

ETHYL CORPORATION

CHRYSLER BUILDING • 405 LEXINGTON AVENUE
NEW YORK 17, N. Y.

PLAINTIFF'S
EXHIBIT

ETCO-425

March 16, 1950

Caldwell & McCann
Baton Rouge
Louisiana

Gentlemen:

In accordance with understanding between you and representatives of Ethyl Corporation it is agreed that you will undertake the construction work required in connection with the twelve autoclave expansion program at the Baton Rouge, Louisiana plant of the Ethyl Corporation.

Because the scope of the work covering this program cannot be accurately determined at this time, the contract therefore cannot now be finalized. Since time is of the essence and Ethyl Corporation wishes to proceed immediately with the work we are willing to issue to you a LETTER of INTENT, authorizing you to begin such construction work. As soon as the scope of the work is finally determined and the cost estimate therefore complete, we will submit a contract in substantially the following form to you covering the balance of the work to be completed under the expansion program. During the interim period, however, we will proceed with the construction work under the following terms and conditions:

I.

As soon as the plans and specifications covering any phase of the work to be performed hereunder are completed, Ethyl Corporation will release same to you for construction. We will advise you at the time we release the plans and specifications to you, of the materials to be supplied by Ethyl Corporation. You will furnish and provide all other materials (subject to the prior approval of Ethyl Corporation) and do and perform all work shown on the drawings and specifications in a true and thoroughly workmanlike manner turning same over to Ethyl Corporation at the completion thereof. You agree in the performance of the work authorized hereunder to engage in only such overtime work as Ethyl may direct and you further agree to prosecute the work in an expeditious manner.

II.

Ethyl Corporation agrees to pay you for the faithful performance of the work authorized hereunder and you accept as full payment for the services rendered:

A. The actual "out-of-pocket" expenditures for wages and salaries paid by you in the performance of the work, including field labor, foremen, superintendent, and other necessary field forces, but excluding employees of your main offices. Rates of pay for which Ethyl will reimburse you shall be no greater than those prevailing in the Baton Rouge Area for like services and skill.

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B. The cost of all materials purchased by you and required for the completion of the work (Sales and Use Taxes on such materials will be charged at cost to Ethyl Corporation but will not be included in the amount on which the fee is based).

C. Your actual "out-of-pocket" expenditures for taxes based upon salaries or wages paid by you under (A) above (such taxes shall be charged to Ethyl Corporation but will not be included in the amount of cost upon which your fee is based).

D. Your "out-of-pocket" expenditures for public liability property damage, automotive and other insurance required by Ethyl in connection with the prosecution of the work authorized hereunder.

E. A fixed fee representing your overhead and profit based upon six and one-half ($6\frac{1}{2}$) per cent of items A, B & D above, which amounts shall be agreed upon between you and Ethyl Corporation for each phase of the work released to you prior to your undertaking any work thereunder.

Except as provided for in Article IV hereof, the amount of the fee determined in this Paragraph E for each phase of the work shall remain fixed and unchanged, notwithstanding the final completed cost of the work.

III.

The Ethyl Corporation agrees to make payments to you for work performed hereunder on account as follows:

A. As of the last day of each month that you are engaged in work for Ethyl Corporation hereunder, you agree to submit to Ethyl Corporation for each phase of the work authorized hereunder an invoice covering your charges, as accrued during the period covered thereby for all: (1) labor; (2) materials purchased by you; (3) taxes based upon wages or salaries; (4) expenditures for required insurance; (5) a proportionate amount of the fixed fee determined by multiplying the ratio of your accrued charges for labor during the period covered by the invoice to the total estimated labor cost for the work by the total amount of the fixed fee called for in Paragraph Five (E) of Article II hereof, provided, however, that in no event shall the sum of the fee payments called for on the submitted invoices exceed the amount of the fee determined under Paragraph Five (E) of Article II hereof.

B. Promptly upon receipt of each invoice, but in no event longer than 10 days thereafter, Ethyl agrees to pay you the amount shown thereon as due. All invoices prepared by you and submitted to Ethyl for payment shall be subject to audit and review by us. Each charge included thereon shall be separately itemized and supported by suitable evidence of payment.

C. Upon completion of each phase of the work authorized hereunder and in the event the sum total of the fee payments made to you are less than the amount of the fixed fee for such phase of the authorized work, then Ethyl shall pay you within

thirty (30) days after acceptance of the work by us, a lump sum amount equal to the unpaid remainder of the fixed fee.

IV.

Minor changes and alterations in the work shown in the drawings and specifications covering each phase thereof, may be made by Ethyl Corporation without any change in the amount of the fixed fee provided for in Paragraph Five (E) of Article II thereof. No major change, addition or alteration thereto, however, shall be made in the work authorized hereunder, except upon the written and signed order of Ethyl Corporation. Prior to your undertaking any such major change in the work, the parties hereto shall estimate the amount of the additional cost or reduction in cost therefore, classified as (1) labor, (2) materials to be purchased by you, and (3) taxes based upon wages or salaries. Upon acceptance of the cost estimate of the change, alteration or addition requested by Ethyl the work authorized hereunder shall be amended and revised to include such change, alteration or addition and the amount of the fixed fee provided for under Paragraph Five (E) of Article II hereof, shall be increased or decreased, as the case may be, by the amount of the increase or decrease in cost of the change, alteration or addition from the original estimate therefor times the fee percentage of six and one-half in the same manner as though the change, alteration or addition had been originally incorporated therein.

