

RFQ # 18897
CFC

Quotation Due By: 07/14/2015
Bid Due Time: 10:00:00 AM

REPLY TO:

Monica Fowler
PURCHASING DEPARTMENT
Grand River Dam Authority
226 W DWAIN WILLIS AVE
PO BOX 409
VINITA OK 74301
PHONE: 405-297-9963 x4650
FAX: 405-840-1390
EMAIL: mfowler@grda.com

VENDOR INFO:

VENDOR #: 99999.00

NAME: _____

CONTACT: _____

ADDRESS 1: _____

ADDRESS 2: _____

CITY: _____ STATE: _____ ZIP: _____

EMAIL: _____

PHONE: _____ FAX: _____

NOTE: 1.The bid opening date for this RFQ is July 14, 2015 at 10:00 am Central Time.

2.A completed non-collusion certificate is required and must be submitted with your bid.

3.This form must be signed by an authorized representative of your company in the space provided in the lower right hand corner of this form.

4.The award to the successful bidder will be based on the lowest and best bid received that meets the specifications listed below and the requirements herein. Preference may be given to E-pay vendors if analysis estimates that such appears to result in a lower cost to GRDA.

5.GRDA will take into consideration past performance and ability to meet delivery deadlines in the evaluation.

***** Read the General Bidding Instructions attached to this RFQ for further instructions.*****

The blanket agreement is for a 6 month period, commencing upon execution of the "Railcar Storage Agreement" and ending six (6) months from that date.

This is a firm, fixed price or fixed percent discount, indefinite delivery and indefinite quantity blanket agreement. The GRDA may, or may not, buy the quantity mentioned in this blanket agreement. Any reference to quantity provided in the blanket agreement is an estimate only, and shall not serve to obligate the GRDA to purchase any minimum quantity, nor shall any such reference serve to establish any maximum quantity that the vendor is required to furnish. The vendor must clear all shipments, if applicable, with the GRDA prior to shipping any portion of this blanket agreement. Pricing as submitted shall contain all direct and indirect costs associated with unit price, e.g., insurance, fees, taxes, profit, overhead, general and administrative expenses. All travel expenses to be incurred by the vendor in performance of the blanket agreement shall be included in the total bid price / agreement amount.

The Authority may terminate the contract for default or any other just cause upon a 30 day written notification to the contractor.

GRDA Visa Payment

GRDA provides a Visa payment program which invoices payment by a secure Visa account number assigned to the supplier after award of contract. Notification of payments and required invoice information are issued to your designated Accounts Receivable contact by e-mail remittance payment.

Preference may be shown during the evaluation process to bidders that agree to accept the Visa payment of invoices. To learn more about the benefits of the Visa payment program, and to obtain answers to FAQ, click or copy and paste the following URL into your browser: www.bankofamerica.com/epayablesvendors.

Will accept payment by Visa: Yes ____ No ____ (check one)

Visa acceptance signature: _____

Designated Accounts Receivable Contact for Visa remittance advices:

Name: _____

Phone: _____

Email: _____

LINE ITEM	DESCRIPTION	NUMBER OF UNITS	UNIT OF MEASURE	UNIT PRICE	LINE COST	LEAD TIME
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1	Storage of train set	1.0	\$	_____	_____	_____
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The Grand River Dam Authority is requesting bids for temporary storage of Ninety (90) empty railcars. It is anticipated that storage will be required for approximately 180 days. Each railcar is 53 feet in length and is the Bethgon II rotary dump design, manufactured by Freightcar America, with an empty weight of 42,000 pounds.

Railcars will be supplied empty for storage. Bidders are requested to supply quotation for temporary train set storage, and to include the following information.

Charge per railcar, for each day of storage:

\$ _____

Charge per railcar, for initial placement of each railcar in storage:

\$ _____

Charge per railcar, for retrieval of each railcar placed in storage:

\$ _____

Location of proposed storage track, and delivery location:

Name of railroad supplying delivery to Seller's storage track (must be either BNSF or Union Pacific):

Availability of storage track (immediate storage is desired):

The storage of the railcars will be subject to the terms and conditions described in the Pro Forma "Railcar Storage Agreement", attached hereto and made a part of this request.



