

APPEND TO CONTRACT
 DATED SEPTEMBER 14, 1989
 BETWEEN
 TANOMA COAL SALES CO.,
 AND
 ROBERT MOLNAR HAULING

A-00105933
 F. 1
 Am-B

I. TERM

A. Under this agreement, TANOMA COAL SALES CO., agrees to ship coal with ROBERT MOLNAR HAULING, at a minimum of ten truck loads a month, for the extent of this contract.

II. SERVICES

A. Services to be rendered by Contract Carrier ROBERT MOLNAR HAULING, to transport, by motor vehicle, coal for TANOMA COAL SALES CO., between points in that part of Pennsylvania on and west of U.S. Highway Route 15.

CONTRACT CARRIER:

COAL COMPANY:

ROBERT MOLNAR, t/d/b/a
 ROBERT MOLNAR HAULING

TANOMA COAL SALES CO.

**DOCUMENT
 FOLDER**

DOCKETED
 APPLICATION DOCKET
 FEB 28 1990
 ENTRY No. MS

Robert Molnar

Scott Kroh

ROBERT MOLNAR

SCOTT KROH, PRESIDENT

9-26-90

DATE

2/26/90

CONTRACT CARRIER AGREEMENT

THIS AGREEMENT made this 14th day of September, 1989, by and between TANOMA COAL SALES CO., a Pennsylvania corporation having its principal office in Latrobe, Westmoreland County, Pennsylvania, hereinafter referred to as "Coal Company" and ROBERT MOLNAR, an individual t/d/b/a ROBERT MOLNAR HAULING, whose address is Sutersville, Westmoreland County, Pennsylvania, hereinafter referred to as "Contract Carrier", both of whom may from time to time be collectively referred to as "Parties", as follows:

RECITALS

1. Coal Company operates various coal facilities in PA., and is desirous of contracting with the Contract Carrier to haul such coal from the points of those operations to destinations points, or where the coal may be processed or loaded for shipment to Coal Company's customers;

2. Coal Company cannot haul its coal from its operations to the processing or loading facilities because it does not own and operate sufficient trucks for that purpose and must employ third parties to perform such services;

3. Coal Company is unable to secure satisfactory and adequate services from an existing common carrier to haul its

coal to it's customers as herein contemplated by the Parties; and

4. The services to be rendered by Contract Carrier pursuant to this Agreement are intended to be those of a "Contract Carrier by Motor Vehicle" as that term is defined by Public Utility Code, 66 Pa.C.S.A. §2501(b)(1), and in issued therunder by the Public Utility Commission of the Commonwealth of Pennsylvania.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and each intending to be hereby legally bound, the Parties agree as follows:

1. The foregoing recitals are incorporated into and made part of this Agreement as if set forth herinafter in their entirety.

TERM

2. The term of this Agreement shall be for a period commencing with the date of this Amendment and ending on September 30, 1990, and thereafter from month to month unless either Party given thirty (30) days advance written notice to the other of its intent to terminate the Agreement or unless the Agreement is terminated as otherwise provided.

SERVICES

3. Contract Carrier agrees to haul and transport coal

for coal company to and from mining and processing facilities and buyers in PA., using the State's borders on the North, South, and West, and PA. Rte. 15 on the East, as boundaries for service.

DELIVERY POINTS AND RATE

4. Contract Carrier shall transport and deliver Coal Company's coal to and from mining processing and buyer's facilities in PA. using the State's borders on the North, South, and West, and PA. Rte. 15 on the East, as boundaries for service, for the rate per load per mile per net ton of two thousand (2000) pounds of coal transported as set forth below:

(a) Eighty (\$0.80) cents per mile for the first mile per ton per load plus eight (\$0.08) cents per mile per ton for each additional mile thereafter for each one way trip to the point of destination in accordance with the Tariff filed by contract Carrier with the Pennsylvania Public Utility Commission.

WEIGHTING THE TRUCKS

5. Coal Company shall pay to Contract Carrier for all transportation and delivery of coal hauled by contract Carrier pursuant to this Agreement based upon the weight for each load for each truck load of coal established by the weight of each truck before loaded and after loaded at scales as agreed upon by

the Parties as evidenced by weight slips which are issued in numerical sequence and dated by the weigh master at such scales or other persons authorized to operate said scales.

RESOLUTION OF DISPUTE OF WEIGHTS

6. All disputes between the Parties as to the weight of coal delivered by Contract Carrier to points prescribed by Coal Company shall be resolved utilizing the methods and practices customary to the coal industry in resolving such disputes and determining the weight of coal transported and delivered.

