

## **BIODIESEL GENERATOR SYSTEM AGREEMENT**

---

This Biodiesel Generator System Agreement (the "Agreement") is entered this 4th day of January, 2011, between the Hanover Township, an Illinois Township located in Cook County, Illinois, (the "Township" or "Owner") and Anchor Electric Corporation (the "Contractor") (collectively, the "Parties").

**IN CONSIDERATION** of the covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. Project Work.

A. Contractor shall submit preliminary shop drawings relative to the below described Project Work to Engineer in accordance with the Contract Documents. Following (i) approval by the Engineer and Township of the shop drawings; (ii) Contractor's receipt of all licenses and permits required for the Project Work from any federal, state and local governmental entities and/or agencies thereof having jurisdiction over the Project Work, which Contractor shall obtain at its sole cost; (iii) Contractor furnishing the Township with the Bond or irrevocable letter of credit in accordance with paragraph 12 below; and (iv) Contractor furnishing the Township with the certificates of insurance, additional insured endorsements and other insurance documents in accordance with paragraph 11 below, Contractor shall commence the Project Work immediately following receipt of notice to proceed from the Engineer

B. The Project Work includes the supply and installation of a new 200kW, 250Kva, 277/480 volt, 3 phase, 4-wire, biodiesel standby emergency generator system (the "Generator") and all electrical, plumbing, mechanical and ancillary materials and labor thereto at the Township's Senior Center located at 240 South Route 59, Bartlett, Illinois, 60103 (the "Project Site") in strict accordance with the Specifications, Plans, Drawings and Project Manual dated December 13, 2010 prepared by W-T Mechanical/Electrical Engineering, LLC (the "Engineer") and the Contract Documents (defined below).

C. "Contract Documents" shall mean: (i) the attached General Conditions and Instructions to Bidders and General Requirements, (ii) the Hanover Township Senior Center New Biodiesel Generator System Project Manual dated December 13, 2010, including but not limited to all Plans, Specifications and Drawings referenced therein prepared by the Engineer; (iii) the attached Contractor's Bid Proposal; (iv) the Tax Compliance Affidavit, (v) the attached Certifications, (vi) attached Addendum Number One dated December 23, 2010 and Addendum No. Two dated December 27, 2010; (vii) this Biodiesel Generator System Agreement; (viii) Performance Bond and Payment Bond or irrevocable letter of credit as hereinafter described in paragraph 12; (ix) the Energy Efficiency and Conservation Block Grant Program Subrecipient Agreement, attached

hereto and incorporated herein ("EECBG Agreement"); and (x) the attached Bid Notice. In the event of any conflict between the terms and conditions of any of the Contract Documents, the most stringent requirements shall control.

2. Completion Date. Contractor shall complete the Project Work in strict compliance with the requirements herein on or before April 30, 2011, weather permitting. Time is of the essence of this Contract.

3. Contract Sum and Payment Terms.

A. The contract sum for the Project Work is \$96,660.00 (the "Contract Sum"). The Contract Sum includes all costs attributable to the Project Work, Maintenance Work, Repair Work, Restoration Work and Warranty Work, including but not limited to, all materials, equipment, labor, licenses, insurance, testing, certifications, demonstrations, Performance and Payment Bonds, Letters of Credit, fees, expenses, costs, profits and overhead required under the Contract Documents.

B. Contractor shall provide monthly invoices to the Township throughout the Project Work. It shall be a condition precedent to the Township's obligation to make a monthly progress payment that the Contractor shall have submitted to the Engineer, not less than seven (7) days prior to the month in which the Contractor is applying for a payment, the following documentation, which shall hereinafter collectively be referred to as the "Contractor's Progress Payment Documents":

(i) An itemized Application of Payment for operations and Continuation Sheets using AIA G702 and G703 supported by such data to substantiate the Contractor's right to payment as the Township and/or the Engineer may require, such as copies of requisitions from material suppliers, and reflecting a 10% retainage until after final acceptance has been made by the Township. Payments shall be further reduced by such additional amounts as Engineer determines for non-conforming work and unsettled claims.

(ii) A general Contractor's Sworn Statement in form customarily used by Chicago Title and Trust Company.

(iii) Current Partial Waivers of Lien from the Contractor and from all subcontractors of every tier that furnished labor, materials and/or equipment in connection with the Project Work and from all material suppliers that supplied material in connection with the Project covering such period.

(iv) All of the Contractor's Progress Payment Documents shall be sworn to and notarized.

(v) Such additional documentation and/or information requested by the Township and/or Engineer relative to said payment.