REQUEST FOR QUOTE # 18897

NOTE: All prices must be quoted FOB: Destination. All freight charges to delivery point must be included in the unit price quoted for each line item. All packaging, handling, delivery and any other surcharges must also be included in the price quoted for each line item.

SHIP TO: Grand River Dam Authority
GRAND RIVER ENERGY CENTER
8142 HWY 412B
4 MI EAST ON HWY 412 & 1 MI NORTH ON HWY 412B
CHOUTEAU OK 74337

PAYMENT TERMS: _____

QUOTE EXPIRATION DATE: _____

QUOTATION NUMBER: _____

QUOTED BY (please print): _____

COMPANY NAME: _____

SIGNATURE: _____

DATE OF QUOTE: _____

THIS IS NOT AN ORDER. We would be pleased to receive your quotation for furnishing the above. This form must be completed **in full** (including signature) and returned by the due date above. You may attach additional pages if necessary. If attached, the Non-Collusion form must be completed and returned with your quotation. NO PARTIAL SHIPMENTS OR PARTIAL PAYMENTS WILL BE ALLOWED WITHOUT PRIOR APPROVAL.

All articles purchased hereunder shall be in accordance with the Bidding Procedures and General Terms & Conditions contained on the attached sheets.



GRAND RIVER DAM AUTHORITY

NON-COLLUSION CERTIFICATE

RFQ / RFP # _____

A Non-Collusion Certificate shall be included with any competitive bid or contract submitted to the Authority for goods or services exceeding \$5,000.00 (but not exceeding \$50,000.00), with the exception of those for the purpose of repairs and improvements to GRDA facilities.

A. For purposes of competitive bid or contract, I certify:

1. I am the duly authorized agent of _____,
(Company Name)
the bidder submitting the competitive bid which is attached to this statement, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to said bid;
2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder, nor contractor, nor anyone subject to the bidder's or contractor's direction or control, has been a party:
 - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
 - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor, whether competitively bid or not, has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract herein.

B. The contractor further certifies that no person who has been involved in any manner in the development of said contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract.

C. If any contract pursuant to this bid is for professional services as defined in 74 O.S. § 85.2.25, and if the final product is a written proposal, report or study, the contractor further certifies that (s)he has not previously provided the state agency or any other state agency with a final product that is a substantial duplication of the final product of the proposed contract.

Authorized Signature

Certified this Date

Printed Name

Title

Telephone Number

Fax Number

E-Mail

Grand River Dam Authority is an agency of the State of Oklahoma.

Administrative Headquarters • 226 West Dwain Willis Avenue • Vinita, Oklahoma 74301 • 918-256-5545

