

PURCHASING DEPARTMENT

New York

October 4, 1971

COPY

AIR MAIL

PLAINTIFF'S EXHIBIT

ASA-1256

Mr. E. H. Haug
Salt Lake City, Utah

Re: Order 71-1539-1, Reg. CE-70-EP-22

In accordance with your phone request of October 1st, I am enclosing herewith for your use and file self-explanatory copy of the contract entered into with Wellman-Power Gas Incorporated covering the Sulphuric Acid Plant at our El Paso, Texas location.

Original Signed by
WILLIAM A. BENNIS

William A. Bennis

WAB/HH
Attach.

cc: WRMahoney
AO Marsh, Jr.

(One copy of the above mentioned
(contract is enclosed for your file.

WAB

ASARCO ELP 0009814

TO:	APPROVED
Purchasing	BY
Credit	GR
Legal	ECC
Insurance	RSM & ESS
Operating Vice President	PMZ
	RLH

Return to Purchasing Department

CONTRACT

BETWEEN

AMERICAN SMELTING AND REFINING COMPANY

AND

WELLMAN-POWER GAS INCORPORATED

FOR

ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES

FOR A

SULFURIC ACID PLANT

AT

EL PASO, TEXAS

WPG PN 4121

August 25, 1971

ASARCO ELP 0009815

CONTRACT FOR
SULFURIC ACID PLANT

at

AMERICAN SMELTING AND REFINING COMPANY'S El Paso Plant
at El Paso, Texas.

THIS AGREEMENT, made the 25th day of August, 1971 by and between Wellman-Power Gas Incorporated, a Florida Corporation, P. O. Box 2436, Lakeland, Florida 33803 (hereinafter called the "Contractor") and AMERICAN SMELTING AND REFINING COMPANY, a corporation of the State of New Jersey, whose address is 120 Broadway, New York, N. Y. 10005 and El Paso Plant (hereinafter called the "Owner").

W I T N E S S E T H:

The Contractor and the Owner, for the consideration hereinafter named, agree as follows:

SPECIAL PROVISIONS OF THE CONTRACT

Article 1. Scope of the Work

The Contractor shall furnish all plans, available shop drawings, field engineering, labor, materials, transportation, tools, equipment and other facilities, except such items as are hereinafter listed as being furnished or furnished and installed by the Owner, required for a Converter Gas Sulfuric Acid Plant at the El Paso Plant of the Owner at El Paso, Texas, hereinafter referred to as the "Plant", all in accordance with the requirements and provisions of the attached "General

Provisions of the Contract" and the drawings and specifications listed below and those drawings and specifications which may be supplied by the Owner or prepared by the Contractor at the Owner's direction subsequent to the execution hereof and approved by the Owner and agreed to by the Contractor, all of which are incorporated herein by reference, made a part hereof and, together with this Agreement, hereinafter referred to collectively as the Contract:

1. Owner's specifications for converter acid plant and auxiliaries dated November 16, 1970.

2. Owner's addenda as follows:

Addendum No. 1 - Oleum Storage
Deleted by Addendum No. 3,
12-22-70

Addendum No. 2 - Electrical Specifications -
dated 12-9-70

Addendum No. 3 - General Revisions -
dated 12-22-70, but with
certain modifications such
as use of insulation to con-
trol sound level per H.E.W.,
hot heat exchange tube
material, CIL acid coolers,
400 ton Oleum tank, regular
instrument panel.

Addendum No. 4 - Wet Scrubbing Gas Cleaning
Section - dated 1-29-71 is
no longer applicable due to
extensive modifications and
agreements.

Addendum No. 5 - Converter Gas Cleaning Plant -
dated 2-11-71

3. Contractor's proposal W-PG PN 2070, June 2, 1971, (hereinafter referred to as the "Proposal") to the extent not inconsistent with this Agreement and excluding therefrom Section VI, Performance Guarantees.
4. The Contract Price for the acid plant and gas cleaning system is based on using CIL acid coolers.
5. Each blower does have a separate lubrication system and two pumps are included for each system, one being a shaft driven unit, and the other having an electric motor drive.
6. Metallizing the top heads of all gas to gas heat exchangers is included in the contract price.
7. No part of the intermediate gas fan, dampers, or inlet ducts thereto is W-PG work. However, the electrical hookup for the fan motor is included in the Contract Price, since the starter would be located in the new motor control center. The operator for the fan shutters is in the Contract Price. A flow venturi in the hot gas duct is included.

8. Installed spare acid circulation pumps, Nos. 1102, 1106, and 1107 are included in the Contract Price.
9. Installed spare product pumps, Items 1112 and 1117 are included in the Contract Price.
10. A third layer of 2-1/4" thick acid brick on the floor of each of the four acid towers, Nos. 2202, 2205, 2206, and 2207 is included in the Contract Price.
11. The gas cleaning system now included in the Contract Price consists of one venturi scrubber followed by two parallel trains, each isolatable by plug dampers and composed of one packed tower and two lead electrostatic precipitators, in series arrangement. Necessary pumps, coolers, valves and piping are included to make an operable unit. The four electrostatic precipitators are of lead and will each have 172 tubes, each ten inches diameter, 15 feet long.
12. All lead material for any plant components will be furnished cut to size by Owner to the fabricator of the equipment, FOB fabricator's siding, without cost to the Contractor or fabricator.

13. Offset stack off the drying and absorbing tower shells with a line returning stack condensate to the drying tower below the mist eliminator pads.
14. The CIL coolers are to have specialty metals used on the water side to prevent corrosion as recommended by CIL.
15. The cooling tower blowdown, 66 gpm, is to be pumped through a 3" line about 1600 ft. on the pipe rack to #6 cooling pond.
16. We will accept Allis-Chalmers standard test procedure.

Services by the Contractor's advisory start-up personnel during start-up and commissioning are included in this Contract Price and will be provided until Performance Guarantees have been met. If such Contractor's services beyond those set forth in the Proposal are required, the additional advisory start-up assistance shall be reimbursed at the rate of \$125 per calendar day for start-up supervisors and \$100 per calendar day for start-up engineers/technicians, plus travel and living expenses.

Article 2. The Time of Completion

The Contractor will supply the written notice that the work is mechanically completed, referred to in Article 5(a) of this Contract, on approximately October 1, 1972.

The Contractor will proceed with the work using due diligence and will make all reasonable efforts to complete it without delay. The Contractor shall not be responsible for delays caused by bona fide labor disputes, war, act of government, accidents, fire, flood or other cause beyond its reasonable control, but shall use all reasonable efforts to minimize the extent of the delay.

Article 3. The Contract Price

(a) The Owner shall pay the Contractor for the performance of this Contract, subject to any additions and deductions herein provided for, a Contract Price of Six million three hundred seventy-four thousand eight hundred forty dollars (\$6,374,840.00), lawful money of the United States of America, at the time and in the manner herein after provided. This sum includes a fully paid license fee for the use of any and all proprietary technology and patents embodied in the plant, as referred to in Article 29 of the General Provisions.

(b) The Contract Price is based on a forty (40) hour field force work week consisting of eight (8) straight-time hours per day, Monday thru Friday, inclusive, or on the trade union work day or work week specified in Contractor's trade union agreements, and does not include any amount for wage premiums resulting from overtime work or for work on Saturdays, Sundays, or holidays (herein cumulatively referred to as "overtime"). No overtime (other than "Spot" overtime) shall be worked on this project, including overtime worked by Owner's other contractors, except upon the mutual agreement of the Owner and Contractor. If Owner requests overtime and Contractor agrees thereto, the Contract Price shall be increased.

(c) The Contract Price is based upon the field force labor rates and fringe benefits for lead burners established by the applicable labor agreement which expired May 25, 1971. The Contract Price shall be adjusted to include any variation in the lead burners labor rates and/or fringe benefits (including corresponding variation on payroll taxes and insurance) as a result of the terms of any new labor agreement with the lead burners, and based on the actual lead burning hours required for construction of the Plant.

(d) The Contract Price includes 3½% on materials and equipment for sales and use taxes. If the rates or their applicability change, Owner shall reimburse Contractor for the increased costs resulting from such changed rates or applicability.

