

COPY

MAY 2 1977

April 27, 1977

Mr. E. J. O'Connell, Vice President
Kaiser Engineers, Inc.
300 Lakeside Drive
Oakland, California 94666

Re: Order 17H-0837

Subject: Contract - El Paso Ore Handling & Lead
Sintering Project

Dear Mr. O'Connell:

I am enclosing for your file one fully executed copy of the Contract covering the engineering and procurement services for our El Paso Ore Handling and Lead Sintering Project.

You will note order number 17H-0837 has been assigned to this Contract for record purposes and all future correspondence, invoices, etc. should clearly indicate this reference. In addition, should there be any change in the estimated completion date of December 31, 1977 for your portion of the work, I request you promptly notify me.

Very truly yours,

(Original Signed by
WILLIAM A. BENNIS

William A. Bennis

WAB/HH
Enc.

cc: K.D. Loughridge - W/o Enc.
L.C. Travis - W/o Enc.
H.E. Kelshaw, Jr. *
E.H. Haug (✓)
W.R. Kelly (✓) W/Enc.
L. Green (✓)

* The enclosed original fully executed contract should be placed in your permanent file.

W.A.B.

DMART 288

CONTRACT

EL PASO ORE HANDLING AND LEAD SINTERING PROJECT

THIS AGREEMENT, made as of the 23rd day of February, 1976 by and between KAISER ENGINEERS, INC., a corporation of the State of Ohio, whose address is 300 Lakeside Drive, Oakland, California 94666 (hereinafter called the "Contractor") and ASARCO INCORPORATED, a corporation of the State of New Jersey, whose address is 120 Broadway, New York, N.Y. 10005 (hereinafter called the "Owner").

WITNESSETH:

The Contractor and the Owner, for the consideration hereinafter named, agree as follows:

ARTICLE 1 - SCOPE OF WORK

Subject to Owner's elections and authorizations provided for below, the Contractor shall furnish all plans, engineering, procurement (as required), labor, materials, transportation, tools, equipment and other facilities, except such items as are being furnished or furnished and installed by the Owner, required for the design/engineering, construction, installation and modification of facilities at Owner's El Paso plant, all to be in accordance with the requirements and provisions hereof and of the attached "General Provisions", the description of facilities set forth below, and the following documents attached to such General Provisions, all of which are incorporated herein and by reference made a part hereof and together with this Agreement are hereinafter referred to collectively as the "Contract":

- EXHIBIT "A" - TRAVEL AND SUBSISTENCE ALLOWANCE POLICY

EXHIBIT "B" - DEFINITION OF DEFINITIVE ESTIMATE OF TOTAL COST

EXHIBIT "C" - DEFINITION OF TYPE III ESTIMATE

EXHIBIT "D" - INSURANCE COVERAGE SUMMARY

The facilities with respect to which said work is to be performed are generally described as follows (sometimes hereinafter called the "Project"):

1. Car unloading building and associated plant trackage.
2. Collecting and delivery conveyor system for lead and copper concentrates.
3. Bedding building and reclaim system.
4. The sinter plant including, impactor, mixer, pelletizing drum, sinter machine, roll crushers, and associated conveying systems and surge bins.
5. Sinter charge and coke bins, weighing equipment, blast furnace charge car locomotive, and delivery system to blast furnace elevator.
6. The required dust collection systems for each of the items above.
7. Electrical distribution for the above items from existing and new substations provided by others.
8. Required utilities for items 1 through 6, including potable water, contact water, fire water, sewage, fuel oil distribution, plant air and natural gas distribution.
9. Demolition and rerouting of certain buried plant piping systems and routing of the new strong gas flue through the existing bedding buildings to the strong gas fan provided by others.
10. Intercom system between items 1, 3, 4 and the copper roaster building.
11. Modification to existing D & L baghouse.
12. Modification to existing coke conveying system.

Subject to Owner's election and written authorization to proceed, Contractor shall perform the following work for the Project:

A. Capital Cost Estimate (Phase I)

The Phase I preliminary engineering work for the capital cost estimate will be performed in close cooperation with Owner's staff and will include:

1. Process flow sheets.
2. Process criteria.
3. Plot plans.
4. General arrangements: plans and sections.
5. P. & I.D.'s
6. One-line electrical drawings.
7. Type III capital cost estimate as defined in Exhibit C hereto.
8. Schedule for detail engineering, procurement, and construction.

B. Detail Design Engineering and Procurement Assistance (Phase II)

In its performance of the Phase II work, Contractor will prepare and provide the following:

1. Design criteria.
2. Engineering calculations.
3. Detail design drawings.
4. Specifications for engineered equipment.
5. Construction specifications for bid packages.
6. Evaluation and recommendations for purchase of engineered equipment and preparation of specifications for construction packages.
7. Procurement assistance:
 - (a) preparation of an approved bidders list for each item;
 - (b) preparation of suitable requisitions for each item;
 - (c) solicitation of bids from the bidders list;

- (d) receipt of the bids and preparation of a commercial and a technical analysis of the bids for each item including a recommendation for purchase;
- (e) preparation of the purchase order, on Contractor's letter-head and Contractor to sign as Agent for the Owner, to the successful bidder in each case;
- (f) expediting of the receipt of all engineering information and drawings from the vendors that are required for completion of the engineering assignment and for start-up of construction in the field.
- (g) expediting and inspection of machinery and materials at vendors' plants as may be required;
- (h) Monthly progress reports.

C. Field Construction (Phase III)

In its performance of the Phase III work, Contractor shall provide or cause to be provided all field construction and home and branch office support services necessary for the construction and installation of the Project. These services shall include the following:

Construction services including the furnishing of field management, materials, equipment, labor, labor supervision, field accounting, field engineering, field inspection, field purchasing and expediting, negotiation monitoring and supervision of subcontracts issued, receiving and checking of materials and equipment, warehousing, startup assistance and related work required at the site.

Effective as of the date of this Contract, Owner elects to have Contractor perform the Phase I work and authorizes Contractor to do so.

Although this Agreement is stated to be made as of February 23, 1976, the parties recognize that prior to the date of actual execution of this Agreement the Phase I work set forth above had been completed and the results embodied in a report entitled "CAPITAL COST ESTIMATE for Ore Handling and Sinter Plant, El Paso, Texas, ASARCO Incorporated Report No. 76-58-RE", transmitted to Owner by Contractor's letter KEI-59-AS of July 8, 1976 to Owner, such report and letter being hereinafter collectively referred to as the "Capital Cost Estimate Report". Effective as of July 8, 1976 the facilities with respect to which Phase II and Phase III work is to be performed generally shall be as set forth in Section III entitled "DESCRIPTION OF FACILITIES" and the drawings set forth in Section VI entitled "APPENDIX" of the Capital Cost Estimate Report, subject to such changes therein as are necessitated by Contractor's further engineering evaluations. Effective as of July 8, 1976, Owner elects to have Contractor perform Phase II work and authorizes Contractor to do so. The estimated completion date for Phase II work is December 31, 1977. However, Contractor shall not perform Phase III work unless and until Owner elects to have Contractor perform Phase III work.

Contractor shall not be responsible for any lack of conformity of any such facilities, or the design or other work of Contractor relating thereto, with environmental criteria or standards required by OSHA, the Texas Air Control Board or other

federal, state or local authority or with other criteria or directions of Owner if such conformity is not reasonably attainable in accordance with known and feasible engineering controls, technology and operating practices in commercial use. Accordingly, Contractor shall not ultimately bear any costs, fines or damages resulting from any such non-conformity for which it is not responsible and any such costs, fines or damages paid by Contractor shall be reimbursed to Contractor by Owner, notwithstanding anything apparently to the contrary appearing elsewhere in the Contract.

Contractor shall, however, promptly upon becoming aware thereof, notify Owner of any such potential lack of conformity, whereupon Owner shall, with such assistance from Contractor as Owner may reasonably request, attempt to demonstrate compliance with the regulation in question or to obtain deviations from such criteria or standards required by governmental authority or to make required changes in other criteria or directions of Owner to eliminate such non-conformity, with the cost of such assistance by Contractor to constitute a reimbursable cost to Contractor under Article 3 of this Agreement.

Contractor is aware of and has analyzed and taken into account such existing and proposed OSHA requirements as are known to Contractor relating to permissible lead exposure and methods

of compliance therewith. In its professional judgment, the design and proper operation of the facilities to be installed will limit employee exposure to airborne concentrations of lead to the maximum extent achievable based on such feasible engineering controls, technology and operating practices in commercial use as are known to Contractor.

ARTICLE 2 - TIME OF COMPLETION

In the event Owner authorizes Contractor to perform Phase III work, the estimated completion date for such work shall be mutually established by Owner and Contractor.

ARTICLE 3 - THE CONTRACT PRICE

(a) In consideration of the performance of the Contract, the Owner agrees to reimburse the Contractor for all costs and expenses incurred by the Contractor defined in Paragraph (b) below as "Reimbursable Costs" and to pay the Contractor the fees provided for in (d) below.

(b) The words "Reimbursable Costs" as used herein shall mean the cost to the Contractor of the following items used or consumed or incurred in performance of the work hereunder, excluding, however, any of such items supplied by Owner:

1. Site job office and all necessary temporary facilities such as buildings, use of land not furnished by the Owner, access roads and utilities. The costs of these items include construction, furnishings and equipment, maintenance during the period that they are needed, and such demolition and removal as may be ordered by the Owner. Title to all such facilities, except those supplied or obtained on a rental basis with the Owner's consent, shall be and remain in the Owner.

