

Rev
BBT

**PLAINTIFF'S
EXHIBIT**

ETCO-69

cc: Mr. D. D. Turner
Mr. J. H. Schaefer
Mr. C. W. Bond
Mr. S. T. Crossland
Mr. R. E. Cowlishaw
Mr. A. C. Burdick
Mr. W. R. Perdue, Jr.
Mr. G. S. Roberts
Dr. C. F. Kirby

Mr. P. A. Savage

New York

Stephen E. Rodi

Baton Rouge

Caldwell & McCann - Continuing
Construction Contract at Baton
Rouge Plant

November 26, 1951

Attached is an executed copy of the contract covering
construction work which Caldwell & McCann will perform at our
Baton Rouge Plant from time to time. The contract form has been
approved by Mr. W. R. Perdue, Jr. (See Teletype 5 PM NY 10-26-51).
This copy is for your official files.

Copies of the contract have been distributed to the
following:

Mr. D. D. Turner
Mr. J. H. Schaefer
Mr. C. W. Bond
Mr. S. T. Crossland
Mr. R. E. Cowlishaw
Mr. A. C. Burdick

Stephen E. Rodi

SPH/ml
Attach:

E-08885

15d
November

THIS AGREEMENT made and entered into this 15th day of November

1951, by and between **ETHYL CORPORATION**, a Delaware Corporation, having its principal place of business in the City of New York and doing business in the State of Louisiana, herein represented by **B. E. Turner**, its Vice President, duly authorized, (hereinafter called "Owner"), and **CALDWELL & McCANN**, a commercial partnership composed of **George A. Caldwell** and **F. L. McCann**, both of full age and majority and residents of the Parish of East Baton Rouge, State of Louisiana, (hereinafter called "Contractor"),

W I T N E S S E T H:

WHEREAS, Owner, from time to time, has elected and may continue to elect to have Contractor perform for it construction work at its plant site located in East Baton Rouge Parish, State of Louisiana, and

WHEREAS, Contractor has performed and is willing to continue to perform such construction work as Owner may designate and as it elects to perform, and

WHEREAS, Owner and Contractor have agreed upon the terms and conditions upon which construction work now in progress or hereafter agreed upon shall be performed.

NOW, THEREFORE, the Owner and the Contractor for the consideration hereinafter contained and upon the terms and conditions herein expressed to bind and obligate themselves as follows:

I.

When Owner elects to have Contractor perform any construction work hereunder it shall prepare a schedule outlining the scope of the work and a definitive estimate of the cost therefor and shall transmit such schedule to

Contractor for its acceptance or rejection. The definitive estimates contained on each schedule shall show (1) the estimated cost of labor, (2) the estimated cost of materials to be purchased by the Contractor, (3) the estimated cost of distributable items, and (4) the Contractor's fixed fee. The transmittal form shall bear a statement that all of the general provisions of this contract are applicable to the work outlined in the schedule. Contractor will indicate acceptance of the construction work and the applicability of the provisions of this contract to such work by signing such letter of transmittal and returning it to Owner. By such acceptance, Contractor will acknowledge its familiarity with and its understanding of what is required of it in the performance of the work.

II.

(a) The Contractor shall perform all work in an expeditious, substantial and workmanlike manner and to the satisfaction of the Owner. Title to all work completed and any Contractor furnished materials incorporated therein shall immediately pass to the Owner. Contractor shall keep all work and materials free of all liens and encumbrances.

(b) In the performance of the work authorized hereunder, Contractor agrees to provide all necessary manpower and only such items of materials as the Owner may, in writing, designate. The Contractor agrees in the performance of the work to engage in only such overtime as the Owner may authorize and direct; to adhere to the scheduling program as coordinated and set out by the Owner; and to complete any portion or portions of the work in such order of time as Owner may require. The Owner shall have the right to take possession of and use any completed or partially completed portion of the work and shall have free access at all times to the work or any place where

any of the material for the same is in preparation.

III.