(e) The Contract Price includes the fee due Lurgi/Bayer for this Plant of 545,000 Deutsche Marks based on a daily capacity of 575 STPD and where the SO₂ containing gases originate from sources other than sulfur combustion but are previously cooled and have an SO₂ content at the inlet of the converter averaging less than 8.0% and never exceeding 8.4%. If Owner converts the Plant to use SO₂ containing gases originating from sources other than sulfur combustion where the SO₂ content at the inlet of the converter averages 8.0% or more, or ever exceeds 8.4%, then Owner shall be responsible for the payment of an additional license fee to Lurgi/Bayer. For this Plant, such additional fee would be 110,000 Deutsche Marks.

Article 4. Progress Payments

As soon as practicable after the first day of each calendar month the Contractor shall present to the Owner an invoice equal to the percentage of the total amount.

of the Contract which has been completed from the start of the job up to the end of the preceding month plus the cost of materials suitably stored at the site thereof, together with such supporting evidence as may be required by the Owner. In determining the percentage of the contract which has been completed, there shall be excluded any Contractor's purchase orders covering equipment, etc. for the job which may be in progress of being manufactured at a vendor's facility. Subject to verification of such invoice by the Owner, the Owner within 10 days after receipt thereof shall pay the Contractor ninety-five percent (95%) of the amount thereof, less aggregate of previous payments; and upon mechanical completion of the entire work, a sum sufficient to increase the total payments to ninety-five percent (95%) of the Contract Price. In the event at any time prior payments by the Owner equal such percentage of the Contract Price, no further payments shall be made until final payment is due. Final payment is to be made as outlined under Article 5(f) of this agreement.

Article 5. Acceptance, Test-Run and Final Payment

(a) Contractor shall be deemed to have mechanically completed the Plant when Owner has mechanically accepted each plant unit (as defined in paragraph 2.18 of the Proposal) comprising the Plant in accordance with Paragraph (b) below, and Contractor has notified Owner in writing that the Plant has been "prepared for start-up," which term, for purposes of this Contract shall mean the completion of all work necessary for the safe operation of the Plant, excluding nonessential work such as painting, insulation, and incidental construction. Provided, however, that

(Article 5 continued on Page 10)

Owner shall have five (5) days after receipt of such notice to notify Contractor of any valid reason that the Plant has not been prepared for start-up, and Contractor shall correct any such deficiencies specified by Owner before Contractor shall be deemed to have satisfied its obligations hereunder.

(b) When, in Contractor's opinion, a particular plant unit within the plant has been substantially mechanically completed, Contractor shall conduct mechanical tests of all the equipment comprising said plant unit within as short a period of time as reasonably possible. The mechanical tests shall be witnessed by an authorized representative of Owner, to be designated to Contractor in writing, and Owner shall accept care, custody and control, including responsibility for maintenance, for each item of equipment when Owner's representative acknowledges in writing the satisfactory completion of the mechanical tests relating thereto. Owner shall be deemed to have accepted a plant unit as substantially mechanically complete when the equipment comprising said plant unit has been tested and accepted in accordance with the foregoing procedure, and Owner shall thereafter assume care, custody, and control, including responsibility for maintenance of such plant unit.

(c) Promptly after mechanical acceptance of the plant, the Owner will at his cost make raw materials, utilities and

a sufficient number of qualified operators available for start-up of the plant."

(d) After a sufficient running-in period of not less than fifteen (15) days or more than sixty (60) days the Contractor shall notify the Owner in writing when the Contract Plant is ready for the test run. The test run for the purpose of proving compliance with the guarantees specified in Article 7 hereof shall be run continuously for 72 hours with a feed as defined therein.

(e) During the running-in period and the test run the Contract Plant shall be operated by the Owner according to the instructions of the Contractor. The quantities and qualities of products produced during the test run shall be jointly determined by the Owner and the Contractor. Any dispute not resolved by mutual agreement will be subject to arbitration.

(f) When results from the test run meet the guarantee of chemical performance set forth in Article 7; a final certificate shall be issued within three days after completion of the successful test run verifying that the Contractor's liabilities for chemical performance shall be considered fulfilled. The entire balance of the Contract Price shall be paid to the Contractor by the Owner within 30 days after date of said final certificate.

(g) If it is found during the running-in period that the guarantees given under Article 7 are attainable the test run may be waived in whole or in part at the option of the

Owner and from the date of such waiver the Contractor's liabilities shall be considered fulfilled to the extent of the waiver.

(h) If, contrary to expectation, this guarantee test is not successful for reasons which are proved to be imputable to the Contractor, the Contractor shall carry out, free of charge for the Owner, such changes as are necessary for fulfilling the guarantees. After the execution of these changes, new guarantee tests as prescribed above will follow.

(i) Before issuance of the final certificate, the Contractor shall submit evidence satisfactory to the Owner that all payrolls, material bills, and other indebtedness connected with the work have been paid, and that the work is free from all liens and encumbrances. In the case of disputed indebtedness or liens the Contractor may submit, in lieu of evidence of payment, a surety bond satisfactory to the Owner, guaranteeing payment of all such disputed accounts when adjudicated.

Article 6. Insurance Certificate

Prior to commencement of this work the Contractor shall file with the Owner completed certificates of insurance in form of "Insurance Certificate" attached and shall provide insurance coverage in amounts as stated the General Conditions.

Article 7. Performance Guarantees

A. General Conditions

1. Standard Abbreviations

Unless specified otherwise, the following abbreviations shall apply to the Guarantees:

Lurgi Lurgi Gesellschaft für Chemie und
 Huttenwesen m.b.h.

% Weight percent, unless designated otherwise

STPD Short tons per day (2,000 pounds per short ton)

NLT Not numerically less (or lower) than

NMT Not numerically more (or higher) than

ppm Parts per million

2. Equipment, Materials, Laboratory Service, and Personnel

Owner shall provide measuring equipment in accordance to Contractor's specifications for receiving and measuring flows of feed stocks and/or products, and related equipment, miscellaneous supplies, chemicals and necessary services, such as adequate laboratory facilities, qualified maintenance and operating personnel and maintenance materials to operate satisfactorily and permit evaluation of the test run results.

3. Sampling and Analytical Methods

Official samples of feed stocks and all products shall be collected during the test run period in sufficient quantities to fulfill the conditions set forth in these guarantees. These samples shall be taken at frequencies and by methods established by the Contractor.

Characteristics of feed stocks and product(s) which are required to establish the fulfillment of obligations set forth below in Part B shall be determined by the appropriate specified methods. In the event Contractor and/or Owner cannot agree as to the accuracy of any laboratory inspections made by Owner, then a sample of the material in question shall be submitted to a mutually satisfactory independent laboratory and the findings of this laboratory shall be accepted as final.

If the result of this re-test is closer to Owner's result, all costs of the re-test incurred shall be at Contractor's expense. If this result is closer to Contractor's result, however, all costs of the re-test incurred shall be at Owner's expense.

The collection and testing of all samples during the test run are an obligation of Owner and all analytical work shall be performed at Owner's expense in Owner's laboratories, and results reported as soon as analyses are completed. Two (2) copies of all laboratory results shall be made permanently available to Contractor for evaluation.

4. Utilities

During the test run on the Plant, Owner shall supply, at the battery limits of said Plant, adequate quantities of all utilities required to operate Plant. The design

utility quantities and conditions for the Plant shall be in accordance with Contractor's proposal Sections I, II and III, PN 2070, "Part B - Raw Materials and Utilities Imported."

5. Initial Operation

If Contractor's start-up engineer and Owner conclude that the Plant has not been operated according to instructions and equipment has been damaged, or if in their joint opinion, mechanical failure or any other event occurs that causes an abnormal condition that will not permit the Plant to operate at design conditions, the Owner shall shut the Plant down and recondition the Plant essentially to the state in which it was at the time it was first brought on stream. This reconditioning of the plant shall be at Owner's expense. In the event of a disagreement Owner shall proceed to recondition the Plant and Owner's/Contractor's responsibility shall be determined by arbitration.

6. Test Run

(a) General

The ability of the Plant to meet the Performance Guarantees set forth below in Part B shall be determined by means of test runs conducted by Owner according to the instructions set forth in Contractor's Operating Manual and under the guidance

of Contractor's start-up Engineer.

