AGREEMENT FOR GAS TRANSPORTATION SERVICES

THIS AGREEMENT, made and entered into as of this 17th day of April, 1990 by and between **COLUMBIA GAS OF KENTUCKY, INC.** (Columbia), and **FLEX-O-LITE, INC.** (End User).

WITNESSETH:

WHEREAS, End User will construct a new plant facility in Mount Sterling, Kentucky, which will utilize natural gas; and

WHEREAS, End User intends to enter into contract(s) for the purchase of natural gas for delivery to its facilities via Columbia Gas Transmission Corporation (Transmission) and, where applicable, Columbia Gulf Transmission Company (Gulf) and, ultimately, Columbia; and

WHEREAS, gas transportation services will be provided only in accordance with applicable rules, regulations and orders of the Kentucky Public Service Commission and other agencies having jurisdiction; and

WHEREAS, Columbia is willing to receive and transport said natural gas to End User's facilities in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, End User would not have decided to locate its new plant facility in Mount Sterling, Kentucky, in the absence of the discounted gas transportation rate provided in this agreement;

NOW, THEREFORE, in consideration of the premises and covenants and agreements herein set forth, the parties mutually agree as follows:

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1. **Deliveries.** Subject to limitations of pipeline capacity in its existing facilities and to its service obligations to its other tariff gas customers, Columbia will deliver to End User's facilities, a maximum of **250,000** Mcf per year on an interruptible basis. Said interruptible volumes will be delivered to End User up to a maximum daily rate of **1,000** Mcf.

It is agreed that of all volumes of gas delivered by Columbia to End User at its facilities during each monthly billing period, the first gas through the meter shall be volumes of retail sales gas, if any, purchased by End User from Columbia either by End User's choice or due to inadequate deliveries of End User's gas to Columbia (see section titled Volume Bank). The last gas through the meter shall be volumes of gas delivered pursuant to this agreement.

2. **Adjustment for Heating (Btu) Value** In accordance with the procedures set forth below, Columbia will make a heat content adjustment in order to deliver to End User volumes of gas, in Mcf, equal to the dekatherms of gas Transmission delivered to Columbia for the account of End User.

The average monthly heating value of gas measured and calculated by Transmission for redelivery by Columbia to End User's facilities will be used each billing month to establish the heating value of the gas delivered by Columbia to End User during that month, provided that no significant quantities of locally produced gas or gas from pipelines other than Transmission are introduced into Columbia's pipeline through which End User's gas is delivered to its facilities.

In those situations in which locally produced gas or gas from pipelines other than Transmission is introduced into Columbia's pipeline serving End User's facilities, so as to raise any question as to the applicability of the heating value determined by Transmission, either Columbia or End User may request that gas samples be taken to determine the heating value of the gas received by End User at its facilities. The following provisions will apply in the event either party elects to have gas samples taken:

(a) The party requesting the sample(s) will pay all costs connected with obtaining the sample(s) and having the sample(s) analyzed.

(b) The gas sample(s) shall be obtained at or in the vicinity of End User's facilities during normal operating hours of the facilities.

(c) The gas sample(s) will be analyzed at a Columbia testing facility or at a testing facility approved by Columbia.

(d) If the analysis is done by an outside testing facility, the testing facility will forward the results directly to Columbia and End User, using a format provided by Columbia for recording the results of the analysis. If Columbia performs the analysis, the Columbia testing facility will forward the results directly to End User.

(e) Multiple samples taken during any billing month will be averaged to obtain a Btu value; that Btu value will be applied only for that particular billing month. No retroactive adjustments based on Btu readings obtained in a current billing month will be made to billings for any prior month.

(f) The average Btu value obtained from sample(s) during any billing month shall be used to determine the volumes delivered by Columbia to End User only if such Btu value is more than 103% or less than 97% of the saturated (wet) Btu value provided by Transmission for that month, otherwise Transmission's Btu value will be used.

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SECTION 9 (1)
BY: [signature]
PUBLIC SERVICE COMMISSION MANAGER

3. **Delivery Charges** For all End User's gas delivered by Columbia to End User at its facilities on an interruptible basis pursuant to this Agreement, End User will pay to Columbia a delivery charge of twenty-two cents ($.22) per 1000 cubic feet (Mcf) of gas plus the currently-effective take-or-pay surcharge, except that such surcharge shall not exceed ten cents ($.10) per Mcf.

These charges are subject to modification by the Kentucky Public Service Commission, provided, however, that if the Commission requires any modification of such charges which is unacceptable to either party, such party may terminate this Agreement upon ten (10) days written notice to the other party. Such notice must be given within twenty (20) days of the issuance of the Commission order requiring the modification. Such charges and payment do not reflect or recognize any sale of such gas from Columbia to End User, but are agreed delivery or transportation charges.

In addition, End User will reimburse Columbia for all transportation or delivery charges paid by Columbia to Transmission, and, where applicable, Gulf, pursuant to Columbia's and End User's contract(s) with Transmission and, where applicable, Gulf, which are incorporated herein and made a part hereof by reference.