C. Notwithstanding the forgoing, the Township will not be obligated to pay Contractor for the cost of the Generator until said Generator has been delivered to the

Project Site, the Township has received the Contractor's Progress Payment Documents including but not limited to a final lien waiver from the supplier of the Generator, and the Engineer's preliminary approval of said Generator, including but not limited to the Engineer's determination that the Generator is in strict compliance with the Buy American Provision as required under the Contract Documents.

D. Upon completion of the Project Work and any Repair Work required hereunder, Contractor shall submit the following documentation to the Township:

(i) General Contractor's Sworn Statement in form customarily used by Chicago Title & Trust Company, and final lien waivers from: (a) Contractor; (b) all subcontractors of every tier that furnished labor and/or materials in connection with the Project Work; and (c) all suppliers that furnished materials and/or equipment in connection with the Project Work (collectively, "Final Payment Request Documentation").

(ii) Contractor shall perform all testing, retesting, demonstrations, and submit all reports, certifications and documentation required under the Contract Documents.

(iii) Contractor shall provide all final shop drawings, as built drawings, operating instructions, equipment schedules and all other submittals required under the Contract Documents.

(iv) Contractor shall assign all manufacturer's warranties to Owner as required herein.

(v) Following receipt of the Final Payment Request Documentation and all certifications, reports, guaranties, warranty assignments, shop drawings, as-built drawings and all documents and submittals required under the Contract Documents, and following the Township and Engineer's determination that the Project Work has been completed in strict compliance with the Contract Documents and is free from defects, the Township shall tender payment to the Contractor of the balance of the Contract Sum, subject to the conditions herein.

E. It shall be a condition precedent to any payment required by the Township hereunder, that the Township and the Engineer have determined that the Project Work being invoiced is free from any defects and has been completed in accordance with the terms and conditions herein. The Township shall deduct from the final payment hereunder, amounts as determined for incomplete Work, including but not limited to 110% of the value of the punch list work, and any required Restoration Work, and for any unsettled claims, and further subject to the conditions herein.

F. Payments shall be further contingent upon the consent of the surety issuing the performance and payment bonds and/or other bond hereunder to said

payment. Any amounts required to be withheld from said payment by the surety shall be withheld without any liability to the Township.

G. In the event the Contractor, Township and/or Engineer is in receipt of any claim(s) for lien and/or other notice of any claim in connection with the Project, the amount claimed shall be held out from payment for a period of at least 120 days to determine whether said claimant files a lawsuit to foreclose or otherwise adjudicate its lien claim. In the event a lawsuit is in fact filed within the statutory period, the Township, in its sole discretion, may elect to (a) file an interpleader action and/or intervene in the lawsuit and deposit the amount in question with the Clerk of the Court or (b) continue to hold said disputed sum until the lawsuit has been fully adjudicated or settled, or (c) elect to pay said disputed sum to the Contractor after having first received such additional indemnification agreement(s) and surety bond(s) as are acceptable to the Township. In the event the lien claimant fails to file a lawsuit within the applicable statutory period, the Contractor shall either furnish a release or final waiver from said lien claimant or furnish the Township with an indemnification agreement and an additional mechanic's lien bond in form approved by the Township issued by a surety company acceptable to the Township.

H. It shall also be a condition precedent to any payment hereunder that contractor must complete and submit certified payrolls to the Township covering all payouts in strict compliance with the Prevailing Wage Act (820 ILCS 130/01, et seq.) or the Davis Bacon Act (as applicable under paragraph 13 below) (the "Certified Payrolls"). The Township will not process or release any payments prior to receiving the Certified Payrolls relative to each applicable pay application.

I. Notwithstanding the foregoing, in no event shall the Township's acceptance of the Project Work, Contractor's Payment Request Documentation and/or any Certification and/or the Township's payments to Contractor be deemed a waiver, express or implied, of any warranties required herein.

4. **Material and Equipment Inspection and Responsibility.** Materials and Equipment, the style, make or quality of which is specifically designated, shall be as specified. Should any substitution of material or item of equipment or apparatus be made, the Township's written approval must be obtained prior to installation which the Township may withhold in its sole and absolute discretion.

5. **Non-Discrimination.** Contractor shall not discriminate against any worker, employee or applicant for employment because of religion, race, sex, color, or national origin, marital status, or ancestry, age, physical or mental disability unrelated to ability, or an unfavorable discharge from the military service, nor otherwise commit an unfair employment practice.

6. **Compliance With Law.** All goods, equipment, materials, and all labor furnished by Contractor and subcontractors of every tier shall comply with all applicable

federal, state and local laws, regulations, rules, ordinances, statutes and codes relative thereto including, but not limited to, the Federal Occupational Safety and Health Act (OSHA), the Americans with Disabilities Act of 1990 as amended, Illinois and United States Department of Labor (IDOL and USDOL), the Human Rights Commission, the Illinois Department of Human Rights, EEOC, Environmental Laws (defined below), and the Village of Bartlett Building Code, with the most stringent standards governing (collectively, the "Laws"). To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the below defined Indemnified Parties from loss or damage, including but not limited to, attorney's fees, and other costs of defense by reason of actual or alleged violations of any Law(s) related to the Project Work, including but not limited to products liability claims. This obligation shall survive the expiration and/or termination of this Agreement.

7. Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Township, the Engineer, Cook County, Corporate Design & Development Group, LLC (the "Architect") W-T Engineering, Inc., and each of their respective officials, officers, directors, employees, managers, servants, and agents (collectively, the "Indemnified Parties"), against all injuries, deaths, damage to property, loss, damages, claims, suits, liens, lien rights, liabilities, judgments, costs and expenses, including but not limited to legal defense costs, attorney's fees, court costs, settlement judgments, prejudgment interest, post judgment interest, whether by direct suit or third parties which may in any way arise directly or indirectly from the Project Work, Repair Work, Restoration Work, Maintenance Work and/or Warranty Work provided hereunder; and/or any acts and/or omissions of or on behalf of the Contractor, its employees, contractors, subcontractors of any tier, suppliers, and/or agents and/or any person and/or entity acting on behalf of any of them, except to the extent caused by the negligence of any of the Indemnified Parties. In which case, Contractor shall at its own expense, appear, defend and pay all charges of attorneys and costs and other expenses arising therefrom or incurred in connection therewith, and if any judgment shall be rendered against the Indemnified Parties or any of them, in any such action, Contractor agrees that any bond or insurance protection required herein, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Indemnified Parties as herein provided. Contractor shall similarly protect, indemnify and hold and save harmless the Indemnified Parties against and from any and all claims, costs, causes, actions and expenses including but not limited to attorney's fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of the Agreement. This obligation shall survive the expiration and/or termination of the Agreement.

8. Binding Obligation and Non-Assignability. Contractor shall not assign the whole or any part of this Agreement without the written consent of the Township. All subcontractors shall be approved by the Township. Any such assignment by Contractor without the Township's written approval shall be null and void.

9. Taxes. The Township is a Tax Exempt Organization and is not subject to sales, consumer, use, and other similar taxes required by law. This exemption does not, however, apply to tools, machinery, equipment or other property leased by the Contractor, or to suppliers and materials which, even though they are consumed are not incorporated into the completed Project Work. The Contractor shall be responsible for and pay any and all applicable taxes, including sales and use taxes, on such leased tools, machinery, equipment or other property and upon such unincorporated supplies and materials. Notwithstanding the forgoing, it shall be Contractor's responsibility to determine and pay all applicable taxes attributable to the Project Work. All such taxes are included in the Contract Sum.

10. Investigations by Contractor. Contractor has made such investigations as it deems necessary to perform the Project Work, including but not limited to, Project Site inspection, and represents and warrants that the Specifications and depictions are adequate and the required result can be produced under the Specifications and requirements herein. No plea of ignorance of conditions that exist or of conditions or difficulties that may be encountered in the execution of the Project Work under this Agreement as a result of failure to make the necessary investigations will be accepted as an excuse for any failure or omission on the part of Contractor to fulfill in every detail all of the requirements of this Agreement, or will be accepted as a basis for any claims whatsoever, for extra compensation.

11. Insurance. Contractor shall procure and maintain for the duration of the Project Work, Repair Work, Restoration Work, Maintenance Work, and Warranty Work, insurance of the types and in amounts of not less than the coverages listed below. The cost of such insurance is included in the Contract Sum.

**A. Commercial General and Umbrella Liability Insurance.**

Contractor shall maintain commercial general liability (CGL) insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL contains a general aggregate limit, it shall be in an amount of not less than \$2,000,000, or it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence from CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from: Liability arising out of the Project Work, Maintenance Work, Repair Work, Restoration Work, and Warranty Work, including activities performed by or on behalf of Contractor; premises owned, leased, or used by Contractor; operations; administration of the work; independent contractors; subcontractors; vendors and suppliers; products-completed operations; personal injury and advertising injury; and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

**Any endorsement or policy provision which limits contractual liabilities shall be deleted in its entirety.**

Hanover Township, Cook County, W-T Mechanical/Electrical Engineering, LLC, Corporate Design & Development Group, LLC, W-T Engineering, Inc., and each of their respective officers, officials, directors, employees, managers, servants, and agents (collectively, the "Additional Insured") shall be included as an insured under the CGL coverage, Business Auto Liability coverage, and any Commercial Umbrella Liability Coverage, using ISO additional insured endorsement CG 20 10 or substitute providing equivalent coverage.

These insurance coverages shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Additional Insured, and shall not require exhaustion of any other coverage or tender of any claim or action to any other insurer providing coverage to any of the Additional Insured. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insured, or any of them.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse or underground property damage.

