

Gelmar

PLAINTIFF'S EXHIBIT

CC-241

COASTAL STATES PETROCHEMICAL COMPANY

CONTINUING MAINTENANCE OR CONSTRUCTION CONTRACT

WHEREAS, COASTAL STATES PETROCHEMICAL COMPANY, a Texas corporation, with principal offices located in Houston, Harris County, Texas, hereinafter called "COMPANY" is desirous of entering into a contract whereby COMPANY shall have the right, from time to time during the term hereof, to obtain needed fabrication, stress relieving, inspection services, maintenance, or construction work on or in connection with its Refinery and associated facilities located within COMPANY's operating area, which work includes, but is not limited to, construction, fabrication, stress relieving, repairs, relocations, alterations, taps, and minor installations, hereinafter called the "work;" and

WHEREAS, the undersigned contractor, hereinafter called "CONTRACTOR," represents that he is presently engaged in the business of providing such work, as an independent contractor, and that he is knowledgeable, experienced, and has competent personnel and equipment available to perform such work, and is desirous of performing and furnishing said work required by COMPANY, from time to time during the term hereof, within the said area.

NOW, THEREFORE, in consideration of the premises and in consideration of the sum of One Dollar (\$1.00) in hand paid by COMPANY to CONTRACTOR, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby mutually agree as follows:

1. CONTRACTOR agrees to have available at all times during the term hereof, competent and adequate labor and equipment of the type listed and shown on the attached Wage Rate Schedules and Equipment Rental Schedules, to perform work hereunder from time to time, when requested by COMPANY. In connection with the work to be performed hereunder, COMPANY agrees to advise CONTRACTOR of each specific job of work that COMPANY desires to have CONTRACTOR perform and to provide CONTRACTOR with any drawings, plans, instructions and/or specifications that COMPANY may have prepared in connection therewith, with any such drawings, plans, instructions and/or specifications so provided or furnished by COMPANY to be a part hereof, the same as if copied verbatim herein.
2. CONTRACTOR and COMPANY agree that no work will be performed by CONTRACTOR hereunder unless COMPANY, by and through one of its authorized representatives, specifically requests that CONTRACTOR perform such work.
3. CONTRACTOR agrees that nothing stated herein shall be considered in any manner, to give CONTRACTOR the exclusive right to perform inspection services, stress relieving, x-ray, maintenance, or construction work for COMPANY within the COMPANY's operating area or within any area, but that the intent and purpose of this agreement is for COMPANY to have an independent contractor available to perform such work when needed, from time to time, with the prices, terms and conditions thereof being agreed to in advance, with COMPANY being free to perform such work either by itself or by and through others.
4. COMPANY agrees to pay and CONTRACTOR agrees to accept, as total consideration to be paid to CONTRACTOR hereunder, the total amount of money arrived at by multiplying the actual number of work hours actually performed by CONTRACTOR by the appropriate item, both labor and equipment, on the Equipment List and Rental Schedule and Wage Rate Schedule attached hereto and made a part hereof. In connection with the said Schedules attached hereto, CONTRACTOR agrees that the prices set out therein cover all profit, overhead and all other considerations that CONTRACTOR shall be entitled to receive in connection with the work.

The consideration shall be payable to CONTRACTOR as follows:

a. Upon the undertaking of any specific job, such as turnarounds and major capital projects, CONTRACTOR agrees to prepare and submit to COMPANY on a daily basis, an itemized invoice properly listing and setting forth the number of hours actually performed, both labor and equipment, and, at the end of the specific job, to submit proper proof to COMPANY that CONTRACTOR has paid all bills and claims for labor, material, equipment and supplies and that there are no liens or claims outstanding that could become liens, or any outstanding claims for damages as mentioned in Paragraph 6. COMPANY agrees, subject to the right to make any necessary corrections and subject to satisfying itself that there are no such outstanding bills or claims, to remit final payment for each specific project promptly upon receipt thereof.

b. For general plant maintenance and miscellaneous small projects of whatever nature, weekly invoices will be submitted as in Paragraph 4a above.

It shall be the responsibility of COMPANY to notify CONTRACTOR as soon as possible the type of project that is undertaken under 4a or 4b above.

CONTRACTOR shall coordinate with COMPANY's Planning Office on the maintenance and submitting of daily time cards for each man and each piece of CONTRACTOR's equipment in COMPANY's plant for whatever project. CONTRACTOR will also submit daily time sheets to the Planning Office, signed by CONTRACTOR's Foreman and a COMPANY Representative.

