

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made the 12th day of June, 2000 by and between: Sun City Analytical, Inc. whose address is: 1409 Montana Avenue, El Paso, Texas, 79902 (hereinafter called the "CONSULTANT") and ASARCO Incorporated whose address is: 2301 W. Paisano Street, El Paso, Texas, 79922 (hereinafter called the "OWNER").

The CONSULTANT and the OWNER, for and in consideration of the mutual covenants set forth herein, agree as follows:

1. GOVERNING TERMS

This Agreement constitutes the sole, exclusive and entire agreement between OWNER and CONSULTANT. Any modifications must be in writing and signed by both parties. This Agreement shall control in the event of any inconsistency in any document referred to or incorporated herein, or provided by the CONSULTANT.

2. SCOPE of SERVICES

CONSULTANT agrees to perform all Services described below (the "Services"). No change or increase in the Scope of Services shall be valid unless agreed to in writing in advance of performance of the Services.

CONSULTANT shall perform asbestos consulting/services as directed and agreed upon by Asarco's El Paso Plant management.

3. TIME for PERFORMANCE

The CONSULTANT shall commence Services on or about May 12, 2000 and complete the Services by May 11, 2001. In performing the Services, time shall be of the essence.

4. MATERIALS, EQUIPMENT and LABOR

CONSULTANT shall furnish all labor, transportation, tools, supplies, materials and related equipment necessary to complete the required Services.

5. PAYMENTS

The OWNER shall pay CONSULTANT for the performance of this Contract, subject to any additions and deductions herein provided, the sum of Ten Thousand dollars (\$10,000.00), in lawful currency of the United States of America under the conditions hereinafter provided. CONSULTANT shall submit invoices monthly and such invoices shall be paid within 30 days of receipt.

6. WARRANTY

CONSULTANT warrants that all Services rendered hereunder shall be performed using the highest degree of skill and care exercised by recognized industry professionals performing services of the nature required hereunder, and that such services shall conform to all requirements of this Agreement.

7. FORCE MAJEURE

If either party is prevented in whole or in part from performing its obligations under this Agreement by unforeseeable events or causes beyond its control and without its fault or negligence, then during the course of such event or cause the party so prevented shall be excused from whatever performance is affected by such event or cause; provided that such party provides prompt written notice to the other party of such condition. Force Majeure events or causes include, but are not limited to: acts of God; unusually severe weather; labor disputes; fires; riots; civil commotion; acts of federal, state or local governmental authorities; and acts of war.

8. CONSULTANT CLAIMS

In the event CONSULTANT sustains a delay, damage or loss of any kind or encounters a change or unexpected condition during performance of this Agreement, CONSULTANT's sole remedy against OWNER shall be an award of an extension of time for performance. In no event may CONSULTANT recover any monetary relief from OWNER, including but not limited to damages, consequential or otherwise.

9. SUBCONTRACTS

The CONSULTANT shall not employ any Subcontractors without the prior written approval of the OWNER. For the Subcontracted Work, the CONSULTANT shall require each such Subcontractor to adhere to the terms and conditions of this Agreement. Nothing herein shall be deemed to create a contractual relationship between any such Subcontractor and the OWNER.

10. ASSIGNMENT

Neither party shall assign this Agreement in whole or in part without the prior written consent of the other party. Nor shall the CONSULTANT assign any monies due or to become due it hereunder without the prior written consent of the OWNER.

11. COMPLIANCE WITH ALL LAWS AND ENVIRONMENTAL SAFETY AND HEALTH POLICY

CONSULTANT acknowledges that compliance with laws and providing a safe and healthy workplace and protection of the environment is an OWNER priority. CONSULTANT agrees to abide by that priority in all of its actions that relate to OWNER. CONSULTANT agrees, represents and warrants that in providing Services hereunder it will maintain copies of and will fully comply with all

applicable federal, state and local laws, rules, regulations, standards and other governmental requirements including but not limited to: the Federal Occupational Safety and Health Act ("OSHA"), Federal Mine Safety and Health Act ("MSHA") the statutes enforced by the U.S. Environmental Protection Agency ("EPA"), their state and local equivalents and all regulations, policies and orders issued by or pursuant to them (the "Acts"). The inclusion in this Agreement of any specific laws or regulations shall not relieve CONSULTANT of its obligation to comply with all federal, state and local laws, rules, statutes, regulations and ordinances. CONSULTANT further agrees that any of its officers, agents, employees, contractors or subcontractors that enter OWNER's premises will be trained, certified and/or licensed both as required by such laws and Acts and in the methods and procedures for compliance with them. CONSULTANT acknowledges and agrees that it has instituted a policy that mandates compliance with this provision.