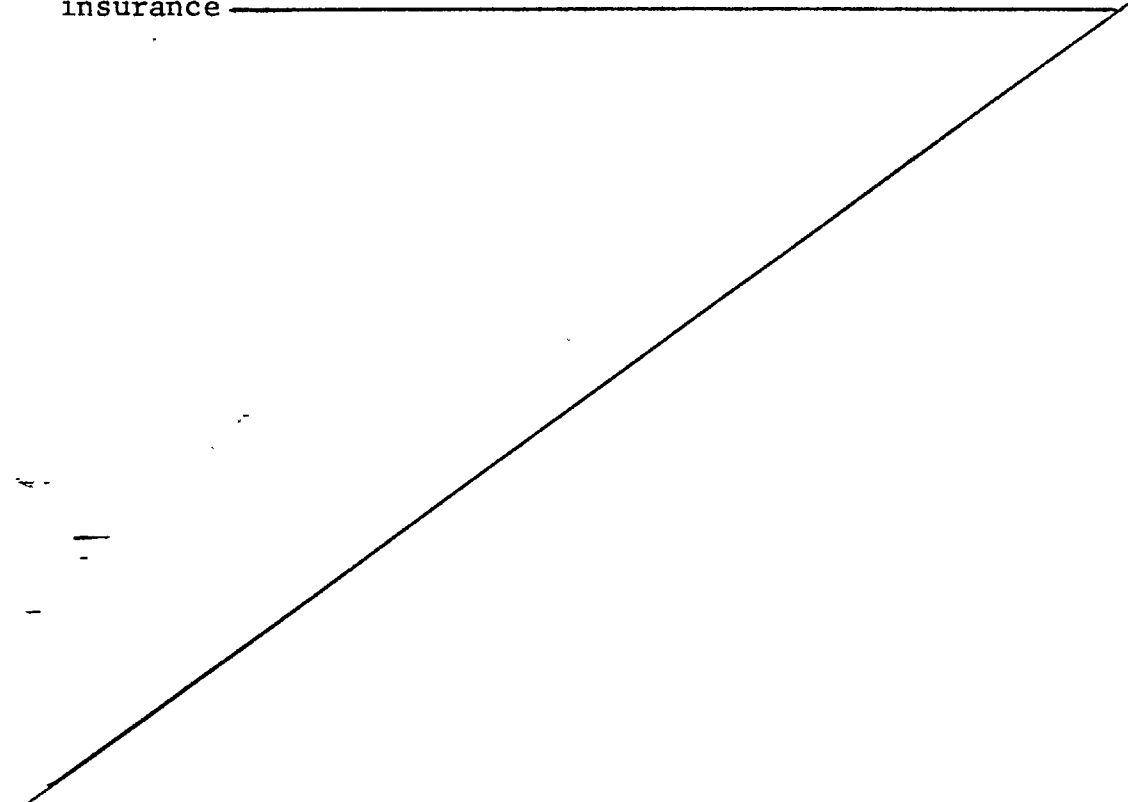
2. All materials whether for temporary or permanent construction.
3. Supplies, services and utilities, fuel, lubricants, power, light, water and telephone service.
4. Rental for plant and equipment which, with the consent of the Owner, is used on a rental basis, at rental rates and terms of use approved by the Owner. If the rental rates do not include an allowance for running repairs and repair parts needed for ordinary maintenance of the plant and equipment, then such items of cost are to be included as Reimbursable Costs.
5. The actual cost of all necessary tools, plant, machinery and equipment purchased for the work by the Contractor; and the cost of operation, maintenance and repair (including supplies and spare parts) of all such items, whether purchased for the work by the Contractor or supplied for the Contractor's use by the Owner. Title to all of such items shall be and remain in the Owner and they shall be turned over to the Owner, upon completion of the work, or upon termination of this Contract.
6. All transportation costs on tools, equipment and materials.
7. All salary and wage costs of Contractor's personnel permanently assigned to the field for the performance of the work, exclusive of corporate officers unless assigned full time to the work. Salary and wage costs of field personnel who are not covered by union agreement shall include salaries and wages, payroll taxes, workmen's compensation and employer's liability insurance, group life, hospital and medical insurance, retirement plans and all sick leave, vacation, holiday and excused absence time for such personnel. Salary and wage costs of Contractor's field personnel, who are covered by union agreements shall include wages and salaries of such personnel, payroll

taxes, workmen's compensation and employer's liability insurance and Contractor's costs incurred for vacations, sick leave, pensions and other employee benefits in accordance with such union agreements. As referred to herein and elsewhere in this Contract "corporate officers" shall mean the Chairman of and any other member of the Board, the President, any Vice Presidents, the Secretary, the Treasurer, and the Controller of Contractor.

8. An amount equal to 2.26 times the salaries and wages of Contractor's home and branch office personnel (including personnel on the payrolls of Contractor's parent company and affiliated corporations on loan for the performance of the work), exclusive of corporate officers, salaried personnel permanently assigned to the field (assignments expected to continue for six (6) continuous months or more), and accounting personnel unless assigned full time to the work, for all time expended in the performance of the work. Contractor agrees that this amount shall constitute the total amount to which he is entitled to reimbursement hereunder for his cost of all salaries and wages, payroll taxes, workmen's compensation and employer's liability insurance, group life, hospital and medical insurance, retirement plans and all sick leave, vacation, holiday and excused absence allowances for such personnel and all related

home and branch office overhead costs including rent, light, heat, water, furniture and equipment, office supplies and local telephone services and accounting expense.

9. Premiums on bonds and all premiums on public liability, property damage and other insurance carried by Contractor in connection with the work and which is normally carried by Contractor for similar work (exclusive of the all-risk insurance to be carried by Owner as provided below) and premiums on other insurance coverage authorized or required by the Owner. The Owner shall obtain all-risk insurance _____



covering the construction of the Project with a policy written in the name of Owner, and Contractor and subcontractors, and Owner's responsibility for any loss sustained under said all-risk policy shall be as set forth in ARTICLE 21 of the General Provisions.

10. All sales, use, excise, privilege, business, occupation, gross receipts and all other taxes paid by the Contractor in connection with the work, but excluding income taxes based on net income derived from this Contract.

11. All fees for permits, licenses and easements, which are required for the prosecution of the work.

12. The actual cost to the Contractor of transportation, travel, living accommodations and board furnished in respect of field personnel in connection with the performance of this Contract, and all actual costs of transportation and travel incurred by home and branch office personnel (including corporate officers) who are required to travel in connection with the performance of the contract work which conform to the policies and practices set forth in Exhibit "A".

13. All subcontracts approved by the Owner which are not paid directly by Owner to subcontractor.

14. Losses, damages, costs or expenses of every kind, or any combination thereof, not compensated to Contractor by insurance or otherwise, actually incurred or sustained by the Contractor in connection with the work, including but not limited to any arising out of Contractor's obligations to Owner under this Contract; provided, however, that such losses, damages, costs and expenses incurred or sustained by Contractor due to the failure of the corporate officers of Contractor or a representative of Contractor having supervision

of the work as a whole (or also, Contractor's Resident Manager at the field job site in the event Owner elects and authorizes Contractor to proceed with Phase III work) to exercise the standard of care normally exercised by duly qualified persons in the performance of comparable work shall be reimbursable to Contractor only to the extent the total amount of all such losses, damages, costs and expenses due to all such failures exceeds the aggregate amount of Contractor's fees provided for in Article 3(d) and payable under Article 3(a) of this Agreement. Without limiting the generality of the foregoing, such costs, losses, damages and expenses shall include costs of reconstruction, replacement or correction of work performed by Contractor and Contractor shall be paid for such services, in addition to such costs, an additional fee proportionate to the aggregate amount of Contractor's fees provided for under Article 3(d) and payable under Article 3(a); provided, however, that any such costs which are due to the failure of individuals referred to in the above proviso to exercise the standard of care referred to therein shall not be taken into account in determining the amount of such additional fee.

15. Out-of-pocket expenses, such as telegrams, telephone charges, consultant's fee and other items incidental to

the work.

16. Move-in, move-out costs of Contractor's personnel relocated by reason of performance of work under this Contract, including traveling, transportation and moving expenses incurred in accordance with the policies set forth in Exhibit "A".

17. An amount equal to twenty-five percent (25%) of the total salary and wage costs reimbursable under Paragraph (b) 7 above on account of salaried field personnel to cover home and branch office overhead costs allocable to such field personnel.

18. Any other cost not specifically listed under this ARTICLE 3 (b)

but covered elsewhere in this Contract and, subject to the approval of Owner (which approval shall not unreasonably be withheld), such other costs which are reasonable and necessary to the performance of the Contract work.

In determining Reimbursable Costs, Owner shall be given credit for the following items:

- i. Such discounts on invoices as may be reasonably obtainable provided that the Owner advances sufficient funds to pay the invoices within the discount period.
- ii. Any amounts received and retained by Contractor on account of sale by Contractor of materials, tools or equipment the cost of which has been reimbursed by Owner and taken over by the Contractor by arrangement with the Owner for Contractor's sale at the completion of the work.
- iii. Any rebates, refunds, returned deposits or other allowances received and retained by Contractor relating to the work.

