY OWNER. Temporary services and facilities for construction purposes only will be furnished by Owner as indicated in Specification SECTION 01560 Temporary Utilities and Facilities and the Contract Documents.

16.2 TEMPORARY SERVICES BY CONTRACTOR. Additional common temporary services and/or facilities are for use by all Contractor's personnel on the Project and shall be furnished by Contractor, as indicated in Specification SECTION 01560 Temporary Utilities and Facilities and the Contract Documents. All other temporary Site facilities or services required to complete the Work are Contractor's responsibility.

ARTICLE 17 RECORDS AND AUDIT

17.1 RECORDS AND AUDIT. Contractor shall maintain a method of accounting in accordance with generally accepted accounting principles and practices and such as is acceptable to Owner. For the purpose of auditing such costs and payments, Owner shall have access during regular business hours to books, records, accounts, correspondence, instructions, plans, drawings, receipts and memoranda ("Audit Information") of Contractor which are pertinent to the Work. Should Owner desire to make an audit, Contractor agrees to make available such Audit Information for at least three (3) years after the final billing for each item of Work.

ARTICLE 18 COMPLIANCE WITH LAWS

18.1 COMPLIANCE WITH LAWS. Contractor shall observe and abide by and shall require its employees, sub-contractors, and all others directly or indirectly employed or engaged by Contractor to observe and abide by all valid applicable Laws, Statutes, ordinances, rules, and Regulations of the national, state, and local governments (and subdivisions or agencies thereof) in connection with any and all Work performed hereunder, and Contractor shall indemnify and hold harmless Owner and CM Agent from and against any and all loss, liability, damages, and expense caused by, incurred, arising out of or occasioned directly or indirectly by Contractor's failure to comply with the provisions of applicable Laws, ordinances, rules, Regulations and requirement, including but not limited to any fines or penalties. For example, and not by way of limitation, Contractor shall comply with the following:

18.1.1 The following clauses, where applicable, are incorporated by reference as if fully set out herein: the Equal Opportunity Clause prescribed in 41 CFR 60-1.4 as amended; the Affirmative Action Clause prescribed in 41 CFR 60-250.4 as amended, regarding disabled veterans and veterans of the Vietnam Era; and the Affirmative Action Clause for Handicapped Workers prescribed in 41 CFR 60-741.4 as amended.

18.1.2 Contractor, to the extent required by law, shall comply with 48 CFR Chapter 1 Subpart 19.7 as amended, regarding Small Business and Small Disadvantaged Business Concerns; and 48 C.F.R. Chapter 1 Subpart 20.3 (1993) as amended, regarding utilization of Labor Surplus Area Concerns.

18.1.3 Contractor agrees to award subcontracts to women-owned business concerns consistent with the efficient performance of this Agreement, to the fullest extent required by Executive Order 12138 as amended and associated Regulations.

18.1.4 Contractor certifies (i) that it is in compliance with the Affirmative Action Compliance Program prescribed in 41 CFR. 60-1.40 as amended; (ii) that it is in compliance with 41 CFR. 60-1.8 as amended, and does not and will not maintain segregated facilities, and shall furnish Owner with a Certificate of Compliance in a form satisfactory to Owner; (iii) that it is in compliance with 41 CFR 60-1.7 as amended, to the extent Contractor is required to file and employer information report; and (iv) that it is in compliance with Laws concerning wages, hours, and fair labor standards.

18.1.5 Contractor shall comply and require its sub-contractors to comply with the Immigration Reform and Control Act of 1986, as amended ("IRCA") and the Regulations promulgated thereunder, including the documentary inspection requirements and the Form I-9 paperwork requirements, and shall reimburse Owner for any fines levied against Owner for Contractor's or its sub-contractor's violation of IRCA.

18.1.6 In the event that Owner is subject to the Federal Equal Opportunity Employment Regulations (Executive Order 11246, as amended), or any other similar or related programs, Regulations, or Laws, either by virtue of the Contract Documents, or otherwise, Contractor agrees to comply with those programs, Regulations, or Laws.

18.1.7 Not Used

ARTICLE 19 ENGINEER'S AND CM AGENT'S STATUS DURING CONSTRUCTION

19.1 OWNER'S REPRESENTATIVE. Engineer and CM Agent will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer and CM Agent as Owner's representative during construction are set forth herein and in the Contract Documents and shall not be extended without written consent of Owner and Engineer or CM Agent.

