

CONSTRUCTION CONTRACT

JOB DESIGNATION

AFE #41335

PLAINTIFF'S EXHIBIT

CC-326

THIS AGREEMENT between COASTAL STATES PETROCHEMICAL COMPANY, a corporation, with its principal office in the Petroleum Tower, whose mailing address is P. O. Drawer 521, City of Corpus Christi, Nueces County, Texas, hereinafter called "PETRO-CHEMICAL", and Berry Contracting Co., whose mailing address is P. O. Box 4858
Corpus Christi, Texas 78408, hereinafter called "CONTRACTOR", provides for performance by CONTRACTOR of the work stipulated below on the terms and conditions set forth.

ARTICLE I - WORK TO BE PERFORMED

CONTRACTOR agrees to perform the work described below for PETROCHEMICAL in accordance with the specifications, plans, maps, and instructions as set forth in the attached Exhibit "A", incorporated hereto by the signatures of the parties identifying them as a part hereof. Additional detail as to location may be obtained by CONTRACTOR from maps in PETROCHEMICAL'S Engineering Department. All matters not covered in detail herein shall be performed in a manner consistent with the highest standards prevailing for such type of work in the petrochemical industry.

ARTICLE II - ALTERATIONS AND EXTRAS

PETROCHEMICAL, at any time during the progress of said work, shall have the right, without invalidating the agreement, bond, or the original plans, drawings and specifications to which they refer, to order extra work or make changes or alter, add to, or deduct from said work, but no such extra work or change shall be undertaken by CONTRACTOR unless a written order therefor is first given by PETROCHEMICAL to CONTRACTOR, incorporating therein the increase or decrease, as the same may be, in said agreement price for such extra work and/or changes and a revised time for the completion of the work under this Agreement (if a revised time be required). Upon receipt of such written order for extra work, changes or alterations, CONTRACTOR without delay shall do such extra work and/or make such changes or alterations, and work and materials shall be charged to PETROCHEMICAL'S account on a cost-plus basis as set forth in Article XIX below.

It will be noted in the attached Exhibit "A" that in certain instances specific materials, products, methods and services have been specified by brand or trade name partly for the purpose of establishing the effect or standard of quality desired. Upon the prior written approval of PETROCHEMICAL'S authorized representative, substitutions for such specifically named materials, products, methods or services may be made; provided the materials, products, methods or services desired to be substituted have been proven to PETROCHEMICAL'S authorized representative to provide the effect or standard of quality desired.

CONTRACTOR shall handle all materials so that they may be inspected by PETROCHEMICAL'S authorized representative and should any materials be found defective or in any way not in accordance with the contract, such material, without regard to the stage of completion, may be rejected by PETROCHEMICAL'S authorized representative and, if so rejected, shall be promptly removed from the premises by CONTRACTOR installing same and replaced at CONTRACTOR'S sole cost, risk and expense.

Re-examination of questioned work may be ordered by PETROCHEMICAL'S authorized representative, and if so ordered, the work must be uncovered by the CONTRACTOR. CONTRACTOR shall pay all costs of uncovering or replacing any questioned work unless the work was covered after the inspection and approval of PETROCHEMICAL'S authorized representative and, upon uncovering, is found to be in accordance with the contract documents, in which event such costs of uncovering shall be borne by PETROCHEMICAL.

ARTICLE III - MATERIALS AND PERSONNEL

CONTRACTOR shall furnish at its own expense constant supervision, competent foremen, and all bonds, permits, licenses, labor, tools, equipment, fuel, materials, machinery and transportation, together with all other items which may be necessary in the performance and completion of the work herein described, except such as may be specifically provided below to be furnished by PETROCHEMICAL. Unless otherwise specified all materials shall be new and of a grade and of a quality adequate for the required use; and all materials and equipment used in the construction of this project shall be adequately inspected and tested by CONTRACTOR in accordance with accepted standards at no expense to PETROCHEMICAL, unless otherwise specifically provided.

Before ordering any materials or doing any work, CONTRACTOR shall verify all measurements at the site and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of any difference between actual dimensions and the measurements indicated on the Drawings. Any differences which may be found shall be submitted to PETROCHEMICAL'S authorized representative for his consideration and instructions before proceeding with the work.