(c) Reimbursable Costs shall not include, and the Contractor shall not be reimbursed for, the cost of any of the following items incurred by the Contractor:

1. Overhead or general expenses of any kind, except as these may be provided for in Article 3 (b) above.
2. Interest on capital employed either in plant or in expenditures on the work, except as may be provided for in Article 3 (b) above.
3. Contributions, bad debts, entertainment expense.
4. Extra cost of any premium time, or overtime in excess of the regular work week unless written prior approval for the specific premium time or overtime is given by Owner's project engineer or his authorized

field representative; provided that this provision shall not apply to occasional and necessary overtime retroactively approved in writing by such engineer or representative.

(d) Contractor's fees referred to in Article 3 (a) above shall be as follows:

1. Phase I work. For Phase I work, Contractor's fee shall be in an amount equal to twelve percent (12%) of the total amount reimbursable to Contractor for Phase I work pursuant to Paragraph (b) 8 of this Article 3.
2. Phase II work. For Phase II work, Contractor's fee shall be fixed and shall be in an amount equal to one percent (1%) of the mutually agreed Definitive Estimate of Total Cost as defined in Exhibit "B", less the amount of fee paid for Phase I work. A tentative fixed fee amount shall be established by Owner and Contractor upon commencement of the Phase II work to provide a basis for payment of fee pending determination of the fixed fee as above provided.
3. Phase III work. For Phase III work, Contractor's fee shall be fixed and shall be in an amount equal to one percent (1%) of the mutually agreed Definitive Estimate of Total Cost as defined in Exhibit B. A tentative fixed fee amount shall be established by Owner and Contractor upon commencement of the Phase III work to provide a basis for payment of fee pending determination of the fixed fee as above provided.

ARTICLE 4 - TERMS OF PAYMENT

(a) Requests for reimbursement, substantiated by copies of supporting invoices and copies of payrolls or other data, shall be rendered by Contractor to Owner as mutually agreed but at least monthly to cover withdrawals from the revolving fund provided for in paragraph (b) below during the previous period. Such requests shall be due and payable by the Owner within fifteen (15) days after Owner's receipt thereof subject to the provisions of paragraph (b) below.

(b) It is the intention of the parties that the cost of the work will be financed in its entirety by Owner. In order to accomplish this objective, Owner shall from time to time during the course of the work advance funds to Contractor in amounts to be mutually agreed upon to be used by Contractor as a revolving fund in paying Reimbursable Costs specified in ARTICLE 3 hereof, as the same accrue. As payments are made by Owner to Contractor on its requests for reimbursement covering withdrawals from the revolving fund, the amounts so paid shall be deposited by Contractor in said revolving fund to replenish the same. If at any time or from time to time the amount of the revolving fund, in the opinion of the Owner, shall exceed the foreseeable requirements of Contractor, the Contractor shall pay to Owner such portion thereof as will not be needed, and upon completion of the work and full payment to Contractor, Contractor shall pay to Owner the full amount then remaining in the revolving fund. All funds received by Contractor for purposes of said revolving fund shall be deposited in a bank account or accounts clearly showing the special character thereof / Contractor / and shall make all records in connection with such bank account or accounts available to Owner at Owner's request.

(c) Ninety percent (90%) of Contractor's applicable fee, provided for in ARTICLE 3 hereof, shall be paid by Owner to Contractor in monthly installments as it accrues, based on the percentage of completion of the work as determined by Owner from estimates submitted by Contractor.

(d) Within thirty (30) days after completion of the work and the Owner's written acceptance thereof, Owner shall pay to Contractor the unpaid balance of all Reimbursable Costs and the unpaid balance of the applicable fee. Owner shall accept the work with reasonable promptness after completion.

ARTICLE 5 - CONVERSION OF COMPENSATION METHOD

In the event Owner authorizes Contractor to perform Phase II work or Phases II and III work, then, at such time as design is sufficiently complete in Owner's judgment to provide for a definitive scope of the Project and detailed take-offs of materials for estimating purposes, Owner and Contractor shall mutually explore the feasibility of converting the method of compensation under this Contract from the reimbursement of cost plus fixed fee method provided for in ARTICLE 3 to a guaranteed maximum price method of compensation.

ARTICLE 6 - CONTRACTOR'S INSURANCE COVERAGE

Contractor maintains, at the date of actual execution of this Agreement, Comprehensive Public Liability Insurance described in Exhibit "D". Contractor shall not, of its own initiative, cause said insurance to be cancelled or materially changed during the course of its services under this Contract. Contractor shall cause the insurers under said insurance to provide Owner with appropriate certificates evidencing said insurance and providing that cancellation of, or material change in, said policies shall be subject to thirty (30) days' prior notice thereof by the insurer to the Owner.

ARTICLE 7 - 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 8 - COMPLIANCE WITH LAWS AND ORDINANCES

The Contractor shall, except as otherwise expressly provided herein, give all notices and comply with all federal, state and local laws, ordinances, rules and regulations, applicable to the conduct and performance of the work to be performed hereunder. If the Contractor fails to so comply with any such law, ordinance, rule or regulation, he shall bear all costs, fines and damages arising therefrom and shall indemnify and hold Owner harmless, subject, however, to the limitation of liability set forth in Article 36 of the General Provisions. In particular, but without limiting the scope of the foregoing, the Contractor shall, and shall cause any subcontractor to, so comply with the terms and provisions of the Occupational Safety and Health Act of 1970 and all applicable rules, regulations, orders and occupational and health standards promulgated under and issued pursuant to such Act in the discharge of its duties and obligations hereunder.

Irrespective of the foregoing provisions of this Article 8, Contractor shall not ultimately bear and shall be reimbursed by Owner for any costs, fines, or damages incurred in connection with the following:

- a. Citations, fines or proceedings resulting from Owner's conduct.
- b. Citations or proceedings finally dismissed.
- c. Citations or proceedings resulting from Owner's error in judgment or decision.

ARTICLE 9 - GUARANTEE BY KAISER INDUSTRIES CORPORATION

Solely for purposes of the provisions contained in this Article 9, Kaiser Industries Corporation (hereinafter referred to as Guarantor) is executing this document as Guarantor and upon so doing and in consideration of the sum of One Dollar (\$1.00) now paid by the Owner to the Guarantor (the receipt whereof is hereby acknowledged) and other valuable consideration, hereby

directly and unconditionally guarantees to and covenants with the Owner as provided below in this Article 9. The Contractor will duly perform, observe and keep each and every covenant, obligation and agreement in this Contract on the part of the Contractor to be performed, observed and kept in the manner herein specified, and if any default shall be made by the Contractor in performing this Contract, the Guarantor will forthwith perform, observe and keep each and every covenant, obligation and agreement of this Contract in place of the Contractor. In the enforcement of its rights hereunder the Owner may proceed against the Guarantor as if the Guarantor were named as Contractor hereunder. The Guarantor hereby waives any right to require the Owner to proceed against the Contractor or to pursue or exhaust any remedy which the Owner may have available to it before proceeding against the Guarantor. No neglect, forbearance, extensions of time or failure to act of or by the Owner as against the Contractor shall release, discharge or in any way reduce the obligations of the Guarantor hereunder.

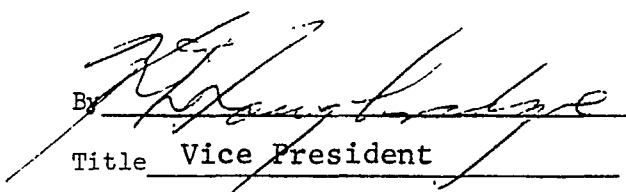
Irrespective of any other provisions apparently to the contrary contained in this Contract, Guarantor may at any time assign its rights and obligations to the Owner under this Article 9, to a purchaser or purchasers of all of the assets or all of the common stock of Contractor, providing such purchaser or purchasers have a total net worth of at least \$25,000,000 at the time of such purchase and provided such purchaser or purchasers assume all of the obligations of Guarantor under the provisions of this Article 9, whereupon Guarantor will have no further obligation to Owner under this Article 9 and Owner shall look solely to such purchaser or purchasers for performance of such obligations.

ARTICLE 10 - 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 herein except by an agreement in writing duly executed by the parties or their duly authorized agents.

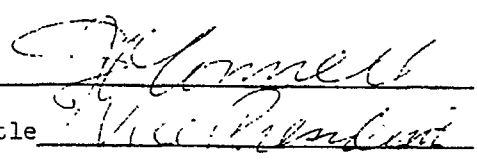
IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first above written.

ASARCO Incorporated

By 

Title Vice President

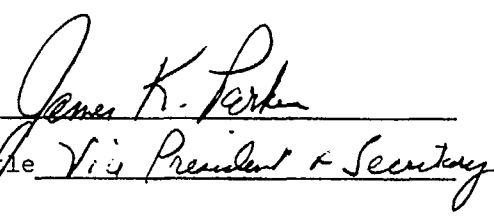
KAISER ENGINEERS, INC.

By 

Title Vice President

GUARANTOR:

KAISER INDUSTRIES CORPORATION

By 

Title Vice President & Secretary

General Provisions of the Contract

ATTACHED to the Agreement between ASARCO Incorporated and
Kaiser Engineers, Inc. dated as of February 23, 1976 ("Agreement").

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GENERAL PROVISIONS

ARTICLE 1 - NOTICE

Written notice shall be deemed to have been duly served if delivered by hand or sent by registered mail, postage prepaid, in each case to the address or addresses of each party set forth on the first page of this Contract or at such other address subsequently designated by either party.