19.2 ENGINEER VISITS TO SITE. Engineer will make visits to the Site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous on Site inspections to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on Site observations as an experienced and qualified design professional, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defects and deficiencies in the Work.

19.3 PROJECT REPRESENTATION. CM Agent will furnish Resident Project Representatives and assistants to assist Owner in observing the performance of the Work.

19.3.1. Communications pertaining to Submittals, written interpretations, and Extra Work Orders shall be directed to CM Agent.

19.3.2. Communications pertaining to day-to-day operations at the Site shall be directed to CM Agent.

19.3.3. CM Agent will conduct observations of the Work in progress to assist Engineer in determining that the Work is proceeding in accordance with the Contract Documents.

19.3.4. CM Agent will not have authority to permit any deviation from the Contract Documents which involves a change in Contract Price or Contract Times, except with concurrence from Owner.

19.3.5 Owner shall issue all communications to Contractor through CM Agent

19.4. CLARIFICATIONS AND INTERPRETATIONS. Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If Contractor believes that a written clarification or interpretation justifies a Change Order, Contractor may request a Change Order per Article 5 of this Agreement.

19.5. AUTHORIZED VARIATIONS IN WORK. Engineer or CM Agent may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field order and will be binding on Owner, and also on Contractor who shall perform the Work involved promptly.

19.6. REJECTING DEFECTIVE WORK. Engineer or CM Agent will have authority to disapprove or reject Work which CM Agent believes to be defective, and will also have authority to require special inspection or testing of the Work as provided herein, whether or not the Work is fabricated, installed, or completed.

19.7. DETERMINATIONS FOR UNIT PRICES.

19.7.1. CM Agent will determine the actual quantities and classifications of unit price Work performed by Contractor. CM Agent will review with Contractor the CM Agent 's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

19.8.2. CM Agent 's written decisions thereon will be final and binding upon Owner and Contractor, unless, within ten days after the date of any such decision, either Owner or Contractor delivers to the other party to the Agreement and to CM Agent written notice of intention to appeal from such a decision.

19.8. DECISIONS ON DISPUTES.

19.8.1. CM Agent will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes, and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims regarding Extra Work will be referred initially to CM Agent in writing with a request for a formal decision in accordance with this Paragraph, which CM Agent will render in writing within a reasonable time. Written notice of each such claim, dispute, and other matter will be delivered by the claimant to CM Agent and the other party to the Agreement promptly (but in no event later than 3 days) after the occurrence of the event giving rise thereto, and written supporting data shall be delivered to CM Agent and the other party within 15 days after such occurrence unless CM Agent allows an additional period of time to ascertain more accurate data in support of the claim.

19.8.2. When functioning as interpreter described herein, CM Agent will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by CM Agent with respect to any such claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by laws or regulations in respect of any such claim, dispute, or other matter.

19.9. LIMITATIONS ON CM AGENT'S OR ENGINEER'S RESPONSIBILITIES.

19.9.1. Neither CM Agent's or Engineer's authority to act under this Article or elsewhere in the Contract Documents nor any decision made by CM Agent or Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of CM Agent or Engineer to Contractor, any Subcontractor, any Vendor, or any other person or organization performing any of the Work, or to any surety for any of them.

19.9.2. Whenever in the Contract Documents the terms "as directed", "as required", "as allowed", "as approved", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review, or judgment of CM Agent or Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to CM Agent or Engineer any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions defined herein.

19.9.3. CM Agent or Engineer will not have the authority to supervise, direct, control, or stop Contractor's work without Owner's approval or except as reasonably necessary, upon observation and realization, when CM Agent or Engineer believes in his sole judgment and opinion that personnel on site are in serious and imminent danger. CM Agent or Engineer will not have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with laws and regulations applicable to the performance of the Work.

19.9.4. CM Agent or Engineer will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

19.9.5. CM Agent or Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Contractor, or of any other person or organization performing or furnishing any of the Work.

19.9.6. The presence or absence of CM Agent or Engineer will not act to relieve Contractor of any responsibility or of any guarantee of Contractor's performance. Neither will observation by CM Agent or Engineer in any way be understood to relieve Contractor of any responsibility for proper supervision of the Work at all times.