5. CONTRACTOR agrees, in the performance of this contract, that he, whether such CONTRACTOR be a corporation or not, is acting and will act at all times as an independent contractor. All personnel utilized by CONTRACTOR in connection with this contract shall be the employees of CONTRACTOR and subject to CONTRACTOR's sole and exclusive supervision, direction and control, with it being distinctly understood that COMPANY shall in no wise be associated with or connected with the details or the method and manner employed to perform the work, but that COMPANY is interested in the end result to be accomplished and the final performance of the objectives of the project specified herein. COMPANY being interested in the end result, shall have the right at all times to halt the work for such periods only as may be reasonably necessary for COMPANY to determine whether or not all of the work being performed complies with this contract and the end objective. CONTRACTOR shall be solely liable and responsible for all withholding, salaries, wages, insurance, benefits and all other similar obligations relating to CONTRACTOR's personnel and labor.

6. CONTRACTOR agrees, in the performance of each and every part of this contract and all of the work to be performed that CONTRACTOR shall be solely liable for all overhead, labor, equipment, expenses, materials and supplies in connection therewith and CONTRACTOR agrees to hold COMPANY harmless of, from and against and to indemnify COMPANY from any claims for any of the aforesaid items from any person asserting same. Further, CONTRACTOR agrees to indemnify, defend and hold COMPANY harmless of, from and against all claims for damage of any nature whatsoever, including but not limited to, bodily injury, death or property damage, arising out of or connected with the work to be performed hereunder.

7. CONTRACTOR shall maintain, at all times during the term hereof, sufficient insurance satisfactory to COMPANY, and as may be required by law to protect CONTRACTOR and COMPANY from and against all claims, demands, and causes of action arising by reason of any work performed by CONTRACTOR, which insurance shall be written as specified in Exhibit "A" attached.

8. CONTRACTOR shall not assign this contract or subcontract the whole or any part of said work without COMPANY's prior written consent. COMPANY's consent to any assignment or subcontract shall not relieve CONTRACTOR, or CONTRACTOR's surety, if there be a surety, of any liability for the full and faithful performance of this contract according to its terms and conditions.

9. COMPANY shall have the right at all reasonable times to inspect and audit the books of CONTRACTOR pertaining to the work and to this contract; provided, however, that CONTRACTOR shall have right to exclude any trade secrets, formulas or process from such inspection.

10. CONTRACTOR hereby authorizes COMPANY to deduct from any amount payable to CONTRACTOR (whether or not arising out of this contract) all amounts which may be payable by CONTRACTOR to COMPANY, and also all amounts for which COMPANY may become liable to third parties by reason of CONTRACTOR's act in performing or failing to perform CONTRACTOR's obligations under this contract or growing out of this contract, and in the event that any claim is made by third party, or any indebtedness shall exist which shall appear to be the basis for a claim or lien, COMPANY may withhold from any payment due, without liability because of such withholding, an amount sufficient to cover such claim. The failure of COMPANY to exercise such right to deduct or to withhold shall not, however, affect the obligation of CONTRACTOR to protect COMPANY as elsewhere provided herein.

11. In the event CONTRACTOR is prevented from continuing or completing any given work hereunder because of an act of God or public enemy, strike, lockout, boycott, picketing, riot, insurrection, or any governmental order, rule or regulation, or any ordinance, or failure to delay on the part of COMPANY, then, notwithstanding anything herein contained to the contrary CONTRACTOR shall not be liable to COMPANY in damages on account thereof, but COMPANY shall have the right at its election to cancel any work, labor, or equipment furnished by CONTRACTOR in connection with any given project or job begun under this contract, by paying to CONTRACTOR, for work done prior to the time of the exercise of such election. If COMPANY does not elect to cancel such work under this contract, then the time for completing the said project shall be extended for such time as CONTRACTOR is so prevented from completing said work. Further, in the event COMPANY is prevented or hindered in the continuance of any such work because of any act of God or public enemy, strike, lockout, boycott, picketing, riot, insurrection, or any other reason over which COMPANY has no reasonable control, then COMPANY may suspend or cancel any of the work being performed hereunder in connection with such project or job without liability. Any payment made by COMPANY under this paragraph shall be subject to and in accordance with the last paragraph of Paragraph 4.

12. If any work provided for by this contract was commenced by CONTRACTOR under oral agreement prior to the execution of this contract, this written contract shall apply thereto in the same manner as if made before said work was commenced.