Upon receipt of notice from PETROCHEMICAL'S authorized representative that any material placed in the Project or on the site is not of the quality specified or has been improperly placed, CONTRACTOR shall remove same from the site, or have same replaced as the case may be, within 48 hours after receipt of such notice, at CONTRACTOR'S sole cost, risk and expense.

ARTICLE IV - INDEPENDENT CONTRACTOR

In the performance of all work, CONTRACTOR is an independent contractor, with sole right to supervise, manage, control and direct the performance of the details. PETROCHEMICAL is interested only in the end result to be accomplished, but the end result must meet with the approval of PETROCHEMICAL, whose representatives shall be entitled to make such inspections from time to time as may be necessary to assure such results.

ARTICLE V - INSURANCE

CONTRACTOR agrees to carry adequate workmen's compensation and employers liability insurance covering all persons and employees connected with the work and also to carry comprehensive public liability insurance, and automotive public liability and property damage insurance in form and amounts subject to approval of PETROCHEMICAL, to protect against any claims for injuries or death to persons or damages to, or destruction of, property (including existing property of PETROCHEMICAL) sustained in the carrying out of said work, which insurance shall be written in the minimum amounts set forth in Article XIX below.

No work shall be commenced by CONTRACTOR until after the policy, or policies, evidencing the insurance coverage herein required, or certificates of such insurance providing that the insurer will give PETROCHEMICAL fifteen (15) days written notice prior to cancellation, material revision or intention to renew, have been filed with PETROCHEMICAL.

ARTICLE VI - RISK OF LOSS

Until written acceptance of the work has been delivered by PETROCHEMICAL to CONTRACTOR, as provided in Article XVII below, all risk of loss, injury or destruction by any cause other than acts or omissions of PETROCHEMICAL, shall be borne by CONTRACTOR. Responsibility of CONTRACTOR shall extend to materials and equipment, if any, that PETROCHEMICAL supplied for the job.

CONTRACTOR shall continuously maintain adequate protection of all the work performed under this CONTRACT as well as PETROCHEMICAL'S property adjacent thereto and shall protect PETROCHEMICAL'S property from injury or loss arising in connection with this CONTRACT. CONTRACTOR shall, at his own expense, replace or repair any such damage, injury or loss, and in the event CONTRACTOR fails to comply with this provision, PETROCHEMICAL may replace or repair any such damage at CONTRACTOR'S expense.

ARTICLE VII - NON-ASSIGNABILITY

CONTRACTOR shall not assign this agreement or subcontract the whole or any part of said work without PETROCHEMICAL'S prior written consent. PETROCHEMICAL'S consent to any such assignment or subcontract shall not relieve CONTRACTOR, or CONTRACTOR'S surety, if there be a surety, of the primary responsibility or any liability for the full and faithful performance of this CONTRACT according to its terms and conditions.

ARTICLE VIII - OPERATIONS

CONTRACTOR shall commence actual operations immediately upon the execution hereof by PETROCHEMICAL and CONTRACTOR and shall prosecute them diligently and without interruption to completion in a good and workmanlike manner within the period of time set out in Article XIX.

ARTICLE IX - DEFAULT

Time and quality of work shall be of the essence of this Contract. If CONTRACTOR fails to begin, or having commenced, fails to prosecute the work in a good and workmanlike manner with reasonable diligence, PETROCHEMICAL may, at its option, upon three days' notice, in writing, to CONTRACTOR, terminate his work. In the event PETROCHEMICAL terminates this Contract then, without prejudice to any other remedy it may have, PETROCHEMICAL may take control of this work for the purpose of completing the same under the terms hereof, either by its own employees or by other independent CONTRACTORS. If PETROCHEMICAL takes control of this work, CONTRACTOR shall be entitled, upon PETROCHEMICAL'S completion of the work, to the difference between the contract price and the reasonable cost and expense incurred by PETROCHEMICAL in finishing said work. If such cost and expense should exceed the contract price, CONTRACTOR agrees to pay the excess to PETROCHEMICAL at Corpus Christi, Texas as liquidated damages agreed upon by the parties hereto in consideration of the difficulty of ascertaining the actual damages by other means. Provided, however, that if the completion of this Contract is delayed, by PETROCHEMICAL, by general strikes, acts of God, or causality, beyond the control of this CONTRACTOR, then, in such event, the time of completion of this Contract shall be extended for such additional time as shall be caused by such delay. Provided, however, that CONTRACTOR herein shall at the time of such delay, if any, demand of PETROCHEMICAL, in writing, such additional time within which to complete the performance of this Contract.

