

A G R E E M E N T

between

KELLOGG LUMBER COMPANY

and

THE UNION PACIFIC COAL COMPANY

Dated July 15th, 1926.

Covering construction of Office Building
and filling station
at
Rock Springs, Wyo.

7-16-26

C-O-P-Y

THIS AGREEMENT, made and entered into this

15th day of July, 1926
by and between KELLOGG LUMBER COMPANY, a partnership composed of Samuel E. Kellogg, George A. Kellogg and Gordon Morris, all of Rock Springs, Sweetwater County, Wyoming, (hereinafter designated "Contractor"), party of the first part, and THE UNION PACIFIC COAL COMPANY, a corporation of the State of Wyoming, (hereinafter designated "Owner"), party of the second part,

WITNESSETH that the Contractor, in consideration of the agreements herein made by the Owner, agrees with the Owner as follows:

Article I. The Contractor shall provide all material and furnish all labor, tools, appliances and other things requisite and necessary, and shall construct, finish and complete (except heating, plumbing and electrical work) an Office Building and Filling Station at Rock Springs, Sweetwater County, Wyoming, in conformity with drawings 2000.3100-A sheets 1 to 14, inclusive, and drawing 2000.3104, sheet 1, and specifications consisting of sheets 1 to 44, inclusive, covering construction of the Office Building, and sheets 1 to 8, inclusive, covering construction of the Filling Station, each being identified by the signatures of the Engineer for the Owner and S. E. Kellogg for the Contractor, which drawings and specifications are hereby by reference made a part of this contract.

ARTICLE II. The performance of the said work shall be done under the direction and supervision of the Owner's Engineer (hereinafter designated "Engineer"); it being understood, however, that the Owner shall not be responsible for the methods selected by the Contractor for the Contractor's own convenience in performing said work. The decision of the Engineer as to the true construction and meaning of the drawings and specifications shall be final. Additional drawings and specifications, if necessary to detail and illustrate the work to be done hereunder, shall be furnished by the Engineer, and the Contractor shall conform to and abide by such additional drawings and specifications so far as they may be consistent with the purpose and intent of the drawings and specifications referred to in Article I.

All drawings and specifications prepared for the purpose of this contract will be furnished by the Owner, at its expense, and shall remain the property of the Owner.

The services of the Engineer shall be paid for by the Owner.

Article III. No alterations shall be made in the work except on the written order of the Engineer; the amount to be paid by the Owner, or allowed by the Contractor by virtue of such alterations to be stated in the said order.

Article IV. The Contractor shall provide sufficient, safe and proper facilities at all times for the inspection of the work by the Engineer; shall, within twenty-four hours after receiving written notice from the Engineer to that effect, take down all portions of the work which the Engineer shall condemn as unsound and improper or as in any way failing to conform to the drawings and specifications, and shall make good all material and work damaged or destroyed thereby.

Article V. Should the Contractor at any time refuse or neglect to furnish a sufficiency of properly skilled workmen, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the Engineer, the Owner shall be at liberty, after six days' written notice to the Contractor, to provide any such labor or materials and deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this agreement and if the Engineer shall certify that such refusal, neglect or failure is sufficient ground for such action the Owner shall also be at liberty to terminate this contract and to enter upon the premises and take possession, for the purpose of completing the said work, of all materials, tools and appliances thereon, employing any other person or persons to finish the work, and provide materials therefor. In case of such termination of this contract, the Contractor shall not be entitled to receive any further payments under this contract until the work shall be fully finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the Owner in finishing the work, such excess shall be paid by the Owner to the Contractor; but if such expense shall exceed such unpaid balance, the Contractor shall pay the Owner the difference.

The expense incurred by the Owner as herein provided, either for furnishing materials or for finishing the work, and any damage incurred through default, shall be audited and certified by the Engineer whose certificate thereof shall be conclusive upon the parties.

Article VI. The Contractor shall give personal superintendence and direction of the work and keep a competent foreman in charge constantly on the ground.

Article VII. The Contractor shall complete any portion or portions of the work in such order of time as the Engineer may require. The Owner shall have the right to take possession of and use completed or partially completed portions of the work, notwithstanding the time for completing the entire work, or such portions may not have expired, but such taking possession and use shall not be deemed an acceptance of the work as taken or used, or any part thereof. The work shall be continuous as far as practicable and the entire work shall be completed by the 15th day of December, 1926.

Article VIII. Should the Contractor be unusually delayed in the prosecution or completion of the work by the act, neglect or default of the Owner, of the Engineer or of any other contractor employed by the Owner on the work, or by any damage caused by fire, lightning, earthquake, cyclone, or by the abandonment of the work by the employees through no default of the Contractor, then the time herein fixed for the completion of the work shall be extended on the specific work delayed, and not on the entire work, for a period equivalent, to the time lost by reason of any or all the causes aforesaid; which extended period shall be determined and fixed by the Engineer; but no such allowance shall be made unless a claim therefor is presented in writing to the Engineer within twenty-four hours of the occurrence of such delay.