The Owner agrees to pay the Contractor for the faithful performance of the work authorized hereunder, and the Contractor accepts as full payment for the services rendered hereunder, the following:

A. REIMBURSEMENT OF CONTRACTOR'S COST, AS FOLLOWS:

(1) The actual "out-of-pocket" expenditures for wages and salaries paid to employees of the Contractor engaged in the performance of the work, including field labor, field foreman, field superintendents and necessary field office forces but excluding employees of the Contractor's main office. Rates of pay for field labor for which Owner will reimburse Contractor shall be no greater than those prevailing in the Boston Large area for like services and skills. The number, and rates of pay, of field foremen, field superintendents and necessary field office forces shall be subject to Owner's prior approval.

(2) The cost of all materials purchased by the Contractor and required for the completion of the work, provided such materials are authorized for purchase, in writing, by the Owner. All sales, use or other excise taxes (not including penalties, interest or other delinquency charges) on such materials will be charged at cost to the Owner.

(3) The Contractor's actual "out-of-pocket" expenditures for taxes (not including penalties, interest or other delinquency charges) based on salaries or wages of employees which salaries or wages Owner has reimbursed Contractor under

paragraph (A) (1) of this Article III.

(4) A proportionate part of Contractor's actual "out-of-pocket" expenditure for State of Louisiana and City-Parish of Baton Rouge Occupational License Taxes (not including penalties, interest or other delinquency charges) to be determined by analyzing Contractor's tax base and ratifying all of Ethyl Corporation's contracts included therein to the total thereof.

(5) The Contractor's actual "out-of-pocket" expenditure for Louisiana Power Use Taxes (not including penalties, interest or other delinquency charges) paid on prime movers generating power used in connection with the work performed hereunder.

(6) The Contractor's "out-of-pocket" expenditures for fire, public liability, automotive and other insurance required by the Owner in connection with the prosecution of the work authorized hereunder.

(7) The Contractor's "out-of-pocket" expenditures for distributable items including cost of temporary construction, rentals for equipment and tools leased with Owner's prior approval, cost of tools purchased for Owner with Owner's prior approval, cost of fuel, maintenance of equipment and tools, and cost of job facilities, field office overhead, safety equipment, starting up expense and similar mutually agreed items, but excluding any main office expense.

B. A FIXED FEE, AS FOLLOWS:

A fixed fee as agreed upon in the schedule outlining the scope of the work and estimating the cost thereof, (See Article

I hereof), representing Contractor's overhead and profit. Unless otherwise specified in said schedule, the fixed fee provided in said schedule will be determined by the sum of the following:

(1) Six and one-half percent (6½%) of the estimated cost of labor, figured on a straight time basis, including field labor, field foreman, field superintendents and necessary field office forces.

(2) Six and one-half percent (6½%) of the estimated cost of materials to be purchased by the Contractor.

(3) Six and one-half percent (6½%) of the estimated cost of distributable items. Distributable items include cost of temporary construction, rentals for equipment and tools leased by Contractor with Owner's prior approval, costs of fuel, maintenance of equipment, tools, and job facilities, field office overhead, safety equipment, starting up expenses and similar mutually agreed items. In estimating cost of distributable items, unless it is otherwise specified in said schedule, the parties agree that such costs represent five percent (5%) of the estimated labor and material costs including materials furnished by the Owner and those to be purchased by the Contractor, as set out in said schedule.

The amount of the fixed fee shall remain unchanged notwithstanding the fact that the final completed cost of the work including costs of labor, materials to be purchased by the Contractor, and distributable items, may vary from the estimated amounts set out in the schedule of the estimated cost of the work furnished to Contractor by Owner. The

fixed fee is subject to additions and deductions as provided for in Article V hereof.

IV.

The Owner agrees to make payments to the Contractor for work performed hereunder on account as follows:

(a) During the time the Contractor is engaged in any or all work for the Owner hereunder, Contractor will submit weekly invoices covering Contractor's charges, as accrued during the prior work week (Monday through Sunday), for each project or job being performed hereunder. Such invoice shall show Contractor's charges for all (1) labor; (2) materials purchased by the Contractor; (3) taxes based upon wages or salaries; (4) occupational license taxes; (5) power use taxes; (6) expenditures for required insurance; (7) expenditures for distributable items; and (8) a proportionate amount of the fixed fee determined by multiplying the ratio of Contractor's accrued "out-of-pocket" expenditures for wages and salaries paid to employees of the Contractor in the performance of the work (sub-paragraph (A)(1) of Article III hereof) during the period covered by the invoice to the total estimated labor cost as set out in the schedule of the estimated cost of the work, by the total amount of the fixed fee as set out in the schedule of the estimated cost of the work. In no event shall the sum of the fee payments called for on the submitted invoices exceed the total amount of the fee.