19.9.7. CM Agent's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

19.9.8. The limitations upon authority and responsibility set forth in these Contract Documents shall also apply to CM Agent's or Engineer's Consultants and assistants.

19.10. VISITS TO CONTRACTOR'S FACILITIES: Owner or Engineer may make visits to Contractor's facilities where the Equipment and Materials are being produced to observe production, inspection, or testing of the Equipment and Materials.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, the day and year first above written.

CONTRACTOR:	OWNER:
By: _____	By:_____
Print Name: _____	Print Name:_____
Title:_____	Title:_____

EXHIBIT 1

GUARANTEED DATES

ITEM	Start Date	No Later Than Date	Liquidated Damages
Power Generation Building			
Start Power Block Building Erection (Foundation Ready)	2/15/2016		
Engine Hall Enclosed (Available for mechanical contractor to begin work)		3/28/2016	$5,000/day
Switchgear/Mechanical Rooms Enclosed (Available for electrical contractor to begin work)		4/18/2016	$5,000/day
Substantial Completion (of Contract)		7/22/2016	$2,000/day
Submittal			
Submittals		As Defined in 013301 Appendix A	$500/day

**Project Site will be available to contractor from 7:30 a.m. to 5:30 p.m. CST, Monday – Friday excluding the following Holiday's : New Years Day, Memorial Day, 4th of July, Labor Day, Thanksgiving Day, Christmas (2 days).*

Liquidated damages for Submittals shall be limited to a maximum of 2.5% of the Contract Price.

Liquidated damages for Construction & Substantial Completion combined shall be limited to a maximum of 10% of the Contract Price.

Aggregate total for all Liquidated Damages shall be limited to a maximum of 10% of the Contract Price.

EXHIBIT 2

CONTRACTOR VERIFICATION FORM:

I have reviewed the Site Specific Safety and Health Program and I hereby understand all terms and requirements set forth in the Site Specific Safety and Health Program. Furthermore, the work practices and requirements outlined in the Site Specific Safety and Health Program will be the minimum requirements implemented and utilized during all construction activities.

(Contractor) is adopting the Site Specific Safety & Health Rules as its own for the Project. By signing this agreement, I acknowledge the understanding of all requirements and obligations stated in the Site Specific Safety & Health Program and has the resources necessary to carry out such functions for the Project.

_____ _____

Project Manager and/or President Date

RECEIPT ACKNOWLEDGED

By:_____ Date: _____

EXHIBIT 3

CONDITIONAL WAIVER & RELEASE UPON PROGRESS PAYMENT **WAIVER NO.** _____

PROJECT: _____ CONTRACT NO._____

Address: _____ OWNER: _____

City/State: _____ Invoice No. _____ Amount: $_____

STATE OF _____) CONTRACTOR: _____
) SS
COUNTY OF _____) SCOPE/TRADE:_____

I, _____ *(Name of Officer)*, after being duly sworn upon my oath, state that I am the _____ *(Title of Officer)* of the above-named CONTRACTOR and I am personally familiar with all the facts stated herein related to the PROJECT and know them to be true:

1. CONTRACTOR has furnished all material, labor, tools, supervision, equipment and any other item required to perform the Work covered by CONTRACTOR's Invoice No. _____, dated _____, in the amount of $_____ under the Subcontract Agreement entered into with City of Coffeyville, Kansas (hereafter "OWNER"), dated _____, pertaining to the above-referenced PROJECT.

2. Upon receipt of the above amount, CONTRACTOR will fully pay for all said material, labor, tools, construction equipment and facilities furnished by it, or by its lower-tier subcontractors, suppliers or materialmen on the PROJECT, subject only to retainage withheld.

3. On the condition that OWNER makes payment of the above Invoice, and upon clearance of such payment by the bank upon which it is drawn, CONTRACTOR waives, releases and forever discharges any and all rights it may have to liens or claims against OWNER and its Surety (if any), premises and property described above. This waiver and release includes any and all actions, suits, causes of action, claims, and demands whatsoever which CONTRACTOR now has, or at any time hereafter may have, in connection with the PROJECT and CONTRACTOR's Work performed through date of the above Invoice.

