

INDUSTRIAL GAS CONTRACT

THIS AGREEMENT, made and entered into this 19 day of March, 19 69, by and between the GAS DIVISION OF THE PENDLETON COUNTY WATER DISTRICT OF FALMOUTH, KENTUCKY, hereinafter referred to as "SELLER", and McCo Const. Co. Inc. a Ky. Corporation of Bardstewen, Ky., hereinafter referred to as "BUYER".

WHEREAS, the Seller owns and operates a natural gas transmission and distribution system, used in the transportation and sale of natural gas, and has available certain quantities of natural gas which Seller desires to sell and deliver to Buyer for industrial purposes, but not for resale, and Buyer desires to purchase from Seller certain quantities of natural gas for use in Buyer's plant.

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties hereto, as herein set forth, the parties hereto covenant and agree as follows:

1. Seller agrees to sell and deliver to Buyer, and Buyer agrees to receive, purchase, and pay for, natural gas for the industrial fuel requirements as hereinafter specified, subject to the provisions of the Rate Schedule of and the terms and conditions hereinafter set forth.

2. RATES

Buyer agrees to pay Seller at the following rate, and on the basis as specified, for all gas received and purchased.

- (a) Firm Gas Service 69.5¢ per Mcf for all gas used.
- (b) The rate as specified above shall be subject to a Purchase Gas Adjustment Clause as follows:



In the event Seller's supplier increases or decreases the rates payable by Seller, the above rates shall be subject to revision to any Buyer whose gas is served from such supplier by the amount of such increase or decrease, effective the date of such change from the supplier.

- (c) In addition to the regular monthly billing for the gas delivered, Buyer agrees to pay any applicable deficiency due under the Minimum Annual Bill requirements.
- (d) Buyer also agrees to pay, in addition to the specified price for gas, any applicable production, severance, sales or excise tax with respect to natural gas which is imposed by any governmental agency and which the Seller has to pay.
- (e) In the event the amount of an increase in the price of gas under the Purchased Gas Adjustment Clause or an increase due to any applicable taxes, in the judgement of Buyer, shall operate to make the price of gas prohibitive, then Buyer shall have the right and privilege of cancelling and terminating this contract and thereupon all obligations and liabilities of the parties hereunder shall cease, provided that such cancellation and termination shall not affect Buyer's obligation to pay for all gas delivered by Seller including any additional payments or penalties that may be applicable.

3. DELIVERY VOLUMES

- (a) The volume of gas to be sold and purchased under this contract shall be the daily quantities supplied by the Seller and used by the Buyer.

4. QUALIFICATION

- (a) This contract is applicable only to a Buyer who requires gas for the period of March 1 through November 30, and Buyer understands and agrees that this contract is subject to cancellation by Seller, if for any reason, Buyer fails to comply with this minimum requirement.
- (b) In the event of cancellation of this contract for this reason, Buyer agrees that all gas delivered thereafter shall be billed to it at the lowest available approved rate for which Buyer qualifies, or if Buyer elects, it may discontinue the use of gas entirely, provided that such change to another rate schedule or discontinuance

of the use of gas shall not affect Buyer's obligation to pay for all gas delivered by Seller including any additional payments or penalties that may be applicable.

5. UTILIZATION

This contract shall apply only to the utilization, volume, and location specified as follows:

- (a) Utilization: Hot-mix asphalt plant
- (b) Maximum Hourly Demand 60 Mcf
- (c) Maximum Deliver Pressure 25 Pounds
- (d) Utilization period - March 1 through November 30.
- (e) Location - Butler, Kentucky

6. MINIMUM ANNUAL BILL

A Minimum Annual Bill will be computed as follows:

- (a) Firm Gas Service:

An amount equivalent to \$266.66 times 8 months plus \$266.72 for one month or a total of \$2,400.00 annually to be billed as set forth in Section 8(b).

This Minimum Annual Bill is not subject to being waived, except at Seller's sole discretion, and without obligation.