On Contractor's written request, all Plant processing equipment as required shall be placed by Owner in essentially start-of-run condition prior to commencement of the test run.

(b) Interruption of Test Run

After commencing any test run, Owner shall continue it to completion, unless, in the opinion of either Owner or Contractor, a safety hazard exists, necessitating a shutdown.

If a test run is interrupted by causes beyond the control of Contractor, the period of the test before the interruption may, at Contractor's option, be included in the total test run period specified.

The continuation of the test shall be rescheduled and be conducted within seven (7) days after written request by Contractor.

(c) Operating Data

Before the start of a test run, Contractor shall specify the operating data to be recorded and the manner in which the data are to be taken. Two (2) copies of Owner's Operating Log shall be made permanently available to Contractor for evaluation.

(d) Evaluation of the Test Run Data

Evaluation of the test run data, including operating and laboratory data accumulated during, or as a part of, the test run shall be performed by Contractor within a reasonable period of time after the completion of the test run. Contractor shall submit to Owner the results of such evaluation in writing, indicating whether in the opinion of Contractor the Guarantees have been met.

(e) Fulfillment of Guarantees

Within thirty (30) days after receipt of the test run results, Owner shall signify in writing their agreement or specify in what respect the Guarantees have not been met. In the event Contractor has not received a letter of acceptance or rejection within the thirty (30) days of the receipt of said results, all Guarantees pertaining thereto shall be deemed to have been satisfied.

B. Obligations of Contractual Parties

1. Owner's Obligations

Owner shall supply to the battery limits of the plant a gas having characteristics set forth below and free of deleterious impurities, at the conditions specified in Specification CE-70-RS-22 and Addendums Numbers 1, 2, and 3.

Operating Characteristics

The design gas flow rate to this plant is 59,500 cfm dry basis, 32°F and one atmosphere. The gas strength will average 6.0% SO₂ by volume with variations from 4.0% to 8.0%. Actual conditions of gas feed to the drying tower are 90°F, saturated with water vapor, and at a pressure corresponding to 3800 feet above sea level.

Design Gas Composition is:

<u>Component</u>	<u>Volumetric % (dry basis)</u>
N ₂	80.00
O ₂	12.00
SO ₂	8.00
	<u>100.00</u>

The gas feed stream is assumed saturated at 90°F.

Dust content of gas feed stream is assumed to be nil.

Noxious elements, such as flourine and arsenic, are assumed to be nil.

2. Contractor's Obligations

(a) General

When owner is meeting the obligations of Part A and B-1 above, the sulfuric acid plant shall meet the capacity, product quality, and acid gas emission guarantees set forth below for a test period of three (3) consecutive days.

(b) Capacity

The plant shall be capable of processing the design flow of gas containing from 4.0% to 8% (by volume) SO_2 . Processing of gas strengths higher than 8.0% shall require dilution with outside air to conform to design conditions of 8%.

The acid produced shall be:

1. 20% oleum or 104.5% H_2SO_4
2. 93% H_2SO_4
3. 98-99% H_2SO_4

NOTE: The capability of producing oleum and 98% acid is dependant on gas strength.

(c) Quality of Product

Acid produced shall meet the following specifications:

93% Sulfuric Acid

Total acidity as % H_2SO_4	NLT 93.0
	NMT 94.0
SO_2	NMT 60 ppm

98-99% Sulfuric Acid

Total acidity as % H_2SO_4	NLT 98.00
	NMT 99.00

20% Oleum

Total acidity as % H_2SO_4	NLT 104.00
	NMT 105.00

(d) Acid Gas Emission

Based on exit stack gas analyses, the sulfur dioxide

emission shall be NMT 500 ppm by volume.

Article 8. Workmanship and Material Warranties

A. Subject to the conditions hereinafter set forth, Contractor warrants all fabrication, assembly, installation or construction work performed by Contractor, and all such work performed at the Plant site by its subcontractors, against defects in workmanship for twelve (12) months after mechanical acceptance of the work by Owner. Upon written demand by Owner within ten (10) days after discovery of any deficiency and prior to the expiration of the aforementioned warranty period, Contractor shall repair or replace, at its own expense, any defective work which it has warranted hereunder; provided that Owner shall use its best efforts to minimize any damage or loss resulting from such defective work. Contractor assumes no responsibility or liability for the effects of corrosion or erosion, normal wear and tear, or damage or loss due to Owner's misuse or misoperation of the plant or any system, sub-system or item of equipment or material used therein.

B. All equipment and materials installed in the Plant and furnished by Contractor, its subcontractors and vendors shall be of proven type and quality suitable to Contractor's design.

C. Contractor shall use its best efforts to secure, for the benefit of Owner, warranties of third party vendors and suppliers (including subcontractors) running directly

to Owner or assignable by Contractor to Owner, with respect to the materials and equipment furnished by such vendors and suppliers and except as provided for in Article 16 of the General Provisions, Contractor itself shall not be a guarantor of such materials and equipment; provided that Contractor shall use its best efforts short of litigation, to enforce third party warranties on behalf of Owner.

Costs, if any, incurred by Contractor in installing any materials or equipment replaced or repaired by third party vendors or suppliers shall be reimbursed by Owner.

D. If Contractor does not take action to correct any defects or deficiencies for which it is responsible under this Article 8 within a reasonable time after receipt of Owner's written notice thereof, Owner may take such corrective action itself or through contract with others, and Contractor shall reimburse Owner for the reasonable costs thereof.

Article 9. Limitation of Liability

Contractor makes no guarantee or warranty of any kind, either express or implied except as expressly set forth in this Contract with the exception of (1) risks covered by insurance as provided for in Article 19B of the

General Provisions of this Contract, and (2) liability arising under Article 6 of the General Provisions of this Contract, Contractor shall not be liable to Owner, under any circumstances, for loss of profit or loss of product, or for consequential damages of any sort, arising in connection with Contractor's work hereunder, and, with the exceptions stated above in this Article 9, Contractor's maximum liability to Owner under this Contract, or in any way arising in connection with the performance of the work hereunder shall not exceed \$1,000,000.

Article 10. Applicable Law

This Contract shall be construed and enforced in accordance with the laws of the state of Texas.

Article 11. Guarantee by Davy - Ashmore Ltd.

It is understood that a guarantee from Davy - Ashmore Ltd. (the "Guarantor") whose address is London, England, will be obtained fully guarantying the performance of the Contractor under all aspects of this agreement and will assume full responsibility for any and all acts and failures to act hereunder on the part of the Contractor.

Article 12. Entirety Clause

This Contract constitutes the entire agreement between the parties; and except as may be specifically set forth herein no changes can be made herein except by an agreement in writing duly executed by the parties or their duly authorized agents.

IN WITNESS WHEREOF, the parties have executed this Contract the day and year first above written.

WELLMAN-POWER GAS INCORPORATED
Contractor

By *R. H. Hilly*

As its *Gen. Mgr. President*

AMERICAN SMELTING AND REFINING
COMPANY
Owner

By *R. H. Hilly*

As its *President*

GENERAL PROVISIONS OF THE CONTRACT

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Article 1. Notice

Written notice shall be deemed to have been duly served if delivered by hand or sent by registered mail, in each case, to the address or addresses of each party set forth on the first page of this Contract or at such other address subsequently designated by either party.

Article 2. Drawings and Specifications

The Contractor agrees to furnish to the Owner, for approval or review as set forth in paragraph 3 of the Proposal, three sets of prints of the following drawings before proceeding with the erection of the work covered therein:

- a) All of the Contractor's drawings which are made for this job.
- b) Any Contractor's shop drawings and subsupplier's drawings as far as available, detail sheets or erection diagrams required for any phase of the work.
- c) Certified dimension sheets, wiring diagrams and performance curves covering any equipment purchased by the Contractor for the job.

The Contractor shall make any corrections required by the Owner in drawings submitted for his review or approval. The Owner's review or approval as to design of such drawings shall not relieve

the Contractor of responsibility for errors or discrepancies of any sort. If such corrections by the Owner affect the extent of work, the changes shall be governed as provided in Article 12 of these General Provisions.