ARTICLE 2 - ORDER OF COMPLETION; SCHEDULES; ESTIMATE OF EXPENDITURES

The Contractor shall complete any portion or portions of the work in such order of precedence as the Owner shall require, and the times of completion of the various portions or divisions of the work will be determined by schedules mutually agreed upon by the Owner and the Contractor.

The Contractor will furnish to the Owner, at any time requested by the Owner, a statement of estimated expenditures to be made during any period, in such form and with such itemization as the Owner may request.

ARTICLE 3 - DRAWINGS AND SPECIFICATIONS

The Owner shall furnish to the Contractor data and process design criteria and other information necessary to provide the basis upon which the Contractor shall design and engineer the Project and the Contractor shall be entitled to rely upon such data, criteria and information in the performance of the Work hereunder.

The Contractor agrees to furnish to the Owner for approval three sets of ~~prints~~ of the following drawings before proceeding with any portion of the Work covered therein:

- a) All of the Contractor's drawings as they become available which are made for the Project.
- b) Any shop drawings, detail sheets or erection diagrams required for

any phase of the Work.

c) Certified dimension sheets, wiring diagrams and performance curves covering any equipment purchased by the Contractor for the Project.

The Contractor shall make any corrections of errors or discrepancies required by the Owner in drawings submitted for his approval. The Owner's approval as to design of such drawings shall not relieve the Contractor of any of its responsibilities under this Contract.

The Contractor also agrees to use its best efforts to furnish to the Owner five sets of operation and installation instructions and parts lists for all equipment furnished by the Contractor, not later than the date the equipment is shipped, including two certified copies of dimension sheets, wiring diagrams and performance curves of same.

Upon completion of the construction work, by whomever performed, the Contractor shall furnish the as-built original drawings and two complete final sets of prints to the Owner.

ARTICLE 4 - MATERIALS, APPLIANCES AND TEMPORARY FACILITIES

Unless otherwise specified, all materials specified (Phase II) or incorporated (Phase III) in the permanent work shall be new, and both workmanship and materials shall be of the best quality consistent with Owner's requirements and availability. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Contractor shall in Phase III construct and maintain all necessary temporary facilities for the completion of the work. Upon completion of the Phase III work all such facilities shall, unless the Owner shall otherwise direct, be removed from the premises and the site cleared. Should the Owner wish to change the type and character of the facilities to conform to continued usage thereof in other construction or operation, it shall be its prerogative

to change and retain any such facilities.

ARTICLE 5 - EMPLOYEES OF CONTRACTOR

If, for any reason, the Contractor's or any subcontractor's employees or agents acquire a status imposing liability on the Owner for employer's contributions or taxes under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, any State Unemployment Tax Act, or any other Act, the Contractor shall be exclusively liable for, indemnify the Owner against, and take such immediate steps as are necessary to change the status of such employee 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.

The Contractor shall at all times enforce strict discipline and good order among his employees, and shall seek to avoid employing on the work any unfit person or anyone not skilled in the work assigned to him.

Adequate sanitary facilities shall be provided and maintained by the Contractor at the Project site for Phase III work.

The Owner shall have the right to approve any key employee for assignment to the Work, and any such employee, once so approved, shall not be removed from such assignment prior to the completion of such work without Owner's approval. Contractor and Owner shall agree as to what constitutes key employees.

The Contractor shall make no representation or indication to its employees or anyone else that they will be employed or have any preference in employment by the Owner at the plant where the work is undertaken or at any other plant of the Owner.

ARTICLE 6 - PATENTS

The Contractor shall use its best efforts to obtain from the Contractor's

material and equipment vendors and from any licensor of Contractor an indemnification to save the Owner and the Contractor harmless from all claims growing out of any patent infringement or claims thereof arising from the Owner's use of any such equipment, material, process or work in the Project to the extent that such indemnification is reasonably obtainable, and the Contractor's liability in the latter case shall be limited to using its best efforts to obtain such indemnification and subject to the limitation of liability set forth in Article 36 of the General Provisions.

In implementation of the foregoing paragraph, Contractor will use its best efforts to include the following standard patent indemnity provisions in all purchase orders for goods or services hereunder, with such modifications thereof as are acceptable to Owner:

"Seller represents that it has fully investigated all specifications, including any furnished by Purchaser, in connection with the goods or services, and based on such investigation and its past experience and superior knowledge with respect to such goods or services, has determined that the production or rendering thereof will not infringe any patent, trademark, or copyright. Seller warrants to Purchaser and its successors in interest that the sale or use of the goods and any services covered by this order, whether manufactured or rendered in accordance with Purchaser's specifications, or otherwise, do not and will not infringe upon any patent, trademark or copyright, and Seller shall indemnify and hold Purchaser and its successors in interest free and harmless from and against any and all claims, demands, costs and liabilities, including legal expenses, arising out of any such infringement or claim of infringement. Purchaser is relying upon the experience, skill and superior knowledge of Seller with respect to the goods and makes no representation that Seller will be safe in manufacturing the goods or rendering the services as required under this order. In no event shall Purchaser or its successors in interest be liable to Seller for any patent, copyright or trademark infringement or claim thereof."

In the event Contractor in the actual performance of this contract with Owner is notified in writing by any third party of the necessity for acquiring a patent license or immunity under any patent or proprietary right which is not acquired pursuant to the aforementioned patent indemnity provision, Contractor will promptly notify Owner in writing thereof and promptly provide

Owner with all relevant facts. The foregoing shall constitute the only obligations of Contractor to Owner with respect to patent rights of third parties.

ARTICLE 7 - PROTECTION OF THE PUBLIC AND OF WORK AND PROPERTY

For the Phase III work, the Contractor shall provide and maintain all necessary watchmen, barricades, red lights and warning signs, and take all necessary precautions for the protection and safety of employees on the work, of all other persons and of adjacent private and public property. The Contractor at all times shall maintain adequate protection of the work from damage and shall protect the Owner's property and all persons thereon from injury, damage or loss by reason of any act or omission of the Contractor or any subcontractor.

In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor is, without special instructions or authorization from the Owner, hereby authorized to act at Contractor's discretion to prevent such threatened loss or injury. The Contractor shall also so act if so instructed by the Owner.

ARTICLE 8 - INSPECTION OF WORK

During the course of the work, the Owner and its representatives shall at all times have access to the work and the Contractor shall provide safe and proper facilities for such access and for inspection.

If the specifications, the Owner's instructions, law, ordinances, or any public authority, require any item of material, equipment or work to be specifically tested or approved, the Contractor, in the course of the Phase III work, shall give the Owner timely notice in writing of its readiness for inspection, and if the inspection is by another authority than the Owner, of the date fixed for such inspection. Inspections by the Owner shall be promptly made, and where practicable at the source of supply.

If any work should be covered up before examination by Owner without approval or consent of the Owner, it must, if required by the Owner, be uncovered for examination and properly covered again at the Contractor's expense. Even though the Owner has examined a particular item of work, the Owner may order re-examination of such work, and if so ordered, the work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract, the Owner shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract, the Contractor shall pay such cost, subject to the limitation of liability set forth in Article 36 hereof.

ARTICLE 9 - CONTRACTOR'S COVENANTS; SUPERVISION AND SUPERINTENDENCE

The Contractor recognizes the relationship of confidence established between the Contractor and the Owner by this Contract which is based on a cost-plus-fee arrangement. The Contractor covenants to use its best skill and judgment in performing the work, to do such work at the lowest cost practicable, and to perform all such work in a workmanlike manner with efficiency and diligence.

The Contractor shall maintain a competent staff at all times to supervise the work. The Contractor shall submit to the Owner for approval, prior to the time the Contractor begins performance of the work, a complete organization chart of all key personnel that the Contractor proposes to employ at the site for Phase III work.

The Contractor shall keep on the job-site during Phase III work, a competent superintendent and any necessary assistants, all satisfactory to the Owner. Directions by the Owner may be given to the superintendent and shall be binding on the Contractor. Directions shall be confirmed in writing upon written request of the Contractor.

The Contractor shall use its best judgment and skill in dealing with labor matters, and take all reasonable steps to avoid labor disputes. In the event of any strike or threat of strike, slowdowns, featherbedding, or other like practices during the Phase III work, the Contractor shall apprise the Owner of all relevant facts and implications of the particular labor problems involved, and shall consult in good faith with the Owner in an endeavor to reach a mutually satisfactory solution to such labor problem and, so far as reasonably possible, to protect the Owner against delays or increases in the cost of the work or damage or losses to its other operations.

ARTICLE 10 - QUALIFICATION AND PERFORMANCE OF CONTRACTOR'S EMPLOYEES

The Contractor shall use its best efforts at all times to supply a sufficient number of skilled workmen to diligently pursue the Phase III work. All Phase III workmanship and materials shall conform to all codes, rules, regulations and ordinances applying thereto. Where required by such codes, rules, regulations and ordinances, all workmen engaged in such work shall present evidence by certificate, or otherwise, that they are qualified to do the work in conformity with such codes, rules, regulations and ordinances. If any conflict occurs between the above-mentioned codes, rules, etc., and the specifications or the drawings, the code requirements shall govern.