PAYMENT FOR SERVICES

7. All payments for services rendered by Contract Carrier to Coal Company shall be made upon receipt of invoices thereof, but in no event, later than fifteen (15) days following the receipt of an invoice. Contract Carrier shall issue invoices to Coal Company for services rendered pursuant to this Agreement on a calendar month basis not later than ten (10) days following the close of each calendar month for services rendered in the preceding month, if any. All invoices for services shall set forth the date, number of tons and point of destination where deliveries of coal were made.

WEIGHT SLIPS

8. Each of the Parties shall on a daily basis be issued a duplicate copy of each weight slip issued by the scale where each truck was weighted for each truck making a delivery of coal pursuant to this Agreement.

GENERAL LIABILITY

9. Contract Carrier, in the performance of its services pursuant to this Agreement, shall comply with all applicable Federal and State laws, local ordinances and all regulations issued by an agency or authority pursuant to such laws and ordinances, including, but not limited to, the Public Utility Code and the Motor Vehicle Code of the Commonwealth of Pennsylvania. The Contract Carrier, while in possession of any of Coal Company's coal, shall be as at common law liable for any loss thereof or damage thereto, except as otherwise provided in this Agreement.

LIMITATION OF LIABILITY

10. Contract Carrier shall not be liable for any loss of coal or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the Coal Company, or for natural shrinkage. The Contract Carrier shall not be liable for loss, damage or delay of coal caused by fire occurring after the arrival of the coal at destination and after placement of the coal for delivery at destination, or tender of delivery of coal at the point of destination, unless such loss is the result of Contract Carrier's negligence. Except in the case of negligence of the Contract Carrier, the Contract Carrier shall not be liable for loss, damage or delay occurring while the coal is stopped and held in transit, upon the request

of the Coal Company, owner or party entitled to make such request, or resulting from a defect in the coal, or from riots or strikes.

REFUSAL OF COAL

11. In the event coal transported and delivered by Contract Carrier pursuant to this Agreement is refused at the point of destination by any party who has apparent authority to refuse delivery, such coal may be discharged at the risk and expense of Coal Company at another location within the area in which the Contract Carrier is authorized to haul coal as herein before specified as designated by Coal Company, returned at the risk and expense of Coal Company to its point of origin earning the per ton per mile transportation charge both ways or, in the event of an emergency not the result of any act or omission of the Contract Carrier, for the Contract Carrier's judgment which is suitable, and, in any such case, Contract Carrier's responsibility for such coal shall cease when the coal is so discharged. Coal Company shall hold Contract Carrier harmless from any expense, or loss, it may incur or damages it may be required to pay by reason of the refusal of coal at a point of delivery or discharge of coal at any place other than at a point of delivery specified in this Agreement including, but not limited to, additional transportation charges.

CLAIMS AND SUITS

12. Claims for loss, damage or injury to coal

transported pursuant to this Agreement must be made in writing within six (6) months after delivery, or, in case of failure to make delivery.

INSURANCE

13. (a) If Contract Carrier is liable on account of loss of or damage to any coal, it shall have the full benefit of said coal, so far as this shall not avoid the policies or contract of insurance of Coal Company insuring the coal.

(b) Contract Carrier represents and warrants that it has in full force and effect, and shall at all times during the continuance of this Agreement keep in full force and effect, a policy or policies of insurance insuring the Contract Carrier and Coal Company as an additional insured party as follows:

(1) Comprehensive general liability insurance, contractual liability insurance with liability limits of \$300,000.00 property damage and \$500,000.00 personal injury;

(2) Umbrella policy covering general liability with limits of \$1,00,000.00;

(3) Worker's Compensation insurance in compliance with the Worker's Compensation Act of the Commonwealth of Pennsylvania.

Contract Carrier shall provide a certificate of insurance to Coal Company evidencing that such insurance is in effect, which certification shall contain an endorsement thereon

that such insurance shall not be cancelled or terminated without the giving of thirty (30) days prior written notice thereof by the underwriter or its agent to the Coal Company.

MAINTENANCE OF TRUCKS

14. Contract Carrier shall maintain all trucks owned or leased by it and used in rendering services pursuant to this Agreement in a road worthy and in a safe operating condition in compliance with all requirements of the Commonwealth of Pennsylvania and its insurance underwriter. Failure of Contract Carrier to maintain such trucks, which results in delays in the transportation and delivery of coal to Coal Company's customers at the time and locations specified by Coal Company, shall be grounds for the immediate termination of this Agreement with any requirement contained in this Agreement.

TERMINATION

15. This Agreement shall terminate as follows:

(a) This Agreement shall terminate automatically without notice upon the filing of a petition in bankruptcy by or against either Party, or a petition or pleading seeking or acquiescing in an reorganization, arrangement, composition or dissolution of either Party, for the appointment of a receiver, trustee, or liquidator of either Party or for all or any substantial part of the property of either Party, or the revocation or termination of authority by the Pennsylvania Public Utility Commission to Contract Carrier to operate as a Contract

Carrier for the transportation of coal contemplated by this Agreement.

