

Form 215--Sheet 1
Revised March 1, 1926

THIS AGREEMENT, made this 5th day of December, 1956, between the ATLANTIC COAST LINE RAILROAD COMPANY, hereinafter for convenience referred to as the Railroad and ALABAMA AGGREGATE COMPANY, Division of McCullough Industries, Inc., a corporation under the laws of the State of Alabama, hereinafter for convenience referred to as the Industry;

W I T N E S S E T H:--that

WHEREAS, the parties hereto, as provided in part in an agreement dated October 1, 1946, as supplemented July 20, 1951, and April 1, 1953, have constructed and are maintaining and operating track facilities for the economical and convenient conduct of the business (rock quarry) of the Industry at or near Pelham, County of Shelby, State of Alabama, described as follows:

Track No. 3: Commencing at a point in the Railroad's track No. 6, about 536 feet south of Mile Post NJ-960 on the Railroad's Manchester, Ga. - Birmingham, Ala. line, and extending in a northwardly and northwestwardly direction 4,277 feet to switch point connection in the Railroad's main line, said switch point connection being about 3,587 feet northwardly (measured along the main line) from said mile post, it being understood and agreed that the Railroad constructed and owns the southerly 1,947 feet and the northerly 1,052 feet and the industry constructed the 1,278-foot intermediate segment of said track No. 3.

Track No. 4: Commencing at a point in said Track No. 3 about 56 feet south of said mile post and extending in a northwardly direction 1,617 feet to northerly switch point connection in said Track No. 3, it being understood and agreed that the Railroad constructed and owns the southerly 1,467 feet and the Industry constructed the northerly 150 feet of said Track No. 4.

Track No. 7: Commencing at a point in said Track No. 4 about 1,077 feet northwardly from said mile post and extending in a northwardly direction 681 feet to northerly switch point connection in said Track No. 4, it being understood and agreed that the Industry constructed said Track No. 7.

Track No. 8: Commencing at a point in said Track No. 3 about 1,399 feet northwardly from said mile post and extending in a northwardly and northwestwardly direction 1,644 feet to northerly switch point connection in said Track No. 3, it being understood and agreed that the Railroad constructed and owns the northerly 862 feet and the Industry constructed the southerly 782 feet of said Track No. 8, said tracks, as shown in red and green on Blueprint No. 2677-7, dated 3-16-56, last revised 12-13-56, being hereinafter for convenience called sidetrack.

Now, therefore, in consideration of the covenants and agreements herein contained, it is mutually agreed that the said sidetrack shall be maintained, and the Railroad hereby agrees to operate the same, under the following terms and conditions.

1. RIGHT OF WAY.

(a). The Industry hereby grants and conveys to the Railroad an easement or right of way upon and over the lands of the Industry to a width of 30 feet, as shown on said blueprint, for the portions of said Tracks Nos. 3 and 8 owned by the Railroad and extending, respectively, 1,052 feet and 862 feet southwardly from the northerly switch points thereof, together with such additional widths as may be needed for slopes and fills.

(b). The Industry shall provide, without cost to the Railroad, all necessary right of way outside of the right of way of or hereby conveyed to the Railroad, required for the proper operation of said sidetrack, said right of way to be satisfactory to the Chief Engineer or other proper officer of the Railroad.

(c). The cost and expense of procuring or complying with any ordinance, order, permit, or consent whatsoever, at anytime, and from time to time, adopted or required by Municipal, County, State, or other lawfully constituted authorities, in connection with the operation, maintenance and/or use of said sidetrack, shall be borne by the Industry.

(d). The Railroad, its officers and employees shall have the right to enter upon the property of the Industry, for the purpose of maintaining and/or operating said sidetrack.

BOOK 187 PAGE 340

3. MAINTENANCE.

(a). Said sidetrack shall be maintained and/or renewed to the satisfaction of the Chief Engineer, or other proper officer of the Railroad; the work shall be performed and the cost thereof borne as follows: the southerly 1947 feet of Track No. 3, the southerly 1467 feet of Track

(b). The Railroad shall maintain and/or renew ~~said sidetrack from the switch point to the clearance point~~ the northerly 1052 feet of Track No. 3 and the northerly 862 feet of Track No. 4, shown in red on said blueprint.