(b) Promptly upon receipt of each invoice, but in no event longer than ten (10) days thereafter, the Owner agrees to pay the Contractor the amount due thereon. All invoices prepared by the Contractor and submitted to the Owner for payment shall be subject to audit and review by the Owner. Each charge included thereon shall be separately itemized and supported by suitable evidence of computation and payment. Contractor shall keep accurate records and books of accounts showing the actual cost to it of all expenditures reimbursable hereunder. Owner or its duly authorized representatives shall have access at all reasonable times to all books, records, correspondence, instructions, receipts, vouchers and documents of any description pertaining to the work under this agreement for the purpose of auditing the costs to Contractor of the work. Contractor shall preserve all such records for a period of one (1) year after the completion of each project performed hereunder.

(c) Upon completion of any work authorized hereunder, if the sum total of the monthly fee payments made to the Contractor on such work are less than the amount of the total fixed fee, then the Owner shall pay the Contractor, within thirty (30) days after acceptance of the work by the Owner, a lump sum amount equal to the unpaid remainder of the agreed total fixed fee.

V.

Owner may make minor changes and alterations in the work covered in the Schedules without any change in the amount of the fixed fee provided

for in Article III hereof. Owner shall also have the right to make major changes in, additions to, subtractions from, and alterations to the work. When making a major change, the Owner shall estimate the amount of the additional cost or reduction in cost therefor, classified as (1) labor; (2) materials supplied by the Contractor; (3) materials supplied by the Owner; and (4) distributable items. Upon Contractor's acceptance of the cost estimates of the change, addition, subtraction or alteration required by the Owner, the work authorized hereunder shall be amended and revised to include such change and the amount of the fixed fee provided for in Article III hereof shall be increased or decreased, as the case may be, by determining six and one-half percent ($6\frac{1}{2}\%$) of the revised estimated cost of labor, materials to be purchased by Contractor and distributable items. In the event, Contractor does not agree to Owner's estimate of such changes, it shall notify Owner to that effect prior to proceeding with the work. If Owner desires that the work continue, Contractor shall nevertheless proceed therewith and the matter shall be subject to arbitration as is hereinafter provided.

VI.

All equipment and tools required by the Contractor for the performance of the work authorized hereunder shall be supplied to Contractor by the Owner at no cost or charge to the Contractor. Such equipment and tools shall be maintained by the Contractor and cost thereof will be reimbursed under paragraph III A of this agreement as part of the cost of work. All equipment and tools furnished hereunder to the Contractor shall be returned to the Owner, at the completion of the work, in as good condition as received, normal wear and tear excepted. Title

to all equipment and tools furnished the Contractor hereunder shall at all times remain in the Owner. Contractor agrees that equipment and tools supplied hereunder will not be used for work other than that authorized hereunder.

VII.

If, at any time, there should be evidence of any lien or claim for which Owner might become liable and which is chargeable to the Contractor, the Owner shall have the right to retain out of any payment then due or thereafter to become due on any or all work being performed hereunder, an amount sufficient to completely indemnify the Owner against such lien or claim, and if such lien or claim be valid, the Owner may pay and discharge the same and deduct the amount so paid from any moneys which may be or may become due and payable to the Contractor. If any lien or claim remain unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the Owner may be compelled to pay in discharging such lien or claim including all costs and a reasonable attorney's fee. Before final payment is made for any work hereunder, Contractor shall submit evidence satisfactory to the Owner, that all payrolls, materials purchased by the Contractor, bills and other indebtedness connected with the work have been fully paid and satisfied.

VIII.

Contractor agrees to indemnify and hold harmless the Owner against any loss or damage to persons or property as a result of operations growing out of the performance of this Contract caused by the negligence or carelessness of the Contractor, Contractor's employees, subcontractors, truckmen, workmen, laborers, mechanics, furnishers of supplies and materials, and licensees.

II.