End User shall also pay such state and/or local taxes which are applicable to or attributable to the transportation of natural gas, insofar as such taxes are not already included in the delivery charge. In the event the rates of applicable taxes already included in the delivery charge are increased, or new taxes applicable to the

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transportation of natural gas are imposed, End User shall pay such tax increases or new taxes in addition to the delivery charge.

4. **Regulatory Fees** End User agrees to reimburse Columbia, within thirty (30) days of billing, for any FERC or other regulatory fees paid by Transmission and/or Gulf necessary to commence or continue gas transportation service to End User, when Columbia is required to reimburse Transmission and/or Gulf for said fees. End User also agrees to reimburse Columbia for filing fees paid by Columbia to an entity other than Transmission and/or Gulf when necessary to commence or continue gas transportation service to End User.

5. **Interruption of Gas Deliveries To End User's Facilities** Whenever Columbia is required to reduce daily deliveries of flowing gas to avoid exceeding its daily contractual gas delivery limitations from Transmission or due to pipeline facility limitations, End User agrees that all deliveries of volumes to its facilities pursuant to this Agreement other than those volumes contracted by customer as firm, will be subject to complete interruption. The need for, the timing of, and the extent of such interruption shall be determined solely by Columbia. When such interruption is imposed by Columbia, End User may not replace the interrupted transportation gas with gas purchased from Columbia under a tariff or special rate contract.

Such interruption of deliveries by Columbia of End User's volumes hereunder shall also apply during force majeure situations (herein defined to mean acts of God, strikes, lockouts or other labor disturbances, acts of a public enemy, wars, blockages, insurrections, riots, epidemics, fire, floods, washouts, civil disturbances, ex-

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plosion, breakage or accidents to machinery or pipelines, freezing of wells or pipelines, partial or entire failure of such wells, or any other cause not otherwise provided for herein, whether of the kind herein enumerated or otherwise), not reasonably within the control of Columbia.

In the event actual gas deliveries to End User are in excess of the amount authorized by Columbia on any day on which interruption of End User's transported gas is required and requested by Columbia, all unauthorized volumes delivered to End User during such period of interruption shall be considered tariff or contract gas volumes and End User shall pay Columbia, in addition to the cost of such tariff or contract gas, liquidated damages of $10.00 per Mcf for all deliveries in excess of the authorized volumes specified by Columbia.

Annual or supply associated interruption shall not be imposed upon the volumes produced and tendered by End User for delivery, by displacement, to it at its facilities, unless so required by order or regulation of the Kentucky Public Service Commission.

6. **<u>Volume Bank.</u>** Columbia has established a system of banking gas volumes to account for those volumes delivered to Columbia by Transmission for the account of End User, but not delivered to End User at its facilities during the same monthly billing period. Such undelivered volumes shall be called a volume bank. End User shall be permitted to receive such banked volumes at a later date.

The volumes bank of End User shall not at any time exceed five percent (5%) of the maximum annual volumes to be delivered under this Agreement. In the event Columbia determines that the volume bank of End User has exceeded five percent (5%) of the maximum annual volumes to be delivered under this Agreement, Columbia may require End User to reduce or stop deliveries until its volume bank of gas is less than five percent (5%) of the maximum annual volumes to be delivered under this Agreement.

End User agrees to exert its best efforts to reduce its volume bank to zero at the end of February and August of each year. In the event the volume bank at the end of any February or August exceeds 2 1/2% of the maximum annual volumes to be delivered, End User agrees to reimburse Columbia for any increase in the commodity rate charged Columbia by Transmission which becomes effective as of the first day of any March or September, such reimbursement to be limited to volumes in the volume bank that are in excess of 2 1/2% of the maximum annual volumes.

End User acknowledges and agrees that it is entitled to have delivered to it by Columbia hereunder only those volumes of End User's gas which have previously been delivered to Columbia for the account of End User. It is specifically agreed between the parties that any volumes of gas delivered by Columbia to End User in any calendar month which are in excess of volumes previously delivered to Columbia for the account of End User shall be tariff or contract gas and shall be billed to End User at the applicable tariff or contract gas rate.

7. **Warranty of Title.** End User warrants that it will have good title to all natural gas delivered to Columbia for transporta-

tion to End User's facilities, that such gas will be free and clear of all liens, encumbrances and claims whatsoever, and that it will indemnify Columbia and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas. This section is operative when such warranty is not otherwise provided by Transmission, Gulf, or any other transporter.

8. **Payment.** End User shall pay all bills presented by Columbia pertaining to the transportation service furnished by Columbia and Transmission hereunder within ten (10) days from the monthly billing date. Should End User fail to pay all of the amount of any bill as herein provided when such amount is due, a delayed payment penalty at the rate of one and one-half percent (1 1/2%) per month shall accrue on the unpaid portion of any bill of $2,000 or more from the due date until the date of payment, except this provision shall not apply to that portion of the bill reasonably disputed by End User under normal and customary payment procedures.

Columbia may, at its option, terminate this Agreement for failure by End User to pay the bills rendered by Columbia for the transportation service furnished hereunder. Exercising this option shall not relieve End User from the obligation to pay for service previously rendered hereunder.