ARTICLE X - NOTICES

Notices hereunder shall be sent to the respective addresses of the parties, but all requests given CONTRACTOR'S foreman on the job by PETROCHEMICAL'S authorized representative, as designated in Article XIX, shall be conclusive. Oral communications will be sufficient except as to matters required to be in writing by this Contract.

ARTICLE XI - INDEMNITY

CONTRACTOR agrees to protect, indemnify and hold PETROCHEMICAL free and harmless from and against any and all claims, liabilities, demands and causes of action of every kind and character (including the amounts of judgments, penalties, interest, court costs and legal fees incurred by PETROCHEMICAL in defense of same) arising in favor of governmental agencies or third parties (including employees of either party) on account of taxes, claims, debts, personal injuries, death or damages to property, and without limitation by enumeration all other claims or demands of any kind, character or nature, arising out of or incidental to the work to be performed by CONTRACTOR.

ARTICLE XII - COMPLIANCE WITH AUTHORITY

CONTRACTOR agrees to comply with all laws, orders, rules or regulations of any governmental body, including without limitation, those pertaining to social security, safety, health, old age pension and unemployment compensation. Before final settlement, CONTRACTOR shall satisfy PETROCHEMICAL of the payment and release of all debts, taxes, liens, claims, charges and obligations arising by operation of law, or otherwise out of its performance of the work. CONTRACTOR hereby authorizes PETROCHEMICAL to deduct from any amount due CONTRACTOR (whether or not arising out of this agreement) all amounts which may be payable by CONTRACTOR to PETROCHEMICAL, and also, all amounts for which PETROCHEMICAL may become liable to a third party by reason of CONTRACTOR'S acts in performing, or failing to perform CONTRACTOR'S obligations under this agreement, and in the event that any claim is made by a third party, the amount or validity of which is disputed by CONTRACTOR, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, PETROCHEMICAL may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of PETROCHEMICAL to exercise such right to deduct or to withhold shall not, however, affect the obligation of CONTRACTOR to protect PETROCHEMICAL as elsewhere provided herein.

ARTICLE XIII - INSPECTION OF BOOKS

PETROCHEMICAL shall have the right at all reasonable times to inspect and audit the books of CONTRACTOR pertaining to the work and services rendered hereunder where such inspection is reasonably related to such work and services and for a legitimate purpose which shall be stated to CONTRACTOR; provided, however, that CONTRACTOR shall have the right to exclude the following from inspection: Any trade secrets, formulas, processes and records of work for others.

ARTICLE XIV - PAYMENT

PETROCHEMICAL agrees to pay CONTRACTOR upon completion of the work, or from time to time as may be provided under Article XVII and XIX - 6, hereof, for the performance of this Contract, subject to the additions and deductions provided for herein the sum of money stated under Article XIX - 3 by its check or draft at Corpus Christi, Texas.

ARTICLE XV - BILLING, LABOR AND MATERIALS SEPARATELY

CONTRACTOR shall bill PETROCHEMICAL separately for charges for labor and charges for materials in order that PETROCHEMICAL may be the ultimate consumer of such materials and may utilize its exemption from the Texas sales and use tax for materials used in this project.

ARTICLE XVI - USE AND/OR OCCUPANCY BY PETROCHEMICAL PRIOR TO ACCEPTANCE

After written notice to CONTRACTOR, PETROCHEMICAL may use and/or occupy, before final acceptance of the project, the whole or any part of the project for the purpose for which the project is intended, provided that such proposed use and/or occupancy will not, in CONTRACTOR'S opinion, interfere with the completion of the work. Should CONTRACTOR consider that PETROCHEMICAL'S proposed use and/or occupancy would interfere with the completion of the work, CONTRACTOR shall, within forty-eight hours after receiving notice of such intended use and/or occupancy, notify PETROCHEMICAL thereof in writing. If CONTRACTOR does not timely object to PETROCHEMICAL'S proposed use and/or occupancy, the same shall be considered to be with CONTRACTOR'S consent and not as an interference with the completion of such work.