The Contractor also agrees to furnish to the Owner five sets of operation and installation instructions and parts lists for all equipment furnished by the Contractor, not later than mechanical completion of the Plant, including two certified copies of dimension sheets, wiring diagrams and performance curves of same.

As soon as the drawings referred to in subparagraphs (a) and (b) above are completed, checked and approved, the Contractor shall furnish three complete final sets of prints to the Owner.

Article 3. Contractor's Understanding

The Contractor shall satisfy itself as to the nature and location of the work, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this Contract.

Owner shall provide a site suitable for the proper execution and completion of the project, free of all existing buildings, structures, overhead and underground obstructions. The Contract Price is based on the assumption of a natural soil bearing of 6000 PSF. Contractor's

structural and civil design and construction for the Plant shall be based on soils investigation, data or conclusions as needed by Contractor and to be provided by an independent soils consultant at Owner's cost, and the Contract Price shall be adjusted to reflect any soils conditions and design basis revealed by said Consultant's reports which deviate from the assumption of 6000 PSF soil bearing. Contractor shall not be responsible under this Contract for unforeseen subsurface conditions not revealed in said soils consultant's reports, or for any other unusual, unexpected or unforeseen physical conditions encountered at the Plant site, and all added costs and expenses resulting therefrom shall be borne by Owner.

Article 4. Materials, Appliances and Temporary Facilities

The Owner will supply electricity, water, roads, parking areas, compressed air, site clearance and rough grading required for construction as set forth in the Proposal. Where such items are not supplied by the Owner they shall be furnished by Contractor at Owner's expense, and the Contractor shall, in either case, be required to make the necessary connections, provide approved shut-off and safety devices and furnish and install all temporary lines required to bring them to the point of use.

Unless otherwise specified, all materials incorporated in the permanent work shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Contractor shall construct and maintain all necessary temporary facilities required by Contractor for the completion of the work. Upon completion of the work all such facilities shall, unless the Owner shall otherwise direct, be removed from the premises and site cleared.

Article 5. Employees of Contractor

If for any reason the Contractor's or any Subcontractor's employees or agents acquire a status imposing liability on the Owner for employer's contributions or taxes under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, any State Unemployment Tax Act, or any other Act, the Contractor shall be exclusively liable for, and shall indemnify the Owner against, the same and agrees to comply with all such laws and regulations so as to relieve the Owner from any and all liability therefor and from the responsibility of making reports or keeping records with respect thereto.

The Contractor shall at all times enforce strict discipline and good order among his employees, and shall seek to avoid employing on the work any unfit person or anyone not skilled in the work assigned to him.

Adequate sanitary facilities shall be provided and maintained by the Contractor.

Article 6. Patents

The Contractor shall indemnify and save the Owner harmless against and from any and all claims, losses, damages, expenses, actions or other proceedings, arising out of or resulting from the infringement of any patent issued upon a patent application entitled to a filing date which is earlier than two (2) years from the date on which the Plant installed hereunder is placed into commercial operation by the Owner, Contractor or any Subcontractor in the performance of this Contract or by Owner's operation of said sulfuric acid plant in accordance with Contractor's design and operating instructions, provided Owner gives Contractor prompt notification of and the right and opportunity to defend or settle the infringement claim.

The Contractor shall defend any infringement suit or at its option may compromise or settle the infringement claim or redesign and reconstruct the plant (in a manner conforming to the guarantees hereinbefore provided) so as to avoid such infringement, all at the Contractor's cost and expense. Owner shall cooperate fully with Contractor in the defense of any infringement claim.

Article 7. Surveys, Permits and Regulations

If involved in the subject matter of this Contract, the base lines and mean datum will be established by the Owner; the control lines and levels and all general layout work will be the responsibility of the Contractor. All controls established by the Contractor shall be preserved and maintained throughout the life of the Contract.

Unless otherwise specified, the Owner shall furnish all land surveys required. Permits and licenses of a temporary nature (other than building permits) necessary for the prosecution of the work shall be secured and paid for by the Contractor. Building permits and permits, licenses and easements for any permanent changes in existing facilities or for pollution control or Plant operation shall be secured and paid for by the Owner, unless otherwise specified.

The Contractor shall give all notices and comply with all applicable published laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, Contractor shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work. If the Contractor performs any work knowing it to be contrary to any such law, ordinance, rule or regulation, and without such notice to the Owner, Contractor shall bear all costs arising therefrom.

Article 8. Protection of the Public and of Work and Property

The Contractor shall provide and maintain all necessary barricades, red lights and warning signs and take all necessary precautions for the protection and safety of employees on the work, of all other persons

and of adjacent private and public property. The Contractor at all times shall maintain adequate protection of the work from damage and shall protect the Owner's property and all persons thereon from injury, damage or loss by reason of any act or omission of Contractor or any Subcontractor.

In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor is, without special instructions or authorization from the Owner, hereby authorized to act at Contractor's discretion to prevent such threatened loss or injury. Contractor shall also act if so instructed by the Owner.

Any compensation claimed by the Contractor on account of emergency work of this nature shall be determined by mutual agreement and failing which, by arbitration.

Article 9. Inspection of Work

The Owner and its representatives shall at all times have access to the work and the Contractor shall provide safe and proper facilities for such access and for inspection.

If the specifications, the Owner's instructions, laws, ordinances, or any public authority require any item of material, equipment or work to be specially tested or approved, the Contractor shall give the Owner timely notice in writing of its readiness for inspection, and

if the inspection is by another authority than the Owner, of the date fixed for such inspection. Inspections by the Owner shall be promptly made, and where practicable at the source of supply.

If any work should be covered up before examination by Owner without approval or consent of the Owner, it must, if required by the Owner, be uncovered for examination and properly covered again at the Contractor's expense. Even though the Owner has examined a particular item of work, the Owner may order re-examination of such work, and if so ordered, the work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract, the Owner shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract, the Contractor shall pay such cost. No inspection or approval conducted or expressed by the Owner during construction and testing shall in any way relieve Contractor of any liability that would otherwise attach to Contractor hereunder.

Article 10. Supervision and Superintendence

The Contractor shall maintain a competent staff at all times to supervise the work. Any engineering to be performed under this Contract within the State of Texas shall be supervised by engineers registered in the State of Texas, retained or employed by the Contractor.

The Contractor shall keep on the work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Owner. Reasonable instructions relating to Plant regulations, safety or the like applicable to construction, may be given by the Owner to the superintendent and shall be binding on the Contractor. Such instructions shall be confirmed in writing upon the request of the Contractor.

The Contractor shall use its best judgment and skill in dealing with labor matters, and take all reasonable steps to avoid labor disputes. In the event of any strike or threat of strike, slowdowns, featherbedding, or other like practices, the Contractor shall apprise the Owner of all relevant facts and implications of the particular labor problem involved, and shall consult in good faith with the Owner in an endeavor to reach a mutually satisfactory solution to such labor problem and, so far as reasonably possible, to protect the Owner against delays affecting the work or damage or losses to its other operations.

Article 11. Qualification and Performance of Contractor's Employees

The Contractor shall at all times supply a sufficient number of skilled workmen to diligently pursue the work. All workmanship and materials shall be of good quality and shall conform to all codes, rules, regulations and ordinances applying thereto. Where required by such codes, rules, regulations and ordinances, all workmen engaged in such work shall present evidence by certificate or otherwise that

they are qualified to do the work in conformity with such codes, rules, regulations and ordinances. If any conflict occurs between the above mentioned codes, rules, etc., and the specifications or the drawings, the code requirements shall govern.

Article 12. Extra Work: Changes

Owner may order extra work or make changes, related to the scope of the work covered by this Contract, by altering, adding to, or deducting from the work, provided that Contractor may reject any change or extra work that would adversely affect the performance guarantees or the workmanship and materials guarantees hereunder unless Owner waives or appropriately modifies such guarantees. All such work ordered by Owner pursuant to this Article shall be performed under the provisions of this Contract except that the completion date and Contract Price shall be adjusted to reflect the same. Contractor shall proceed with any such work upon receiving from Owner written authority therefor. This work will be reimbursed on a cost plus basis in accordance with the Contractor's Schedule of Reimbursable Costs, attached hereto as Exhibit A, plus a fee equal to a) 10% of Contractor's general home office expenses set forth in Section A of Exhibit A, plus b) 3% of Contractor's other costs set forth in Sections B, C and D of Exhibit A. Such extra work shall be performed under a segregated account. If a change involves a reduction in cost to Contractor, the Contract Price shall be decreased by the fair value thereof as agreed by the parties.