#### **B. Continuing Completed Operations Liability Insurance.**

Contractor shall maintain commercial general liability (CGL) coverage with a limit of not less than \$1,000,000 each occurrence for at least three years following substantial completion of the Project Work.

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 10 93, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Any continuing commercial umbrella coverage shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

#### **C. Business Auto Liability Insurance.**

Contractor shall maintain business auto liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of "Any Auto" including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

**D. Workers Compensation and Employees Liability Insurance.**

Contractor shall maintain workers compensation as required by statute and employers liability insurance. The employers liability limits shall not be less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease.

If the Additional Insured have not been included as an insured under the Commercial General Liability, Business Auto Liability, and Excess Umbrella Liability Insurance coverages required in the Contract, the Contractor waives all rights against the Additional Insured, and each of them for recovery of damages arising out of or incident to the Project Work.

**E. Excess Umbrella Liability Insurance Coverage.**

Contractor shall maintain Excess Umbrella Liability Insurance coverage of not less than \$1,000,000 each occurrence and \$1,000,000 aggregate. The minimum amount of Excess Umbrella Liability Insurance coverage may be reduced by the amount that Contractor's CGL coverage per occurrence exceeds \$1,000,000.

**F. General Insurance Provisions.**

**i. Evidence of Insurance.**

Prior to beginning work, Contractor shall furnish the Township with a certificate(s) of insurance and applicable policy endorsement(s), including but not limited to all additional insured endorsements required herein, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to the Township prior to the cancellation or material change of any insurance referred to therein. Written notice to the Township shall be by certified mail, return receipt requested.

Failure of the Township to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Township to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

The Township shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor of any tier from entering the Project Site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Township.

Failure to maintain the required insurance may result in termination of this Contract at the Township's option.

With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to the Township whenever requested.

Contractor shall provide certified copies of all insurance policies required above within 10 days of the Townships' written request for said copies.

**ii. Acceptability of Insurers.**

Insurance shall be provided by insurance companies licensed to do business in the State of Illinois with a policy holder rating of not less than A and a financial rating of not less than VII in the latest edition of Best Insurance Guide.

**iii. Cross-Liability Coverage.**

If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

**iv. Deductibles and Self-Insured Retentions.**

Any deductibles or self-insured retentions must be declared to the Township. At the option of the Township, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Additional Insured, or any of them, or required to procure a bond guaranteeing payment of losses and other related costs, including, but not limited to, investigations, claim administration and defense expenses.

**v. Township Shall Not Waive Any Rights of Subrogation.**

The Township shall not, in any manner, be deemed or intended to have waived any right of subrogation which either it, and/or its insurance carrier and/or risk pool provider, Township Officials of Illinois Risk Management Agency ("TOIRMA") and/or insurance company providing excess coverage on behalf of the Township or TOIRMA may have against the Contractor, for any property injury, death, or other damage caused by any Contractor, or any of their respective employees, agents, consultants, officers, directors, limited or general partners, and/or otherwise arising out of the Project Work.

**vi. Failure to Comply With Insurance Reporting Provisions.**

All insurance required of the Contractor shall provide that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Additional Insured, or any of them.

**vii. All Insurance Obtained Shall Apply Separately to Each Insured.**

All insurance required of the Contractor shall provide that the insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**viii. Insurance Requirements Cannot be Waived by Township.**

Under no circumstances shall the Township be deemed to have waived any of the insurance requirements of this Contract by any action or omission, including, but not limited to:

- a. allowing any work to commence by the Contractor before receipt of Certificates of Insurance;
- b. failing to review any Certificates of Insurance received;
- c. failing to advise the Contractor that any Certificate of Insurance fails to contain all the required insurance provisions, or is otherwise deficient in any manner; or
- d. issuing any payment without receipt of a sworn certification from the Contractor stating that all the required insurance is in force.

The Contractor agrees that the obligation to provide the insurance required by these documents is solely its responsibility and that this is a requirement which cannot be waived by any conduct, action, inaction or omission by the Township and/or any of the other Additional Insured.

**ix. Liability of Contractor is not Limited by Purchase Of Insurance.**

Nothing herein contained in the insurance requirements of the Contract Documents is to be construed as limiting the liability of the Contractor, and/or their respective insurance carriers. The Township does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Additional Insured, or any of them, the Contractor, or any subcontractor's interest or liabilities, but are merely minimums. Any obligation of the Contractor to purchase insurance shall not, in any way, limit their obligations to the Additional Insured in the event that the Additional Insured, or any of them should suffer an injury or loss in excess of the amount recovered through insurance, or any loss or portion of the loss which is not covered by either the Subcontractor's and/or Contractor's insurance.