The Contractor accepts full and exclusive liability for the payment of any and all current taxes, including all sales, use, power, occupational taxes, and all contributions and taxes for unemployment compensation insurance and old age pensions or annuities now or hereafter imposed by any Federal or State or other governmental authority which are imposed with respect to or covered by the wages, salaries, or other compensations paid to persons employed by the Contractor and the Contractor shall be responsible for the compliance with all obligations and restrictions imposed by the Labor Laws or any other laws affecting employer-employee relationships, and Contractor further agrees to comply with all applicable Federal, State, Municipal and local laws and the regulations and requirements of any Federal, State or local governmental agency or authority. Contractor further agrees to defend, indemnify and hold harmless from any liability or penalty which may be imposed by any Federal, State or local authority by reason of any asserted violation by Contractor of such laws, regulations or requirements and also from all claims, suits or proceedings that may be brought against the Owner arising under, growing out of, or by reason of the work provided for by this Agreement whether brought by employees of the Contractor, by third parties, or by Federal or State governmental authority or any political subdivision thereof.

X.

Prior to the Contractor engaging in any work authorized hereunder, the Contractor agrees to arrange and maintain in force during the prosecution of any work authorized hereunder, the following forms of insurance in the name

of the Contractor and Owner as their respective interest may appear:

(a) Workmen's Compensation and Employer's Liability Insurance

Shall be taken out and maintained in accordance with the Workmen's Compensation Law of the State wherein the work is to be undertaken, including occupational disease coverage and medical reimbursement. This insurance is to cover all employees working on, on or away from the premises in the performance of the Contract. In addition to the foregoing, the Contractor shall carry Employer's Liability Insurance with limits of at least \$50,000 per person and \$100,000 aggregate with respect to all claims during each policy period, to cover disease and injuries not covered under the Workmen's Compensation Act. Contractor will require all subcontractors to provide similar Workmen's Compensation and Employer's Liability Insurance.

(b) Comprehensive General Liability & Contractor's Protective Liability Insurance

Shall be taken out and maintained to cover any Public Liability and/or Property Damage claim against Contractor which may arise from operations under this Contract, whether such operation be by Contractor or any subcontractor or any persons directly or indirectly employed by them. Such insurance shall be for an amount not less than \$100,000 to cover injury or death of each person and not less than \$500,000 to cover all persons sustaining injury or death as a result of each occurrence and for not less than \$100,000 to cover loss or damage to property resulting from each.

accident. The Comprehensive General Liability policy shall be endorsed so that wherever the word "accident" appears in the policy, it will be changed to read "occurrence" as respects bodily injury liability.

Each insurance shall not exclude injury to or destruction of wires, conduits, mains, sewers or other similar property or appurtenances or any apparatus in connection therewith below the surface of the ground nor shall such insurance exclude blasting, explosion or collapse.

The Contractor shall also carry Contractor's Protective Liability insurance covering all work let to subcontractors in the same limits as herein provided for the Comprehensive General Liability insurance.

(c) Owner's Protective Liability Insurance - Blank

(d) Automotive Public Liability and Property Damage Insurance

shall be taken out and maintained to cover the interests of Contractor against any Public Liability or Property Damage claims arising out of the operation of motor vehicles in performance of the work under this Contract, whether such operation be by Contractor or any subcontractor or any persons directly or indirectly employed by them. The amount of such insurance shall

not be less than \$100,000 for injury including death to any person and not less than \$500,000 to cover injury to all persons in any one accident. Property Damage Insurance shall be for an amount not less than \$50,000 per accident.

Two copies of the insurance certificates attesting to the fact that the above insurance is in effect shall be filed with Ethyl Corporation, attention Insurance Supervisor, Box 341, Baton Rouge, Louisiana, prior to the commencement of field work under the Contract.

All certificates must include the following clause:

"It is agreed that a ten (10) day notice of cancellation or any material change in these policies will be given to:

Ethyl Corporation
Attn: Insurance Supervisor
Box 341
Baton Rouge, Louisiana

as evidenced by return receipt of registered mail."

Contractor shall, on request, permit an authorized agent of Ethyl Corporation to examine the original copies of any and all insurance policies issued in compliance with the above requirements.