If the Contractor, in the course of the work, finds any discrepancy between the plans and the physical conditions encountered or any errors or omissions in plans or in the layout as given by survey points and instructions, the Contractor shall immediately inform the Owner, in writing. After such discovery, no work shall be done by the Contractor involving such discrepancy, error or omission until authorized by the Owner; otherwise it will be done at the Contractor's risk. If the correction of such discrepancies, errors or omissions involves an increase or decrease in costs, the contract price shall be adjusted accordingly in the manner provided above as in the case of a change in the work.

Nothing in this Article shall limit Contractor's right to additional compensation for extra work or changes resulting from inaccuracies or omissions in information furnished by or through Owner or from other causes that are beyond Contractor's reasonable control, and the Contract Price shall be equitably adjusted to reflect such additional compensation.

Article 13. Deductions for Uncorrected Work

If the Owner and Contractor deems it inexpedient to correct work that has been damaged through the fault or neglect of the Contractor, or that was not done in accordance with the Contract, an

amount to compensate the Owner fully for such damage, or non-compliance shall be deducted from the Contract price. If the parties cannot agree on the amount of such deduction, it shall be determined by arbitration.

Article 14. Correction of Work Before Final Payment

At any and all times before final payment, the Contractor shall promptly remove from the premises all materials, whether incorporated in the work or not, and take down all portions of the work, condemned by the Owner if such work fails to meet Contract requirements. The Contractor shall promptly replace and re-execute the Contractor's own work in accordance with this Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Contractor does not remove such condemned work and materials within a reasonable time after written notice, the Owner may remove them and may store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal within ten days time thereafter, the Owner may, upon ten days written notice, sell such materials at auction or at private sale and shall pay to the Contractor the net proceeds thereof, after deducting all the cost and expense that should have been borne by the Contractor. The Contractor waives all rights to claim damages for sale of materials at auction or private sale. Any dispute under this Article shall be determined by arbitration.

Article 15. .Correction of Work After Final Payment

Neither the final certificate nor final payment nor any provision in this Contract shall relieve the Contractor of liability for faulty design, materials or workmanship and the Contractor shall at his option replace such materials free on site or remedy such design and workmanship and any defects within the Acid Plant as defined in the contract scope, which shall appear within one year from the date of mechanical acceptance of the plant. The Owner shall give notice of observed defects with reasonable promptness. Any dispute under this Article shall be determined by arbitration.

Article 16. Termination

A. Termination by Owner for Cause

If the Contractor should be adjudged a bankrupt, or make an assignment for the benefit of creditors, or if a receiver of the Contractor's property should be appointed, or if the Contractor files a petition, or if a trustee of the Contractor's property should be appointed under the reorganization or readjustment provisions of the Bankruptcy Act, or if he should fail to make payments due Subcontractors or for material or labor, or disregard laws, ordinances, or otherwise be guilty of a substantial violation of any provision of the contract (other than performance guarantees) as to which he shall have failed to initiate corrective action within ten days after receipt of written notice thereof by the Owner, then the Owner may, without prejudice or any other right or remedy, terminate, upon five days advance written notice to Contractor, the employment of the Contractor for the Contractor's default

and take possession of the premises and of all materials, Contractor's own tools and appliances thereon and finish the work by whatever reasonable method the Owner may deem expedient, and in such event Owner shall retain the license granted under Paragraph 29 hereof. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contractor price shall exceed all the costs of the Owner caused by the Contractor's default, including the expense of finishing the work and reasonable compensation to the Owner for the Owner's managerial and administrative services, such excess shall be paid to the Contractor. If such costs shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. In the event the Contractor and the Owner are unable to agree upon the amount to be paid or reimbursed the dispute shall be settled by arbitration.

In the event of termination by Owner for cause, Owner shall have the right to complete the Plant and to use Contractor's plans, specifications, and other documents and information furnished hereunder, provided that Owner shall obtain Contractor's prior written approval (which approval shall not be unreasonably withheld) of the person or persons, if any, employed by Owner to complete the Plant, and such person or persons shall execute an appropriate secrecy agreement with Contractor and Owner. Any licenses granted in connection with this Contract shall survive termination by Owner for cause, provided the full Bayers/Lurgi license fee of \$545,000 Deutsche Marks has been paid to Contractor as provided under Article 4 of the Special Provisions of this Agreement. 143,500

B. Termination by Contractor for Cause

Contractor may terminate or suspend all or any portion of the work under this Contract, upon five (5) days advance written notice to Owner, in the event that:

- (1) Owner shall fail to pay amounts due under the Contract which are not the subject of a bona fide dispute, within ten (10) days after receipt of notice of such delinquency from Contractor, stating Contractor's intent to invoke the provisions of this Article; or
- (2) Owner shall materially breach any of the other obligations or provisions of this Contract and shall fail to initiate adequate measures to remedy such breach within ten (10) days after receipt of notice thereof from Contractor, stating Contractor's intent to invoke the provisions of this Article.

C. Termination by Owner Without Cause

In the event Owner shall abandon or indefinitely defer the work or any material portion thereof, or shall elect to terminate the contract for any reason whatsoever other than the circumstances provided for in Article 16 A, Owner shall pay to Contractor such proportion of the Contract Price as the work performed by Contractor prior to termination bears to the entire work under this Contract, less prior payments received by Contractor, plus 5% of the unpaid Contract Price as cancellation charge for disruption of business

and loss of anticipated profit, plus the reasonable costs incurred by Contractor in closing out the work hereunder, including the costs of commitments which cannot be cancelled; provided, however, that the total payments to Contractor shall not exceed the total Contract Price. In the event of any licenses granted hereunder shall terminate, and Owner shall return to Contractor all Contractor's plans, specifications, flow sheets, operating data and other documents, and all copies thereof.

Article 17. Removal of Equipment

In the case of termination of this Contract before completion from any cause whatever, the Contractor shall promptly remove any part or all of Contractor's equipment and supplies from the property of the Owner, failing which the Owner shall have the right to remove such equipment and supplies at the expense and at the risk of the Contractor without liability of the Owner for any damage to, or loss of the same.

Article 18. Payments Withheld

The Owner may withhold all or part of any progress or final payment to the extent necessary to protect the Owner from loss or damage on account of:

- (a) Damaged or defective work not remedied for which Contractor is liable.
- (b) Lien claims filed against Owner which Contractor has failed to discharge by bonding or otherwise.

- (c) Failure of the Contractor to make payments properly due to Subcontractors or for material or labor.
- (d) Damage to Owner's property or the work of another Contractor for which Contractor is liable.

Article 19. Insurance

A. Owner shall insure, at its own expense, all work completed and in the course of construction at the plant site and all materials delivered and stored at the site which are to be incorporated into the work, against the risks normally insured under a Builder's Risk Insurance Policy, but Owner shall not be responsible for or provide insurance to protect Contractor's or Subcontractor's scaffolding, tools, construction equipment or other property used in the prosecution of the work. Contractor shall be named as an additional insured under this policy, and Contractor shall be furnished with certificates thereof.

B. Contractor shall provide, at its own expense, the following insurance pertaining to operations under this Contract whether such operations be by the Contractor or any Subcontractor or anyone directly or indirectly employed by either of them, and shall obtain and with Owner certificates thereof.

- (1) Workmen's Compensation Insurance in compliance with the Workmen's Compensation Act of the State or States wherein the work is to be performed.

- (2) Employer's Liability Insurance with a limit of \$500,000 for one or more claims arising from each accident.
- (3) Comprehensive General Liability Insurance including Contractual Liability coverage, with a single limit of \$6,000,000 (bodily injury and property damage combined) for each occurrence.
- (4) Comprehensive Automobile and Truck Liability Insurance with a single limit of \$6,000,000 (bodily injury and property damage combined) for each occurrence, insuring all motor vehicles used by Contractor in the performance of this Contract.
- (5) All Risk Installation and Legal Liability Floater Insurance (excepting Builders Risk Perils that are encompassed in the insurance required from Owner under paragraph A above) with an aggregate limit of \$6,000,000 applicable in any one loss, disaster, or casualty, except losses due to earthquakes or flood which aggregate limit shall be \$500,000, all subject to a \$500 deductible clause.