GENERAL BIDDING INSTRUCTIONS FOR STANDARD & EMERGENCY BIDS

1. Bids shall be submitted to the designated purchasing agent at the Grand River Dam Authority (hereinafter referred to as "GRDA" or "the Authority") at the address on the attached RFQ or RFP form on or before the date (and time, if applicable) indicated. Bids shall be in conformity with these and any additional instructions to bidders and shall be submitted on GRDA's form. **The RFQ (Request for Quote) or RFP (Request for Proposal) form must be completed in full and signed by the bidder.** If your bid response necessitates additional space, you may attach additional pages; however, the RFQ or RFP form must be completed, signed and reference the additional pages. All bid responses shall be typewritten or handwritten in ink, and any corrections to bids shall be initialed in ink. Quotations or proposals submitted in pencil shall not be accepted.
2. Quotations or proposals may be submitted to GRDA via postal mail, delivery service, fax or e-mail, provided all required signatures can be transmitted successfully.
3. **Non-Collusion Certificate:** RFQs or RFPs anticipated to exceed a total amount of \$5,000 shall be accompanied by a Non-Collusion Certificate. This certificate shall be completed by the bidder and include a signature in ink of an authorized company representative (preferably the bidder) with full knowledge and acceptance of the bid proposal. In the case of bids submitted via fax or e-mail, the Non-Collusion Certificate may be submitted with the bid. Purchase orders in excess of \$5,000 will not be released to the successful bidder without receipt of a properly signed certificate for the bid.
4. In the event the unit price and line total extension do not agree, the unit price shall be considered the quoted price accepted for evaluation.
5. **Freight Terms:** All prices shall be quoted FOB: Destination/Freight Allowed. All packaging, handling, shipping and delivery charges shall be included in the unit price quoted for each line item. No exceptions shall be granted unless approved by the guidelines of the GRDA Chief Financial Officer or designee.
6. **Other Surcharges:** Any additional surcharges (such as HazMat charges, fuel surcharges, set-up fees, etc.) shall be included in the unit price quoted for each line item. All additional charges are considered a part of the cost of the goods, and bids shall be evaluated to include these additional charges.
7. **Tax-Exempt Status:** GRDA is an agency of the state of Oklahoma and is specifically exempt from the payment of sales tax by Oklahoma state statute, Title 68 O.S.A. § 1356 (10). An excerpt from the statute shall be furnished upon request.
8. **Questions arising during the bidding process should be submitted in writing to the GRDA purchasing agent named on the RFQ or RFP.** The GRDA purchasing agent shall coordinate a reply from the end user to ensure that all potential bidders are provided the same information. Under no circumstances shall a bidder discuss pricing with any GRDA employee prior to the bid opening.
9. All bids submitted shall be subject to GRDA's Purchasing Policy and Procedures, General Terms and Conditions, the bidding instructions and specifications, the Oklahoma Open Records Act, other statutory regulations as applicable, and any other terms and conditions listed or attached herein – all of which are made part of this Request for Quote or Request for Proposal.
10. GRDA reserves the right to reject any and all bids, and to contract as the best interests of the Authority may require. GRDA reserves the right to reject any bids that do not comply with the requirements and specifications of the Request for Quote or Request for Proposal. All bid responses become the property of GRDA and are subject to the Oklahoma Open Records Act. GRDA shall endeavor to protect technical information designated by the bidder as proprietary information; however, only technical information (i.e., "trade secrets") may be considered proprietary – pricing and other non-technical aspects of the quote shall be considered non-proprietary.
11. **"Sole Brand" or "No Sub" Items:** Items with a "Sole Brand" or "No Sub" designation in the description shall be furnished as the specified manufacturer and model/part number. No exception may be taken to the specification, and no alternate shall be accepted. In those cases where a manufacturer has discontinued the specified model/part number, the bidder shall indicate so on the RFQ. If a replacement item is available, the new model/part number shall be indicated on the RFQ form and the price quoted. It shall also be noted whether the replacement item is a direct replacement for the obsolete part number originally requested. If not, or if the specifications differ in any way, the bidder shall explain in detail, and corresponding drawings or descriptive literature shall be included with the quote.