12. ENVIRONMENTAL HEALTH AND SAFETY PROVISIONS

CONSULTANT agrees to comply with all of OWNER's safety, health and environmental rules and procedures relating to Services performed on, access to and use of, OWNER's facility, including but not limited to the following general safety and health, and environmental provisions:

(a) CONSULTANT shall designate a job site representative to be its supervisor responsible for compliance with all laws, and that person shall be responsible for promoting health, safety and accident prevention, environmental protection, compliance with applicable laws, rules and regulations and coordinating such activities with OWNER. In particular, that person shall insure that CONSULTANT performs, through an independent laboratory, biological monitoring as specified in OWNER's safety policy.

(b) CONSULTANT shall convey in writing to its employees and employees of its subcontractors that they must notify CONSULTANT and OWNER's representative immediately of any environmental, safety or health concerns or hazards, or problems they may have or encounter in performing this Agreement or any of its requirements. CONSULTANT agrees to evaluate the concern, take protective actions, if needed, and notify OWNER of such concerns and actions in writing.

(c) CONSULTANT agrees to limit its travel on OWNER's facilities solely to that necessary for performing this Agreement and require that its employees, agents and subcontractors be accompanied by OWNER's personnel, unless a particular employee, agent or subcontractor is authorized in writing by OWNER to be unaccompanied.

(d) CONSULTANT agrees to become familiar with and train its employees and those of its subcontractors in the characteristics of the site, including, but not limited to, any hazards, restricted areas, protective measures and applicable emergency and evacuation procedures.

(e) CONSULTANT agrees to provide and utilize safe, functional equipment and nonhazardous materials and to possess or obtain, prior to entering OWNER's site, any training, testing, licenses or certifications that are necessary, appropriate or required for utilizing all equipment, materials and tools used to perform this

Agreement. CONSULTANT also agrees to maintain such equipment, materials and tools in good order and working condition, and utilize personal protective equipment whenever appropriate or required by law or OWNER's policies.

(f) CONSULTANT agrees to be subject to OWNER's contract compliance monitoring, and further agrees that such monitoring or the lack thereof does not relieve CONSULTANT of any duties and/or obligations under this Agreement or applicable laws.

(g) CONSULTANT shall promptly advise OWNER of any investigation or inspection by any federal, state or local governmental agency in any way related to or concerning OWNER or Work under this Agreement.

(h) CONSULTANT shall immediately notify OWNER (and if requested, provide a detailed written report) of every accident or incident involving injury to personnel or occupational illness, or damage to OWNER's property, or environmental incident or event occurring in connection with this Agreement. CONSULTANT agrees to assist OWNER with any investigation thereof, and agrees to record and report all required information by and to all appropriate federal, state and local regulatory agencies. CONSULTANT shall provide notice and copies of such reports and information to OWNER. On a monthly basis, CONSULTANT shall also report to OWNER employee days and hours worked while on OWNER's premises.

(i) Upon request, CONSULTANT agrees to provide OWNER with its written environmental, safety and health programs and documents applicable to its presence at OWNER's facility and to provide any requested additional documentation or certification.

13. EFFECT OF OWNER'S VOLUNTARY ACTIONS

(a) CONSULTANT's duties of indemnity towards OWNER pursuant to Paragraph 18 shall apply with full force and effect even if OWNER provides CONSULTANT with safety, health and environmental information, training, materials, inspections, goods or services, or otherwise voluntarily assists CONSULTANT in protecting people and the environment and meeting CONSULTANT's compliance obligations hereunder.

(b) CONSULTANT acknowledges that it is fully and solely responsible for compliance with all laws and regulations and that any assistance provided by OWNER as referenced herein is provided voluntarily and solely for the purposes of promoting the parties' mutual interests in health, safety and the environment.

(c) Any actions by OWNER in volunteering environmental, safety and health information, training, materials, equipment and services shall not be alleged to, nor constitute a change in, or diminish or relieve CONSULTANT of any contractual or governmental responsibilities in these areas. Such OWNER's voluntary actions also shall not constitute, nor be alleged by CONSULTANT in any inspection, investigation or legal proceeding to constitute control, supervision or direction of its employees.

