

27. 4053

CONTRACTUAL AGREEMENT

HF-2 CONSTRUCTION

OWNER: ETHYL CORPORATION

CONTRACTOR: BROWN & ROOT, INC

UNITED STATES OF AMERICA
STATE OF TEXAS
COUNTY OF HARRIS

* *

THIS AGREEMENT, made this 14th day of December, 1970 by and between ETHYL CORPORATION, a Virginia corporation, herein represented by G. S. Roberts, its Chief Engineer, duly authorized (hereinafter call "OWNER"), and BROWN & ROOT, INC., a Texas corporation herein represented by L. J. Derrick, its Senior Vice-President, duly authorized (hereinafter call "CONTRACTOR"),

WITNESSETH:

That CONTRACTOR and OWNER for the consideration hereinafter named, agree as follows:

ARTICLE 1. SCOPE OF THE WORK

A. CONTRACTOR shall furnish all of the material not furnished by OWNER, labor, supervision, facilities, supplies, and tools; purchased equipment specified by OWNER; furnish inspection and expediting services when requested, and shall construct and erect certain portions of the facilities described as OWNER'S HF-2 Facilities, Job No. H-7613, in accordance with drawings and specifications to be furnished by OWNER as they

are completed, and shall do everything required by this AGREEMENT and the above-mentioned drawings and specifications, including all implicit and accessory work, whether or not it is expressly stated, to construct these facilities at the Houston manufacturing plant of ETHYL CORPORATION, located in Pasadena, Texas. OWNER will supply the categories of items listed in the attached Exhibit "B".

B. CONTRACTOR has prepared a definitive estimate of the Work, described in 1-A above, which was based on mechanical flow diagrams, plot plans, equipment drawings and quotations furnished by OWNER. This estimate of Six Million, Four Hundred Seventy-Three Thousand, Six Hundred Twenty-Three Dollars ($6,473,623.00), which conforms to OWNER'S "Standard Project Accounts" furnished for this job, has been accepted by OWNER and is the basis of the Contract Fee stated in Article 4.

C. The Work shall be done on a cost plus a fixed-fee basis as described in Article 4.

D. OWNER'S General Conditions for "Cost Plus" Construction Contracts, Rev.1 dated December 5, 1969, shall govern where not in conflict with this AGREEMENT.

E. All materials required for the job and furnished by CONTRACTOR shall meet OWNER'S specifications, unless an agreement to depart therefrom is approved in writing by OWNER, and all Work shall be done in a good and workmanlike manner, to the satisfaction of OWNER, and shall be fabricated and installed in accordance with all current and applicable codes, rules, and regulations.

ARTICLE 2. CONTRACT DOCUMENTS

The CONTRACT DOCUMENTS which describe the scope of the Work, and the terms and conditions under which the parties are obligated to faithfully perform,

consist of this AGREEMENT together with all applicable drawings, standards, specifications, purchase requisitions, OWNER'S General Conditions for Cost Plus Construction Contracts, Rev. 1, dated December 5, 1969, OWNER'S Standard Project Accounts, any other documents incorporated directly or by reference in the above-mentioned documents, and all other applicable rules and regulations.

ARTICLE 3. TIME OF COMPLETION AND SCHEDULE

The Work to be performed under this AGREEMENT shall be commenced as scheduled after release of engineering and equipment delivery information, and pursued with diligence according to the construction schedule prepared by CONTRACTOR, and mutually agreed to between OWNER and CONTRACTOR. CONTRACTOR shall complete all of the Work described by this AGREEMENT, including all fabrication, erection, testing and flushing, and clean-up within the time shown on the schedule.

CONTRACTOR agrees to expedite the Work as much as possible and to review the progress of the Work weekly with OWNER. OWNER reserves the right to question the manpower assigned to the job and, if in disagreement, CONTRACTOR shall either furnish satisfactory proof, in writing, that the job is adequately manned to meet the schedule or shall add such personnel to the job as desired by OWNER.

It is expressly understood that CONTRACTOR will use his best efforts at all times to schedule the Work to fit any deviations in delivery dates of equipment and materials, and delays in the original issue and revisions to construction drawings, and otherwise to minimize the effects of all such revisions on the completion date.

ARTICLE 4. THE CONTRACT FEE

OWNER shall pay CONTRACTOR, in addition to the reimbursable costs listed in Article 5 below, as full and complete compensation for the performance of this Contract, a fixed fee equal to Three Hundred Fifty-Six Thousand, Forty-Nine Dollars ($356,049.00). No fee will be paid on the premium portion of any wages paid for work in excess of 45 hours per week. There shall be no fee on the cost of preparing the estimate nor on any material or equipment shown on OWNER-furnished equipment as identified in the estimate prepared under Article 1-B.

