

APPROVED BY	
FORWARDED BY	
DATE	
RECEIVED	
BY	
DATE	

Engineering, Architectural
And/Or Consulting Services
Contract Form PD-58

Order No. _____

PLAINTIFF'S EXHIBIT

ASA-1715

CONTRACT FOR

Design of West Plant Sewer

(Insert name of job)

AMERICAN SMELTING AND REFINING COMPANY'S El Paso

Plant at El Paso, Texas

(Insert town and state)

THIS AGREEMENT, made the 15th day of September, 19 72,
by and between Kistenmacher Engineering Co., Inc. whose address is
6024 Gateway East, El Paso, Texas 79905 (hereinafter called the
"ENGINEER") and AMERICAN SMELTING AND REFINING COMPANY, a corporation of the
State of New Jersey, whose address is 120 Broadway, New York, N.Y. 10005 and
P. O. Box 1111, El Paso, Texas 79999

(Insert address of plant or unit)

(hereinafter called the "Owner").

W I T N E S S E T H:

The Engineer and the Owner agree as follows:

Article 1. Scope of Work

The Engineer shall furnish and perform the various services required for
Preparing plans and specifications for a sewer line from the West Plant
area to the City of El Paso sewer system west of Paisano Drive

as outlined in the specifications listed below. Any attachments referred to
are incorporated herein by reference and made a part hereof.

Kistenmacher Proposal of September 12, 1972

Article 2. Time of Completion

The services outlined above shall be commenced on or about September 19, 1972 and shall be completed on or about October 20, 1972.

Article 3. The Contract Price

In consideration of the performance of the Contract, the Owner agrees to reimburse the Engineer as follows:

Engineer's fee in the amount of \$ 2,650.00 for performance of work plus the reimbursable costs specified as follows:

As outlined in Appendix "A".

None

Article 4. Progress Payments (If Specified under Article 3)

The Owner shall make payments on account of this Contract as follows:

(a) As early as possible after the first day of each calendar month commencing with _____ 19__ the Engineer shall present to the Owner a statement, on forms provided or approved by the Owner, of all reimbursable costs incurred during the preceding month. This statement shall be accompanied by copies of supporting invoices and such copies of payrolls, or totalization and distribution of same, as may be required, lists of plant and equipment used with rates for same, together with any other information as the Owner may require to allow it to verify the accuracy of the statement. As soon as practicable after receipt of such statement and upon verification thereof the Owner shall pay _____% of such amount to the Engineer.

Article 5. Acceptance and Final Payment

(a) Upon receipt of written notice in the form of a final certificate from the Engineer that the work is ready for final inspection and acceptance the Owner shall promptly make such inspection, and if and when it finds the work acceptable under the Contract and that the work provided for in this Contract has been completed, the entire balance due the Engineer, including the amount of his fee, shall be paid by the Owner to the Engineer within 30 days after the date of acceptance of the work by the Owner.

(b) Before issuance of the final certificate, the Engineer shall submit evidence satisfactory to the Owner that all payrolls, material bills, and other indebtedness connected with the work have been paid, and that the work is free of all liens and encumbrances. In case of disputed indebtedness or liens the Engineer may submit, in lieu of evidence of payment, a surety bond in form satisfactory to the Owner, guaranteeing payment of all such disputed amounts.

Article 6. Insurance

The Engineer shall maintain such insurance as will indemnify it against claims made under Workmen's Compensation Acts and against any other claims for damages for personal injury, including death, which may arise from operations under this contract, whether such operations be by the Engineer or any of its subcontractors or anyone directly or indirectly employed by either of them.

Prior to commencement of this work the Engineer shall file with the Owner completed certificates of insurance in the form of the "Insurance Certificate" attached and shall provide insurance coverage in amounts not less than those stated herein with companies acceptable to the Owner.

It is understood Engineer will maintain insurance coverage in such amounts and for such periods as are sufficient to protect Owner from any liability as a result of the professional errors and/or omissions of the insured (Engineers/Architects) or any person employed by the insured, and will furnish evidence of the same to Owner.

Article 7. Title to the Work

All drawings, specifications survey reports, models and other items included in the scope of the work completed or in the course of completion and furnished by the Engineer shall be and become the property of the Owner at the

completion of this agreement or upon its cancellation, and the said items may be used by the Owner entirely at its own discretion as it may deem advisable at any time. Drawings, specifications survey reports and other data shall at all times be treated as confidential by the Engineer. This clause shall survive the termination for any reason of this agreement.

The Engineer agrees that the Owner shall have full and exclusive mechanical, process and design patent, copyright, and/or Trademark rights in this country and abroad on all of the Engineer's work for the Owner insofar as they pertain to the services or work being performed hereunder, without extra cost to the Owner. The Engineer agrees at the Owner's request to cause the person or persons making any invention or inventions in connection with the conception or development of the Owner's processes, products or plants hereunder, to sign all papers necessary for Letters Patent on said invention or inventions which Owner shall have prepared, provided said person or persons shall be in the employ of the Engineer upon presentation of said papers for signature, and to execute any and all assignments necessary to vest all right, title and interest in and to said inventions, applications and patents in the Owner. It is understood that no costs or expenses of any kind in connection with obtaining the aforesaid patents, application and assignments shall be imposed on or borne by the Engineer or by any person associated with the Engineer.

