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Contracts -
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February 9, 1955

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Ralph Elsen, Chief, Contract Coordination Branch

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CONTRACT W-7605-ENG-276 - MARSHAW CHEMICAL COMPANY

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CONTRACTS

As a result of a memorandum dated December 31, 1954, from the Acting Director of Production, and correspondence between Oak Ridge Operations and Marshaw Chemical Company, a meeting was held in the Marshaw Cleveland, Ohio, office, on February 4, 1955, for the purpose of negotiating an arrangement under which the Plant "C" Refinery could be maintained in standby condition until January 1, 1957. In addition to the undersigned, those in attendance were:

Marshaw

AEC

W. C. Novay, Vice President
O. R. Farnelius, Manager for AEC Projects
W. H. Brown, Attorney

E. A. Wands
F. R. Dowling
J. C. Winkles -
A. W. Neumann

Since the meeting, a teletype dated February 7, 1955 was dispatched from the Manager, ORO, to the Director of Production, such teletype explaining the substance of the agreement finally reached with Marshaw. Furthermore, a proposed Modification No. 81 to the subject contract, which will cover the matter in more detail, is now being prepared. The purpose of this memorandum, therefore, is to explain some of the discussions leading to the final agreement as we now understand it. Marshaw agreed at the meeting to submit to this office in writing a revised proposal reflecting their understanding. That revised proposal has not yet been received.

Mr. Wands opened the meeting by stating that our delay in responding to Marshaw's proposal dated November 1, 1954 had resulted from the necessity of making a detailed review and study of our position in view of national security requirements. We had now concluded that those requirements made necessary the availability of the Plant "C" Refinery until January 1, 1957. He further stated our feeling that Marshaw's November 1, 1954 proposal for payment by the Commission of \$15,000 per month starting October 1, 1954, in addition to the payment of actual costs of standby services, seemed to be somewhat unreasonable and

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considerably higher than we would expect to pay for such an arrangement. He pointed out our inability to fully comprehend the reason for Harshaw's now proposing to charge \$15,000 per month, whereas they had, under a previous standby arrangement, charged only approximately \$4,000 per month, that charge remaining in effect during our occupancy without standby from October 1, 1954 through September 30, 1955.

Mr. Hovey then explained in some detail Harshaw's position in the matter as follows:

1. The building in which the refinery is contained is located within the general Harshaw manufacturing facilities and is therefore a precious piece of property to Harshaw. If the building were located apart from the rest of their plant and in a less valuable or convenient area, Harshaw might well be willing to simply rent it on a nominal basis. If the building in its present location were now available to them, they would undoubtedly use it for Harshaw's business with a resulting normal profit factor.
2. They presently have a new process in the pilot plant stage. If it proves to be successful, and they have every reason to believe that it will in the immediate future, they would proceed to install the manufacturing version of that process in the Plant "C" Refinery building. If they allow us to occupy the building until January 1, 1957, they may well have to install a new facility just outside their present plant area costing in excess of \$200,000.
3. Prior to the meeting, Mr. Neumann had contacted Harshaw in an attempt to ascertain the book or market value of the property we are occupying. Hovey stated that it would be entirely unreasonable to try to base any occupancy charge or charge for loss of production on the book value, which is now \$125,000. The precious location of the property and its production value to Harshaw is the determining factor. He stated that the cost for duplicating the building would be well in excess of \$800,000.
4. They could now use the whole building but have no present use for that part of the building not taken up by the Commission's Refinery. Out of an approximate total of 65,000 square feet, our equipment takes up about 35,000 square feet, that being the valuable part of the building, in view of the fact that it contains three stories and high bays. The remainder of the building is on the ground floor. Should they find a use for the remainder of the building, they would agree to an appropriate statement in the monthly charge. They would, however, be extremely reluctant to use any part of the building if we might at any time wish to place the Refinery in operation. It was their feeling that operation of the Refinery would then require the Commission's use of the whole building, thus placing them in a

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precarious position so far as using any part of it is concerned. In other words, they could not plan for continued use. In this connection, the possibility of our utilizing other space in the Harshaw plant was discussed briefly and furthermore Mr. Wende stated that the Commission would certainly have to stand scum of the involved costs if Harshaw were to use a portion of the building for their own purpose and then have to reconvert for Refinery operation.

5. Harshaw had computed factory profit on their whole plant, and in applying it to the building in question they arrived at a loss in factory profit of \$21,000 per month if we continued to occupy and not operate. It is significant to note here that a monthly profit of \$21,000 has, in effect, been guaranteed for previous operations under the subject contract. Their figures of course presumed that they could make the same profit on the space in question as in other portions of their plant. Mr. Wende pointed out that their computations must have included management effort and use of manufacturing equipment in place and that those things would not be required in the proposed standby arrangement. Although Hovey never agreed with that concept in respect to equipment, he did state that the virtual absence of management effort was one of the reasons for their quoting to us a figure of \$15,000 per month rather than \$21,000.
6. In summary, Mr. Hovey stated that Harshaw would certainly rather have the space for their own use than to enter into a standby arrangement with the Commission. In any event, they felt strongly that they should be well and equitably compensated for their loss of production capacity.