7. PENALTY FOR UNAUTHORIZED OVERRUN

- (a) In the event Buyer fails, in part or in whole, to curtail gas usage during the period of December, January and February, Buyer shall pay for the unauthorized gas so used in this period at the rate of \$10.00 per Mcf, which rate shall be revised to reflect any increase or decrease in the charge which Seller pays its supplier. Seller may waive this penalty at his discretion upon a written agreement with Buyer stating the Buyers daily gas requirements during this period. If the Buyer exceeds the quantities set forth in the agreement, the penalties stated in this contract will prevail.
- (b) In addition to this penalty payment for the use of unauthorized gas, the regular applicable rate shall be billed by Seller and paid for by Buyer for any and all gas used.

- (c) Also, when Buyer uses any volume of unauthorized gas as specified in Section (a) above, Buyer shall pay, in addition to the specified penalty for demand charges, any special penalty which Seller has to pay its supplier by reason of such unauthorized use.
- (d) Any payment by Buyer of the penalty for charges or of the special penalty payment shall not be deemed as giving Buyer any right to use any gas to which it is not otherwise specifically entitled to use under this contract, nor shall any such payment serve or tend to relieve Buyer of any other obligations resulting from its using any unauthorized or excess gas at any time, or from its failure to comply fully with such or other curtailment orders which may be in effect in the future.

8. BILLING AND PAYMENT

- (a) Seller will render a statement to Buyer on or before the tenth (10th) of each calendar month covering the gas delivered hereunder during the preceding month, and Buyer shall make payment in full on or before the twentieth (20th) day of the month in which the statement is rendered.
- (b) Any applicable Minimum Annual Bill or deficiency thereunder, will be billed by Seller as of the end of November with statement rendered to Buyer on or before the tenth (10th) day of the month following and Buyer shall make payment in full on or before the twentieth (20th) day of the month in which the statement is rendered.
- (c) If Buyer shall fail to pay any bill for gas delivered, for any deficiency payment under the Annual Minimum Bill within the time herein provided, Seller, in addition to any other remedy it may have, may, if Buyer thereafter fails to pay on written demand, at its option cancel and terminate this contract, provided that such cancellation and termination shall not affect Buyer's obligation to pay for all gas therefore delivered and for any other obligations due under this contract.

9. POINT OF DELIVERY

- (a) The point of delivery of all gas delivered hereunder shall be on the outlet side of Seller's measuring station at the point of connection between the facilities of Seller with those of Buyer, and Seller shall

be in possession and control of the gas delivered hereunder and responsible for any damage or injury caused thereby until the gas shall have been delivered to Buyer at the point of delivery, after which Buyer shall be deemed to be in possession and control thereof and responsible for any injury or damage caused thereby.

- (b) Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the operation or maintenance of the property or equipment of the indemnifying party the point of delivery as hereinbefore specified to be the point of division of responsibility between the parties.

10. QUALITY

- (a) The gas delivered hereunder shall be commercially free from objectionable dust or other solid, liquid or gaseous matters which might interfere with its merchantability or utilization.
- (b) The annual average total heating value of the gas delivered hereunder shall be approximately 1,000 Btu's per cubic foot and shall vary only with Seller's supply. If the annual average is below 990 Btu's a credit of 1% for each 10 Btu's of deficiency below 990 Btu's shall be applied to Buyer's billing.
- (c) The total heating value of the gas delivered hereunder shall be determined by a recording calorimeter located at Seller's supplier's facilities, or at such other place as may be available and more practicable in the circumstance.

11. MEASUREMENT

- (a) The sales unit of the gas delivered hereunder shall be 1,000 cubic feet (Mcf) measured according to Boyle's Law for the measurement of gas under pressure with deviations therefrom in accordance with standard methods.
- (b) The deviations of the gas from Boyle's Law, at the pressures under which said gas is delivered hereunder, shall be determined by standard methods.
- (c) The unit of volume for the purpose of measurement shall be one cubic foot of gas at a temperature of 60 degrees Fahrenheit and at a pressure of 14.65 pounds per square inch absolute.