12. **Approved Equivalents:** Unless an item is designated as a “Sole Brand” or “No Sub” item, any manufacturer’s name, brand name, information and/or catalog number listed in a specification is for informational or cross-reference purposes and is not intended to limit competition. Bidders may offer any brand/manufacturer for which they are an authorized representative, provided it meets or exceeds the specification of the listed item. However, if quoting an equivalent product, bidders shall indicate on the RFQ form the manufacturer’s name and part number. Bidder shall also submit any drawings, descriptive literature and specifications for evaluation purposes. Reference to literature submitted with a previous bid shall not satisfy this provision. The bidder shall also provide written confirmation that the proposed equivalent will meet the requested specifications and is not considered an exception. Bids which do not comply with these requirements may be rejected. GRDA warehouses are not permitted to accept any item with a part number differing from that quoted by the bidder. Bids lacking any written indication of intent to furnish an alternate brand, model or part number shall be considered to be in complete compliance with the specifications as listed on the RFQ.
13. **Insurance Certificates:** Any service to be performed that requires the vendor’s employee, vehicle or equipment to be on any GRDA property must be covered by minimum insurance requirements. The workscope to be performed for the Authority shall be evaluated and the minimum insurance requirements shall be provided to prospective bidders with the RFQ or RFP. Evidence of insurance coverage shall be furnished in the form of a Certificate of Insurance, and shall be submitted with the bid response. Bidders shall disclose any subcontractors to be used, and the Authority shall consider the supplier as the single point of contact. The supplier shall assume responsibility for the performance of the subcontractor. Policies shall remain current for the duration of the requested service period, and GRDA shall be notified of any cancellation or revision to policies. Purchase Orders shall not be released to the successful bidder without a current Certificate of Insurance naming GRDA as certificate holder on file. A Memorandum of Insurance shall not be acceptable for this requirement.
14. **MSDS:** Material Safety Data Sheets shall be furnished to GRDA’s Safety Department at the address noted on the PO prior to delivery of items.
15. **Purchase Orders** shall be awarded to the “lowest and best” or “best value” bidder. Line items may be split into multiple orders, taking low items from each respective bidder, or orders may be awarded on an “all or none” basis, whichever is in the best interests of the Authority. Award decisions are further subject to consideration of any additional terms and conditions contained in the bid proposal. Vendor protests must be submitted in writing to the Central Purchasing Unit of GRDA within thirty-six (36) hours of award of Contract or Purchase Order.
16. Successful vendor shall deliver the merchandise or perform the service as quoted. Substitutions or changes without prior approval of the GRDA purchasing agent shall be rejected and returned at the vendor’s expense.
17. **Bidder Responsibilities:** Bidders are to transact all phases of the purchasing function directly with the GRDA purchasing agent. Bidders are to conduct all written and verbal communication with the Authority through the GRDA purchasing agent. Bidders are to conduct negotiations ethically, without attempts to influence through offers of valuable personal gifts or entertainment. Bidders are to make available as requested any technical information which might be of benefit in the bid evaluation.
18. **Supplier List:** The Finance Department maintains a current listing of suppliers with a cross-reference as to products and services offered. Suppliers may have their names added to the list by submitting a completed Vendor Registration/Payee Application, and shall notify the Authority of any update information. If a supplier fails to respond to bid requests after four appropriate solicitations, that supplier may be removed from the active list. Suppliers who do not meet quoted shipping dates or lead times, supply products or services of poor quality, substitute items of unequal quality, continually over-ship or under-ship items, or do not invoice properly may be placed under suspension or disqualified from the active supplier list. Suppliers may voluntarily request to be removed from the supplier database.
19. **Service Contracts:** By submitting a bid for services, the bidder certifies that they, and any proposed subcontractors, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes, but is not limited to, the free Employment Verification Program (E-Verify) available at www.dhs.gov/E-Verify. This shall remain in effect through the entire term, including all renewal periods, of the contract. The State may request verification of compliance for any contractor or subcontractor. Should the State suspect or find the contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default, and suspension or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the contractor.

GENERAL TERMS AND CONDITIONS



Any contract or order issued by the Grand River Dam Authority (hereinafter referred to as GRDA) is expressly conditioned upon Seller's assent to these terms and conditions, unless otherwise agreed in writing. Any order issued or filled by Seller shall be deemed to constitute Seller's assent to these terms and conditions. Any additional or different terms submitted by the Seller are hereby expressly objected to by GRDA unless expressly agreed to in writing by GRDA.

