

INSTRUCTIONS: Attach and forward with
Inquiry Form No. 352. To be completed
and returned as contractor's proposal.

CONTRACT FOR

**ERECTION OF 1952 ROASTER AND
REVERBERATORY PLATE TREATER
BUILDING AND EQUIPMENT**

at

AMERICAN SMELTING AND REFINING COMPANY'S EL PASO Plant
at EL PASO, TEXAS

THIS AGREEMENT, made the _____ day of September, 1953,

by and between SOUTHWESTERN TRANSFER COMPANY, INC.

whose address is 1730 Bassett Avenue, El Paso, Texas

(hereinafter called the "Contractor") and AMERICAN SMELTING AND REFINING COMPANY,
a corporation of the State of New Jersey, whose address is 120 Broadway, New York
5, N.Y. and P. O. Box 1111, El Paso, Texas
(hereinafter called the "Owner").

W I T N E S S E T H:

The Contractor and Owner agree as follows:

Article 1. Scope of the Work

The Contractor shall furnish all plans, engineering, labor, tools, equip-
ment and materials, except such items as are hereinafter listed as being furnished
or furnished and installed by the Owner, for Rstr. and Reverb Pl. Tr. Bldg.,
(hereinafter called the "work") at the El Paso plant
of the Owner at El Paso, Texas as shown on the
drawings and specifications (attached hereto) (entitled Exhibit "A"
furnished by American Smelting & Refining Co and dated July 27, 1953)
and shall erect, install, and complete the work in good and workmanlike manner and
in compliance with all applicable codes, rules, regulations and ordinances.

Article 2. Time of Completion

The work shall be commenced September 15, 1953
and shall be substantially completed as promptly as possible

PLAINTIFF'S EXHIBIT

ASA-1166

Article 3. Payment

The Owner shall pay the Contractor for the performance of this contract, the sum of **Forty Three Thousand Five Hundred Sixty Seven and 67/100** dollars (\$**43,567.67**), lawful money of the United States of America within **ten (10)** days after satisfactory completion of the work and submission by the Contractor of evidence (including, if requested, complete releases of all liens arising out of or in connection with the work by all persons firms or corporations on whose behalf such liens could have been or be filed) 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.

The Owner may withhold payment to the extent necessary to protect the Owner from loss on account of damage to the work, or to the person or property of the Owner, claims or probable claims arising from damage to another contractor, or any other person, which is in any way connected with, grows out of, or has anything to do with the execution and performance of this contract by the Contractor or any subcontractor.

Article 4. Liens

If any lien remain unsatisfied after payment has been made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee. The Contractor shall, at any time requested by the Owner, deliver a bond satisfactory to the Owner indemnifying it against any lien and expenses occasioned thereby.

Article 5. Title to the Work

Title to all work completed or in the course of construction, and all tools, equipment, or materials on account of which any payment has been made, shall be in the Owner.

Article 6. Inspection and Repair

The Contractor shall provide safe and proper facilities at all times for the inspection of the work by the Owner, and shall as soon as practicable after written notice from the Owner, at his own expense remove, take down, replace and repair any materials or portions of the work which the Owner shall deem unsatisfactory or not in conformity with this contract or specifications, and make good all work damaged or destroyed thereby, whether or not there shall be a dispute with respect to any of the foregoing. Any such dispute shall be settled by arbitration in the manner hereinafter provided.

Article 7. Protection of the Work

The Contractor at all times shall maintain adequate protection of the work from damage and shall protect the Owner's property from injury or loss arising in connection with this contract. If any loss or expense to the Owner or damage to the property owned by it results from, or in connection with, the performance of this contract by the Contractor, or any subcontractor, the Contractor shall fully indemnify the Owner. If the work is damaged in any manner whatsoever, it shall be repaired at the expense of the Contractor.

The Contractor shall fully save harmless and indemnify the Owner 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 connected with, grows out of or has anything to do with the execution and performance of this contract on the part of the Contractor or any subcontractor; and the Contractor agrees that the Owner shall not be liable for any injury, or other loss or damage of any nature, that might be sustained by the Contractor itself or its employees or subcontractors in the execution and performance of this contract, regardless of whether such injury, loss or damage is caused in whole or in part by negligence on the part of the Owner or its employees.

Article 8. Contractor's Liability Insurance

The Contractor shall maintain such insurance as will protect it from claims under workmen's compensation acts and from any other 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.

Prior to commencement of this work the Contractor shall file with the owner completed certificates of insurance in form of "Insurance Certificate" attached for the Contractor and each subcontractor, and the Contractor and each subcontractor shall provide insurance coverage in the amounts not less than those stated in the attached form.