Each of the above insurance policies carried by Contractor shall provide for ten (10) days advance written notice to Owner in the event of cancellation or a change in the terms thereof.

C. Notwithstanding anything provided elsewhere in this Contract to the contrary, Contractor's liability to Owner under any provision of this Contract, or in any way arising in connection with the performance of the Work hereunder, shall not exceed the amounts recoverable under the insurance specified in paragraphs A and B of this Article, where such insurance applies to the loss, damage or injury giving rise to Contractor's liability.

Article 20. Indemnity by Contractor

The Contractor shall save harmless and indemnify the Owner from and against any expense, loss or damage on account of any claim, demand or suit made by any person whomsoever, including any employee of the Owner, which is in any way caused by or connected with, or grows out of the execution and performance of this Contract by the Contractor or any Subcontractor. Subject to the insurance requirements and limits set forth in Article 19, the Contractor accepts all risk of injury or damage and all responsibility for any claim for damages whatsoever resulting from the use, misuse, or failure of any hoist, rigging, blocking, scaffolding, or other like or unlike equipment used by the Contractor or any of its Subcontractors, even though such equipment be furnished or loaned to the Contractor or any such Subcontractor by the Owner, and shall indemnify the Owner against all such claims; provided, however, that the Contractor shall not be required to indemnify the Owner under this Article against any loss caused solely by the negligence or willful fault of the Owner or its agents, employees or other contractors.

Article 21. Damages to Owner's Property

Subject to provisions of Article 19 hereunder, the Contractor shall be responsible, and reimburse the Owner, for any loss or expense to the Owner arising from damage to the work or other property of the Owner caused by the wrongful act or neglect of the Contractor, any Subcontractor or of the employees of the Contractor or any Subcontractor. Where such damage includes damage to the work it shall be repaired at the expense of the Contractor.

Article 22. Surety Bonds

If the Owner has so requested prior to the signing of this Contract, the Contractor shall furnish bond covering the faithful performance of this Contract and the payment of all obligations arising thereunder, in such form as the Owner may prescribe and with such sureties as it may approve. If such bond was required by instructions given previous to the receipt of bids, the premium shall be paid by the Contractor; if subsequent thereto, it shall be paid by the Owner.

Article 23. Liens

Neither the final payment nor any progress payment shall become due until the Contractor, if required, shall deliver to the Owner a complete release of all liens arising on account of labor, materials, machinery or equipment in respect of which such payment is to be made, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as Contractor has knowledge or information the releases or receipts include all the labor and materials for which a

lien could be filed; but the Contractor may, if any Subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner, to indemnify the Owner against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

Article 24. Assignment

Neither party shall assign its interest in this Contract without the prior written consent of the other party hereto, except that Owner may assign its interest to Smelter Pollution Control Associates, a limited partnership formed under the laws of the State of New York and in which Owner is a General Partner, and either party may assign its interest without such consent to its successor by merger or consolidation or to a person, firm or corporation acquiring all or substantially all its business and assets. No assignment of this Contract shall be valid until and unless this Contract shall have been assumed by the assignee. Notwithstanding the foregoing, Contractor may sublet or subcontract parts of its work to be performed under this Contract without obtaining the consent of Owner, provided, however, that in such event Contractor shall not be relieved or released from any of its obligations and responsibilities to Owner under this Contract.

Article 25. Coordination of Work

The Contractor shall conduct the work so as to cause a minimum of interference with the Owner's operations. Where interference with the Owner's operations becomes absolutely necessary, permission shall be requested by the Contractor not less than seventy-two (72) hours in advance.

When other Contractors or the Owner's forces are working on the job on the immediate premises, the Contractor and Owner agree to so schedule their work (including the work of Owners other contractors) as not to make it necessary for the Contractor to cut into or otherwise alter any work that has been completed by such other persons. If the Contractor fails to do so, then the Contractor shall replace or repair the damaged work at the Contractor's own expense and in a manner satisfactory to the Owner.

If any part of the Contractor's work depends for proper execution or results upon the work of any other person, the Contractor and Owner shall inspect and promptly report to each other any defects in such work that render it unsuitable for such proper execution and results. Owner shall cause such defects to be corrected promptly.

Article 26. Subcontracts

The Contractor shall be fully responsible to the Owner for the acts and omissions of Contractor's Subcontractors and of persons directly or indirectly employed by them. Nothing in this Contract shall create any contractual relationship between any Subcontractor

The word "Subcontractor," as employed herein, shall mean one having a direct contract with the Contractor, including one who furnished material worked to a special design according to the plans or specifications of this work, but excluding one who merely furnished material not so worked.

Article 27. Arbitration

All disputes which are herein stated to be subject to arbitration shall be submitted to and determined by arbitration. Demand for arbitration shall be filed in writing by either party with the other within a reasonable time after cause thereof has arisen and in no case later than the time for final payment. No one shall act as an arbitrator who is in any way financially interested in this Contract or is or has been connected or interested in the business affairs of either the Owner or the Contractor. The award of the arbitrator shall be in writing and shall be binding on both parties. Except as and to the extent otherwise provided by the controlling state law; no party may have recourse to legal proceedings (other than to enforce this arbitration Article) unless and until an arbitration award has been made; the award of the arbitrator shall not be open to objection on account of the form of the proceeding or the award; and there shall be one arbitrator who shall be chosen by the American Arbitration Association, whose arbitration rules shall be followed.

Article 28. Title to the Work

Title to all work completed or in the course of construction shall be in the Owner; and title to all machinery, equipment and materials to

be incorporated in the work shall be in the Owner as soon as they are delivered on the site of the job and paid for by Owner.

Article 29. Use of Technical Information

The Contractor has disclosed, prior to the execution of this contract and will disclose, during the course of the performance of this contract, technical information (including, but not limited to, blueprints, drawings, specifications, operating instructions, operating manuals, and other documents and data) to be furnished by the Contractor to the Owner pursuant to this contract and technical information embodied in the plant to be constructed and operated pursuant to this contract.

The Contractor hereby grants to the Owner a paid-up irrevocable and non-exclusive license to use such information for purposes of the construction, operation, maintenance, repair or other maintenance or rebuilding of the plant to be constructed pursuant to this contract.

The Owner shall have a non-exclusive, paid-up and irrevocable license to practice the license granted herein to the Owner, under any and all patents and patent rights owned by the Contractor and under any and all patents and patent rights under which the Contractor has the right to grant licenses.

Contractor warrants it has the right to grant Owner a license under the Lurgi Technical Information and Patents and under the Bayer Technical Information and Patents, which relate to the plant to be constructed under this contract; and, the licenses granted by Contractor to Owner under this Article 29 shall include a license under said

information and patents of Lurgi and said information and patents of Bayer.

Double Catalysis Process

The Bayer/Lurgi Double Catalysis Process (hereinafter called the "Process") is a process for the catalytic conversion of SO_2 containing gases to SO_3 and/or sulfuric acid characterized by single intermediate absorption of at least part of the SO_3 formed in the first stage or stages and re-introduction of the remaining SO_2 containing gases into the converter after reheating, to the extent that this Process is operated in equipment and apparatuses beginning with the inlet of the first heat exchanger on the SO_2 gas side and ending with the outlet of the last heat exchanger on the SO_3 side (including intermediate absorption).

Contractor warrants that it is a licensee of Lurgi Gesellschaft für Chemie und Huttenwesen m.b.H., Gervinusstr, 17/19, Frankfurt/Main, Federal Republic of Germany (sometimes referred to in this agreement as "Lurgi") for the Process, including the rights of Lurgi under its license agreement with Farbenfabriken Bayer A.G., Leverkusen, Federal Republic of Germany (sometimes referred to in this agreement as "Bayer"), and that Contractor is licensed to design, build, and sell plants using the Process and to license the owners thereof to operate the plants. Contractor hereby grants to Owner a non-exclusive, paid-up and irrevocable right to install and operate the Plant to be constructed hereunder, using the Process.