Under the present contract the Commission is allowed to occupy the plant, with no requirement as such for Harshaw to maintain it in a standby condition, for approximately \$4,000 per month during the period October 1, 1954 through September 30, 1955. Also, under the standby arrangement in effect prior to October 1, 1954, the \$4,000 charge was applicable. This matter was discussed at considerable length, with Mr. Wende taking a firm stand that the Commission should in no event be required to pay an increased monthly amount until October 1, 1955, that being the start of the period subsequent to our present contractual occupancy rights. Harshaw's November 1, 1954 proposal was based, among other things, upon their being required to maintain the Refinery in a standby condition and a requirement to operate the plant for the Commission upon four months' notice. These two factors were not a part of the present occupancy or previous standby arrangements and Harshaw contended that the increase from \$4,000 to \$15,000 was due in part to consideration of these factors. In agreeing to the present occupancy setup, Harshaw had, of course, planned that the plant would be turned over to

them completely at least by September 30, 1955. If they now agreed to a continuation of occupancy or standby, those plans must be discarded and they must be compensated for loss of production and interference on our part with their operations for a lengthy period.

Wende explained that actual standby or maintenance services would be extremely meager, consisting probably of only heat and light and possibly one man to check the sprinkler system from time to time, and that we were really shooting mainly for a continuation of the present occupancy arrangement. Furthermore, it was concluded that the forthcoming contract modification need not contain any definite contractual option or requirement for Harshaw to operate the plant. It was felt that Harshaw would be willing to operate if necessary and that any negotiations in respect thereto could be handled at the time our operation requirement arises. It was agreed that in case the parties could not, if the need should arise, agree on operation by Harshaw the Commission would have the right to bring in another operator or operate the plant itself.

At Wende's request, the Harshaw people retired from the meeting for the purpose of revising their proposal to reflect the continuation of the present monthly charge until September 30, 1955, a virtual occupancy arrangement only without any extensive standby maintenance services, and the elimination of any definite requirement to operate the plant for the Commission. They were asked to prepare their proposal on the basis of occupancy until January 1, 1957, with a further period of five months in which the Commission would dispose of equipment, restore the plant, and turn it over to Harshaw. There was considerable discussion as to what might really be required in maintaining the plant and equipment and it was concluded that nothing more than normal protection of the building, with periodic inspections, would be necessary. The present reimbursement provisions for standby work could be retained in case we should from time to time require Harshaw to do some maintenance work.

The Harshaw people returned to the meeting with a proposal for continuing the present approximate \$4,000 per month charge through September 30, 1955, with a charge of \$20,000 per month thereafter during our occupancy. Based on occupancy through June 1, 1957 (including the five months disposal and restoration period), this revised proposal was \$32,000 less than their November 1, 1954 proposal. Wende declined to accept this proposal and offered his opinion that the \$15,000 per month proposed by Harshaw originally would be equitable and fair to both parties provided that such charge did not start until October 1, 1955. The relative merits of the two positions were thoroughly explored, and after another recess, Mr. Hovey finally agreed to Mr. Wende's offer, subject to certain other conditions discussed below. This resulted in a saving to the

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Commission of \$132,000 when compared to Harshaw's November 1, 1954 proposal and of \$100,000 when compared to their first revised proposal presented at the February 4, 1955 meeting. Incidentally, this was a much better monetary arrangement than we had expected Harshaw to agree to. Under the present contract we pay for heat, and other utilities, and will continue to do so under the contract extension.

In respect to cancellation or termination, it was agreed that the Commission would have the right, at any time, to terminate the occupancy agreement and that we would pay not less than a four months' charge (at the monthly rate then in effect) from the time of notice of termination. This, in effect, provides for a four months' termination notice, with monthly payments to continue as long as we occupy the plant, but in any event not less than a payment for four months' occupancy. For example, if we were to give notice of termination, and actually vacate and restore the plant within two months, we would still pay for four months' occupancy. This method was considered to be entirely reasonable in order to give Harshaw proper time in which to plan for their own work and probably means that we will pay for no more than our actual occupancy. It is quite inconceivable that we would be able to entirely vacate in less than four months. At first, Harshaw proposed that there be imposed upon the Commission some penalty for failing to vacate within four months following any notice of termination or within four months following January 1, 1957. It was pointed out, however, that the Commission could well be delayed because of Harshaw's contractual responsibility in respect to decontamination. In the final analysis, Harshaw conceded on this point and it was agreed that the final date of occupancy would be established as of June 1, 1957, this date having been arrived at on the basis of four months for disposal and abandonment of equipment, with one month additional for restoration. The Commission will have a definite obligation to vacate and restore by that time. In regard to any prior termination, the Commission would be expected to make all reasonable effort to completely vacate within a five-month period after notice of termination.

As previously stated, a proposed Modification No. 81 is now being prepared in accord with the above stated understanding of the agreements reached with Harshaw.

Ralph Elson

CC: E. A. Wende
F. R. Dowling ✓
J. C. Winkles
A. W. Neumann, Cleveland

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