**x. Notice of Personal Injury or Property Damage.**

Contractor shall notify the Township, in writing, of any actual or possible claim for personal injury or property damage relating to the work, or of any occurrence which might give rise to such a claim, promptly upon obtaining first knowledge of same.

**xi. Subcontractors.**

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the types of coverages and in not less than the amounts of coverages specified above. When requested by the Owner, Contractor shall furnish copies of certificates of insurance, additional insured endorsement, or such other insurance documentation evidencing coverage for each subcontractor.

12. Performance Bond, Labor and Material Payment Bond. Prior to commencement of the Project Work, Contractor shall furnish the Township with (i) a performance bond, labor and material payment bond each in the amount of 110% of the Contract Sum in form otherwise acceptable to the Township (the "Bond"), co-signed by a surety authorized by the Illinois Department of Insurance to sell and issue sureties in the State of Illinois naming the Township as primary obligee; or (ii) an irrevocable letter of credit in the amount of 110% of the Contract Sum issued by a financial institution with at least \$40,000,000 in assets and a capital to asset ratio of not less than 6% in form acceptable to the Township; to guaranty the performance of the Contractor's obligations herein and the payment of all labor and materials furnished for the Project Work, Warranty Work, Maintenance Work, Repair Work and/or Restoration Work including but not limited to the payment of the below defined Prevailing Wages. The cost of said Bond or letter of credit, as the case may be, is included in the Contract Sum set forth in paragraph 3.

**13 Davis Bacon Act, Illinois Prevailing Wage Act, and Contract Work Hours and Safety Standards Act**

A. All laborers and mechanics employed by Contractor and by any subcontractor(s) on Project Work, Maintenance Work, Repair Work, Restoration Work and Warranty Work shall be paid wages at rates not less than 1) those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, (40 U.S.C. Sections 276-276a-5), as amended, and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327 et seq.), as amended, and 2) those required under the Illinois Prevailing Wage Act (820 ILCS 130/01 et seq.), which ever wages and requirements are greater and more stringent (hereinafter, "Prevailing Wages"). Contractor and all subcontractor(s) shall comply with all regulations issued pursuant to these Acts and other applicable federal, state, and local laws and regulations pertaining to labor standards with the most stringent laws and regulations controlling. The Secretary of Labor has, with respect to the labor standards specified in this Section, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. Section 133z-15) and Section 2 of the Act of June 13, 1934, as amended, (40 U.S.C. Section 276c).

B. The Contractor shall notify immediately in writing all of its Subcontractors, of all changes in the schedule of Prevailing Wages. Contractor shall include in each of its subcontracts a written stipulation that not less than the Prevailing Wages shall be

paid to all laborers, workers, and mechanics performing work under the Contract and shall require each of its sub-subcontractors of every tier to include said stipulation regarding payment of Prevailing Wages. Any increase in costs to the Contractor due to changes in the Prevailing Wages or labor law during the term of any contract and/or sub-contract of any tier shall be at the expense of the Contractor and not at the expense of the Township. Any change orders shall be computed using the Prevailing Wages applicable at the time the change order work is scheduled to be performed. The Contractor shall be solely responsible to maintain accurate records as required by applicable federal and state law (with the most stringent requirements controlling), and shall be solely liable for paying the difference between Prevailing Wages and any wages actually received by laborers, workmen and/or mechanics engaged in the work and for ensuring strict compliance with the requirements of the above mentioned Acts, including but not limited to providing certified payrolls to the Township in accordance with said applicable law (i.e., the most stringent requirements). Contractor shall similarly comply with all records and wage requirements imposed under the EECBG Agreements.

#### 14. Warranty.

A. Contractor shall assign all manufacturer's warranties for the Project Work to the Township, including but not limited to all warranties from the manufacturer of the Generator. Notwithstanding such assignments, Contractor expressly warrants to the Township that all materials, supplies and all labor furnished on or for the Project Work will be free from defects, and Contractor shall repair and/or replace such defective supplies, materials and/or Project Work, at no cost to the Township for a period of one (1) year commencing upon the completion of the Project Work and acceptance of same by the Township (the "Warranty Work"). All Warranty Work shall be completed within fourteen (14) days of Contractor's receipt of notice from the Township demanding the Warranty Work, weather permitting (the "Warranty Completion Date").

B. If the Drawings and/or Specifications provide for methods of construction, installation, materials, etc., which the Contractor cannot warranty for the indicated period, it shall be the responsibility of the Contractor to so inform the Owner in writing before submitting his bid. Otherwise, the Contractor shall be held responsible to provide the method of construction, installation, materials, etc., which will be guaranteed for the indicated period of time.