Improvements

Contractor shall disclose to Owner all improvements and inventions regarding the Process, which are conceived, developed or acquired with the right to disclose and license, by Contractor, Inurgi or Bayer during the period beginning with the date of this agreement and ending five (5) years thereafter. Owner shall have a non-exclusive, paid-up and irrevocable license to use in the Plant such improvements and inventions disclosed to Owner by Contractor.

Owner shall disclose to Contractor all improvements and inventions in the Process, which are made and installed by Owner in the Plant in the period beginning with the date of this agreement and ending five (5) years thereafter. Contractor shall have a non-exclusive, paid-up and irrevocable license to use, and to sublicense others to use, such improvements and inventions which are disclosed by Owner to Contractor.

Confidential Information

It is understood that no technical information beyond that disclosed in the proposal stage shall be disclosed by Contractor to Owner until an agreement satisfactory to both parties shall have been executed concerning confidentiality of the said information.

Article 30. Cleaning Up

The Contractor shall at all times keep the premises reasonably free from accumulations of waste material or rubbish caused by Contractor's employees or the work, and at the completion of the work Contractor shall remove all Contractor's rubbish from and about the site and all Contractor's

tools, scaffolding and surplus materials and shall leave the work "broom-clean" or its equivalent.

Article 31. Adaptability of Plans and Specifications

Except in the case of patented products for which there is no adequate substitute, the Contractor will not, without the prior written approval of the Owner, prepare any drawings or specifications for the prospective use or installation of any piece of equipment, or material in the work which is of such a character that such drawings, specifications, could not be used by all or most manufacturers of such equipment or materials, or any substitute therefor.

Article 32. Progress Reports

Contractor shall keep Owner periodically advised as to progress of work by submission of proper reports applying thereto.

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EXHIBIT A
SCHEDULE OF
WELLMAN'S RECOVERABLE COSTS
FOR EXTRA WORK

Column Number:

1. Items reimbursable at cost or as noted.
2. Items of time and costs to which will be added 80% for general overhead for Sections A, B and C.
3. Items of indirect cost included in the percentage added to time card costs (Column 2), or as may be included in an overall fee stated elsewhere.

DESCRIPTION	1	2	3
A. <u>GENERAL HOME OFFICE EXPENSES</u>			
1. Salaries of All Officers			X*
a) President			
b) Executive Vice President			
c) Senior Vice President			
d) Vice President of Finance & Administration			
e) Vice President of Planning & Diversification			
f) Vice President of Operations			
2. Time Worked Costs for Business Development Personnel such as:			X**
a) Vice President of Business Development			
b) Executive Engineers			
c) Business Development Secretaries, Typists & Clerks			

* Except when engaged in specific work for the project in which case, when approved by Owner, these will be reimbursed under Column 1 at a fixed rate of \$25 per hour or \$200 per day.

** Except when engaged in specific work for the project, in which case, when approved by Owner, these will be reimbursable under Column 2.

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DESCRIPTION	1	2	3
3. Salaries or Wages for Other Administrative Costs such as:			X*
a) Manager of Personnel and Staff.			
b) Manager of Insurance and Administrative Services.**			
c) Coordinator of Contracts & Licenses			
d) Executive & Administrative Assistants			
e) Executive & Administrative Secretaries & Stenographers			
f) Manager of General Services			
g) Security Personnel			
h) Receptionists			
i) Switchboard Operators			
j) Messengers & Mail Clerks***			
k) Records, Files & Stock Clerks***			
l) Janitors			
4. Time Worked Costs for Accounting Personnel such as:		X	
a) Controller			
b) Supervisor of General Accounting			
c) Payroll Supervisor			
d) Manager of Field Administrative Services			
e) Senior Accountant			
f) Internal Auditor			
g) Accountants			
h) Accounting Secretaries, typists and Clerks.			

* Except when engaged in specific work for the project, in which case, when approved by Owner, these will be reimbursable under Column 2.

** Except when engaged in obtaining insurance for the project, as in insurance problems and/or claims related to the project, in which case, these will be reimbursable under Column 2.

*** Except messengers when engaged in specific trips for the project or Central Files personnel when directly engaged in receiving, sorting, routing, filing and mailing documents for the project, in which case, they will be reimbursable under Column 2.

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DESCRIPTION	1	2	3
5. Time Worked Costs for Procurement Personnel such as:		X	
a) Director of Purchasing			
b) Purchasing Agent			
c) Buyers			
d) Expeditors & Chief Expeditor			
e) Inspectors & Chief Inspector			
f) Purchasing Secretaries, Typists & Clerks			
6. Time Worked Costs for Estimating Personnel such as:		X	
a) Director of Estimating			
b) Chief Estimator			
c) Estimators			
d) Estimating Secretaries, Typists & Clerks			
7. Time Worked Costs for Control Engineering Personnel such as:		X	
a) Manager of Control Engineering			
b) Schedule and Cost Coordinator			
c) Project Planners			
d) Cost Reporters			
e) Scheduling Reporters			
f) Control Engineering Secretaries, typists & clerks			
8. Time Worked Costs for Project Administration Personnel such as:		X	
a) Director of Project Administration			
b) Project Managers			
c) Manager of Technical Services and Start-Up			
d) Chief Start-Up Engineer			
e) Start-Up Engineers & Technicians			
f) Project Administration Secretaries, Typists & Clerks			

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DESCRIPTION	1	2	3
9. Time Worked Costs for Engineering Personnel such as:		X	
a) Vice President of Engineering			
b) Director of Engineering			
c) Manager of Design Engineering			
d) Managers of Process Engineering			
e) Assistant Managers of Process Engineering			
f) Manager of Project Engineering			
g) Project Engineers			
h) Process Engineers			
i) Manager of Power Engineering			
j) Power Engineers			
k) Chief Engineers			
l) Squad Leaders			
m) Design Engineers			
n) Designers			
o) Draftsmen			
p) Engineering Secretaries, Typists, Clerks			
10. Time Worked Costs for Other Technical Support Engineering Personnel such as:		X	
a) Senior Civil Engineer			
b) Senior Process Engineers			
c) Manager of Special Projects			
d) Manager of Proposals			
e) Proposal Engineers			
f) Proposal Coordinator			
g) Technical Support Secretaries, Typists & Clerks			
11. Time Worked Costs for Construction Personnel such as:		X	
a) Director of Construction			
b) Assistant Manager of Construction			
c) Labor Relations Manager			
d) Construction Secretaries, Typists & Clerks			

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DESCRIPTION	1	2	3
12. Payroll burden on reimbursable personnel under Item 1 through 11 above at 22% of direct salaries and wages to cover employee benefits and allowances for vacation, sick leave, holiday, and retirement benefits; all payroll taxes, premiums for public liability and property damage liability insurance of limits within Wellman's basic policies, workmen's compensation and other normal insurance premiums measured by payroll costs.		X	
13. Postage, supplies and stationery, including drawing paper, forms, loose leaf binders, pencils, etc., but excluding paper used in Reproduction Department, at eight cents (\$0.08) per reimbursable Home Office manhour.	X		
14. Reproduction services for blue or black line diazo printing at 8 cents per sq. ft. of reproduced material. Other reproduction services at Wellman's established rates and outside services at cost.	X		
15. Cost of Wellman's computer usage at \$100.00 per hour and outside computer services at cost. Cost of Wellman's keypunch operators at \$5.00 per hour and programmers at \$12.00/hour.	X		
16. Long distance telephone, telegraph and teletype calls.	X		
17. Necessary travel and living expense in the interest of the job by all Wellman's personnel.	X		
18. Professional services and expenses, purchased or subcontracted designs and drafting when applicable to any aspect of the work plus a fee of 5% thereof.	X		