ARTICLE 5. REIMBURSABLE COSTS

OWNER will reimburse CONTRACTOR for costs when approved or authorized by OWNER prior to incurrence as follows:

A. Equipment, Materials and Supplies - The cost of all equipment, materials, and supplies necessary to complete the project, provided they are authorized for purchase by OWNER. All sales, use or other excise taxes (not including penalties, interest or other delinquency charges) on such costs will be charged to OWNER at cost. OWNER will enjoy discount benefits on equipment and materials purchased by CONTRACTOR, and CONTRACTOR shall positively attempt to obtain the best benefits available on OWNER'S behalf.

B. Labor - The field payroll rates for all work performed in connection with the project shall be in accordance with Exhibit "D", entitled "Current Salaries and Wage Rates." All time worked in excess of 45 hours per week, time worked on holidays or days other than Monday through Friday, or at times worked other than during re- regular working hours , will require OWNER'S written approval. Time worked in excess of 40 hours per week will be reimbursed at one and one-half ($1\frac{1}{2}$) times the regular rates of pay, except that no overtime compensation will be paid to employees exempt from applicable wage and hour laws.

C. Subcontracts - Actual cost of subcontracts to third parties performed with prior written approval of OWNER.

D. Emergency Expenditures - Where expenditures are required for furtherance or protection of the Work and emergency conditions exist which preclude obtaining OWNER'S prior approval, CONTRACTOR will advise OWNER of the circumstances and will request OWNER'S approval as soon as possible following the commitment.

E. Payroll Expenses and Insurance - All statutory payroll taxes and insurance, vacation pay, employers contribution to Retirement and Savings plan, sick pay, hospital and life insurance, and court duty are to be reimbursable with reimbursement for these elements of cost to be an amount equal to Fourteen and Seventeen One Hundredth Percent (14.17%) of gross payroll labor.

Premiums for insurance on construction equipment, with deductibles up to One Thousand Dollars ($1,000) per occurrence for CONTRACTOR'S account, and premiums for all other insurance required by OWNER in Article 21 of the General Conditions, Rev. 1, dated December 5, 1969.

F. Equipment and Tool Rental - Rental charges for CONTRACTOR'S construction equipment and for construction tools having a unit value in excess of $200 (designated as Rental Equipment in Exhibit "A", entitled, "Rental Equipment, Small Tools and Consumable Supplies", Rev. 1, dated November 13, 1970) shall be reimbursed at Eighty Percent (80%) of the rates published in the current manual of the Associated Equipment Dealers, and daily and weekly rates will be charged on a fractional monthly rate basis. Rental charges for second shift operation shall be reimbursed at thirty-five percent (35%) of the current A.E.D. rates. Equipment rented from others shall be reimbursed at invoice cost. CONTRACTOR owned equipment which is not listed by A.E.D. shall be charged at the rates quoted by CONTRACTOR in the attachment to CONTRACTOR'S proposal dated September 23, 1970, and entitled, "Equipment Rental Rates (CONTRACTOR OWNED). OWNER will reimburse CONTRACTOR for actual costs incurred for fuel, oil, grease, minor maintenance, and supplies for rental equipment, and for actual costs incurred for minor maintenance and repair parts of rental tools having a unit value in excess of $200 per tool.

OWNER will reimburse CONTRACTOR for transportation costs in moving such equipment to and from CONTRACTOR'S home office. However, CONTRACTOR will not be reimbursed for transporting equipment from OWNER'S job site when such equipment is scheduled to be moved directly to another of CONTRACTOR'S jobs. No reimbursement will be made for major repairs or major replacements. Rental costs will be reimbursed to the extent incurred during minor repairs, but only if CONTRACTOR is liable to a third party lessor for rental charges. No rental costs will be reimbursed on CONTRACTOR frunished equipment during major or minor repairs.

OWNER shall always have the option to compare CONTRACTOR'S price with quotations from local equipment and tool suppliers at any time of commitment and to require that CONTRACTOR use equipment furnished by OWNER, or by third parties, in lieu of using equipment owned by CONTRACTOR.

G. Small Tools and Consumable Supplies - Small tools up to a maximum unit value of $200, as designated in Exhibit "A" entitled Rental Equipment, Small Tools and Consumable Supplies, Rev. 1, dated November 13, 1970, shall be charged at a rate of 1.75 percent of the cost of direct labor as delineated in OWNER'S Standard Project Accounts and agreed to in the estimate required by Article 1-B. Consumable supplies as set forth in aforementioned Exhibit "A" and in section 760,20 of OWNER'S Standard Project Accounts shall be charged at a rate of five percent (5%) of the cost of direct labor. OWNER will be neither responsible nor liable for lost or stolen tools.