Article IX. The Owner agrees to furnish all labor and materials essential to the conduct of this work not included in this contract in such manner as not to materially delay its progress, and in event of failure so to do, thereby causing loss to the Contractor, agrees that it will reimburse Contractor for such loss and the Contractor agrees that if it shall delay the progress of the work so as to cause loss or damage to the Owner, or loss for which the Owner shall become liable, then it shall reimburse the Owner for such loss or damage.

Article X. The Contractor, in consideration of being awarded this contract, and the payments to be made hereunder by the Owner to the Contractor, further agrees to fully complete, according to the plans and specifications, the Office Building and Filling Station herein mentioned, on or before the fifteenth day of December, 1926, and if the said Contractor shall fail to deliver said building to the Owner fully completed as aforesaid by the fifteenth day of December, 1926, then and in that case the Contractor agrees to pay to the Owner an amount covering the actual rental paid by the Owner per day for quarters because of not having the use and occupation of said building after December 15, 1926.

Article XI. In consideration of the completion of the work herein described in conformity in all respects with said drawings and specifications, and the fulfilment of all the covenants, conditions and agreements of the Contractor herein contained, to the satisfaction and acceptance of the Owner, the Owner shall pay to the Contractor the contract price of ninety-eight thousand three hundred twenty-five dollars and ninety cents (\$98,325.90), which contract price shall include all expense incident to the personal bond furnished by the Contractor hereunder and shall cover all expense in connection with the entire Repelle treatment mentioned on page 37 of the specifications and is based on the completion of the interior finish with plain sawed white oak as mentioned on page 27 of the specifications, to which contract price shall be added amounts based on the following unit prices for sidewalk and curbs constructed by the Contractor as required by the Engineer:

For all cement sidewalks, 5 inches thick,
constructed by the Contractor, complete
in place - - - - - 25¢ per sq. ft.

For all cement sidewalks, 6 inches thick,
constructed by the Contractor, complete
in place - - - - - 30¢ per sq. ft.

For all 24-inch, concrete curb constructed
by the Contractor, complete in place - 60¢ per lin. ft.

The said contract price, subject to additions for
sidewalks and curbs, shall be paid by the Owner to the Con-
tractor in current funds and only upon certificates of
Engineer to the Owner as follows:

The Contractor shall furnish a complete schedule
with amounts of money for the different items of the work
which will be used as a basis for estimates.

The Contractor shall also present monthly requests
based on the above schedule for items covered by actual ex-
penditure for labor and materials.

The Engineer will issue a statement for vouchers at
the end of each month covering eighty per cent (80%) of the
work completed during the month. Twenty per cent (20%) shall
be held until the completion of the contract. The final pay-
ment shall be made within 30 days after the completion of the
work included in this agreement and all payments shall be due
when the certificates are issued.

If at any time there shall be evidence of any liens
or claims for which, if established, the Owner of the said
premises might become liable, and which is chargeable to the
Contractor, the Owner shall have the right to retain out of
any payments then due, or thereafter to become due, an amount
sufficient completely to indemnify it against such liens or
claims. Should there prove to be any claim after all payments
are made, the Contractor shall refund to the Owner all moneys
that the latter may be compelled to pay in discharging any
lien on said premises made obligatory in consequence of the
Contractor's default.

Article XII. It is further mutually agreed between
the parties hereto that no certificate given or payment made
under this contract, except the final certificate or final
payment, shall be conclusive evidence of the performance of
this agreement, either wholly or in part, and no payment shall
be construed to be an acceptance of the defective work.

It is further agreed by and between the parties here-
to that the Contractor shall make good all defects, omissions
and violations of the terms of this contract whenever dis-
covered during the progress of the work and thirty days after
completion, notwithstanding any payments that have been made
or any certificates that have been given, or any possession or
acceptance of the work by the Owner, and shall be responsible
for any damages that may be caused in making good such defects,
or omissions or violations.

Article XIII. The Owner shall during the progress of the work maintain insurance on said work in its name, against loss or damage by fire. The policy shall cover all work incorporated in the work and all materials for the same in or about the premises, and shall be payable to the Owner. The Owner to pay the Contractor in full for his interest as may appear.