ARTICLE XVII - ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due thirty days after completion of the work, which period shall be computed from the date of issuance of certificate of completion, as provided below, excluding Saturdays, Sundays and legal holidays

Upon receipt of written notice that the work is ready for final inspection and acceptance, PETROCHEMICAL'S authorized representative shall promptly make an inspection, and when he finds the work acceptable under the Contract and the Contract fully performed, he shall promptly issue a final certificate, over his own signature, stating that the work provided for in this Contract has been completed and is accepted by him under the terms and conditions thereof; and that the entire balance found to be due the CONTRACTOR, and noted in said final certificate, is due and payable.

Before issuance of final payment the CONTRACTOR shall submit evidence satisfactory to PETROCHEMICAL that all payrolls, material bills and other indebtedness connected with the work have been paid or otherwise satisfied.

If after the work has been substantially completed, full completion thereof is materially delayed through no fault of the CONTRACTOR, and PETROCHEMICAL so certifies, PETROCHEMICAL shall, without terminating the Contract, make payment of the balance due for that portion of the work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

ARTICLE XVIII - INTERPRETATION

This Contract, together with the specifications, plans, maps and instructions attached or identified separately, constitute the entire agreement between the parties, and no other conversations, bids, memoranda, or other matter shall vary, alter, or interpret the terms hereof. The side head captions in this instrument are for convenience of the parties in identification of the several provisions and shall not constitute a part of the agreement nor be considered interpretative thereof. Failure of PETROCHEMICAL to exercise any option, right or privilege hereunder, or to demand compliance as to any obligation or covenant of CONTRACTOR shall not constitute a waiver of any such right, privilege or option, or of the strict performance thereof, unless waiver is expressly required in such event, or is evidenced by a properly executed instrument.

ARTICLE XIX -

1. COMMENCEMENT DATE: Immediately upon the execution of this Contract by PETROCHEMICAL and CONTRACTOR.
2. COMPLETION DATE: On or before the 1 day of February, 19 80.
3. CONTRACT PRICE: One Hundred Fifteen Thousand, Eight
Hundred Sixty Nine Dollars
(\$ 115,869) in installments as provided below.
4. DESCRIPTION AND LOCATION OF WORK: Install pump, piping, instrumentation
and electrical in Coastal States
Petrochemical Co.'s West Plant Manifold
Pit, located on Cantwell Lane in
Corpus Christi, Texas
5. PETROCHEMICAL'S AUTHORIZED REPRESENTATIVE: T. C. Covert
6. PAYMENT:

Progressive payments; on or before the 15th day of each month, PETROCHEMICAL will pay to CONTRACTOR the sum equal to ninety percent (90%) of the cost to PETROCHEMICAL of the labor performed, material suitably stored on the site and materials built into the project during the preceding calendar month based on estimates timely certified by CONTRACTOR and approved by PETROCHEMICAL'S authorized representative. In no event, however, shall PETROCHEMICAL pay to CONTRACTOR partial payments totalling more than ninety percent (90%) of the contract price until the final completion and acceptance of the project. Upon completion and acceptance of the project, PETROCHEMICAL'S authorized representative shall issue a "Certificate of Completion," and thirty (30) days thereafter, in accordance with V.A.T.S. Article 5469 and any amendments thereof, PETROCHEMICAL shall pay to CONTRACTOR the balance due on the contract price calculated in accordance with the terms and provisions of this contract.

7. ~~PAYMENT, ALTERATIONS AND EXTRAS:~~

~~Alterations and extras as referenced under Article II above shall be billed to the account of PETROCHEMICAL on a cost-plus basis as set forth below:~~

- ~~1. A fee of _____ per cent (____%) shall be charged by CONTRACTOR on all gross payrolls, which will include payroll taxes, insurance, tool fees, overhead and profit.~~
- ~~2. Construction equipment costs shall be accounted for at prevailing rates.~~
- ~~3. A fee of _____ per cent (____%) shall be charged by CONTRACTOR for procuring materials, as directed by PETROCHEMICAL, plus applicable taxes.~~
- ~~4. A fee of _____ per cent (____%) will be charged by CONTRACTOR on all subcontracts.~~

~~It is expressly agreed, however, that no fees for such alterations or extras will be charged to PETROCHEMICAL'S account without the prior written consent of PETROCHEMICAL'S authorized representative.~~

8. INSURANCE

CONTRACTOR shall file with PETROCHEMICAL evidence of insurance at the following minimum amounts:

1. Workmen's Compensation and/or all other Social Insurance in accordance with the statutory requirements of the state, province or country having jurisdiction over CONTRACTOR'S employees who are engaged in the work, with Employer's Liability not less than 100,000 each accident.