(b) This Agreement may be terminated by either Party upon the giving of thirty (30) days advance notice in writing to the other of its intent to terminate the Agreement to the other Party, if any one or more of the following events occur:

(i) when the other Party shall violate any of the terms, covenants and conditions of this Agreement provided the Party seeking to terminate has set forth in the written notice of intent to terminate the nature of the breach or violation of this Agreement and provides to the violating Party an opportunity to cure such breach or violation within the thirty (30) day notice period;

(ii) at the end of any calendar month upon the expiration of thirty (30) days written notice given by either Party to the other following September 30, 1990;

(iii) upon the giving of written notice by either Party to the other following an event of force majeure as provided in paragraph 16 of this Agreement.

FORCE MAJEURE

16. If because of force majeure either Party is unable to

carry out any of its obligations under this Agreement (other pursuant to this Agreement), and if such Party promptly gives to the other Party written notice of such force majeure, then the obligations of the Party giving such notice will be suspended to the extent made necessary by such force majeure and during its continuance. Any deficiencies in shipment of coal caused by force majeure shall be waived. The term "force Majeure" as used in this Agreement shall mean any causes beyond and outside the control and without fault or negligence of the Party affected thereby, such as, but not limited to, acts of God, acts of the public enemy, insurrections, riots, labor disputes, labor or material shortages, fires, explosions, floods, breakdowns of or damage to plants, the equipment or facilities, interruptions to transportation, rail car shortages, embargoes, legislation, regulation by state, federal or local governmental authority, orders activity of civil or military authority, or other causes a similar nature which wholly or substantially prevent the mining, delivering, unloading, accepting, utilizing, or sale of the coal to be delivered pursuant to this Agreement.

MODIFICATION AND AMENDMENT

17. (a) This agreement may be modified or amended by a writing signed by each of the Parties. In the event any modification or amendment to this Agreement shall require an amendment to any permit of authority issued to Contract Carrier

by the Pennsylvania Public Utility Commission (P.U.C.), or the issuance of a permit by or the approval of the P.U.C., then the prerequisite approval, issuance of a permit or amendment of a permit by the P.U.C. shall be a condition precedent to the effect of any modification or amendment to this Agreement.

(b) The rate for the transportation and delivery of a net ton of two thousand (2,000) pound of coal per mile to points of destination as designated by Coal Company as set forth at Section 4 of this Agreement may be amended or modified at any time by the issuance by the Coal Company of a purchase order to Contract Carrier specifying the rate to be paid for the transportation and delivery of coal pursuant to this Agreement provided that such amendment is not in conflict with any Tariff of Contract Carrier approved by the Pennsylvania P.U.C..

GOVERNING LAW

18. This Agreement shall be governed and determined by the laws of the Commonwealth of Pennsylvania.

NOTICES

19. All notices authorized or required between the Parties by this Agreement shall be given in writing and delivered by U.S. Mail addressed to the Parties at the addresses for each listed below unless some other address is hereafter specified in writing:

CONTRACT CARRIER:

-----ROBERT MOLNAR

R.D. #1, BOX 38-A
SUTERSVILLE, PENNSYLVANIA 15083

COAL COMPANY:

TANOMA COAL SALES CO.

P.O. BOX 682

LATROBE, PA. 15650

Copy to: TANOMA COAL SALES CO.

Attention: Scott Kroh, President

In the event of termination of this Agreement, notice shall also be sent to:

PENNSYLVANIA PUBLIC UTILITY COMMISSION

P.O. Box 3265

Harrisburg, PA. 17120

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date and year first above written.

WITNESS:

CONTRACT CARRIER:

ROBERT MOLNAR, t/d/b/a
ROBERT MOLNAR HAULING




Robert Molnar

ATTEST:

COAL COMPANY:

TANOMA COAL SALES CO.





Scott Roth, President



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

February 28, 1990

IN REPLY PLEASE
REFER TO OUR FILE

Robert Edward Molnar
Robert Molnar Hauling
R. D. #1
Sutersville, Pa. 15083

Re: A-00105933, F.1, Am-B - T-148*
Robert Molnar Hauling

Dear Mr. Molnar:

We have received the revised bilateral contract submitted in compliance with the Commission's order adopted at the Public Meeting of February 8, 1990. A review of the contract finds that it is now in conformance with Commission regulations as set forth in Title 52, Pa. Code §31.45, and is now acceptable for filing.

Very truly yours,

Tim Zeigler
Technical Review Section
Bureau of Transportation

cc: E. Ditzler
Tariff Section
Document Folder