Article 9. Compliance with Laws and Ordinances

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations, Federal, State or Municipal, bearing on the conduct of the work and the performance of this contract and shall bear all fines, penalties and losses incurred by reason of the violation of any such law, ordinance, rule or regulation. 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, and shall indemnify the Owner against, the same and 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. Patents

The Contractor shall indemnify, protect and save harmless the Owner from and against any and all claims, losses, costs, damages, expenses, actions, suits or other proceedings, growing out of or resulting from infringement of any patent or other similar industrial property right by the Contractor in the performance of this contract, except that this provision shall not apply to patented articles or processes specified in drawings and specifications furnished by the Owner.

Article 11. Owner's Right to Terminate Contract

If the Contractor should be adjudged a bankrupt, or make an assignment for the benefit of creditors, or if a receiver should be appointed on account of

the Contractor's insolvency or if a trustee of his property should be appointed under the reorganization or readjustment provisions of the Bankruptcy Act, or if the Contractor at any time should refuse or neglect to supply enough properly skilled workers or fail to prosecute the work with diligence or in any other respect should violate this contract, the Owner, without prejudice to any other remedy it may have, shall be entitled upon three days' written notice to the Contractor, to terminate the employment of the Contractor and take possession of the work and all materials, tools and appliances on the site and finish the work by whatever method the Owner deems expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including a reasonable allowance for additional managerial and administrative service, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner.

Article 12. Correction of Work after Payment

Neither payment nor any provision in the contract shall relieve the Contractor of responsibility for faulty materials or workmanship and the Contractor shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within one year from the date of completion. The Owner shall give notice of observed defects with reasonable promptness. Any dispute under this article shall be subject to arbitration as hereinafter provided.

Article 13. Arbitration

All questions subject to arbitration under this contract shall be submitted to arbitration at the choice of either party to the dispute. Unless otherwise provided by controlling statutes, there shall be one arbitrator who shall be chosen by the American Arbitration Association, whose rules shall be followed.

Article 14. Assignment

The Contractor shall not assign this contract nor sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due it hereunder without the prior written consent of the Owner.

Article 15. Co-ordination of Work

The Contractor shall conduct his work so as to cause a minimum of interference with Company operations. Where such becomes absolutely necessary, permission to do so shall be requested and arrangements made through the Plant Engineer's office not less than seventy-two (72) hours in advance.

Article 16. By the Owner

The Owner agrees to obtain and pay for any building permits required; to carry fire insurance with extended coverage fully covering the Contractor and/or his subcontractors for all material and equipment delivered for the job and for all labor and material brought into the work as their interests may appear; and, to the extent practicable without interference with operations, to furnish the Contractor, free of charge, for its use during construction, electricity, water, steam and compressed air required for construction purposes, at the

voltage and pressure currently available at the plant, to a point adjacent to or within 100 feet of the site, but the Contractor will be required to make the necessary connections, provide approved shut-off and safety devices and furnish and install all temporary lines required to bring them to the point of use.

Article 17. Additional Provisions

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

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

SOUTHWESTERN TRANSFER COMPANY, INC.
Contractor

By W. Clay Fiske

AMERICAN SMELTING AND REFINING COMPANY
Owner

SIGNED BY W. H. Fiske
By Director of Purchases

AMERICAN SMELTING AND REFINING COMPANY REQUIREMENTS FOR CONTRACTORS WORKING ON PROJECTS.

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE DESCRIBED BELOW HAVE BEEN ISSUED TO _____

SOUTH BAY TRADING COMPANY, INC.

THESE POLICIES ARE NOW IN FORCE, COVERING WORK BY THE ASSURED FOR AMERICAN SMELTING AND REFINING COMPANY ON CONTRACT-NUMBER _____ AT _____

IF THESE POLICIES ARE CANCELLED OR CHANGED IN ANY WAY THAT WILL AFFECT THIS CERTIFICATE, TEN DAYS' PRIOR WRITTEN NOTICE WILL BE GIVEN BY THIS COMPANY TO AMERICAN SMELTING AND REFINING COMPANY, SAMUEL METZGER, JR., 120 BROADWAY, NEW YORK 5, N.Y.