(c). The Industry shall, without cost to the Railroad, maintain and/or renew ~~that portion of said sidetrack beyond the clearance point~~ the 1278-foot intermediate segment of Track No. 3, the northerly 150 feet of Track No. 4, all of Track No. 7, and the southerly 782 feet of Track No. 8 shown in green on said blueprint.

4. OWNERSHIP.

(a). The title and ownership of said sidetrack shall be as follows:

(b). Track material furnished by the Railroad, at its expense, and laid in said sidetrack on the right of way or premises of the Railroad or on the premises of, or right of way furnished by the Industry, shall remain the property of the Railroad, and may be by it removed from said premises or right of way after the termination of this agreement.

(c). Track material furnished by the Industry and laid in said sidetrack on the right of way or premises of the Railroad shall remain the property of the Industry, subject to use hereunder by the Railroad. Upon discontinuance of the use of said sidetrack for the purposes of the Industry, such material may be removed from said right of way or premises at the sole expense of the Industry, but, at the option of the Railroad, by its employees, unless the Railroad shall then desire to purchase such material, which it shall have the right to do on paying the then value thereof to the Industry.

5. USE.

(a). The Railroad shall have the right to use, without cost, the whole or any part of said sidetrack for general railroad purposes and to reach industries, if any, located thereon or reached thereby, provided such use shall not unreasonably interfere with the use thereof by the Industry, and to this end the Industry agrees to permit said sidetrack to be extended or connected with other sidetracks.

(b). The Industry shall not, without the written consent of the Railroad, permit or authorize any use of, extension of, or connection with said sidetrack by or for the benefit of any other person, firm or corporation not one of the parties hereto, nor assign this contract or any rights hereunder.

6. CHANGES OR ENLARGEMENT.

(a). If any change, rearrangement, extension or enlargement of said sidetrack or its structures shall at any time be required by reason of any change in the Railroad's track or tracks, or because of any changes in the operating practice of the Railroad, or for any other cause, then and in that event any expense or damage resulting from such change, rearrangement, extension or enlargement of said sidetrack shall be borne by the Industry.

7. CLEARANCES.

except as hereinafter provided

(a). The Industry agrees ~~not~~ to permit any obstruction over said sidetrack having a clearance of less than twenty-two (22) feet above the top of rail for the full width of the horizontal clearance hereinafter provided for, or alongside of said sidetrack within six (6) feet of the nearest rail of said sidetrack, with the necessary additional clearance on curves. All structures erected over the sidetrack shall be built and maintained in a manner satisfactory to the Chief Engineer or other proper officer of the Railroad. All wires suspended over said sidetrack shall be placed and maintained at the elevations and in accordance with the standards prescribed by the National Electric Safety Code.

8. OPERATION AND LIABILITY.

(a). ~~After the completion of said sidetrack~~ The Railroad will deliver to the Industry, on said sidetrack, cars containing carload shipments and consigned to the Industry for delivery thereon, and will deliver to the Industry on said sidetrack empty cars for loading thereon, and will accept from the Industry on said sidetrack cars containing carload shipments, for movement to destination over the lines of the Railroad or its connections. For such service the Industry will pay the legal charges shown from time to time in the proper tariff of the Railroad, duly filed and published according to law.

826
(b). It is mutually agreed by the parties hereto that all car load shipments consigned to the Industry for delivery on said sidetrack shall be deemed to have been fully and completely delivered as soon as the car containing such shipment shall have been placed on the sidetrack and detached from the engine or train by which it was moved, and the Railroad shall thereupon be fully and completely relieved of any liability, either as common carrier or as bailee or otherwise, for loss of or injury to such shipment occurring after such delivery, and that the Railroad shall not be liable as common carrier, nor as bailee, nor otherwise, for any property loaded into any car on said sidetrack until said car is attached or coupled to the engine or train by which it is to be moved from said sidetrack towards its destination, or until a bill of lading shall have been issued to the Industry therefor, and that until said car is so attached or coupled up, or a bill of lading is issued therefor, the said car and its contents shall be deemed and held to be in the possession of the Industry so far as liability therefor is concerned.