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DESCRIPTION	1	2	3
19. Laboratory test work, either in Wellman's laboratory or in outside laboratories, when approved by Owner plus a fee of 5% thereof.	X		
20. Secretarial cost, including payroll burden, long distance telephone calls, postage, office supplies, reproduction expense for Owner's personnel residence in Wellman's Home or Branch Office.	X		
21. Charges incurred by Wellman maintaining and operating office facilities used by owner's personnel (two persons) resident in Wellman's Home or Branch office.			X
22. Local Telephone Charges and Services.			X
23. Depreciation, repairs and maintenance on Wellman's Home Office furniture and equipment (not including field offices).			X
24. Rent, light, heat and taxes applicable to space for employees, Items 1 to 11 above.			X
25. Miscellaneous items such as help wanted advertising, subscriptions and dues, catalogs, bulletins, etc.			X
26. Wellman's general advertising.			X
27. Wellman's employee cash bonuses.			X
28. Federal, state and local income taxes.			X
29. State franchise taxes and qualification fees.			X
30. Wellman's general, legal, audit and related expenses.			X

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DESCRIPTION	1	2	3
31. Membership in trade, business and professional organizations.			X
32. Contributions and donations.			X
33. Gains or losses from sale, exchange or abandonment of Wellman's capital assets.			X
34. Wellman's general overhead not specifically related to this job.			X
35. Amortized Development Costs.			X

121368

DESCRIPTION	1	2	3
B. <u>TOOL AND EQUIPMENT COSTS</u>			
1. Rental on third party construction equipment and tools at cost including taxes and transportation to and from jobsite.	X		
2. Rental on Wellman owned construction equipment and tools in accordance with the Wellman's established rates plus transportation costs to and from jobsite, provided that the total costs shall not exceed the total costs of comparable third party equipment available in the area.	X		
3. Construction equipment operating expenses including gas, oil, grease, operating supplies and normal service maintenance.	X		
4. Cost of unloading, loading and handling tools and equipment at the jobsite.	X		
5. Small tools will be charged to the job at cost and all small tools remaining at the job upon completion will be sold with the proceeds credited against the cost of the job.	X		

101168
020670

DESCRIPTION	1	2	3
C. <u>MATERIALS, SUB-CONTRACTS, AND CONSTRUCTION SUPPLIES COSTS</u>			
1. All materials and equipment including transportation and unloading of same.	X		
2. All sub-contracts.	X		
3. All consumable construction supplies.	X		
NOTE: Any surplus materials or supplies remaining at the job upon completion will be sold with the proceeds credited against the cost of the job.			

010669/021671

Column Number:

1. Items reimbursable at cost or as noted.
2. Items of time and costs to which will be added 35% for general overhead for Section D.
3. Items of indirect cost included in the percentage added to time card costs (Column 2), or as may be included in an overall fee stated elsewhere.

DESCRIPTION	1	2	3
<u>D. FIELD LABOR AND RELATED FIELD COSTS</u>			
1. Salaries and Wages for the following as required:			x
a) Superintendent			
b) Assistant Superintendent			
c) Construction Supervisor			
d) Field Engineers			
e) Field Office Managers			
f) Field Buyers & Accountants			
g) Warehouse Supervisor			
2. Payroll burden applicable to employee in Item D-1 above at 22% of direct salaries and wages to cover employee benefits and allowances for vacation, sick leave, holiday, and retirement benefits, all payroll taxes, premiums for public liability and property damage liability insurance of limits within Wellman's basic policies, workmen's compensation and employers liability insurance and other normal insurance premiums measured by payroll costs.			x
3. Travel, living expense, and subsistence for personnel in Item D-1 above in accordance with Wellman's policy.	x		
4. All jobsite craft and common labor direct wages including premium pay.	x		

010669/021671

DESCRIPTION	1	2	3
5. Payroll burden applicable to employees in Item D-4 above at 15.3% of the total wages to cover all payroll taxes, premiums for public liability and property damage liability insurance at limits within Wellman's basic policies, workmen's compensation and employers liability insurance and other normal insurance premiums measured by payroll costs.	X		
6. Fringe benefits (all payments to health and welfare, pension, education funds, etc.) applicable to employees in Item D-4 above as required by working rules of unions having jurisdiction.	X		
xxxxxxcostsxxxxxxxxxxxxinsurance providedxxxxxxthecontractxxxxxx	X		
xxxxxxcostsxxxxxxxxxxxxinsurancexxxxxx xxxxxxdeductiblexxxxxxamounts.	X		
9. Costs of any labor negotiations and pre-job labor conferences specifically for this work.	X		
10. Costs of all temporary construction facilities and their upkeep and removal at job completion.	X		
11. All field office costs including, but not limited to, office furniture and equipment, forms, supplies, telephone, telegraph, reproduction and other similar items.	X		
12. Specific building permits and licenses.	X		
13xxxxcostsxxxxxxxxxxxxadjustings repairingxxxxxxdefectivesxxxxxx xxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxx	X		

010669/021671

DESCRIPTION	1	2	3
14. Import duties.	X		
15. Qualification fees, franchise, sales, use and/or gross receipts taxes if applicable, together with any local, state or federal taxes or duties assessed on this transaction, excepting state or federal taxes measured by Wellman's net income.	X		
16. Premiums on performance and payment or other bonds required in connection with the work.	X		
17. Other job costs not otherwise specified by contract	X		

CERTIFICATE OF INSURANCE



Co. Code ☐ Hartford Fire Insurance Company
☒ Hartford Accident and Indemnity Company
☒ Citizens Insurance Company of New Jersey

Co. Code ☒ New York Underwriters Insurance Company
☒ Twin City Fire Insurance Company

This is to certify that the company designated herein by Co. Code has issued to the named insured the policies enumerated below.

Co. Code
5+7

Named Insured and Address

Wellman-Power Gas, Inc., Etal
P.O. Box 2436
Lakeland, Florida 33803

The policies indicated herein apply with respect to the hazards and for the coverages and limits of liability indicated by specific entry herein but this certificate of insurance does not amend, extend or otherwise alter the terms and conditions of the insurance coverage in the policies identified herein.

Hazards	Policy Number and Policy Term	Coverages and Limits of Liability					
		(SINGLE LIMIT)		(DUAL LIMITS)			
		Bodily Injury and Property Damage Liability		Bodily Injury Liability		Property Damage Liability	
		*each occurrence	aggregate	each person	*each occurrence	*each occurrence	aggregate
General Liability	10CB33600E						
Premises-Operations	1-1-72/73	\$ 1,000,000	\$,000	\$,000	\$,000	\$,000	\$,000
Independent Contractors	"	\$ 1,000,000	\$,000	\$,000	\$,000	\$,000	\$,000
Completed Operations; Products	"	\$ 1,000,000	\$,000	\$,000	\$,000	\$,000	\$,000
Contractual (as described below)	"	\$ 1,000,000	\$,000	Aggregate:	\$,000	XXXX	XXXX
Automobile Liability	10CB33600E						
Owned Automobiles	1-1-72/73	\$ 1,000,000	XXXX	\$,000	\$,000	\$,000	XXXX
Hired Automobiles	"	\$ 1,000,000	XXXX	\$,000	\$,000	\$,000	XXXX
Non-Owned Automobiles	"	\$ 1,000,000	XXXX	\$,000	\$,000	\$,000	XXXX
Contractors' Equip. Owned/Rented/Leased	10LMB33600E		All Risk (subject to \$500 deductible each and every loss)				
Workmen's Compensation and Employers' Liability	10WCPB33600E			Compensation — Statutory			
	1-1-72/73			Employers' Liability —	\$ 100,000		
Umbrella-Liability				\$,000,000			

*If with respect to Automobile Liability the Policy Number entered above includes the symbol GB, AZ, MVP, MAG or PGB, the word "occurrence" is amended to read "accident".

Location and description of operations, automobiles, contracts, etc. (For contracts, indicate type of agreement, party and date.)

Project #4121 - El Paso, Texas

If policy is canceled, 30 days written notice will be given to:

Mr. Joe English
American Smelting & Refining Co.
P.O. Box 1111
El Paso, Texas 79999

Date 2-18-72

By *Linda Corio* W-L Insurance Agency, Inc.
Authorized Representative

Form AL-12-2 Printed in U. S. A. 9-70

ASARCO ELP 0009880



AMERICAN SMELTING AND REFINING COMPANY
EL PASO SMELTING WORKS
EL PASO, TEXAS 79999

10-0001-10-1

WELLMAN POWER CO.,

CONTRACT