1. Mail or deliver all invoices or correspondence pertaining to the payment of this Purchase Order to: Accounts Payable Department, Grand River Dam Authority, P.O. Box 409, 226 West Dwain Willis Avenue, Vinita, Oklahoma 74301. Seller shall submit invoices, with one copy detailing each item with unit prices, with the top copy being distinguishable as an original, accompanied by one copy of complete shipping papers. If shipment is not made by routing instructions as specified on the face of this Purchase Order, GRDA reserves the right to deduct any excess transportation charges resulting therefrom. Copy of original freight bill must be supplied for payment. Time, in connection with any discount offered, will be computed from date of delivery of items, or from date the correct invoice is received in Vinita, Oklahoma, whichever period of time is the later date. No Oklahoma State Sales or Use Tax shall be included in payment of this Purchase Order.
2. All articles, materials, equipment and supplies (hereinafter referred to as "items") covered by this Purchase Order, unless otherwise specified, are purchased subject to inspection before and during manufacture and upon arrival at destination. GRDA reserves the right to return for full credit and/or refund, at Seller's sole risks and expense, including all transportation and storage charges, all items found defective or furnished contrary to instructions and/or specifications contained herein.
3. In case of default by Seller, GRDA may procure the items or services from other sources and hold Seller responsible for any excess cost occasioned thereby; provided, that if necessity requires the use of items not conforming to specifications, they may be accepted, and payment made at a proper reduction in price. Notwithstanding anything herein to the contrary, GRDA reserves the right to terminate this Purchase Order for its convenience. In the event of such termination, GRDA shall pay and Seller shall accept the reasonable value of all work performed and items delivered by Seller up through the effective date of such termination.
4. Seller warrants that all items covered by this Purchase Order will conform to the specifications, drawings, samples or other description furnished by GRDA, or any revisions thereof, and any items purchased pursuant to this Purchase Order shall be subject to all warranties expressed or implied by law, and will be merchantable of good material and fit and sufficient for the purpose intended, and shall satisfy any performance guarantee requirements as specified herein by GRDA. In the event the items and/or services purchased hereunder do not meet the warranty specified hereinabove, Seller shall promptly repair or replace any defective item at its expense, or re-perform any necessary services, and shall hold GRDA harmless from any and all costs and expenses incurred due to said defective item or performance of services, including the cost for removing any part or product to be repaired or replaced, as well as transportation and installation charges in connection with the repair, replacement or servicing of any parts or equipment. Seller further agrees that the manufacturer's warranties and guaranties of the items purchased hereunder extended to Seller shall extend to GRDA.
5. Seller shall indemnify and hold GRDA harmless from and against any and all loss, costs or expenses arising out of any liens or claims in any way related to the items or services furnished hereunder. Seller shall likewise indemnify and hold GRDA harmless from any patent, trademark or copyright infringement, except items supplied in accordance with design originating with GRDA. Seller shall be an independent contractor. Seller shall protect, defend, indemnify and hold GRDA harmless from any damage or injury to any persons, including Seller's employees or property, and from any claim, demand, action, cost or expense arising out of the activities hereunder as a result of Seller's negligent or intentional wrongful acts. In no event shall Seller's liability be limited under this Purchase Order for the negligent or intentional wrongful acts of the Seller.
6. Seller shall, before any items are shipped and/or any services are commenced, provide GRDA with certificates evidencing that the following minimum insurance will remain in force until Seller's obligations are completed: (a) Workmen's Compensation Insurance, including Employer's Liability Insurance, in accordance with the laws of the state in which Seller may be required to pay compensation; and (b) Public Liability Insurance with an individual limit of not less than \$100,000 and a total for any one accident of not less than \$300,000, unless otherwise specified herein.
7. This Purchase Order (including Seller's right to receive payments hereunder) shall not be assigned or subcontracted in whole or in part without GRDA's prior written consent. No assignment hereof shall relieve this assignor of its obligations hereunder.
8. Service Contracts: By submitting a bid for services, the Bidder certifies that they, and any proposed Subcontractors, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Supplier/Contractor/Consultant/Construction Manager/etc. certifies that it and all proposed Subcontractors, whether known or unknown at the time a contract is executed or awarded, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes, but is not limited to, the free Employment Verification Program (E-Verify) available at www.dhs.gov/E-Verify. This shall remain in effect through the entire term, including all renewal periods, of the Contract. The State may request verification of compliance for any Contractor or Subcontractor. Should the State suspect or find the Contractor or any of its Subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.
9. All Items shipped pursuant to this Purchase Order will conform with all municipal, state and federal laws, ordinances and regulations, and Seller will defend and save harmless GRDA from loss, costs or damage by reason of any actual or alleged violation thereof.
10. GRDA hereby notifies Seller that Seller must comply, and by acceptance of this Purchase Order, Seller represents that it has complied with, and will continue to comply with, all applicable federal, state and local laws, regulations or orders.
11. This Purchase Order shall be construed as being performed by both parties in Craig County, Oklahoma, and shall be governed in accordance with the laws of the State of Oklahoma.
12. AUDIT RIGHTS. Contractor will, at all times during the term of this Contract and for a period of five (5) years after the completion of this Contract, maintain and make available for inspection and audit by GRDA and/or the Oklahoma State Auditor, all books, supporting documents, accounting procedures, practices, and all other items relevant to the Contract.

Grand River Dam Authority is an agency of the State of Oklahoma.

Administrative Headquarters • 226 West Dwain Willis Avenue • Vinita, Oklahoma 74301 • Phone: 918-256-5545 • Fax: 918-256-1051

RAILCAR STORAGE AGREEMENT

This Railcar Storage Agreement "Agreement" dated as of _____, 2015, between, _____ (herein "Railroad"), and Grand River Dam Authority, an agency of the STATE OF OKLAHOMA, organized and existing pursuant to 82 O.S. § 861 et. Seq., as amended (herein "Customer"), collectively referred to as the "Parties".