15. Maintenance. The twelve (12) months full maintenance as more fully set forth in the Maintenance Service section of the Specifications (Section 1.9, Division 263213, Engine Generators) (the "Maintenance Work") and all other Project Work, Repair Work, Restoration Work, Warranty Work and other work required under the Contract Documents is included in the Contract Sum.

16. Default. In the event of default hereunder, the non-defaulting party shall be entitled to all remedies available at law and/or equity, including reasonable attorney's fees, subject to the limitations set forth in paragraph 19.

17. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed served (a) when delivered by Federal Express or similar overnight courier service to that party's address set forth below during the hours of 9:00 a.m. and 5:00 p.m. local time Monday through Friday, excluding federal holidays; (b) when mailed to any other person designated by that party in writing herein to receive such notice, via certified mail, return receipt requested, postage prepaid; or (c) via fax. Fax notice shall be effective as of date and time of facsimile transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 A.M. to 5:00 P.M. Chicago time). In the event fax notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission. Notice shall be given to the following:

If to Contractor:

Anchor Electric Corporation  
291 E. St. Charles Road  
Carol Stream, Illinois, 60188  
Attention: Robert L. Blair  
Vice-President  
Fax: 630-682-8702

If to the Township:

Hanover Township  
250 S. Route 59  
Bartlett, Illinois, 60103  
Attention: James Barr,  
Township Administrator  
Fax: 630-837-9064

With a copy to:

Laurence J. Mraz  
Bryan E. Mraz & Associates  
111 East Irving Park Road  
Roselle, Illinois, 60172  
Fax: (630) – 529-2019

If to Engineer:

W-T Mechanical/Electrical  
Engineering, LLC  
2675 Pratum Avenue  
Hoffman Estates, Illinois, 60192  
Attention: Stephen Triphahn  
President  
Fax: (224) 293-6444

Either party hereto may change the place of notice to it by sending written notice to the other party.

18. Repair Work. Upon completion of the installation of the Project Work, Maintenance Work, and/or any Warranty Work, Contractor shall repair any damage to

the Project Site and/or any other Township property attributable to acts and/or omissions of Contractor, its employees, agents, or otherwise attributable to the Project Work, Maintenance Work, and/or Warranty Work (the "Repair Work"). The Repair Work shall be completed within fourteen (14) days of the respective completion of the Project Work, Maintenance Work, and/or Warranty Work (the "Repair Completion Date").

**19. Limitation on the Township's Liability.** The Contractor agrees to waive any right which it may have to punitive, consequential, special, indirect, incidental, and/or exemplary damages against the Township and agrees not to make any claim or demand for such damages against the Township.

20. Hazardous Substances. Contractor shall not cause or permit any Hazardous Substances to be brought upon, kept, stored or used in or about the Project Site and/or any other property owned, leased or controlled by the Township (collectively, "Township's Property") by contractor, its employees, subcontractors of any tier, suppliers and anyone for whose acts and/or omissions for whom Contractor may be liable (collectively "Contractor's Agents"), other than the biodiesel fuel required to operate the Generator. If the presence of Hazardous Substances brought upon, kept, stored or used in or about any of the Township's Property by or on behalf of Contractor or Contractor's Agents in violation of this paragraph, results in contamination of the said Property, Contractor shall pay for all actual costs of clean up and shall indemnify, hold harmless and defend the Township and its employees, affiliates, agents, volunteers, officers, commissioners, and officials from and against any and all claims, demands, expenses (including reasonable attorneys' fees), costs, fines, penalties and other liabilities of any and every kind and nature, including, but not limited to, costs and expenses incurred in connection with any clean-up, remediation, removal or restoration work required by any federal, state or local governmental authority because of the presence of any such Hazardous Substances on or about said Property.

For purposes hereof, Hazardous Substances shall include, but not be limited to, substances defined as "hazardous substances," "toxic substances" in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the federal Hazardous Materials Transportation Act, as amended; and the federal Resource Conservation and Recovery Act, as amended ("RCRA"); those substances defined as "hazardous substances," "materials," or "wastes" under any Federal law or the law of the State of Illinois; and as such substances are defined in any regulations adopted and publications promulgated pursuant to said laws (collectively, "Environmental Laws"). If Contractor's activities or the activities of any of Contractor's Agents violate or create a risk of violation of any Environmental Laws, Contractor shall cause such activities to cease immediately upon notice from the Township. Contractor shall immediately notify the Township both by telephone and in writing of any spill or unauthorized discharge of Hazardous Substances or of any condition constituting an "imminent hazard" under any Environmental Laws.

Contractor's indemnification obligations and duties hereunder shall survive the termination and/or expiration of this Contract.

21. Delays in Project Work. Notwithstanding any provision herein to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum as a result of any delays in the progress of the Work. The Contractor's sole remedy for delay shall be an extension of time.