ARTICLE 11 - CHANGES

(a) Owner may at any time by written order or authorization issue instructions making changes, additions or deletions in the plans and specifications relating to the work hereunder and within the general scope thereof. Contractor shall take cognizance of such changes, additions and deletions in performance of its work hereunder. Subject to the provision of paragraph (b) below, if such instruction(s) is issued after the Definitive Estimate of Total Cost is established and results in a material increase or decrease in the amount or character of the Phase II or Phase III work to be done under this Contract, the applicable Fixed Fee shall be equitably adjusted by the proportion such changes, additions or deletions increase or decrease the cost of the work. As soon as practicable after Owner's changes, additions or deletions which result in such material increases or decreases, Owner and Contractor shall agree on the amount of any net increase or decrease in the amount of the Applicable Fixed Fee.

No changes, additions or deletions shall be made except by written order of the Owner, and no claim for reimbursement for the costs incurred in performance thereof, or for adjustment in the Contractor's fee or of the time for completion,

shall be valid unless the change, addition or deletion was so ordered.

If the Contractor, in the course of the work, finds any discrepancy between the plans and the physical conditions encountered or any errors or omissions in plans or in the layout as given by survey points and instructions, the Contractor shall immediately inform the Owner, in writing. After such discovery no work shall be done by the Contractor involving such discrepancy, error or omission until authorized by the Owner; otherwise it will be done at the Contractor's risk subject to the limitation of liability set forth in Article 36 hereof. If the correction of such discrepancies, errors or omissions involves an increase or decrease in costs of completion, the Contractor's fee shall be adjusted accordingly in the manner provided above as in the case of a change in the work.

(b) The Fixed Fees provided for herein shall not be adjusted because of errors or omissions in computing the estimated cost of facilities or the estimated time for completion thereof, nor shall it be adjusted because Owner elects to furnish certain of the services described in ARTICLE 1 of the Agreement.

ARTICLE 12 - DEDUCTION FOR UNCORRECTED WORK

If the Owner deems it inexpedient to correct work that has been damaged or that was not done in accordance with the Contract, such work shall not be corrected. Subject to the limitation of liability set forth in Article 36 hereof, except in the case of damage to the work which does not result from the fault or neglect of the Contractor or any subcontractor, or of the employees of the Contractor or any subcontractor, there shall be deducted from the Cost of the Work for which the Contractor is to be reimbursed an amount to compensate the Owner fully for such damage or non-compliance, and a proportionate reduction shall be made from the Contractor's applicable fixed fee based on the ratio of such deduction to the

Definitive Estimate of Total Cost upon which such fee was based.

ARTICLE 13 - CORRECTION OF WORK BEFORE FINAL PAYMENT

At any and all times before final payment, the Contractor shall promptly remove from the premises all materials, whether incorporated in the work or not, and take down all portions of the work, condemned by the Owner as failing to meet contract requirements. The Contractor shall promptly replace and re-execute the Contractor's own work in accordance with this Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Contractor does not remove such condemned work and materials within 10 days after written notice, the Owner may remove them and may store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal within ten days' time thereafter, the Owner may, upon ten days' written notice, sell such materials at auction or at private sale and shall pay to the Contractor the net proceeds thereof, after deducting all the cost and expense of removal that should have been borne by the Contractor. The Contractor waives all rights to claim damages for sale of materials at auction or private sale.

The foregoing provisions of this Article 13 are subject to the limitation of liability set forth in Article 36 hereof.

ARTICLE 14 - CORRECTION OF WORK AFTER FINAL PAYMENT

(a) Neither the final certificate nor final payment nor any provision in this Contract shall relieve the Contractor of liability for the correction of faulty workmanship performed by it. At Owner's request at any time within one year following initial operation of the plant, Contractor agrees to remedy such faulty Phase II or Phase III workmanship at its own expense, subject to the

limitation of liability set forth in Article 36 hereof. Providing such corrections are due to Contractor's negligence or willful act, the Owner shall give notice of observed defects with reasonable promptness.

(b) Provisions approved by Owner concerning warranties and guarantees of work performed by Contractor's subcontractors and vendors, and concerning indemnities, will be included in each applicable subcontract and purchase order for the benefit of Owner, and Contractor shall take such appropriate action as Owner may request in respect of the enforcement of subcontractors' and vendors' warranties, guarantees, and indemnities.

ARTICLE 15 - OWNER'S RIGHT TO TERMINATE CONTRACT

Owner may at any time terminate Contractor's services under the Contract for any reason whatsoever by giving Contractor not less than fifteen (15) days' written notice of termination setting forth the effective date of termination. In the event of such termination, Owner shall pay to Contractor (a) its Reimbursable Costs for services performed prior to the effective date of such termination, less payments previously paid by Owner on account thereof, (b) all other reasonable costs and expenses which Contractor may incur as a result of such termination including relocation of Contractor's field personnel, and such other costs and expenses as may be approved by the Owner, (c) the accrued Phase I fee, and (d) an equitable portion of the applicable Fixed Fees based upon the actual work performed at the time of termination, less payments on account of the applicable Fixed Fees which have been previously made. Payments to be made by Owner under this Article 16 shall be due and payable within fifteen (15) days after Owner's receipt of Contractor's invoices therefor. Contractor should thereafter return any balance in its Revolving Fund.

ARTICLE 16 - REMOVAL OF EQUIPMENT

In the case of termination of this Contract before completion of Phase III work for any cause whatever, the Contractor shall promptly remove any part or all of the Contractor's equipment and supplies from the property of the Owner.

ARTICLE 17 - USE OF COMPLETED PORTIONS

The Owner shall have the right to take possession of and use any completed or partially completed portions of the work; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with this Contract.

ARTICLE 18 - PAYMENTS WITHHELD

The Owner may withhold all or part of any progress or final payment to the extent necessary to protect the Owner from loss or damage on account of failure of the Contractor to make payments properly to subcontractors or for material or labor and, subject to the limitation of liability set forth in Article 36 hereof, on account of:

- a) Damaged or defective work not remedied; and
- b) Damage to Owner's property or the work of another contractor.

ARTICLE 19 - CONTRACTOR'S LIABILITY INSURANCE

Unless otherwise specifically provided, the Contractor shall maintain such insurance as will protect Contractor from claims under Workmen's Compensation Acts and from claims for damages for personal injury, including death, which may arise from operations under this Contract, whether such operations be by the Contractor or any subcontractor or anyone directly or indirectly employed by either of them. The Owner reserves the option of purchasing Workmen's Compensation Insurance as required by this article.

ARTICLE 20 - INDEMNITY BY CONTRACTOR

Subject to the limitation of liability set forth in Article 36 hereof, the Contractor shall save harmless and indemnify the Owner from and against any expense, loss or damage on account of any claim, demand or suit made by any person whomsoever, including any employee of the Owner, which is in any way caused by or connected with, or grows out of the execution and performance of this Contract by the Contractor or any subcontractor; provided, however, that the Contractor shall not be required to indemnify the Owner against any loss caused solely by the negligence or willful fault of the Owner or its employees. The Contractor accepts all risk of injury or damage and all responsibility for any claims for damages whatsoever resulting from the use, misuse, or failure of any hoist, rigging, blocking, scaffolding, or other like or unlike equipment used by the Contractor or any subcontractor, even though such equipment be furnished or loaned to the Contractor or any such subcontractor by the Owner, and shall indemnify the Owner against all such claims.

Owner and Contractor hereby release each other from any liability for damage to property howsoever caused in connection with the work hereunder to the extent that the party involved is insured for such damage. If any of the insurance policies of Owner and/or Contractor do not permit release of other persons or firms from liability before a loss, endorsement to such policies shall be obtained from respective insurance carriers as may be necessary to effect a waiver of the right of subrogation by such insurance carriers against the parties to this Contract.

ARTICLE 21 - OWNER'S RESPONSIBILITY FOR CERTAIN CASUALTIES

The Owner shall be responsible for all damage to the work and to material, temporary structures, and equipment (excluding construction equipment not owned by the Owner) at the site of the job, which is caused by fire, windstorm, smoke, hail, aircraft, explosion, vehicles, riot or civil commotion.

ARTICLE 22 - DAMAGES TO OWNER'S PROPERTY

The Owner shall obtain all-risk insurance covering the construction of this facility with a policy written in the name of Owner and Contractor and subcontractors.

Subject to the limitation of liability set forth in Article 36 hereof, the Contractor shall be responsible, and reimburse the Owner, for any loss or expense to the Owner, except for those losses or expenses which are recoverable under such all-risk insurance, arising from damage to the work or other property of the Owner caused by the wrongful act or neglect of the Contractor, any subcontractor or of the employees of the Contractor or any subcontractor; and where such damage includes damage to the work, it shall be repaired at the expense of the Contractor.

ARTICLE 23 - LIENS

Neither the final payment nor any progress payment shall become due until the Contractor, if required by the Owner, shall deliver to the Owner a complete release of all liens arising on account of labor, materials, machinery or equipment in respect of which such payment is to be made, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as the Contractor has knowledge or information the releases or receipts include all the labor and materials for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner, to indemnify the Owner against any lien.

ARTICLE 24 - COORDINATION OF WORK

The Contractor shall conduct the work so as to cause a minimum of interference with the Owner's operation. Where interference with the Owner's

operations becomes absolutely necessary, permission shall be requested by the Contractor not less than seventy-two (72) hours in advance.

When other contractors or the Owner's forces are working on the immediate premises, the Contractor agrees to so schedule the Contractor's work as not to make it necessary for the Contractor to cut into or otherwise alter any work that has been completed by such other persons. If the Contractor fails to do so, then the Contractor shall replace or repair such damaged work at Contractor's own expense and in a manner satisfactory to the Owner.