- (d) The average absolute atmospheric (barometric) pressure shall be assumed to be 14.4 pounds per square inch, irrespective of actual elevation or location of the point of delivery above sea level, or variations in such atmospheric pressure from time to time.
- (e) The temperature of the gas flowing through the meters shall be assumed to be 60 degrees Fahrenheit, providing, however, Seller may, at its option, install a recording thermometer to record the actual flowing temperature of the gas through the meter. Where such installation is provided, the arithmetic average of the temperature recorded shall be used in computing measurements.
- (f) The specific gravity and relative humidity of the gas delivered hereunder shall be determined by standard methods.

12. MEASURING EQUIPMENT

- (a) The Seller will install, operate and maintain the necessary regulating and metering equipment of suitable capacity and design to regulate and measure the gas deliveries as specified herein. Suitable site or location for the regulating and metering equipment is to be provided by the Buyer, and the title to this equipment shall remain in the Seller, with the right to install, operate, maintain and remove same, and no charge shall be made by Buyer for use of premises so occupied. The Buyer agrees to install such additional regulating equipment as may be necessary for satisfactory operation and utilization.
- (b) The accuracy of Seller's measuring equipment shall be verified by Seller at reasonable intervals, and whenever requested by Buyer, but Seller shall not be required to verify the accuracy of such equipment more frequently than once in any 30 day period.
- (c) Buyer shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, calibrating or adjusting done in connection with Seller's measuring equipment used in measuring deliveries hereunder. The records from such measuring equipment shall remain the property of the Seller, but upon Buyer's request, Seller will submit such records and charts, together with calculations therefrom, for Buyer's inspection and verification, subject to return within 10 days after receipt thereof.

- (d) If, upon test, any measuring equipment is found to be not more than 2% fast or slow, previous recordings of such equipment shall be considered correct in computing the volume of gas delivered hereunder, but such equipment shall be adjusted properly at once to record accurately. If, upon test, any measuring equipment is found to be inaccurate by an amount exceeding 2%, at a recording corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recordings shall be corrected to zero error, for any period which is known definitely or agreed upon, but, in no case shall any correction be made for a period exceeding one half ($\frac{1}{2}$) of the time elapsed since the date of the last test.

13. SUBJECT TO REGULATION

This contract shall be subject to the valid laws, orders, rules and regulations of all duly constituted authorities having jurisdiction over either or both Seller and Buyer.

14. TERM OF CONTRACT

- (a) This contract shall apply to and be binding upon the successors and assigns of both Seller and Buyer and shall remain in full force and effect for a period of one year from date of first gas deliveries, and thereafter until cancelled by either Seller or Buyer, as hereinafter provided.
- (b) After the expiration of the original term as specified, either Seller or Buyer may cancel this contract by giving notice in writing to the other party of its intention so to 90 days in advance of the time that such cancellation shall become effective.
- (c) This contract supersedes and cancels all previous contracts and agreements between the parties hereto, with respect to the subject matter hereof, and is intended to include all the terms and conditions contemplated by the parties hereto with respect to such subject matter.

15. NOTICES

- (a) Any notice, statement or bill provided for in this contract or any notice which either party may desire to give the other party shall be in writing and shall be

considered as being duly delivered when mailed, by either registered or ordinary mail, to the post office of either of the parties hereto, as the case may be, as follows:

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|-----------------------------------|-----------------------------|
| Seller: | Buyer: |
| <u>Franklin C. Water District</u> | <u>McCo Const. Co. Inc.</u> |
| <u>Box D 17</u> | <u>Box 509</u> |
| <u>298 Main St.</u> | <u>Barclaytown, Ky.</u> |
| <u>Shelburne, Ky.</u> | |

(b) Either party may change its address under this provision by notice to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their proper officers, thereunto duly authorized, and attested by their respective Secretaries or Assistant Secretaries and their respective corporate seals to be here-to affixed, as of the day and year above written.

Franklin C. Water Dist., Et. D.
(SELLER)
By: Henry Cohen, George

Attest:

Joseph B. McCawley

McCo Const. Co. Inc.
(BUYER)
By: F. Mathis

Attest:

Linda Deurban