4. CONTRACTOR further represents that: a) Page 2 of this Waiver is a true and accurate listing of CONTRACTOR's lower-tier subcontractors, suppliers or materialmen and, upon receipt of the above amount from OWNER those parties will promptly be paid the amounts indicated for Work performed for, or material furnished to, CONTRACTOR for this PROJECT; and, b) payment of this Invoice will constitute full payment for any and all Work performed or materials or equipment supplied by or through CONTRACTOR to date, which (inclusive of this invoice) totals the sum of $_____.

5. If any of the statements herein are false, CONTRACTOR shall defend and indemnify OWNER for any claims, liens, suits or demands, including legal fees.

6. I am authorized to make this statement and waiver on behalf of CONTRACTOR.

CONTRACTOR: _____ By: _____ Printed Name: _____ Title: _____	Sworn to me and subscribed in my presence this _____ day of _____, 20___. Signature of Notary for State of _____: _____ My Commission Expires: _____

Subcontractor/Supplier	Contact	Phone No.	P.O. Subcontract No.	Total Invoices To Date	Total P.O. To Date	Balance Due

CONTRACTOR _____ Signature of Officer _____ Title _____ Date _____

EXHIBIT 4

CONDITIONAL WAIVER & RELEASE UPON FINAL PAYMENT **WAIVER NO.** _____

PROJECT: _____ CONTRACT NO._____

Address: _____ OWNER: _____

City/State: _____ Invoice No. _____ Amount: $_____

STATE OF _____) CONTRACTOR: _____
) SS
COUNTY OF _____) SCOPE/TRADE:_____

I, _____ *(Name of Officer)*, after being duly sworn upon my oath, state that I am the _____ *(Title of Officer)* of the above-named CONTRACTOR and I am personally familiar with all the facts stated herein related to the PROJECT and know them to be true:

1. CONTRACTOR has furnished all material, labor, tools, supervision, equipment and any other item required to perform the Work covered by CONTRACTOR's final Invoice No. _____, dated _____, in the amount of $_____ under the Subcontract Agreement entered into with City of Coffeyville/Coffeyville Municiapl Light & Power, Coffeyville, Kansas (hereafter "OWNER"), dated _____, pertaining to the above-referenced PROJECT.

2. Upon receipt of the above amount, CONTRACTOR will fully pay for all said material, labor, tools, construction equipment and facilities furnished by it, or by its lower-tier subcontractors, suppliers or materialmen on the PROJECT, including retainage withheld.

3. On the condition that OWNER makes payment of the above Invoice, and upon clearance of such payment by the bank upon which it is drawn, CONTRACTOR states that it will be fully paid and, therefore, waives, releases and forever discharges any and all rights it may have to liens or claims against OWNER and its Surety (if any), premises and property described above. This waiver and release includes any and all actions, suits, causes of action, claims, and demands whatsoever which CONTRACTOR now has, or at any time hereafter may have, in connection with the PROJECT and CONTRACTOR's Work performed on the PROJECT.

4. CONTRACTOR further represents that: a) Page 2 of this Waiver is a true and accurate listing of CONTRACTOR's lower-tier subcontractors, suppliers or materialmen and, upon receipt of the above amount from OWNER those parties will promptly be paid the amounts indicated for Work performed for, or material furnished to, CONTRACTOR for this PROJECT; and, b) payment of this Invoice will constitute full and final payment for any and all Work performed or materials or equipment supplied by or through CONTRACTOR on the PROJECT, which (inclusive of this invoice) totals the sum of $_____.

5. If any of the statements herein are false, CONTRACTOR shall defend and indemnify OWNER and CM Agent for any claims, liens, suits or demands, including legal fees.

6. I am authorized to make this statement and waiver on behalf of CONTRACTOR.

CONTRACTOR: _____ By: _____ Printed Name: _____ Title: _____	Sworn to me and subscribed in my presence this _____ day of _____, 20___. Signature of Notary for State of _____: _____ My Commission Expires: _____

Subcontractor/Supplier	Contact	Phone No.	P.O. Subcontract No.	Total Invoices To Date	Total P.O. To Date	Balance Due

CONTRACTOR _____ Signature of Officer _____ Title _____ Date _____

EXHIBIT 5

Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

That we, _____ as Principal, and _____ _____,as Surety, a corporation organized and existing under the laws of the State of _____, and duly authorized to do business in the State of Kansas, are held and firmly bound unto the COFFEYVILLE MUNICIPAL LIGHT & POWER, Coffeyville, KS, in the penal sum of_____ _____ _____ Dollars ($_____) lawful money of the United States of America, such sum being equal to 100 % of the Contract price for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our successors, and assigns, jointly and severally, firmly by these presents.