2. Comprehensive General Bodily Injury and Property Damage Liability insurance which shall include coverage for Contractual Liability and Contractor's Protective Liability. This insurance shall cover bodily injury to or death of persons and loss of or damage to property of third parties. Such insurance shall be provided in a Combined Single Limit not less than \$300,000 Bodily;
\$500,000 for any one accident.
 3. Automobile Bodily Injury and Property Damage Liability insurance which shall include coverage for all owned, non-owned and hired automotive vehicles used in the performance of the Work. This insurance shall be provided in a Combined Single Limit not less than \$500,000 ea. occurrence
\$300,000 aggregate for any one accident.
 4. "All Risk" Ocean Marine Cargo insurance which shall include coverage for war, strikes, riots and civil commotion, as the latter perils may be insured during the term of the Work, covering any and all materials and equipment which may be in transit to the jobsite by wet marine bottoms, or by air transportation, and or by connecting conveyances. Such insurance shall be maintained to cover limits at risk.
 5. "All Risk" Installation Floater insurance protecting the respective interest of PETROCHEMICAL and CONTRACTOR, covering any and all loss of or damage to the Work (except for the usual exclusions appearing in such policy form) while in transit (other than by wet marine or air transportation which is provided for in the paragraph next above), while at the jobsite awaiting erection, during erection and until transfer of care, custody and control of the Work to PETROCHEMICAL as hereinafter provided. This insurance shall be maintained at the value of the Work at risk. PETROCHEMICAL shall be included as an additional insured with respect to this contract only.
 6. CONTRACTOR'S "All Risks" insurance covering loss of or damage to construction equipment and tools whether owned or on bare rental to CONTRACTOR. Subrogation shall be waived against PETROCHEMICAL prior to cancellation of any policy.
9. INDEX OF SPECIFICATIONS, PLANS, MAPS AND INSTRUCTIONS SET FORTH IN EXHIBIT "A" AS ATTACHED HERETO AND MADE A PART HEREOF: (Please type)

1. Coastal States Scope of Work R.1. 4-3-79.
2. Coastal States Drawing Index 3-8-79.
3. Drawings per Index above.
4. Coastal States Bill of Material 3-2-79.
5. Coastal States Surface Preparation & Painting Schedule 4-3-79.
6. Coastal States Protective Coating and Wrapping for Underground Pipe. 4-3-79
7. Bid Letter to Berry Contracting, dated 4-3-79.
8. Bid Proposal from Berry Contracting 4-17-79.
9. General Condition of Inquiries Governing Contractors.
10. Safety & Security Regulations Governing Contractors.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed this

1 day of May

1979.

ATTEST:

R. W. Black
SECRETARY

CONTRACTOR

By

W. A. Kluge
Senior Vice President

COASTAL STATES PETROCHEMICAL COMPANY

By

T. Connel

ATTEST:
D. G. Govee
ASST. SECRETARY



THE STATE OF Texas
COUNTY OF Nueces

BEFORE ME, the undersigned authority, on this day personally appeared W.H. Kluge of Benny Contracting, Inc. known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed, and in the capacity therein stated, and as the act and deed of such Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 7th day of May, 1979.

Linda Pope
Notary Public, Nueces County, Texas
My Commission Expires 7-5-79

THE STATE OF TEXAS
COUNTY OF NUECES

BEFORE ME, the undersigned authority, on this day personally appeared T.C. Court, Vice President of Coastal States Petrochemical Company, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein stated, and as the act and deed of such Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 7th day of May, 1979

Joyce Younger
Notary Public, Nueces County, Texas

JOYCE YOUNGER
My Commission Expires July, 1979