H. Temporary Construction Facilities and Miscellaneous Items - OWNER will reimburse CONTRACTOR for actual cost of all temporary buildings, other temporary construction; temporary utility connections; storage expenses; field office supplies and postage; freight charges; expressage; demurrage; trucking and truck hire; telephone and telegraph expense at the field office; certain home office expense when mutually agreed to between OWNER and CONTRACTOR and appropriately supported as directly applicable to the project; and all other job costs and uninsured losses, excluding losses on rental equipment, and excluding all items which are included in CONTRACTOR'S Fixed Fee.

I. Home Office - Payroll costs for special personnel in the home office for actual time employed in connection with the project, in accordance with the attached Exhibit "C" titled "Home Office Salaries and Wages," to be provided by CONTRACTOR, other than for keeping corporate records and following on-going corporate procedures, with prior written approval of OWNER.

With OWNER'S prior approval, travel expenses of home office employees, as well as travel expenses and salaries of engineers, inspectors and expeditors, as set forth in Exhibit "C", other than as covered in Article 8, but as necessary and approved in the interest of the Work.

J. Estimate Preparation - OWNER will reimburse CONTRACTOR at the rate of $9.50/hour for the actual cost incurred up to, but not to exceed Thirty-Five Thousand Dollars ($35,000) to prepare the definitive estimate of the Work required by this AGREEMENT as set forth in Article 1-B.

ARTICLE 6. CHANGES IN THE WORK

A. OWNER may from time to time, by written instructions or drawings issued to CONTRACTOR, require additions to, or deletions from the Work. The cost of all such changes is to merge into the cost of the Work and costs shall be reimbursed under the same terms as the other work being done under this AGREEMENT. OWNER'S right to make these changes shall extend to major or minor changes without differentiation.

B. There shall be no increase or decrease in the the Contract Fee stated in Article 4 unless the aggregate of all the estimates for additional work, and for deleted work, results in a net change in excess of plus or minus 10% of the total estimate of the

Work ($6,473,623.00) as determined under Article 1-B. The Contract Fee shall then be adjusted by an amount equal to 5-1/2 percent of the net increase or decrease beyond plus or minus 10% of the total estimate stated above.

C. Each proposed change shall be estimated and agreed to prior to the start of any work therefor. If the estimate of a proposed change cannot be agreed upon, separate time and material costs shall be kept for the work involved and the actual costs compiled will be used in lieu of an estimate for applying the deviation from the total estimate referred to in Article 1-B.

ARTICLE 7. TERMS OF PAYMENT

CONTRACTOR shall invoice OWNER, and OWNER will pay CONTRACTOR all expended costs so invoiced and 90% of the proratable portion of the Contract Fee for each invoice in accordance with the terms set forth in Article 19 of the General Conditions, Rev. 1, dated December 5, 1969, except that labor will be invoiced weekly, materials bi-weekly, and construction equipment monthly. Each such invoice by CONTRACTOR shall show the dollar amount of the 10% fee retained as well as the balance of the Contract Fee due, on the face of the invoice.

ARTICLE 8. COSTS NOT TO BE REIMBURSED

The following items are among those not to be reimbursed and are considered as compensated by inclusion in the Contract Fee paid CONTRACTOR in accordance with Article 4 of this AGREEMENT: the services of the corporate officers and the construction management, administrative services carried on at CONTRACTOR'S home office, cost of preparing home office payrolls and payroll burden; home office overhead, general and supervisory services and expenses; employers home office portion

of life and hospitalization insurance, vacation pay, retirement and savings benefit, sick pay and court duty compensation for qualified home office personnel; profit for any material, equipment, or service; income taxes; or interest on money employed for the Work.

ARTICLE 9. TITLE TO WORK, MATERIALS AND EQUIPMENT

All materials and equipment furnished by CONTRACTOR for incorporation in the plant shall become the property of OWNER upon delivery to the plant site. Upon completion of the Work, CONTRACTOR shall use his best efforts to dispose of all remaining surplus, with OWNER'S approval, crediting the net proceeds thereof against the cost of the Work. Any surplus remaining thereafter, but purchased by or for OWNER, shall remain the property of OWNER. The title to all building and other facilities erected or purchased specifically for this job shall be vested in the OWNER.

ARTICLE 10. CONFIDENTIALITY AND NON-USE

A. CONTRACTOR agrees to exercise reasonable care to the end that all information and know-how, including that embodied in existing types of plant facilities or in drawings, tracings, and/or any other documents made available or otherwise acquired in connection with bidding for the construction of and/or constructing of the proposed facilities, as well as OWNER'S intentions and plans to construct said plant facilities, will be maintained by CONTRACTOR, its employees, suppliers, and subcontractors in strict confidence and will not be disclosed to any third party.