9. **Assignment.** Except for assignment to a wholly owned subsidiary, a parent or an affiliate of the parties, this Agreement shall not be subject to assignment without the written consent of the other party.

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10. **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

11. **Notices.** Any notices, except those relating to billing, required or permitted to be given hereunder shall be effective only if delivered personally to an officer or authorized representative of the party being notified, or if mailed as follows:

If to Columbia:

Columbia Gas of Kentucky, Inc.
200 Civic Center Drive
Post Office Box 117
Columbus, Ohio 43216

Attention: Director,
Gas Transportation Marketing

If to End User:

Flex-O-Lite, Inc.
8301 Flex-O-Lite Drive
P.O. Box 4366
St. Louis, Missouri 63123
Attention:
Allan A. Huning
Vice President--Operations

12. **Entire Agreement** This Agreement contains the entire agreement among the parties hereto respecting the subject of this Agreement. There are no other terms, conditions, promises or understandings, express or implied, concerning the activities and arrangements contemplated by this Agreement.

13. **No Dedication.** Neither this Agreement nor any deliveries of gas pursuant thereto shall be construed to constitute a dedication or to evidence in any way any dedication by End User of any wells or acreage to Columbia.

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14. **<u>Term and Condition Precedent.</u>** The term of this Agreement shall begin on the date Columbia first delivers volumes of gas to End User at its facilities hereunder and shall continue for a period of five (5) years, provided, however, that this agreement shall not take effect until such time as End User has constructed a new plant facility at the Midland Trail Industrial Park, which is located between Interstate Route 64 and U. S. Route 60 near Mount Sterling, Kentucky, and provided further, that if such facility has not been completed and deliveries hereunder have not commenced on or before December 31, 1991, this agreement shall be deemed null and void.

In the event this Agreement is terminated, Columbia will deliver to End User on an interruptible basis only any volumes of End User's gas which Columbia is holding pursuant to the <u>Volume Bank</u> clause above within 90 days from the termination date of this Agreement.

15. **<u>Regulatory Approvals.</u>** This Agreement shall be expressly contingent upon the receipt of such regulatory approvals or authorizations as may be required and in the event such approval or authorizations terminate or are withdrawn, then this Agreement shall terminate.

16. **<u>Incorporation of Tariff Provisions.</u>** Except as otherwise expressly provided herein, this Agreement incorporates by this reference all of the terms and conditions of Columbia's approved tariff, as well as any general terms and conditions of that tariff applicable to, and consistent with Rate Schedule DS.

17. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Kentucky, including compliance with regulatory requirements.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date hereinabove first mentioned.

FLEX-O-LITE, INC.

Attested By End User:
By: Wayne C. Bircher
Title: Controller

Executed By End User:
By: Allan A. Huning
Title: Vice President/Operations

COLUMBIA GAS OF KENTUCKY, INC.

Attested By Columbia:
By:
Title: Assistant Secretary

Executed By Columbia:
By: Mark T. Ward KWC
Title: Director,
Gas Transportation Marketing

Approved by:

KWC
Attorney for Columbia

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MEMORANDUM

TO: J. W. KELLY

MAY 21, 1990

FROM: L. A. HUGHES

SUBJECT: FLEX-O-LITE

As you requested, attached is a Cost Analysis for the Flex-O-Lite Project. Some of the assumptions are as follows:

> **150,000 MCF Annual Load** - this represents the initial two furnaces to be used. Eventually, I understand there will be three furnaces utilized for three shifts
>
> **FI Customer Charge** - $110/month
>
> **Rate** - 1/2 Fixed Rate plus TOP
>
> **Depreciation Rate** - composite of 3.16%
>
> **Last Allowed Rate of Return** - 10.8%
>
> **Investment:**

M & R Setting	$17,000
600 Ft. Service	9,933
Total	**$26,933**

> **Minimum Operating Income Required** - $2,909

Joe, as you can see, CKY's first year Operating Income is well above the minimum required to obtain the allowed Rate of Return. In fact, Flex-O-Lite's projected Rate of Return for the first year is 73.8%! Under the above assumptions, the project will probably pay for itself in less than two years.

Please let me know if I can be of further assistance.

attachment

cc: J. W. Partridge, Jr.
W. W. Burchett, Jr.
R. D. Gibbons

COLUMBIA GAS OF KENTUCKY, INC.

FLEX-O-LITE PROJECT
1st Year Cost of Service

REVENUES		
(150,000 @ .2761)		$ 41415
Cust. Charge $ 110 x 12		$ 1320
OPERATING EXPENSES:		
Gas Costs (150,000 x .0561)	$ -8415	
O & M Other Than Gas Costs	$ -850	
TOTAL O & M		$ -9265
DEPRECIATION		$ -851
TAXES -OTHER (Property)		$ -140
OPERATING INCOME BEFORE INCOME TAXES		$ 32479
INCOME TAXES		$ -12597
OPERATING INCOME		$ 19882

INVESTMENT	$ 26933
OPERATING INCOME (Year 1)	$ 19882
PAYBACK PERIOD (years)	1.35