(c). The Industry will promptly, at its own cost and expense, and subject to all proper demurrage and other charges, load or unload all cars which are placed on said sidetrack for loading or unloading by the Industry; that it will not allow cars delivered to the Industry on said sidetrack to be removed therefrom except by the Railroad; and that in the event of damage to or destruction of any of such cars while on said sidetrack, whether due to improper use of the cars by the Industry, or agents or employes of the Industry, or to fire, or to any other cause, unless the same be the result of negligence of the agents or employes of the Railroad, the Industry will make good and pay to the Railroad the loss due to such damage to or destruction of such car or cars.

(d). It is hereby expressly agreed that inasmuch as the Industry desires and has requested the ^{use} ~~construction~~ and operation of said sidetrack for its convenience, notwithstanding the proximity of the tracks and engines to the property of the Industry, and notwithstanding the operation of trains in the vicinity and the risk of fire on account thereof, the Industry assumes the duty of keeping the right of way of said sidetrack and the property adjacent thereto clean and clear of combustible or inflammable material, and agrees to release the Railroad from liability for, and hereby assumes all risk of loss or damage to property of the Industry or to property of persons other than the parties hereto in the possession or under the control of the Industry, situate on or in the vicinity of said sidetrack, and due to fire set out by engines, cars or other machinery of, or in any manner caused by the Railroad; and the Industry hereby agrees to hold the Railroad harmless from and against all claims and demands of every nature on account of injury to or loss of property of the Industry, or the property of such other persons in the possession or under the control of the Industry, as above mentioned, which may be caused by, or be incident to fire, whether set out by the engines, cars or other machinery of the Railroad, or in any other manner.

(e). The Industry agrees to keep the right of way for said sidetrack free of all commodities, rubbish, trash or other objects which may prove a danger to those engaged in the operation of said Railroad; and will indemnify the Railroad from all claims and demands which may be made against it by reason of any loss, damage or injury growing out of, or caused by the failure of the Industry to keep the right of way for said sidetrack free from obstructions and objects as aforesaid.

9. ROUTING.

(a). The Industry will, so far as it legally may, cause all shipments to or from the location referred to herein to be routed over the lines of said Railroad and its connections, unless the charges for such shipments over the lines of the Railroad and its connections are higher than the lawfully published rates for like transportation of similar shipments over the lines of other railroad companies.

10. CANCELLATION, TERMINATION AND REMOVAL.

(a). It is expressly understood and agreed that if the Industry fails to keep and perform any of the covenants, agreements, terms or conditions, hereinbefore set forth to be kept and performed by the Industry, then the Railroad reserves the right to terminate this agreement upon thirty days' written notice to the Industry.

(b). Unless terminated as hereinbefore provided, this agreement shall continue in force for the period of one (1) year, and thereafter, until terminated by either party hereto upon thirty days' notice in writing to the other party.

(c). Upon termination of this agreement the Railroad shall have the right to enter upon the property of the Industry and upon any right of way provided by the Industry and to remove therefrom any or all of the material owned by the Railroad, and shall not be liable to account in any way to anyone for monies paid or expended on account of any of the track or tracks covered by this agreement, nor for any damage resulting from the removal of any or all of the material owned by the Railroad.

(d). Unless terminated as hereinabove provided this agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

11. It is expressly understood and agreed that the rail, angle bars, tie plates and turnout metal material with which the Industry constructed those portions of said sidetrack shown in green on said blueprint, shall be and remain the property of the Railroad, subject to the provisions of a certain lease agreement between the Railroad and the Industry, dated December 6, 1956, and nothing herein contained shall be considered as in any way altering the terms of said lease.