If the Contractor, but for a delay not within the Contractor's control, would have completed the Work prior to the project completion date, the Contractor shall not be entitled to any recovery of damages arising out of any event of delay which prevented such early completion of the Work.

22. Change Orders. Notwithstanding any provisions herein to the contrary, where proposed changes to the Project Work involve a modification to (i) the Contract Sum; (ii) the Contract Time, or (iii) material changes in the Work (i.e., other than minor field changes), a written Change Order shall be prepared by the Engineer. It shall be a condition precedent to the acceptance of any Change Order or any Series of Change Orders which involves an increase or decrease in the Contract Sum of \$10,000 or more or changes the time of completion by a total of thirty (30) days or more, that the Township Board of Trustees (the "Board") shall have first approved such written Change Order(s) and made the requisite determinations and findings in writing as required by 720 ILCS 5/33 E-9 (as amended). Other changes involving modifications to the Contract Sum, Contract Time or material change in the Work which will result in an increase or decrease of less than \$10,000 or extension of less than thirty (30) days to the Contract Time shall be made by the Township Administrator.

### 23. Relationship of the Parties.

A. It is understood, acknowledged and agreed by the parties that the relationship of the Contractor to the Township arising out of this Agreement shall be that of an independent contractor. Neither Contractor, nor any employee or agent of Contractor, is an employee, partner, joint venturer, and/or agent of the Township, and therefore is not entitled to any benefits provided to employees of the Township. Contractor has no authority to employ/retain any person as an employee or agent for or on behalf of the Township for any purpose. Neither Contractor nor any person engaging in any work or services related to this Agreement at the request or with the actual or implied consent of the Contractor may represent himself to others as an employee of the Township. Should any person indicate to the Contractor or any employee or agent of Contractor by written or oral communication, course of dealing or otherwise, that such person believes Contractor to be an employee or agent of the Township, Contractor shall use its best efforts to correct such belief. In ordering or accepting delivery of or paying for any goods or services, Contractor shall do so in Contractor's own business.

B. Contractor shall at all times have sole control over the manner, means and methods of performing the services required by this Agreement according to its own independent judgment. Contractor acknowledges and agrees that it will devote such

time and resources as necessary to produce the contracted for results. Neither the Township nor Engineer nor Architect shall have control over, charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Work since they are solely the Contractor's rights and responsibilities. The Contractor shall supervise and direct the Work efficiently with his, her or its best skill and attention; and the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work; and the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the Project Site and all other persons who may be affected thereby. Neither the Engineer nor Architect shall have any authority to stop the work of the Contractor or the work of any subcontractor on the Project.

24. Exhibits and Contract Documents. All Exhibits and Contract Documents referred to herein are expressly incorporated herein and made a part hereof.

**25. Assumption of Liability. To the fullest extent permitted by law, Contractor assumes liability for all injury to or death of any person or person's including employees of Contractor, any subcontractor of any tier, any supplier or any other person and assumes liability for all damage to property sustained by any person or persons occasioned by or in any way arising out of any work performed pursuant to this Contract.**

26. No Waiver of Immunities and/or Privileges by the Township. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities and/or privileges of the Township, and/or its officials, officers, employees, volunteers and/or agents as to any liability whatsoever, and all such immunities and privileges are expressly reserved.

27. Authorized Installer. Contractor represents and warrants that it is an authorized contractor/installer of all equipment furnished hereunder, including but limited to the Generator, and that the performance of the Project Work hereunder by Contractor or any of its employees, subcontractors of any tier and/or agents will not invalidate or void any manufacturer's warranty for the Generator and/or any other Project equipment furnished hereunder.

28. Illinois Human Rights Act. The Contractor shall comply with all terms and procedures of the Illinois Human Rights Act, (775 ILCS 5 et seq.) and Contractor represents and warrants to the Township as follows:

(1) That it will not discriminate against any employees or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age physical or mental handicap unrelated to ability, or an unfavorable discharge from military service, and further that it will examine all job

classifications to determine if minority persons or women are under-utilized and will take appropriate affirmative action to rectify any such under-utilization.

(2) That, if it hires employees in order to perform this Contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the areas from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not under-utilized

(3) That in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin, or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

(4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Acts and Rules and Regulations, the Contractor will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

(5) That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.

(6) That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to a certain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.