14. ENVIRONMENTAL SAFETY AND HEALTH VIOLATIONS AND ASSESSMENTS

CONSULTANT acknowledges that violations by CONSULTANT of health, safety, environmental and other statutory and regulatory laws and authority may result in the imposition of civil and/or criminal penalties or in other damage and loss to both OWNER and CONSULTANT. CONSULTANT agrees that OWNER shall have the right to assess or backcharge CONSULTANT an amount equal to that which OSHA, MSHA or the EPA or their state or local equivalents are authorized to assess or propose for violations whenever OWNER determines that CONSULTANT has committed such a violation. OWNER also shall have the right to inspect or audit CONSULTANT's records, conduct or actions related to this Agreement for the purpose of monitoring CONSULTANT's compliance with, and for enforcing the terms of, this provision. OWNER's remedies against CONSULTANT for violations of the environmental, health and safety provisions of this Agreement shall not be limited to those set forth above.

15. CONFIDENTIALITY and CONFLICTS of INTEREST

The CONSULTANT agrees to hold in strict confidence any and all information provided by OWNER or obtained from OWNER's site and any data, findings, and results of CONSULTANT's Work (the "Information"). This section shall not apply to any Information or portions of such Information which (a) are or become generally available to the public other than as a result of a disclosure by CONSULTANT, or (b) become available to the CONSULTANT on a non-confidential basis from a source other than the OWNER, or (c) is the subject of a written release letter provided by OWNER. If there is a reasonable doubt about the confidential status of any information, the CONSULTANT must inquire with the OWNER in writing.

16. STATUS AND RESPONSIBILITY OF CONSULTANT AND ITS PERSONNEL

The status of CONSULTANT hereunder is that of an independent contractor and any Worker's Compensation Insurance coverage, required training, tax payments or employees benefits for CONSULTANT's personnel shall be the sole responsibility of CONSULTANT. CONSULTANT shall at all times enforce strict discipline and good order among its employees or agents that enter OWNER's site, and shall not employ on the site any unfit or untrained person or anyone not skilled in the work assigned to him. OWNER may require changes in personnel assigned to perform Services on OWNER's site when, in OWNER's opinion, CONSULTANT's Services are not being performed timely or satisfactorily.

17. INSURANCE

A. Minimum Scope and Limits of Insurance

The CONSULTANT shall procure, pay for and maintain in full force and effect at all times during the performance of the Services and until final acceptance of the Services, policies of insurance issued by financially responsible carriers with Best's ratings of no less than A:VII, that afford the following coverages:

- | | |
|--|--|
| 1. Workers' Compensation | Statutory |
| 2. Employer's Liability Insurance | Not less than \$1 million each accident. |
| 3. Business Automobile Liability coverage including owned, non-owned and hired car coverages. | Not less than \$2 million each accident. |
| 4. Commercial General Liability Policy (ISO occurrence or claims made form) including bodily injury, property damage, completed operations and products coverages. (Completed operations shall be provided for a period of two years from final acceptance of the work by OWNER. If a general liability policy is written on a claims-made basis, the OWNER's interest must continue to be covered for an additional two-year period after policy expiration.) | Not less than \$2 million per occurrence combined single limit for both bodily injury and property damage. |
| 5. Environmental Impairment Liability Policy (WHEN APPLICABLE) | Not less than \$2 million each accident. |
| 6. Professional Liability Insurance, including errors and omissions. | Not less than \$2 million each accident. |

B. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. With respect to Commercial General Liability, Automobile Liability and Environmental Liability Coverages, these policies shall:

- (a) name the OWNER, its parents, subsidiaries, agents and affiliated companies, and its directors, officers, agents and employees as *Additional Insureds*;
- (b) expressly include a *severability of interest* clause; and
- (c) be *primary insurance* as respects the OWNER, its parents, subsidiaries, agents and affiliated companies, and its directors, officers, agents and employees.

Any *failure to comply* with reporting provisions of these policies shall not affect coverage provided to the OWNER.

2. With respect to all coverages except Professional Liability Insurance, every policy shall contain a *Waiver of Subrogation* endorsement in favor

of the OWNER, its parents, subsidiaries, agents and affiliated companies, and its directors, officers, agents and employees.

C. Verification of Coverage

Before any equipment or personnel is brought on to OWNER's premises, CONSULTANT agrees to deliver to OWNER an original *Certificate(s) of Insurance* evidencing the above coverages. All policy deductibles and/or self-insured retentions must be shown on the *Certificate(s)* and are subject to approval by the OWNER. *Certificates* shall express provide that no less than thirty (30) days prior written notice shall be given OWNER in the event of material alteration to or cancellation of the coverage evidenced by such policies. Upon renewal of each policy, CONSULTANT shall provide to OWNER a *Certificate(s) of Insurance* evidencing all of the provisions specified in this Article.