If any part of the Contractor's work depends for proper execution or results upon the work of any other person, the Contractor shall inspect and promptly report to the Owner any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure so to inspect and report shall constitute an acceptance of such other work as fit and proper for the reception of Contractor's work, except as to defects which may develop in such other work after the execution of the Contractor's work.

The foregoing provisions of this Article 24 are subject to the limitation of liability set forth in Article 36 hereof.

ARTICLE 25 - ASSIGNMENT

Except as provided in Article 27, Contractor shall not assign or sublet this Contract in whole or in part, nor shall the Contractor assign any monies due or to become due it hereunder without the prior written consent of the Owner.

This Contract may be assigned by Owner to any subsidiary of Owner provided that in case of such assignment Owner shall remain responsible for the performance by such subsidiary of its obligations hereunder.

ARTICLE 26 - ARBITRATION

Any dispute concerning a question of fact arising under this Contract

which is not disposed of by agreement of the parties shall be submitted to arbitration upon the written demand of either party within a reasonable time after the parties have failed to reach agreement thereon.

No one shall act as an arbitrator who is in any way financially interested in this Contract or is or has been connected or interested in the business affairs of either the Owner or the Contractor. The award of the arbitrator shall be in writing and shall be binding on both parties. Except as and to the extent otherwise provided by the controlling state law, no party may have recourse to legal proceedings (other than to enforce this arbitration Article) unless and until an arbitration award has been made; the award of the arbitrator shall not be open to objection on account of the form of the proceeding or the award; and there shall be one arbitrator who shall be chosen by the American Arbitration Association, whose arbitration rules shall be followed.

The arbitrator may consider questions of law in connection with reaching his decisions on questions of fact, but nothing herein shall be construed as making final the decision of such arbitrator on a question of law.

ARTICLE 27 - SUBCONTRACTS

The Contractor shall, prior to the issuance of bids, notify the Owner in writing of the names of any subcontractors proposed for inclusion in such bid list and shall not award any subcontract without the prior approval of the Owner in writing, and shall terminate the employment of any which the Owner may at any time object to as unsatisfactory.

The Contractor agrees to require each subcontractor to execute a contract in writing binding such subcontractor to terms acceptable to the Owner.

Nothing in this Contract shall create any contractual relationship between any subcontractor and the Owner.

The word "subcontractor", as employed herein, shall mean one having a direct contract with the Contractor for the furnishing of labor and/or materials at the jobsite.

ARTICLE 28 - TITLE TO THE WORK

Title to all work completed or in the course of construction shall be in the Owner, and title to all machinery, equipment and materials to be incorporated in the work shall be in the Owner as soon as they are delivered on the site of the job.

ARTICLE 29 - TECHNICAL INFORMATION

All plans, drawings and specifications prepared by Contractor or supplied to Contractor by Owner under this Contract shall be and remain the property of Owner. Plans, drawings, and specifications prepared by Contractor may be reused by Owner, its affiliated companies and licensees; provided, however, that except for the Project, Contractor shall have no liability by way of warranty or otherwise on account of such reuse and Owner shall indemnify and save Contractor harmless in respect of any liability which may arise against Contractor at any time in the future on account of such reuse. Anything to the contrary herein notwithstanding, nothing herein shall in any way restrict Owner's right to use in any way any plans, drawings, and specifications prepared by Owner or supplied to Contractor by Owner.

Contractor agrees to keep in confidence all plans, drawings, and specifications prepared by Contractor or supplied to Contractor by Owner and other technical information learned by Contractor in performance hereunder; and Contractor further agrees that it will not disclose or use any of said plans, drawings, or specifications and other said technical information without Owner's written consent. The foregoing provisions of this Article 29 shall not apply to (1) information which, at the time of disclosure, is

published or in the public domain; (2) information which, after disclosure, is published or enters the public domain, except by a breach of this Agreement by Contractor; (3) information which, at the time of the disclosure, was in Contractor's possession or in the possession of any affiliated or associated company of Contractor; or (4) information which Contractor can show was acquired by Contractor after the date of this Agreement from a third party who is lawfully in possession of such information and can lawfully disclose the same to Contractor; provided, however, that for information other than information which is or becomes published, the foregoing exceptions (1) through (4) shall not apply to information relating to the updraft sintering machine to be installed by McDowell-Wellman in Owner's El Paso Plant.

Owner recognizes that it will be necessary for Contractor to use certain of said confidential information in order to solicit bids from vendors and subcontractors for the Project, and Owner consents to such use upon the understanding that Contractor will solicit bids for such proposals only from vendors and subcontractors from a bidders list approved by Owner, and that Contractor will require such bidders to agree to the nondisclosure of such information on terms consistent with Contractor's obligations to Owner hereunder.

ARTICLE 30 - RECORDS AND ACCOUNTS, INSPECTION AND AUDIT

The Contractor shall keep at the Site, or other location authorized in writing by the Owner, records and books of account for Phase III work showing the actual costs of all items of freight, cartage, labor, materials, equipment, and subcontracts, and all other expenditures of whatever nature which enter into such work, and will regularly furnish copies of any reports requested by the Owner. The system of accounting and control of accounting to be employed by the Contractor shall be such as is satisfactory to the Owner. All books, records and papers of the Contractor relating to the cost of the work shall at all times be available for the inspection and audit of the Owner, exclusive

of those records pertaining to Contractor's profit and overhead factors, and the Contractor shall preserve them to such extent and for such period as may be required by the Owner, but in any event not less than five years after the completion of the Contract.

The Contractor shall forward monthly, for audit, to the Traffic Department of the Owner at its New York office, all receipted freight bills, cartage bills, bills of lading and other transportation bills. These shall be consecutively numbered by the Contractor starting with No. 1. The Contractor further authorizes the Owner, on its behalf, to file and prosecute any overcharge claims against the carriers and there shall be credited to the Owner the amount of all such overcharges which may be collected.

ARTICLE 31 - CLEANING UP

The Contractor shall at all times during the Phase III work keep the premises free from accumulations of waste material or rubbish caused by Contractor's employees or authorized subcontractors of the work, and at the completion of the work Contractor shall remove all the Contractor's rubbish from and about the site and all the Contractor's tools, scaffolding and surplus materials, and shall leave the work "broom-clean" or its equivalent.

ARTICLE 32 - ADAPTABILITY OF PLANS AND SPECIFICATIONS

Except in the case of patented products for which there is no adequate substitute, the Contractor will not, without the prior written approval of the Owner, prepare any drawings or specifications, or do any engineering or planning for the prospective use or installation of any tool, piece of equipment, or material in the work which is of such a character that such drawings, specifications, engineering or planning could not be used with equal facility in connection with the product of all or most manufacturers of such tools, equipment or materials, or any substitute therefor.

ARTICLE 33 - ENGINEERING APPROVAL

The Contractor agrees to order no material or equipment and to do no actual construction, and to permit no work to be done by any subcontractor or supplier of materials or equipment until the specifications of materials and/or the equipment to be used and the supplier have been approved by the Owner. During construction, the Contractor shall make no substitutions of material without the prior written approval of the Owner.

ARTICLE 34 - PURCHASE AND RENTAL OF MATERIAL AND EQUIPMENT

The Contractor agrees to:

(1) Secure in advance the Owner's specific written approval of the final complete form of any rental agreement (including any agreement for rental of equipment owned by the Contractor) before renting, or using on a rental basis any construction equipment. The Contractor shall endeavor to secure rental agreements from equipment firms that will permit the Owner, at its option, to purchase the equipment during the construction period, or at its termination, at a price (to be set forth in the agreement), less rental paid (after deducting the amounts, if any, expended by the lessor for maintenance or repairs during the period the equipment was under rental on this work);

(2) Rent its equipment, if available, at a rental rate of seventy-five percent (75%) of the Associated Equipment Distributors' rental rates as listed in the annual issue of "Compilation of Rental Rates for Construction Equipment" prepared by Associated Equipment Distributors of Chicago, Illinois. Furthermore, if Owner elects, Contractor shall extend the rental contracts to purchase options with full credit for rent paid applied against purchase price;

(3) Purchase of no tools, equipment or materials except after invitations for bids have been extended to a reasonable number of responsible competitive

suppliers, and, except as otherwise required by the Owner, to purchase only upon the basis of the most favorable terms offered with respect to price, quantity and delivery;

(4) Take advantage of all discounts, rebates and allowances including cash discounts, confidential prices, etc., for the benefit of the Owner;

(5) Include in all contracts for the purchase of materials, supplies, or equipment, suitable provisions designed to obtain for the Owner the benefit of any decrease in (a) cost to the suppliers of items not manufactured by them, (b) labor costs, and (c) suppliers' prices, or prevailing prices, on comparable items.

(6) (a) Consult with and obtain the Owner's approval before placing orders in excess of Five Thousand Dollars (\$5,000).

(b) Submit inquiries for proposals and prices to all suppliers which the Owner shall request.

(c) If requested to do so, furnish to the Owner for its approval before placement of orders, copies of all proposals and prices received.

ARTICLE 35 - FORCE MAJEURE

Neither party shall be considered in default in the performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered, or prevented by force majeure. Force majeure shall be any cause beyond the control of the parties hereto which they could not reasonably have foreseen and guarded against. Force majeure includes but is not limited to, acts of God, labor disputes, fires, riots, civil commotions or civil unrest, incendiarism, interference by civil or governmental authorities, and acts of war (declared or undeclared).