13. Anything to the contrary notwithstanding, it is expressly understood and agreed by and between COMPANY and CONTRACTOR that COMPANY shall have the right, in its sole and uncontrolled discretion, to discontinue, in whole or in part, any project where CONTRACTOR may be performing work, by providing notice to CONTRACTOR; whereupon COMPANY's only obligation shall be to pay CONTRACTOR for all work performed prior to the date of termination. Such payment to be made after CONTRACTOR has provided proof that there are no outstanding claims for death, injury or property damage and/or for labor, material, equipment and supplies that could result in a lien.

14. If applicable, CONTRACTOR agrees to comply with Executive Order 11246 which pertains to fair employment practices, and such rules, regulations and orders thereunder.

15. It is understood and agreed that COMPANY may require, as a condition precedent to any work being begun hereunder, that CONTRACTOR provide a Performance Bond and/or a Payment Bond with the understanding that if a Bond is required, that the same will be with a surety or bonding company satisfactory to COMPANY and in a form and with provisions satisfactory to COMPANY, but that COMPANY will reimburse CONTRACTOR for the actual premium cost thereof, less any rebate or discount.

16. CONTRACTOR agrees that the work will be performed in compliance with all applicable governmental laws, rules and regulations and applicable requirements, if any.

17. In addition to the consideration set out in Paragraph 4 hereof, COMPANY and CONTRACTOR agree that in the event COMPANY specifically requests CONTRACTOR to furnish any pipe, fittings, parts or other permanent materials or subcontract services which will become a part of the Refinery or other facilities of COMPANY (excluding, however, welding rods and similar consumable construction materials), then COMPANY agrees to pay and CONTRACTOR agrees to accept as full and total consideration therefor, CONTRACTOR's actual cost of such materials plus Ten Per Cent (10%). No such permanent materials will be supplied by CONTRACTOR unless specifically requested by COMPANY and signed for by a COMPANY Representative upon delivery to COMPANY premises.

18. The term of this agreement shall be for one year, and may be extended thereafter by mutual agreement of COMPANY and CONTRACTOR. The CONTRACTOR may, as need arises, submit new or revised Equipment Lists and Rental Schedules and/or Wage Rate Schedules on a timely basis, avoiding retroactive increases whenever possible. If the new rate schedules are deemed acceptable by the COMPANY, the new or revised schedule will be attached to and made part of this agreement as of the effective date of the new rate schedules, and will supersede and replace all previous rate schedules. In the event that the COMPANY does not agree to or accept new or revised rate schedules, then this contract may be terminated in its entirety without further liability.

19. Any notices and/or invoices provided for in this agreement shall be mailed to:

COMPANY: Coastal States Petrochemical Company
P. O. Box 109
Corpus Christi, Texas 78403
Attn: Field Administrative Supervisor

CONTRACTOR:

EXECUTED on this the Twentieth day of July, 19 '84.

COMPANY:

COASTAL STATES PETROCHEMICAL COMPANY

CONTRACTOR:

GILMAN INSULATION CO., INC.

By:

R. J. Johnston
Officer

By:

H. W. Starkey
GENERAL MANAGER

EXHIBIT "A"

To be attached to and become a part of that certain Service Contract dated July 20, 1984, but to be and become effective as of July 20, 1984, between Coastal Refining & Marketing Co. ("Company") and Gilman Insulation Co., Inc. ("Contractor").

CONTRACTOR'S SERVICES

COMPANY'S SERVICES

CONTRACT PRICE AND TERMS OF PAYMENT

It is understood and agreed that Contractor shall not be entitled to any Company benefits normally extended by Company to its own employees and that the Contract Price is the total consideration payable hereunder.

Contractor shall invoice Company Coastal States Petroleum Co. and shall furnish Company with copies of receipts and other evidence of amounts invoiced and with evidence that all labor and material claims for which Contractor is responsible in connection with its performance of the Services have been paid. Company shall pay such invoices within a reasonable period of time after its receipt thereof. Company's payment of each invoice shall be subject to Company's concurrence with the correctness and accuracy of the amounts invoiced by Contractor, which concurrence shall not be unreasonably withheld. Company shall have the right at all reasonable times to inspect and audit the books of Contractor pertaining to the Services rendered hereunder, provided, however that Contractor shall have the right to exclude any trade secrets, formulas or processes from such inspection.

Contractor hereby authorizes Company to deduct from any amount due to Contractor, all amounts which may be payable by Contractor to Company; and also all amounts for which Company may become liable to third parties by reason of Contractor's act and performing or failure to perform Contractor's obligations under this Contract; and in the event that any claim is made by any third party the amount of validity of which is disputed by Contractor, or any other indebtedness shall exist which shall reasonably appear to be the basis for a claim of a lien, Company may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of Company to exercise such right to deduct or to withhold shall not, however, affect the obligation of Contractor to protect Company as elsewhere provided herein.