Article 8. Status of Engineer and its Personnel

It is understood and agreed that the status of the Engineer hereunder is that of an independent contractor, that the personnel of the Engineer performing services or work hereunder shall under no circumstances be deemed to be employees of the Owner, and that any workmen's Compensation Insurance coverage for such personnel will be the sole responsibility of the Engineer. Notwithstanding the aforesaid understanding, the general instructions of the Owner in connection with accomplishing the work to be done hereunder shall be followed by the personnel of the Engineer.

During tenure of contract, Owner shall have prerogative to request changes in personnel of Engineer's employees assigned to this work when in the opinion of the Owner their work is not conducive to required scope of work.

Article 9. Compliance with Laws and Ordinances

If for any reason the Engineer's or any of its Subcontractor's employees or agents acquire a status imposing liability on the Owner for employer's contributions or taxes under the Federal Insurance Contribution Act, the Federal Unemployment Tax Act, any State Unemployment Tax Act, or any other Act, Statue or Regulation thereunder, the Engineer shall be exclusively liable for, and shall indemnify the Owner against, the same and it agrees to comply with all such laws and regulations so as to relieve the Owner from any and all liability therefor and from the responsibility of making reports or keeping records with respect thereto.

Article 10. Owner's Right to Terminate Contract

If the Engineer should commit an act of bankruptcy, or make an assignment for the benefit of creditors, or if a receiver of the Engineer's property should be appointed, or if the Engineer should file a voluntary petition in bankruptcy, or if a trustee of the Engineer's property should be appointed under the reorganization or readjustment provisions of the Bankruptcy Act, or if the Engineer at any time should refuse or neglect to supply sufficient properly skilled

personnel, or if he should fail to make prompt payments to subcontractors, or disregard applicable laws or ordinances or the instructions of the Owner, or should he otherwise violate any provision of the contract and fail to correct such violation promptly after service of written notice thereof by the Owner, then the Owner may, without prejudice to any of its other rights or remedy in the premises, terminate the employment of the Engineer, take possession of drawings, specifications, surveys, models, etc. and finish the work by whatever method the Owner may deem expedient.

Article 11. Arbitration

In case of any dispute or difference which may arise as to whether the work done hereunder shall fail to comply with the plans and specifications or with any of the provisions of this contract, such dispute or difference and the question of full performance of the Engineer of the obligations herein imposed shall be submitted to a board or arbitration to be selected in the following manner:

Unless otherwise provided by law, the parties may agree upon one arbitrator; otherwise, there shall be three, one named in writing by each party, and the third chosen by these arbitrators. Provided, however, that if either of the parties hereto shall fail to name an arbitrator within ten (10) days after being requested in writing to do so by the other, the arbitrator so named by the latter shall be and act as the sole arbitrator; and provided further, that in the event each of the parties names an arbitrator but the arbitrator so selected shall fail to select a third within ten (10) days, then he shall be designated by the presiding officer of the Bar Association nearest the location of the work. If there be more than one Bar Association in such locality, it shall be the senior association or the one longest established. The decision of the arbitrator or arbitrators shall be in writing and shall be final.

Article 12. Subcontracts

The Engineer will not employ any Subcontractor without the prior written approval of the Owner and the Engineer will require each such Subcontractor to execute a contract in writing containing provisions similar to all provisions of this contract which are in any way applicable to such Subcontractor and which will obligate such Subcontractor to comply with and perform all such provisions. Nothing herein shall be deemed to create a contractual relationship between any such Subcontractor and the Owner.

Article 13. Assignment

The Engineer shall not assign or sublet this contract in whole or in part nor shall the Engineer assign any moneys due or to become due hereunder without the prior written consent of the Owner.

Article 14. Applicable Law

This contract shall be construed and enforced in accordance with the laws of the state where the work hereunder is to be performed.

Article 15. Entirety Clause

This contract constitutes the entire agreement between the parties, and except as may be specifically set forth herein no changes can be made except by an agreement in writing duly executed by the parties or their duly authorized agents.

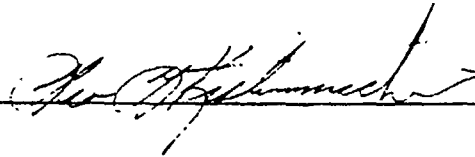
Article 16. Additional Provisions

(Add such additional provisions, if any, as the particular job required.)

KISTENMACHER ENGINEERING CO., INC.

Engineer

By



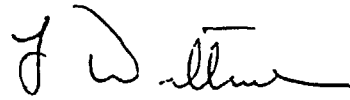
Title

President

AMERICAN SMELTING AND REFINING COMPANY

Owner

By



Title

Purchasing Agent