(c) Builder's Risk Insurance

Owner will arrange Builder's Risk Insurance for account of the Owner, Principals, and/or any Contractor or subcontractor or their agents, as their respective interests may appear. This insurance is to cover loss and/or damage by fire, lightning, windstorm, hail, explosion, riot and civil commotion, falling aircraft, vehicles, smoke, vandalism, malicious mischief and sabotage to the building or structure while in course of con-

struction, also materials, equipment, supplies, forms and temporary structures of all kinds at the job site to be used in the construction of building or structure and (when not otherwise insured, and provided that values of same are included in the monthly reports prepared by Contractor) Contractor's machinery, tools and equipment.

The Contractor shall send to the Owner monthly reports of the values at risk on or before the 5th day of the succeeding month. These values will include amounts invoiced to the Owner to date, also any other values at risk on the site which have not been invoiced; however, these values should not include equipment or materials specifically insured by the Contractor or subcontractor. The Contractor's agreements with any subcontractors should include similar provisions.

XI.

At the date of execution of this Contract, Owner has already supplied Contractor with schedules outlining the scope of the work, the estimated costs therefor, and the Contractor's fixed fee therefor, covering certain projects upon which Contractor has or will perform work. Copies of these schedules are annexed hereto as exhibits and are made part hereof, and are as follows:

<u>Exhibit</u>	<u>Project Number</u>	<u>Description</u>	<u>Schedule Dated</u>	<u>Contractor's Fixed Fee</u>
A	HC-2173	Portion of Centralized Shops and Storero	3-14-51	\$ 11,557.00
B	HC-2173	Centralized Shops - Sewal Blast and Cleaning Vent Blows	3-27-51	757.30
C	HC-2173	Centralized Shops - Sewal Blast and Cleaning Vent Blows, (equipment Installation, Piping, Ductwork, Cleaning Vents, Stairwell, and Jib Crane Only)	4-5-51	456.00

<u>Exhibit</u>	<u>Project Number</u>	<u>Description</u>	<u>Schedule Dated</u>	<u>Contractor's Fixed Fee</u>
D	EA-2173	Centralized Shops - Miscellaneous Additional Storage & Maintenance Facilities	5-12-51	2,064.00
E	EA-2173	Centralized Shops - Sand Blast & Cleaning Vat Sheds (Operations, earth fill, electrical and equipment installation only)	5-15-51	275.00
F	EA-2173	Centralized Shops - Miscellaneous Additional Storage and Maintenance Facilities (Reduction in Scope)	5-31-51	(150.00)
G	EA-2173	Centralized Shops - Modernize Maintenance & Warehouse Facilities - Janitor Storage Shed	6-6-51	519.00
H	EA-2173	Garage, Vehicle Shelter, Paved Area and Services	6-7-51	10,770.00
I	EA-2173	Modernized Maintenance & Warehouse Facilities - 21 Storage Delivery Station Sheds	6-11-51	330.00
J	EA-2173	Modernized Maintenance & Warehouse Facilities - Miscellaneous Additional Facilities	6-8-51	716.00
K	EA-2247-2	Addition of Twelve Autoclaves and Auxiliary Equipment, Part 2	3-14-51	9,227.00
L	EA-2247-2	Addition of Twelve Autoclaves and Auxiliary Equipment, Part 2 (Reduction in Scope)	6-6-51	(75.00)
M	EA-2248	Portion of No. 7 Primary Salt Dryer	3-14-51	2,774.00
N	EA-2250	Portion of Replacement of Gate House #3 - Ethyl Chloride Entrance	3-14-51	531.00
O	EA-2253	Portion of Additions to Development Pilot Plant Building	3-14-51	405.00

Owner does hereby confirm its election to have Contractor perform the above set out work for the fixed fee indicated; and Contractor confirms its acceptance of such work for the fixed fee set out herein. Owner and Contractor further agree that the provisions of this agreement will apply to all of the above set out projects.

XI XII.

The Contractor agrees not to sub-contract any part of the work to be performed hereunder without the prior written consent of the Owner.

XII XIII.

In the performance of the work authorized hereunder the Contractor shall be considered for all purposes an independent contractor and not an employee of the Owner.

XIII XIV.

All the agreements herein contained and all of the obligations herein imposed shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

XIV XV.