WHEREAS, Customer from time to time, has empty railcars in excess of its need and placement ability, and desires to store them temporarily on Railroad's tracks until they can be ordered into Customer's facility.

WHEREAS, subject to availability of storage space, Railroad is ready, willing and able to provide storage for customer's railcars in accordance with the terms of this Agreement.

NOW THEREFORE, for and in consideration of the mutual benefits and obligations set forth in this Agreement, the parties agree that the following terms and provisions shall govern the storage of Customer's railcars by Railroad as follows:

1. STORAGE OF RAILCARS

- 1.1 When Customer desires to store railcars on Railroad's tracks, it must notify Railroad of the number of railcars it wishes to store and the dates on which the railcars will be tendered for storage. Railroad will promptly advise as whether and to what extent it can accommodate Customer's request.
- 1.2 This Agreement does not obligate Railroad to accept all or any number of railcars for storage tendered by Customer.
- 1.3 Movement of Customer's railcars onto Railroad's tracks is evidence that Customer has accepted the premises as suitable for storage.
- 1.4 Customer shall deliver each railcar empty, clean and free of accumulations or deposits of commodities previously carried.

2. FEES

- 2.1 For each railcar which is stored pursuant to the term of this Agreement, Railroad will receive the following fees:
 - 2.1.1 \$_____ per railcar, for switching the railcar onto its tracks from the Interchange Point and placing the railcar into storage.

2.1.2 \$_____ per railcar, for switching the railcar out of storage to an Interchange Point for delivery to Customer.

2.1.3 \$_____ per railcar, per day for each day or fraction thereof that the railcar is on Railroad's tracks for the purpose of storage pursuant to this Agreement.

2.2 The aforementioned fees are for special and unique services and are in addition to, and not in lieu of, any other fees or charges owed to Railroad by Customer, including but not limited to transportation charges, switching fees, tariff charges or divisions. Customer is responsible for all other freight charges as may be charged by railroads other than the Railroad and shall clearly denote such wording on its bills of lading or other documents used to move the Cars.

2.3 All railcars received by Railroad will continue to be billed on a daily basis and at a daily rate so long as they are not requested and are not delivered to Customer's facility.

2.4 The total billable fees under this Agreement shall not exceed \$_____ without prior written authorization from Customer.

3. INVOICING PAYMENT OF CHARGES

3.1 Railroad shall issue an end of the month invoice identifying each railcar by car mark(s), number(s) and date received into storage, as well as by date taken out of storage for delivery to Customer's facility.

3.2 All daily storage fees shall be invoiced on a monthly basis and switching charges will be invoice weekly by Railroad to Customer at the address listed in Section 8.1, or to such other address as Customer shall delivery Railroad in writing.

4. INVOICING PAYMENT OF CHARGES

4.1 This Agreement shall continue for a period of one (1) year from the date first written above, unless sooner terminated.

4.2 Either party may terminate this Agreement at any time, provided that thirty (30) day written notice is provided to the other party's appropriate undersigned authorized representative.

4.3 If this Agreement is terminated for any reason prior to its natural expiration, Customer shall, within five (5) days of the date of termination or by the date of natural expiration of this Agreement, forward Railroad shipping instructions and Railroad shall move all of Customer's railcars

stored on Railroad's tracks to the nearest Interchange Point within ten (10) days of receipt of the shipping instructions.

5. DEGREE OF CARE; LIMITATION OF LIABILITY

- 5.1 To the extent allowed by Oklahoma law, Railroad is responsible only for the cost of repair or replacement, whichever is lower, for damage or loss to the Cars that directly results from its negligent acts or lack of ordinary care. The replacement value of each Car will not exceed the Destroyed Value of the Cars as calculated by current rules of the American Association of Railroads. Notwithstanding the foregoing, in no event shall Railroad be liable for any costs resulting from existing conditions of the Cars, ordinary wear and tear, theft of parts, graffiti/paint/vandalism, or acts of God that may affect the Cars.
- 5.2 The extent allowed by Oklahoma law, Railroad will not be responsible for any loss or damage to any railcar or lading therein, stored on its tracks pursuant to this Agreement, except to the extent caused by Railroad's sole gross negligence or willful misconduct. In no event shall Railroad be liable for loss or damage to any railcar caused by a Force Majeure Event as defined in Section 7 of this Agreement.