B. CONTRACTOR further agrees that it will make no subsequent use of any such information or know-how except as may be expressly authorized in writing by OWNER.

C. The foregoing obligations of confidentiality and non-use shall not apply to information or know-how which was known to CONTRACTOR prior to disclosure by OWNER, to information or know-how which is or becomes generally available to the public through no fault of CONTRACTOR or any employee or subcontractor thereof, or to information or know-how which is acquired by CONTRACTOR from a source independent of OWNER without restriction on disclosure.

D. CONTRACTOR further agrees to use reasonable care in selection and assignment of personnel to this project and to take proper precautions to avoid the unauthorized dissemination of all and any part of the information and know-how CONTRACTOR is obligated to maintain in confidence hereunder.

E. CONTRACTOR also agrees to return within ten (10) days after demand of OWNER, all drawings, tracings and other documents made available by OWNER, including any copies or written modifications thereof made by CONTRACTOR, its personnel, or its suppliers and subcontractors. CONTRACTOR further agrees to confirm, by letter, the return of all information by him to OWNER. The letter shall list the specific items of information or know-how and shall state that such return is complete, including all copies received or made by him, his employees, suppliers, and subcontractors.

F. CONTRACTOR'S supervisory and technical personnel and subcontractors having access to OWNER'S flow diagrams shall sign separate Confidentiality and Non-Use Agreements with CONTRACTOR and OWNER. CONTRACTOR'S other supervisory and technical personnel shall sign Confidentiality and Non-Use Agreements with the CONTRACTOR. OWNER reserves the right to approve all such Agreements as to form and content prior to their execution.

G. CONTRACTOR agrees that for a period of five (5) years after the completion of this project and the acceptance of all of the Work by OWNER, CONTRACTOR will not engage in the bidding, design, or construction of any plant producing sodium salt of nitrilotriacetic acid (NTA) or nitrilotriacetonitrile (NTN) for any party other than OWNER without first obtaining a specific written release from OWNER authorizing each such activity. Upon CONTRACTOR'S written certification to OWNER that separate and independent know-how will be utilized in said proposed plant, and that CONTRACTOR'S personnel previously exposed to OWNER'S information or know-how will not be engaged in the design or erection of such facility, and that confidential information and know-how of OWNER will not be used either directly or indirectly in the bidding or construction of said plant OWNER will provide a release as aforesaid. After the end of the aforesaid period of five (5) years, the obligations on CONTRACTOR pursuant to this paragraph (G) shall terminate. However, CONTRACTOR'S obligations pursuant to Article 10, paragraph (A) through (F), shall not terminate.

ARTICLE 11. ERRORS AND OMISSIONS IN THE WORK

OWNER will bear the costs of errors and omissions in the Work caused by incomplete or contradictory instructions and specifications given and/or prepared by OWNER, or on which CONTRACTOR acts upon in good faith. In all cases where CONTRACTOR'S Project Manager, Assistant Project Manager (if assigned), Project Engineer, or Construction Superintendent are guilty of bad faith, or personally fail to exercise reasonable care in the execution of the Work, the correction, replacement, and other remedies necessary to correct the faulty or incomplete work shall be at CONTRACTOR'S expense.

ARTICLE 12. MATERIAL AND EQUIPMENT WARRANTIES

A. CONTRACTOR guarantees that the Work shall be performed in a skillful and workmanlike manner, free from defects and in accordance with the specifications, exhibits, drawings, and plans.

B. CONTRACTOR does not guarantee or warrant the materials in, or workmanship of, machinery, equipment or materials manufactured by third parties and furnished or installed by CONTRACTOR in the performance of the Work, but CONTRACTOR shall obtain from all vendors and suppliers, and assign to OWNER, the best warranties and guarantees obtainable with respect thereto, and shall render reasonable assistance to OWNER when requested in order to enforce such warranties and guarantees by the third party manufacturers or suppliers.

C. CONTRACTOR'S liability for any breach of this Article 12 shall be limited to remedying, as a reimbursable cost, those defects covered by Article 12 (A) which appear no later than one (1) year after acceptance of the Work, and of which defects CONTRACTOR is notified in writing by OWNER during said period.

ARTICLE 13. ENTIRETY OF AGREEMENT

This AGREEMENT shall supersede and cancel all previous agreements, whether oral or written, between the parties hereto, in connection with the subject matter of this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT in multiple originals the day and year first above written.

WITNESSED:

C E Phillips

Claude E Baird

ETHYL CORPORATION

By G S Roberts
G. S. Roberts, Chief Engineer

Date 12 - 14 - 70

Ann Wright

L. Mathews

BROWN & ROOT, Inc.

By L. J. Derrick
L. J. Derrick, Sr. Vice President

Date December 14, 1970