All Contractor's personnel and vehicles entering upon the Owner's premises must have complied fully with the provisions of Owner's rules covering the "Admittance of Construction and Maintenance Contractors' Employees and Vehicles", identified as Procedure No. 64-42, a copy of which has been furnished to Contractor. The Contractor shall also observe and abide by all fire and safety regulations of the Owner, and before starting construction work shall consult with Owner's Safety Engineer and familiarize himself with such rules and regulations.

XV

XVI.

Any specifications and drawings furnished by Owner are intended to describe and provide for a finished piece of work and to furnish sufficient information to indicate what is necessary for the practical construction and entire completion of the work. Contractor shall during construction adhere strictly to said specifications and drawings. If, however, there is any apparent contradiction or ambiguity between the drawings and specifications, the Contractor shall bring the fact to the attention of the Owner and shall obtain his decision as to the true meaning or intention before proceeding with the portion of the work affected.

XVI

XVII.

Owner shall at all times have full access to the work or to any place where material or equipment for the work is in preparation; and shall have the right to inspect all work, material and equipment and to reject same if found defective. Any omission or failure on the part of the Owner to disapprove or reject any work or material shall not be construed as an acceptance of any defective material or workmanship. Contractor shall promptly remove any materials or equipment rejected as defective by Owner and shall take down any portion of the work rejected by Owner as defective or as failing to conform to specifications. The cost of labor and materials required to repair or replace defective work shall be reimbursed to Contractor by Owner but Contractor shall receive no fee therefor.

XVII

XVIII.

The Owner shall have the right at any time to cancel this Agreement

or any specific work being performed thereunder upon giving written notice to the Contractor. In the event this Agreement or any specific work being performed thereunder is cancelled, the Contractor shall be entitled to the full amount of the estimate of the work done by him under the terms and conditions of this Agreement, up to the time of such cancellation. It is intended that in the event of cancellation an equitable settlement shall be made with the Contractor.

XVIII XII.

All disputes, claims or questions between the parties hereto as to the interpretation of this Agreement, or in the performance of the same, shall be submitted to arbitration by a board of three arbitrators, upon the written request of either party delivered to the other party, which request shall name one arbitrator. The party receiving such notice shall, within ten (10) days thereafter, by notice to the other party, name the second arbitrator or upon failure so to do, the second arbitrator shall be appointed by the Judge senior in service of the United States District Court for the Eastern District of Louisiana upon request of either party. The two arbitrators so appointed shall name the third, or, upon failure so to do within ten (10) days after appointment of the two arbitrators, the third arbitrator shall be appointed by the said senior Judge. The arbitrators so appointed shall promptly hear and determine the questions submitted, after written notice to the parties of the time and place of the hearing, at which time each party shall be entitled to be heard and shall render their decision after ten (10) days after appointment of the third arbitrator. If within said period, a decision is not rendered by the Board or a majority thereof, new arbitrators may be named and shall act hereunder, at the election of either the Owner or the Contractor, in

like manner as if none had been previously named. It is mutually agreed that the decision of the arbitrators shall be a condition precedent to any right to legal action that either party may have against the other, and such decision may be filed in the manner provided by the laws of the state where the work is being done, in order to carry it into effect.

The Contractor shall not cause a delay of the work during any arbitration proceeding, except by agreement with the Owner.

The expense of arbitration, including reasonable compensation to the arbitrators, shall be borne equally by the Owner and Contractor, except that each party shall bear the compensation and expenses of its counsel, witnesses and employees.

XIX II.

This Agreement shall be effective as of the date, month and year first above written and shall remain in full force and effect until all work agreed or to be agreed to be performed thereunder is completed.

BE WILLIAMS BUILDING (Bldg) Corporation has caused this Agreement to be signed in duplicate in its name by its Vice President, B. B. Turner, duly authorized; and George A. Caldwell and F. X. McNamara have each set their hand and seal in duplicate, as of the day and year first above written.

WITNESSES:

W. B. Turner
George A. Caldwell

WITNESSES AS TO CONTRACTOR:

George A. Caldwell
F. X. McNamara
W. B. Turner
W. B. Turner

BE WILLIAMS BUILDING (Bldg) Corporation

By: B. B. Turner
B. B. Turner
Vice President

CALDWELL & McNAMARA (CONTRACTOR)

By: George A. Caldwell
George A. Caldwell

By: F. X. McNamara
F. X. McNamara