ARTICLE 36 - LIMITATION OF LIABILITY

The liability of Contractor to Owner under the Contract to indemnify and for any losses, damages, costs and expenses incurred or sustained shall be limited in the aggregate to recoveries of insurance maintained by Contractor unless said losses, damages, costs or expenses are excluded from reimbursable costs under paragraph (b)¹⁴/of Article 3 of the Agreement, in which case Contractor shall be liable to Owner without regard to the extent of its insurance coverage.

EXHIBIT "A"

TRAVEL AND SUBSISTENCE ALLOWANCE POLICY

Travel Status and Expenses

All Company employees (including officers, executives, administrative heads) who are required to travel in connection with Company business are reimbursed for all actual travel and out-of-pocket expenses meeting the test of reasonableness.

An employee shall be considered in travel status when he is beyond a twenty-five (25) mile radius of the office to which he is permanently assigned on a trip approved by the Company and related to the performance of the contract and will be compensated for salary on the basis of an eight-hour day, 40-hour week, schedule unless otherwise specifically approved by the Client.

Travel expenses include:

- o Actual out-of-pocket costs of meals, gratuities, hotel rooms, laundry and valet services, and other associated out-of-pocket expenses.
- o Actual costs of rail, plane (coach accommodations, unless lack thereof can be established to Owner's satisfaction), bus, or other form of public transportation.
- o Actual costs of fuel, lubricants and fees from recognized automobile rental agencies. Expenses of parking, automobile storage, road and bridge tolls, taxi fees, etc. Travel by personal automobile is reimbursed at the rate of fifteen cents per mile.
- o Actual costs of telecommunications, photostats, blueprints, and other engineering materials and supplies, and other necessary out-of-pocket expenses, considered reasonable, are also reimbursable. The respective project engineers of Owner and Contractor shall mutually agree in advance as to the individuals required to travel on duty directly applicable to the job.

Moving and Living Expenses

- o Administrative, technical and supervisory employees (and such others as the Owner may specifically approve) who are directed to and actually report for work under the contract may be allowed actual and reasonable transportation, traveling, and moving expenses for themselves, members of their household and household effects from their present location to the location of the office to which they are transferred or assigned (other than a temporary assignment) and, upon the termination of the assignment or the conclusion of the work under the contract, for the actual transportation, traveling, and moving expenses of returning themselves, members of their households and household effects to their

former location or equivalent distance. In no event will any costs be allowed for reimbursement should they be beyond reasonable judgment.

- o The employee shall be entitled to reimbursement for actual and reasonable expenses for himself and dependents at the new location for a period of time sufficient to enable him to locate suitable housing and establish residence. Such period of time will not normally exceed thirty (30) days beyond his arrival at the location, but the period of time may be extended in cases where there is a critical shortage of adequate housing.
- o The traveling expense contemplated in the first paragraph of this section (Moving and Living Expenses) shall be limited to the types of expenses listed under Travel Expenses. The cost of moving household goods and furnishings shall include packing and shipping by public carrier, together with a reasonable amount of liability insurance and storage. If the employee does not desire to move his household goods and furnishings, or part thereof, to the location of his new assignment, he shall be entitled to reimbursement for the cost of storage thereof until his return to his former location.
- o In the event an employee chooses to move his personal house trailer into the area by licensed common carrier, as an alternative to moving his household goods in accordance with the previous paragraph, he will be reimbursed for the actual expenses incurred in transporting the trailer into the area where he is assigned, plus a reasonable amount of liability insurance. Such employee may be considered in travel status while awaiting the arrival of the trailer but not exceeding one day after its arrival.
- o Reimbursement for transportation of the employee and/or members of his household by public carrier will be for the actual costs thereof. Reimbursement for transportation by private automobile will be at the rate of fifteen cents per mile, based on the Rand-McNally Standard Table of Distances, with a variation not to exceed ten percent. Reimbursement for living expenses en route will be made only for a reasonable period of time, based upon the most direct route and existing conditions (excluding unauthorized stopovers).
- o Where the job requirements are such that personnel mentioned in the first paragraph of this section are on temporary assignment (usually defined as six (6) months or less), the employee shall be reimbursed for the type of expenses listed under Travel Expenses.
- o Employee on a temporary assignment to the site shall be entitled to reimbursement of expenses of returning (for personal reasons) to his permanently assigned location or equivalent distance and back to the site during the period of assignment, provided the period of assignment is for two months or longer. Period of absence shall be considered approved leave and shall be limited to a reasonable period of time.

- o Employees who are permanently transferred to a new work location within the United States will be provided with an allowance to assist in covering the numerous miscellaneous and incidental expenses in connection with the move which are not specifically covered by this policy. The amount of payment will be based on the employee's base salary at the new location according to the following schedule:

Single Employee	one-third month's salary
Employee & One Dependent	one-half month's salary
Employee & Two or more Dependents	one month's salary

Under current I.R.S. regulations, certain amounts payable for relocation and subsistence allowances are taxable income to the employee and are subject to withholding.

In order to offset a portion of the employee's tax upon such reimbursed expenses, the Company will grant a tax allowance equal to the employee's actual tax (assuming use of a joint return, if available, the standard deduction, and personal exemptions for the employee, spouse, and any minor children). Reimbursement will be made through a payroll transaction resulting in an appropriate credit to the employee's gross income and withholding tax account.

No reimbursement will be made to the employee to offset that portion of the employee's increased tax obligation resulting from payment of the Incidental Relocation Expense Allowance described above.

No reimbursement will be made for tax on tax, or for any state and/or city income taxes which are attributable to the reimbursement for taxable moving expenses. Such additional taxes as the employee may be obligated as a result of this reimbursement policy may be required to be withheld from his regular salary payments if the appropriate law so stipulates.

EXHIBIT "B"

DEFINITION OF DEFINITIVE ESTIMATE OF TOTAL COST

The Definitive Estimate of Total Cost shall be comprised of the total cost of the Project, including all design engineering, materials, machinery, equipment, labor, temporary construction, capital spare parts, contingency and escalation allowances, and all other items of cost related to the construction of the Project, whether furnished by Owner, Contractor or others, consistent with information available when the Definitive Estimate of Total Cost is prepared. The Definitive Estimate of Total Cost shall not include the following items:

- a) Contractor's fee
- b) Costs of Owner's personnel
- c) Maintenance spare parts
- d) Cost of land
- e) Interest during construction
- f) Cost of Owner's personnel training

The Definitive Estimate of Total Cost shall be based upon the mutually agreed definitive Project Scope and general arrangement and detail design drawings and the specifications prepared by Contractor and approved by Owner, and shall be prepared by Contractor when detail engineering for the Project has progressed sufficiently to permit award of purchase orders for all major equipment and quantity take-offs to be made of construction materials.

EXHIBIT "C"

DEFINITION OF TYPE III ESTIMATE

The definition of a Type III Capital and Operating Cost Estimate is set forth on page 30 of this Exhibit "C". Definitions of other types of Capital and Operating Cost Estimates are also included in this Exhibit "C" together with a comparison of such other types with the Type III estimate.

comparison of estimates

ITEM	TYPE I	TYPE II	TYPE III	TYPE IV
Site				
Plant capacity	Assumed	Preliminary	Optimized	Finalized
Geographical location	Assumed	General	Approximate	Specific
Maps and surveys	None	If available	Available	Detailed
Soil and foundations tests	None	None	Preliminary	Final
Site visits by project team	Possibly	Recommended	Essential	Essential
Process				
Process flowsheets	Assumed	Preliminary	Optimized	Finalized
Bench-scale tests	If available	Recommended	Essential	Essential
Pilot plant tests	Not needed	Recommended	Recommended	Essential
Energy and material balances	Not essential	Preliminary	Optimized	Finalized
Facilities Design				
Nature of facilities	Conceptual	Possible	Probable	Actual
Equipment selection	Hypothetical	Preliminary	Optimized	Finalized
General arrangements, mechanical	None	Minimum	Preliminary	Complete
General arrangements, structural	None	Outline	Outline	Preliminary
General arrangements, other	None	Minimum	Outline	Preliminary
Piping drawings	None	None	One-line	Some detail
Electrical drawings	None	None	One-line	Some detail
Specifications	None	Performance	General	Detailed
Basis for Capital Cost Estimating				
Estimates prepared by	Project Engr	Sr Estimators	Sr Estimators	Est Dept
Vendor quotations	Previous	Single source	Multiple	Competitive
Civil work	Rough sketch	Drawing estimate	Drawing estimate	Take-offs
Mechanical work	% of machinery	% of machinery	Man-hours/ton	Man-hours/ton ¹
Structural work	Rough sketch	Prelim drawings	Take-off/ton	Take-off/ton ¹
Piping and instrumentation	% of machinery	% of machinery	Take-off	Take-off ¹
Electrical work	\$ per hp	\$ per hp	Take-off	Take-off ¹
Indirect costs	% of total	% of total	Calculated	Calculated
Contingency ²	20-25% ²	15-20% ²	15% ²	10% ²
Operating Cost Determination				
Labor rates	Assumed	Investigate	Get contracts	Get contracts ³
Labor burden	Assumed	Calculated	Calculated	Calculated ³
Power costs	Assumed	Actual	Actual	Contract ³
Fuel costs	Assumed	Verbal quote	Letter quote	Contract ³
Expendable supplies	Assumed	Verbal quote	Letter quote	Contract ³
Reagents	Assumed	Verbal quote	Letter quote	Contract ³
Parts	Assumed	Verbal quote	Letter quote	Letter quote
Economic Analysis D.C.F.	Not meaningful	If requested	If requested	If requested
Use of Estimates	Comparison rejection	Feasibility	Budget	Funding
Relative Cost	Base	3 x base	5 x base	10 x base
Notes: 1 Often subject to subcontract bids. 2 In this definition the percentage assigned to contingencies is a judgment factor and is not to be interpreted as meaning that estimates are necessarily accurate within this percentage range, nor is there an implied reference to any order of accuracy. 3 Contracts can be solicited if project is near-term.				

type I estimate

DEFINITION OF TYPE I ESTIMATE For Economic Feasibility Studies

Basis

A Type I estimate can be based on assumed flowsheets and process requirements. Test work is desirable but not an absolute requirement if the process is generally well known. A visit to the actual plant site would be helpful. Design drawings are not prepared beyond sketches made by the project engineer. Equipment lists are prepared from the assumed flowsheets and priced on updated former quotations, telephone quotations from vendors' representatives, and occasionally letter quotes. Equipment specifications are not required, nor are formal vendors' proposals solicited. Total facility costs can be determined by roughly estimating the shelter volume and foundation concrete and applying unit costs. Percentage factors are used for installation of machinery. Electrical costs other than motors and substations are estimated as unit costs per installed horsepower. Percentage factors can be used for contractor's field overhead, construction plant, construction camp, design costs, procurement, and contractor's profit.