6. INDEMNIFICATION

- 6.1 To the extent allowed by Oklahoma law, Customer shall indemnify Railroad, and hold Railroad harmless from and against all demands, claims, damages, losses and expenses (including court costs and reasonable attorney's fees) for damage to or destruction of property, or injury or death to any person asserted against Railroad by any person, where the claim arises from or relates to the storage or movement of customer's railcars on Railroad's tracks, pursuant to the terms of this Agreement, except to the extent caused by the gross negligence or willful conduct of Railroad.

7. FORCE MAJEURE

- 7.1 As used in this Agreement, a "Force Majeure Event" means any act or event, whether foreseen or unforeseen, that:
 - 7.1.1 prevents a party (the Nonperforming Party"), in whole or in part, from performing its obligations under this Agreement, or satisfying any conditions to the Performing Party's obligations under this Agreement and
 - 7.1.2 is beyond the reasonable control of and not the fault of the Nonperforming Party, and

7.1.3 the Nonperforming Party has been unable to avoid or overcome by the exercise of due diligence.

7.2 In furtherance of the definition of Force Majeure Event and not in limitation of that definition, each of the following acts or events is deemed to meet the requirements of Section 7.1: war, flood, lightning, drought, earthquake, fire, eruption, landslide, hurricane, cyclone, typhoon, tornado, explosion, civil disturbance, act of God or the public enemy, terrorist act, military action or action of a court of public authority.

7.3 No later than ten (10) days after becoming aware of the occurrence of a Force Majeure Event, the Nonperforming Party shall furnish the Performing Party a written report describing the particulars of the occurrence, including an estimate of its expected duration and probable impact on the performance of the Nonperforming party's obligations under this Agreement. After such notice is given, the obligations under this Agreement shall be suspended for the duration of the Force Majeure Event, until notice is given pursuant to Section 7.4 of this Agreement. Each party will use commercially reasonable efforts to end the Force Majeure Event. The suspension of any obligation under this Section shall cause the term of this Agreement to be extended, unless earlier terminated, for a like number of days as the Force Majeure Event was in effect.

7.4 When the Nonperforming Party is able to resume performance of its obligations under this Agreement, or satisfy the conditions precedent to the Performing Party's obligations, it shall immediately give the Performing Party written notice to that effect and shall resume performance under this Agreement no later than two working days after the notice is delivered.

8. NOTICE

8.1 All notices required to be given by either party to the other (unless expressly stated otherwise in this Agreement), must be in writing and shall be delivered to the other party by overnight messenger service, United States certified mail with return receipt requested, or by overnight courier, and addressed as follows:

To: Customer

Grand River Dam Authority
P.O. Box 609
Chouteau, Oklahoma 74337-0609
Attention: Charles J. Barney
Assistant General Manager

cbarney@grda.com

918-824-1074, extension 57517

To: Railroad

- 8.2 Either party may designate an alternate or different address by sending notice of such intent to the address listed in Section 8.1.

9. ASSIGNMENT

- 9.1 Except in the event of the sale of some or all of the railcars by Customer, neither this Agreement nor any rights or remedies contained in this Agreement may be assigned by Parties without the prior written consent of the other.

10. GOVERNING LAW

- 10.1 The laws of the State of Oklahoma govern all matters arising out of or relating to this Agreement, including, without limitation, its interpretation, construction, performance and enforcement.
- 10.2 Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement may bring the legal action or proceeding in the state courts of the State of Oklahoma and the United States District Court for the Northern District of Oklahoma.

11. ENTIRE AGREEMENT

- 11.1 This Agreement sets forth the entire agreement between the Parties, and replaces and supersedes any prior agreements, understandings, negotiations, or discussions between the Parties relative to the subject matter of this Agreement.
- 11.2 This Agreement may only be modified by a written amendment signed by an authorized representative of both Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the duly authorized representatives as of the date first above written.

CUSTOMER: Grand River Dam Authority

By: _____
Daniel S. Sullivan

Title: GM/CEO and Director of Investments

RAILROAD:

By: _____

Title: _____