CONSULTANT will maintain the original of all policies and endorsements and provide OWNER with copies of the same upon request of OWNER.

D. Subcontractors

CONSULTANT shall include all subcontractors as insureds under its policies or shall furnish separate *Certificates* and *Endorsements* for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

18. INDEMNIFICATION

CONSULTANT agrees to indemnify, defend and hold harmless OWNER from and against all claims, suits or demands of any kind and description, and from and against all alleged or actual damages, loss, fines or penalties which OWNER or OWNER's property may sustain, incur, suffer or receive and which arise or allegedly arise in whole or in part from CONSULTANT's performance under this Agreement or from any other conduct, actions or inactions by CONSULTANT. CONSULTANT's indemnity obligations include, but are not limited to, payment of all judgments, legal fees and expenses incurred by OWNER. OWNER's rights and CONSULTANT's indemnity obligations hereunder shall apply with full force and effect even if OWNER or any third party is or may be liable or responsible in part for the claim, suit, demand, damage, loss, fine or penalty sustained, incurred, suffered, or received. However, CONSULTANT's indemnity obligation shall apply for the amount and to the extent that CONSULTANT is at fault for or the cause of such loss or damages. OWNER's rights and CONSULTANT's obligations hereunder shall survive the expiration or termination of this Agreement.

19. RIGHT TO TERMINATE AGREEMENT

A. Termination For Cause.

OWNER may terminate or cancel this Agreement in whole or in part for cause if: (1) CONSULTANT's performance does not conform in all respects to CONSULTANT's warranty or the terms of this Agreement; (2) CONSULTANT fails to timely and satisfactorily provide its Services to OWNER; (3) any reasonable question arises concerning CONSULTANT's financial condition or solvency. Where a basis for termination exists, OWNER will give CONSULTANT written notice specifying the CONSULTANT's deficiencies. If the OWNER reasonably determines that the deficiencies can not be corrected, to its satisfaction, the notice shall so state and the Contract will be deemed terminated for cause. If the OWNER deems the deficiencies curable and the deficiencies are not corrected to the satisfaction of OWNER within seven (7) days of the date of Consultant's receipt of written notice, or such other time period set forth in OWNER's notice, the OWNER may terminate this Agreement by giving the CONSULTANT written notice of termination. Any notice of termination shall specify the extent to which performance under the Agreement is terminated, and the effective termination date. The OWNER shall pay CONSULTANT for performance received, approved and accepted by OWNER prior to the effective date of termination, minus any additional costs of completion and damages that OWNER may incur as a result of the termination.

B. Termination For Convenience (Without Cause).

OWNER may, by written notice, terminate or cancel this Agreement in whole or in part, at any time and for any reason for OWNER's convenience. In the event this Agreement is terminated for convenience or canceled, CONSULTANT shall be entitled to recover the balance due on the Agreement price only for the services received, approved and accepted by the OWNER up through the date of termination, less previous payments made and any costs OWNER has incurred as a result of CONSULTANT's actions under the terminated or canceled Agreement. In no event may CONSULTANT recover from OWNER any damages, direct, consequential or otherwise or lost profits arising from termination of this Agreement.

20. DISPUTES

Any dispute arising out of or in connection with this Agreement shall first be subject to mediation administered by the American Arbitration Association. Any dispute which cannot be amicably settled through mediation between the parties shall be finally settled by arbitration under the Rules of Commercial Arbitration of the American Arbitration Association. A demand for arbitration may be made as soon as it becomes apparent that the matter cannot be settled through mediation. The mediation or arbitration shall take place at a mutually convenient location in the city closest to OWNER's facility originating this Agreement. The resulting decision of the arbitrators shall be final and binding on the parties. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. No request or demand for mediation or arbitration shall be made after the date on which the applicable statute of limitations would expire.

21. GOVERNING LAW

This Agreement, including performance and all disputes hereunder, shall be governed by the laws of the state or commonwealth in which OWNER will receive the direct beneficial use of the Services.

22. CONFLICTS

In the event of conflict between the provisions of this Agreement and any Attachment(s) or Exhibit(s) attached hereto, the provisions of this Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

ASARCO Incorporated

L. W. Castor

L. W. Castor

General Manager

Date: 6/17/00

Sun City Analytical, Inc.

David

By: David

Its: David

Date: 6/12/00