(7) That it will include verbatim or by reference the provisions of these clauses in every subcontracting awards under which any portion of the Contract obligations are undertaken or assumed, so that each provision will be binding upon such subcontractor. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any Subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any

subcontractor declared by the Illinois Human Rights Commission to be ineligible for Contracts or Subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

29. EECBG Agreement

A. Contractor has been specifically advised prior to submitting its bid proposal that Hanover Township is a Subgrantee of an Energy Efficiency and Conservation Block Grant Program funded by the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"), as amended, pursuant to an Agreement entered into and between the County of Cook and Hanover Township

B. The EECBG Agreement and exhibits thereto (as defined in Section 1d of the General Conditions and Instructions to Bidders attached hereto) are incorporated into the Contract Documents and this Biodiesel Generator System Agreement. Contractor must comply with all requirements under the EECBG Agreement that pertain to the Project Work, Maintenance Work, Repair work, Restoration Work and/or Warranty Work, and/or otherwise required of the Contractor under the EECBG Agreement. Any failure to comply with any such requirements shall be a material breach of this Agreement.

**C. Section 1605(a) of the Recovery Act applies to this Project which provides, in part, that all of the iron, steel, and manufactured goods used in the Project must be produced or manufactured in the United States (the "Buy American Provision"), subject to a waiver issued by the Department of Energy. Section 1605(d), which provides that the Buy American Provision be applied in a manner consistent with the United States obligations under international agreements.**

**Notwithstanding any provision in any of the Contract Documents to the contrary, it is Contractor's obligation hereunder to determine that the Generator furnished by Contractor hereunder complies with the Buy American Provision regardless of any information set forth in the Contract Documents, including, but not limited to, the list of manufacturers therein.**

**The Generator and all other equipment and goods furnished by Contractor must comply with the Buy American Provision, and any non-conforming generator, equipment and/or goods (without a Department of Energy waiver) shall be rejected without penalty and/or cost to the Township, and at the Contractor's sole cost.**

30. Restrictions on Lobbying

A. No federal appropriated funds have been paid or will be paid hereunder to any person for influencing or attempting to influence an officer or employee of a

Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

C. Contractor shall require that the language of this certification be included in the contracts and subcontracts at all tiers (including subcontracts and contracts under grants, loan, and cooperative agreements) and that all contractors and subcontractors of every tier shall certify and disclosure according.

This certification is a materials representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### 31. Equal Opportunity Clause

(The following clause is applicable unless this contract is exempt under the rules and regulations of the Secretary of Labor issued pursuant to Executive Order No. 11246 of September 24, 1965 (30 FR 12319), as amended).

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or natural origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting for the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employee placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and or the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of his contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with the procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issues pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

### 32. Miscellaneous.

A. This Agreement supersedes all prior agreements and understandings, both written and oral, of the parties to the subject matter hereof. This Agreement

applies to and binds the successors and assigns of the Parties to this Agreement. Any amendments to this Agreement must be in writing and executed by both Parties.

B. This Agreement may be executed in any number of counterparts, and by the Township and Contractor on different counterparts, each of which when executed shall be deemed an original and all of which together shall constitute one and the same Agreement.

C. Changes in the number, gender and grammar of terms and phrases herein when necessary to conform this Agreement to the circumstances of the parties hereto shall in all cases, be assumed as though in each case fully expressed therein.

D. This Agreement shall be construed, governed and enforced according to the laws of the State of Illinois, and the exclusive venue for the enforcement of this Agreement and/or litigation between the parties shall be the Circuit Court of Cook County, Illinois.

E. In construing this Agreement, section headings shall be disregarded.

F. Time is of the essence of this Agreement and every provision contained herein.

G. If any clause, phrase, provision or portion of this Agreement or the application thereof, to any person or circumstance, shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement, nor shall it affect the application of any other clause, phrase, provision or portion hereof to other persons or circumstances.

H. Each of the undersigned signing as an officer or agent on behalf of the respective party to this Agreement warrants that he or she holds such capacity as is specified beneath his or her name and further warrants that he or she is authorized to execute and effectuate this Agreement and that he or she does so voluntarily and in his or her official capacity.

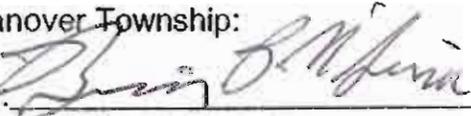
I. Survival of Obligations. Except as otherwise provided, any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement, including, without limitation, Sections pertaining to Indemnity shall survive the expiration of this Agreement.

J. In the event of any conflict between the terms and conditions of any of the Contract Documents, the most stringent requirements shall control.

K. Facsimile signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Agreement.

Hanover Township:

By:

  
Brian P. McGuire,  
Township Supervisor

Anchor Electric Corporation:

By:

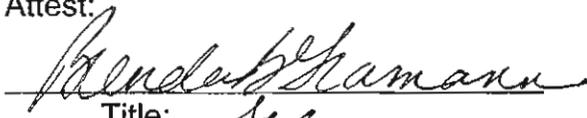
  
President: \_\_\_\_\_

Attest:

By:

  
Katy Dolan Baumer,  
Township Clerk

Attest:

  
Title: Sec