Information Required

It is necessary to know the geographical area of the project, the capacity required by the client, and some idea of the gross value of the raw material to be processed. For calculating operating costs, it is helpful to know the range of local labor rates, statu-

tory and union required labor burden, and the approximate cost of basic supplies such as fuel, power, explosives, grinding media, reagents, etc.

Skills Employed

A Type I estimate can usually be made by a project engineer with experience in the industry covered by the feasibility study. Generally, design drawings and specifications are not prepared; however, recent Kaiser Engineers' experience in the construction of industrial facilities is used for updating percentage factors and other unit costs. Often the project engineer depends heavily on his personal acquaintances among vendors and operating companies and on his own experience in the industry.

Use of Estimates

A Type I estimate contains heavy contingencies.* These may range from 20% to 25% on structures and 10% to 15% on machinery. Kaiser Engineers believes that a Type I estimate may frequently be suitable to reject a project, but it is seldom adequate for positive acceptance of a project. A Type I estimate is often used for preliminary comparison of alternates and generally describes a hypothetical installation; it seldom becomes the basis for even conceptual design. It may, however, indicate the desirability of expanding the estimate to a Type II or Type III.

* In this definition the percentage assigned to contingencies is a judgment factor and is not to be interpreted as meaning that estimates are necessarily accurate within this percentage range, nor is there an implied reference to any order of accuracy.

type II estimate

DEFINITION OF TYPE II ESTIMATE For Economic Feasibility Studies

Basis

For a Type II estimate there should be sufficient bench-scale test work to determine the process flowsheet and approximate material balance, and to size various items of process machinery. One or more visits to the actual plant site are mandatory. Minimum general arrangement drawings are prepared, and major equipment lists are based on recent letter quotations from vendors. Specifications are not prepared, and inquiries are usually limited to a single vendor. Facility costs are estimated by making approximate quantity takeoffs from the general arrangement drawings and applying unit cost factors elsewhere. While foundation concrete and structural steel are not defined in detail, it is possible to make approximate estimates from the drawings. Machinery installation and electrical costs can be estimated more accurately than in a Type I estimate. However, percentage factors are still employed for many installation costs. Percentage factors are used to determine indirect costs.

Information Required

It is necessary to know the geographical area of the project, the capacity required by the client, and some idea of gross value of the raw material being processed. Written reports from competent metallurgical labora-

tories should be available concerning process requirements for calculating operating cost, actual labor contracts from the area should be obtained, and letter quotations should be received from suppliers of basic materials such as fuel, explosives, grinding media, reagents, etc. Written schedules should be obtained from utility companies serving the area.

Skills Employed

A Type II estimate is made under the supervision of a project engineer knowledgeable in the industry covered by the feasibility study. However, because of the existence of minimum general arrangement drawings, it is possible to seek the assistance of professional estimators familiar with the industry covered by the study.

Use of Estimates

Type II estimates still contain heavy contingencies,* amounting to 15% to 20% for structures and at least 10% for machinery and installation. A Type II estimate may be suitable to indicate feasibility, but it may not be adequate for budgeting the project, depending on individual client policy. A Type II estimate usually describes a conceptual installation that might be built rather than the installation which will be built.

* In this definition the percentage assigned to contingencies is a judgment factor and is not to be interpreted as meaning that estimates are necessarily accurate within this percentage range, nor is there an implied reference to any order of accuracy.

type III estimate

DEFINITION OF TYPE III ESTIMATE For Economic Feasibility Studies

Basis

A Type III estimate may be undertaken upon completion of bench-scale test work but, preferably, should be supported with pilot plant investigations. Several visits to the plant site may be required. Equipment lists and general arrangement drawings supported by one-line piping and electrical drawings are prepared. No equipment specifications are prepared, and formal vendors' bids are not solicited; however, letter quotations should be obtained from more than one vendor for each item. Machinery installation costs are determined by weight factors, from past experience, or percentage factors. Electrical and piping costs can be based on approximate electrical and piping runs. An estimate is prepared for the construction plant and camp, and estimates for design costs can be more highly refined.

Information Required

It is necessary to know the geographical area of the project and to have accurate topographic maps available. Written reports should be available concerning bench-scale and pilot plant work, and information should be available concerning gross value of the raw material. Actual labor contracts from the area should be obtained, and letter quotations should be received from suppliers of basic materials such

as fuel, explosives, grinding media, reagents, etc. Written schedules should be obtained from utility companies serving the area. Use permits from government agencies should be investigated where required. Air and water pollution regulations should be investigated.

Skills Employed

A Type III estimate is made under the supervision of a project engineer knowledgeable in the industry covered by the feasibility study. Because of the existence of general arrangement, piping, electrical, and instrument drawings, it is possible to use professional estimators skilled in electrical, piping, and instrumentation estimating, as well as estimators who are familiar with the industry covered by the study.

Use of Estimates

A Type III estimate has reduced contingencies;* however, the overall contingency is still of the order of 15%. A Type III estimate is generally suitable to determine feasibility and assist management in establishing a budget for the project. A Type III estimate generally describes the installation that probably will be built rather than an installation which is conceptual only. The drawings prepared may become the basis for detailed engineering.

* In this definition the percentage assigned to contingencies is a judgment factor and is not to be interpreted as meaning that estimates are necessarily accurate within this percentage range, nor is there an implied reference to any order of accuracy.

type IV estimate

DEFINITION OF TYPE IV ESTIMATE For Economic Feasibility Studies

Basis

A Type IV estimate contains all of the input of a Type III estimate with regard to process information. It is based on general arrangement drawings, supported by piping and instrument drawings, and general arrangement drawings of structural steel and concrete. Drawings prepared may constitute approximately 25% or more of the drawings that will ultimately be required for the project. The total facility costs are estimated by making quantity takeoffs and obtaining subcontract quotations for steel and concrete. Specifications are prepared and submitted to several machinery vendors, who are requested to submit formal proposals. Machinery installation and electrical costs are determined by a professional estimating department. A detailed estimate can be prepared covering the construction plant and camp and the contractor's field overhead. Sufficient drawings are provided so that a detailed estimate can be made of the remaining costs.

Information Required

In addition to all of the information input contained in Type II and Type III estimates, it is necessary to have accurate topographic maps and actual surveys of the plant site, together with foundation data. A professional construction estimator should make several trips to the field with the project engineer to obtain information on all local

codes and regulations pertaining to land use and air and water pollution. The availability and cost of labor should be thoroughly investigated. All of the factors mentioned in Type II and Type III estimates which affect operating costs should be obtained in detail, preferably in written quotations from vendors and utility companies.

Skills Employed

A Type IV capital cost estimate is made entirely by a professional estimating department. However, operating costs, where involved, are estimated by the project engineer.

Use of Estimates

A Type IV estimate contains minimum contingencies,* but never less than 10%. A Type IV estimate may be suitable for funding of the project; however, clients may differ as to the amount of detail which they require for funding. A Type IV estimate should enable the client to authorize Kaiser Engineers to proceed with a turnkey job of detail design and construction. Additional detail design will be required, but the designs and estimates provided in the Type IV estimate are for the plant that will be built, and at this point further modifications would be minimal. A Type IV estimate is seldom undertaken unless there is reasonable assurance as to the feasibility of the project. It may be follow-on work after a Type I, Type II, or Type III estimate.

* In this definition the percentage assigned to contingencies is a judgment factor and is not to be interpreted as meaning that estimates are necessarily accurate within this percentage range, nor is there an implied reference to any order of accuracy.

EXHIBIT "D"

INSURANCE COVERAGE SUMMARY

<u>Primary Bodily Injury (Personal Injury) Liability</u>	<u>Policy No.</u>	<u>Limits</u>	<u>Exp. Date</u>
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Primary Property Damage Liability (Worldwide)

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Primary Errors and Omissions Liability (Worldwide)

Excess Liability - Excess of the Above

*Combined single limit each occurrence. Also annual aggregate with respect to excess of that coverage of primary or underlying policy with an annual aggregate.

**This policy does not provide excess Errors and Omissions Liability coverage.