Dated this _____ day of _____, 20_____.

The condition of this obligation is such that whereas, the above named Principal did, on the _____ day of _____ _____, 20_____, enter into a Contract with the
COFFEYVILLE MUNICIPAL LIGHT & POWER, Coffeyville KS for the construction/services of _____
_____
_____

All in compliance with the plans and Specifications therefore, made a part of said Contract, and on file in the Office of the City Clerk of the City of Coffeyville, KS; and said Contract is hereby made a part and parcel of this bond as if literally written herein.

NOW, THEREFORE, if said Principal shall, fully and faithfully execute the Work and perform said Contract according to its terms and conditions, and covenants, and in exact accordance with the Bid of said Principal, and according to certain plans and Specifications heretofore made, adopted, and placed on file in the Office of the City Clerk of the City of Coffeyville, KS, as set out in the Specifications herein, and shall promptly pay, or cause to be paid, all labor, material and/or repairs and all Bids for labor performed on said Work, whether by Subcontract or otherwise, and shall protect and save harmless the City of Coffeyville/Coffeyville Municipal Light & Power, Coffeyville, KS and all interested property owners against all claims, demands, causes of action, losses or damage, and expense to life or property suffered or sustained by any person, firm, or corporation by reason of negligence of the Principal or his or its agents, servants, or employees in the construction/services of said Work, or by or in consequences of any improper execution of the Work or act of omission or use of inferior materials by said Principal, or his or its agents, servants, or employees and shall protect and save the City of Coffeyville/Coffeyville Municipal Light & Power, Coffeyville, KS harmless from all suits and claims of infringement or alleged infringement of patent rights or processes, then this obligation shall be void; otherwise this obligation shall remain in full force and effect.

It is further expressly agreed and understood by the Parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligation of this bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officer, and the said Surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed by its Attorney-in-Fact, duly authorized so to do, the day and year first above written.

ATTEST: _____

_____ _____
Secretary Surety

(Accompany this bond with Attorney-in-Facts Authority from the Surety Company certified to include the date of the bond.)

EXHIBIT 6

Statutory Bond

KNOW ALL MEN BY THESE PRESENTS:

That we, _____as Principals and_____ _____as Surety, a corporation organized and existing under the laws of the State of _____, and duly authorized to do business in the State of Kansas, are held and firmly bound unto COFFEYVILLE MUNICIPAL LIGHT & POWER, Coffeyville, KS, in the penal sum of _____ _____Dollars ($_____), in lawful money of the United States, such sum being equal to 100 % of the Contract price for the payment of which sum, well and truly to be made, we and each of us, bind ourselves, our successors, and assigns, jointly and severally, firmly by these presents:

Dated this _____ day of _____, 20_____.

THE CONDITION OF THIS OBLIGATION ARE SUCH THAT WHEREAS, the above named Principal did, on the _____ day of _____, 20_____, enter into a Contract with COFFEYVILLE MUNICIPAL LIGHT & POWER, Coffeyville, KS, for

_____

All in compliance with the plans and Specifications therefore, made a part of said Contract and on file in the Office of the City Clerk of the City of Coffeyville.

NOW, THEREFORE, if said Principal shall fail or neglect to pay all indebtedness incurred by said Principal or Subcontractors of said Principal who perform Work in the performance of said Contract, for labor and materials furnished by any Contractor and consumed in the performance of said Contract, and such repairs to and rental of machinery and equipment as may be furnished by a Subcontractor to the person or persons Contracting with t COFFEYVILLE MUNICIPAL LIGHT & POWER, Coffeyville, KS, within thirty (30) Days after the same becomes due and payable, the person, firm or corporation entitled thereto may sue and recover on this bond the amount so due and unpaid.

NOW, THEREFORE, it is expressly agreed and understood by the Parties hereto that no changes or alterations in said Contract and no deviations from the plan or node of procedure herein fixed shall have the effect of releasing the sureties, or any of them from the obligations of this bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed by its Attorney-in-Fact, duly authorized thereunto so to do, the day and year first above written.

ATTEST:

_____ _____

Secretary Surety

(Accompany this bond with Attorney-in-Fact's Authority from the Surety Company certified to include the date of the bond.)