V.

All equipment and tools required by you for the performance of the work authorized hereunder shall be supplied by Ethyl at no cost or charge to you. Such equipment and tools shall be maintained by you and charged to the cost of the work. All equipment and tools furnished hereunder to you by Ethyl Corporation shall be returned at the completion of the work in as good condition as received, normal wear and tear excepted. Title to all equipment and tools furnished to you hereunder shall at all times vest in Ethyl. You agree that equipment and tools supplied hereunder will not be used for work other than authorized hereunder.

VI.

Ethyl Corporation may, at its discretion, refuse to make any payments to you hereunder if any lien or liens for labor, material or other work are recorded against our property or against you in connection with your work hereunder until same has been cancelled and erased from the public records of the Parish of East Baton Rouge; and before the final payment is made hereunder, you shall submit evidence satisfactory to the Ethyl Corporation that all payrolls, materials purchased by you, bills and other indebtedness incurred or connected with the work have been fully paid and satisfied.

VII.

You agree to indemnify and hold harmless the Ethyl Corporation against any loss or damage to persons or property as a result of operations growing out of the performance of this Contract caused by your negligence or carelessness or by the negligence or carelessness of your employees, subcontractors, truckmen, workmen, laborers, mechanics, furnishers of supplies and materials and licensees.

VIII.

You hereby agree to assume full responsibility for the payment of all state taxes, sales use tax and taxes for unemployment compensation as to all employees engaged by you or your subcontractors in the performance of this contract; and you further assume full responsibility for the collection and payment of all taxes that may become due under the Federal Insurance Contribution Act, the Federal Unemployment Tax Act and the Withholding of Tax on Wages imposed by the Individual Income Tax Act of 1944.

IX.

Prior to your engaging in any work authorized hereunder you agree to arrange and maintain in force during the prosecution of the work authorized, the following forms of insurance in your name and in the name of the Ethyl Corporation as our respective interests may appear:

- (a) Workmen's Compensation Insurance for full coverage and protection under the laws of the State of Louisiana including occupational disease and full medical reimbursement. If any work is sublet, subcontractor will be similarly required to provide workmen's compensation insurance for his employees, unless such employees are covered under your insurance.
- (b) Comprehensive General Liability Insurance:
You shall take out, maintain, and keep in force public liability and property damage insurance to cover any claim that might arise from the operation under this Contract. Such insurance shall be for an amount of not less than One Hundred Thousand Dollars (\$100,000.00) to cover injury or death of one person and not less than Five Hundred Thousand Dollars (\$500,000.00) to cover all persons sustaining injury or death as a result of one accident and not less than One Hundred Thousand Dollars (\$100,000.00) to cover loss or damage to property resulting from one accident.
- (c) Automotive and other motor vehicle insurance. You shall take out, maintain, and keep in force during the performance of any work specified by this Agreement such public liability and property damage insurance as shall protect you from any and all claim for personal injury including death, as well as any claim for property damage which may arise under the operation of motor vehicles in the performance of the work under this Contract. The amount of such insurance shall not be less than One Hundred Thousand Dollars (\$100,000.00) for injury including death to any one person and not less than Five Hundred Thousand Dollars (\$500,000.00) as a result of one accident, and not less than Fifty Thousand Dollars (\$50,000.00) to cover loss or damage to property resulting from one accident.

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Two copies of the insurance certificates attesting to the fact that the above insurance is in effect shall be filed with the Ethyl Corporation, attention Mr. H. B. Hunt, P. O. Box 341, Baton Rouge, Louisiana, prior to the commencement of any work under this Contract. All certificates must include the following clause: "It is agreed that ten (10) days' notice of cancellation on any material change in these policies will be given as evidence by return receipt of registered mail".

X.

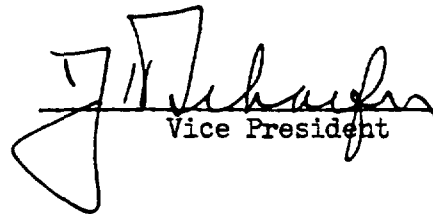
You agree not to sub-contract any part of the work to be performed hereunder without the prior written consent of the Ethyl Corporation.

XI.

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

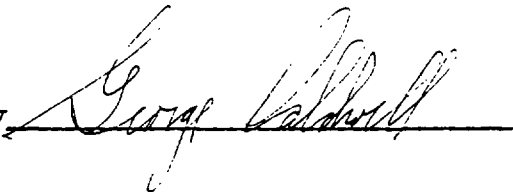
If the foregoing is in accordance with your understanding of our agreement covering the construction work required in connection with our expansion program, please sign this letter in duplicate in the space provided herein and return one executed copy to us.

Yours very truly,

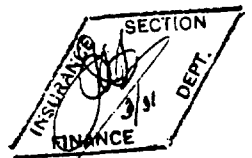

Vice President

ACCEPTED:

CALDWELL & McCANN

By 

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