12. Notwithstanding any other provision herein, it is understood and agreed that overhead crusher, eggstone building and lime building are located and maintained by the Industry at sub-standard clearances of 7.2 feet, 7.2 feet and 8.4 feet, respectively, from the center line of adjacent track No. 8, while loading mechanism is at vertical clearance of 18 feet above top of rail of track No. 3, as shown on blueprint attached hereto and made a part hereof. By reason of the additional hazard created thereby Industry shall and does hereby assume entire responsibility for all damage to property or injury to or death of any person or persons, including but not limited to the employees of Railroad, caused by or in any manner arising out of the presence or use of said overhead crusher, eggstone building, lime building and loading mechanism at sub-standard clearance, whether caused by the negligence of Railroad, or howsoever resulting, and Industry further agrees to indemnify and save harmless said Railroad, its successors and assigns from and against all loss, damage, claims, suits or judgment, resulting from or arising out of damage, injury, or death as aforesaid.

Note: The following changes were made in this agreement prior to execution thereof:

Sheet 1: Typewritten.

Article 3 (b): The words "said sidetrack from the switch point to the clearance point" eliminated. The words "the southerly 1947 feet of track No. 3, the southerly 1467 feet of track No. 4, the northerly 1052 feet of track No. 3 and the northerly 862 feet of track No. 8 shown in red on said blueprint" added.

Article 3 (c): The words "that portion of said sidetrack beyond clearance point" eliminated. The words "the 1278-foot intermediate segment of track No. 3, the northerly 150 feet of track No. 4, all of track No. 7, and the southerly 782 feet of track No. 8, shown in green on said blueprint" added.

Article 7 (a): The words "except as hereinafter provided" added.

Article 8 (a): The words "After the completion of said sidetrack" eliminated.

Article 8 (d): The word "construction" eliminated. The word "use" added.

Article 11: Added.

Article 12: Added.

Sheet 4: Typewritten.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly signed, sealed and delivered the day and year first above written.

WITNESSES FOR RAILROAD:

J. H. Jenkins
J. Seachey

Notary Public
My Commission Expires September 30, 1958

WITNESSES FOR INDUSTRY:

Betty J. Miller
Walter H. Fleck

Notary Public

ATLANTIC COAST LINE RAILROAD COMPANY

By J. J. Anderson
General Manager

Attest

W. T. MARRAS Assistant Secretary
ALABAMA AGGREGATE COMPANY,
Division of McCullough Industries, Inc.

By D. L. McCullough (Seal)
President

Attest M. L. Patterson (Seal)
Secretary

BOOK 001 PAGE 043

As to Form

B. B. Vaughan
Superintendent.

by Lessee, Licensee or Industry

Douglas Littlejohn

Division Counsel.

Director

W. A. Spell
Engineer Maintenance of Way.


General Superintendent.

ALABAMA FORM

BOOK 187 PAGE 344

STATE OF ALABAMACOUNTY OF JEFFERSONI, WALTER FLECK, a Notary Public in and for said County and State, hereby certify that D.L. McCULLOUGH, and N.L. PATTERSONwhose names as President and Secretaryrespectively, of the Alabama Aggregate Company, Division of McCullough Industries,

Inc., a corporation, are signed to the foregoing instrument, and who are known to me, severally acknowledged before me this day that, being informed of the contents of the instrument, they as such officers and with full authority executed the same voluntarily for and as the act of the said corporation

Given under my hand and official seal this 11th day of April 1957.W. C. Tewfleck
Notary Public.My commission expires on the 30th day of June 1960.

Form 3519-B-Ala.

ALABAMA FORM

STATE OF N.C.COUNTY OF New HanoverI, A. J. Teaching, a Notary Public in and for said County and State, hereby certify that L. J. Andrews, and M. J. Marshallwhose names as General Mgr. and Asst. Secyrespectively, of the Atlantic Coast Line Railroad Company

a corporation, are signed to the foregoing instrument, and who are known to me, severally acknowledged before me this day that, being informed of the contents of the instrument, they as such officers and with full authority executed the same voluntarily for and as the act of the said corporation

Given under my hand and official seal this 29th day of April 1957.A. J. Teaching
Notary Public.My commission expires on the 30th day of Sept. 1958.

STATE OF ALABAMA, SHELBY COUNTY

I, L.C. Walker, Judge of Probate, hereby certify that the within Agreement
was filed for record the 15 day of June 19 57 at 8 o'clock, PM
and recorded in Deed 187 Page 339, and the mortgage tax of
Deed Tax of .50 has been paid.

L.C. Walker Judge of Probate.