Article XIV. The Contractor shall be subject to and operate under all applicable Federal enactments and those of the State of Wyoming regarding Employer's Liability, Workmen's Compensation and Workmen's Insurance and expressly covenants and agrees that the Contractor's employees engaged on the work herein undertaken to be done by the Contractor are not and shall not be treated or considered as the servants and employees of the Owner, and the Contractor hereby covenants and agrees to save and hold harmless the Owner from and against any and all damages, claims, costs or expenses whatsoever, due to the existence of such enactments, and of any and all claims, costs and expenses in connection therewith, under any claim of subrogation provided for by said enactments or otherwise, and also from and against any and all damages, claims, costs or expenses arising from or growing out of any injuries to or death of the members of the Contractor's firm, or any of them, or the employees of the Contractor or any other person whomsoever, or damages to property belonging to any persons whomsoever, when such injury, death or damage occurs because of, or in connection with the carrying on and completion of the work to be performed by the Contractor under this contract, whether such claims are based upon a right conferred by the common law or by any statute; PROVIDED, however, that the agreement of the Contractor herein to indemnify and hold harmless the Owner shall not apply as to injuries, deaths or damages occasioned by reason of the negligent acts of an independent contractor over whom the Contractor has no control, either direct or indirect, or of the Owner, its officers, agents or employees, unless in either case there is concurring negligence on the part of the Contractor, in which event the indemnity to be furnished by the Contractor hereunder shall be in proportion to the Contractor's negligence.

The Contractor further agrees, free of cost and expense to, and for the purpose of protecting the Owner, to take out and carry insurance of such kind and amount, as in the judgment of the Engineer, will enable the Contractor to carry out all the provisions of this Article XIV hereof, on the basis of any and all legal enactments in regard to Employer's Liability, Workmen's Compensation and Workmen's Insurance.

Upon settlement of any suits or claims arising hereunder the Contractor shall secure a release to the Owner from all liability in connection therewith.

The Contractor further agrees that in case of suit against the Owner for damages to persons or property occasioned through the work covered by this contract that the Contractor hereby waives notice to come in and defend and agrees to be bound by the amount of the recovery in such suit.

Article XV. The Contractor shall furnish a personal bond satisfactory to the Owner to the amount of forty-nine thousand two hundred dollars (\$49,200.00) to protect the Owner against failure of the Contractor to fully perform the covenants of this contract.

Article XVI. This agreement shall be binding upon and inure to the benefit of the Contractor, the Contractor's legal representatives, heirs, executors, administrators, successors and assigns, the Owner and its successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate as of the date first herein written.

Witness:

(Sgd) M. S. WEBB

(Sgd) M. S. WEBB

(Sgd) M. S. WEBB

KELLOGG LUMBER COMPANY,

By (Sgd) SAMUEL E. KELLOGG
Partner

By (Sgd) GEO. A. KELLOGG
Partner

By (Sgd) C. G. MORRIS,
Partner

Witness:

(Sgd) A. R. McCABE

THE UNION PACIFIC COAL COMPANY,

By (Sgd) EUGENE McAULIFFE,
President

(Seal)

Attest:

(Sgd) C. B. MATTHAI,
Asst. Secty UPCoal Co.

Approved as to form:

(Sgd) JOHN A. BENNEWITZ,

Approved as to execution:

(Sgd) JOHN A. BENNEWITZ,
Cont. Atty.

INDEMNITY BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, Samuel E. Kellogg, George A. Kellogg and Gordon Morris, partners doing business under the firm name and style of Kellogg Lumber Company, of Rock Springs, Wyoming, as principals, and John W. Hay and W. E. Gottsche, both of Rock Springs, Wyoming, as Sureties, are held and firmly bound unto The Union Pacific Coal Company, Obligee herein, in the penal sum of forty-nine thousand two hundred dollars (\$49,200.00) to be paid to the Obligee, its successors or assigns, for the payment whereof well and truly to be made we jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns firmly by these presents;

WHEREAS, the Principals have entered into a written contract dated the 15th day of July, 1926 with the Obligee for the construction of an Office Building and Filling Station in Rock Springs, Wyoming, under the terms and conditions set out in said contract, a copy of which is hereto attached and made by reference a part hereof;

NOW THEREFORE, the condition of the above obligation is such that if the Principals, their heirs, executors or administrators, shall faithfully keep and perform within the time and in the manner specified in said contract all and singular the conditions, covenants and agreements in said contract contained which are to be kept and performed by said Principals, then this obligation to be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, this instrument has been executed this 30th day of July, 1926.

Witness:

(Sgd) M. S. WEBB

" M. S. WEBB

" M. S. WEBB

(Sgd) SAMUEL E. KELLOGG,

" GEO. A. KELLOGG.,

" G. G. MORRIS.

Partners doing business under
the firm name of Kellogg
Lumber Company.

Witness:

(Sgd) C. ELIAS

" C. ELIAS

(Sgd) JOHN W. HAY,
Surety

" W. W. GOTTSCHIE
Surety