KIND OF INSURANCE	DESCRIPTION OF POLICY			REQUIRED MINIMUM
	NUMBER	EXPIRES	LIMITS OF LIABILITY	
CONTRACTOR'S PUBLIC LIABILITY (COMPREHENSIVE)				
	UIU-217 CAG	2-18-54	EACH PERSON \$ 100,000.00 EACH ACCIDENT \$ 300,000.00	\$100,000 \$300,000
	UIU-217 CAG	2-18-54	EACH ACCIDENT \$ 25,000.00	\$ 25,000
CONTRACTOR'S PROTECTIVE LIABILITY				
	UIU-217-CAG	2-18-54	EACH PERSON \$ 100,000.00 EACH ACCIDENT \$ 300,000.00	\$100,000 \$300,000
	UIU-217-CAG	2-18-54	EACH ACCIDENT \$ 25,000.00	\$ 25,000
AUTOMOBILE				
	UIU-217-MAG	2-18-54	EACH PERSON \$ 100,000.00 EACH ACCIDENT \$ 300,000.00	\$100,000 \$300,000
	UIU-217-MAG	2-18-54	EACH ACCIDENT \$ 25,000.00	\$ 10,000
WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY				COMPLY WITH APPLICABLE STATE LAW
			EACH ACCIDENT \$	\$ 25,000

DATE 9-3-53

CITIZENS CASUALTY COMPANY OF NEW YORK

KEMP, COLDWELL & CO. INSURANCE COMPANY

By J. C. Thompson

IN WASH. D.C.

STATE

BY:

AUTHORIZED REPRESENTATIVE

AMERICAN SMELTING AND REFINING COMPANY REQUIREMENTS FOR CONTRACTORS WORKING ON PROJECTS.

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE DESCRIBED BELOW HAVE BEEN ISSUED TO _____

Southwestern Transfer Co., Inc.

THESE POLICIES ARE NOW IN FORCE, COVERING WORK BY THE ASSURED FOR AMERICAN SMELTING AND REFINING COMPANY ON CONTRACT-NUMBER _____ AT _____

IF THESE POLICIES ARE CANCELLED OR CHANGED IN ANY WAY THAT WILL AFFECT THIS CERTIFICATE, TEN DAYS' PRIOR WRITTEN NOTICE WILL BE GIVEN BY THIS COMPANY TO AMERICAN SMELTING AND REFINING COMPANY, SAMUEL METZGER, JR., 120 BROADWAY, NEW YORK 5, N.Y.

KIND OF INSURANCE	DESCRIPTION OF POLICY			REQUIRED MINIMUM
	NUMBER	EXPIRES	LIMITS OF LIABILITY	
CONTRACTOR'S PUBLIC LIABILITY (COMPREHENSIVE)				
BODILY-INJURY			EACH PERSON \$ EACH ACCIDENT \$	\$100,000 \$300,000
PROPERTY-DAMAGE			EACH ACCIDENT \$	\$ 25,000
CONTRACTOR'S PROTECTIVE LIABILITY				
BODILY-INJURY			EACH PERSON \$ EACH ACCIDENT \$	\$100,000 \$300,000
PROPERTY-DAMAGE			EACH ACCIDENT \$	\$ 25,000
AUTOMOBILE				
BODILY-INJURY			EACH PERSON \$ EACH ACCIDENT \$	\$100,000 \$300,000
PROPERTY-DAMAGE			EACH ACCIDENT \$	\$ 10,000
TEXAS EMPLOYERS WORKMEN'S COMPENSATION	C-24920	5-20-54	State Requirements	COMPLY WITH APPLICABLE STATE LAW
AND				
EMPLOYER'S LIABILITY			EACH ACCIDENT \$	\$ 25,000

DATE **September 4, 1953**

Texas Employers Insurance Association
INSURANCE COMPANY

El Paso,

Texas STATE


AUTHORIZED REPRESENTATIVE

QUOTATION

Southwestern TRANSFER COMPANY



EL PASO, TEXAS
1730 BASSETT AVE.
PHONE 2-3493
P. O. BOX 1367

ALBUQUERQUE, N. M.
4507 DOMINGO ROAD, N. E.
PHONE 5-5344
P. O. BOX 8213

American Smelting and Refining Company

Quotation No. El Paso - 1063

Date August 31, 1953

El Paso, Texas

Project Erection of 1952 Roaster and

Reverberating plate treater, bldg & equip.

Location El Paso plant

We propose to furnish the services as described at prices stated and unless otherwise specified by us, under our regular terms and conditions of acceptance, sale and payment of which are given on reverse side of this quotation.

We propose to furnish all labor and equipment to complete all work described in American Smelting and Refining Company's exhibit "A" headed Garfield, Utah, July 27, 1953,

for the sum of \$ 43,567.67
(Forty-three thousand, five hundred and sixty-seven dollars and sixty-seven cents)

This price is based on a work week of five, eight hour days.

All insurance requested will be furnished.

Respectfully submitted,

SOUTHWESTERN TRANSFER CO.

By [Signature]

Steel Erecting — Heavy Hauling — Rigging — Crane Service

ASARCO ELP 0008461