ASSR "Lump Sum" Construction or Repairs
Contract Form PD-20
500 - 10/57

TO:	APPROVED BY
Engineering	
Purchasing	
Credit	
Legal	
Insurance	
Traffic	
Comptroller	
Operating Vice President	

RETURN TO PURCHASING DEPARTMENT

ORDER NO. _____

PLAINTIFF'S EXHIBIT

ASA-1673

CONTRACT FOR

Modifications of Slag Dump Trestle
(Insert name of job)

at

AMERICAN SMELTING AND REFINING COMPANY's El Paso Plant

at El Paso, Texas

THIS AGREEMENT, made the 21st day of August, 19 70, by and between Southwestern Industrial Contractors & Riggers, Inc., whose address is 1730 Bassett Ave., El Paso, Texas 79948 (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 79999 (hereinafter called the "Owner").
(Insert address of plant or unit)

W I T N E S S E T H :

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

Article 1. Scope of the Work

The Contractor shall furnish all plans, shop drawings, field engineering, labor, materials, transportation, tools, equipment and other facilities, except such items as are hereinafter listed as being furnished or furnished and installed by the Owner, required for Modifications of Slag Dump Trestle at the El Paso plant of the Owner at El Paso, Texas,
(Insert name of job) (Insert town and state)
all in accordance with the requirements and provisions of the attached "General Provisions of the Contract" and the drawings and specifications listed below and those drawings and specifications which may be supplied by the Owner or prepared by the Contractor at the Owner's direction subsequent to the execution hereof and approved by the Owner, all of which are incorporated herein by reference, made a

part hereof and, together with this Agreement, hereinafter referred to collectively as the Contract:

(List Specifications and Drawings)

Specifications for Modifications of Slag Dump Trestle at El Paso Plant Dated July 20, 1970
Drawing List is a Part of Specifications

Article 2. Time of Completion

(a) The work to be performed under this Contract shall be commenced September 1, 1970 and shall be completed by January 31, 1971, with an extension of time for completion equal to any time lost due to causes which were beyond the control of the Contractor and which were not the result of his fault or negligence. Like extension of time for completion shall also be allowed for any delays in the progress of the work caused by strikes and other labor disputes, act or neglect of the Owner or of his employees or by other Contractors employed by the Owner, act of Government, delay in the furnishing of plans and necessary information by the Owner, or by any other cause which in the opinion of the Owner entitles the Contractor to an extension of time. The Contractor shall notify the Owner in writing within five days of any occurrence which in the Contractor's opinion entitles him to an extension of time for completion.

(b) Failure to complete the work within the time stated in this Article, including any extension allowed pursuant heret , shall entitle the Owner to deduct from the moneys due to the Contractor as liquidated damages an amount equal to $_____ for each calendar day of delay in the completion of the work.

(c) If the Contractor completes the entire work covered by this Contract earlier than the date determined in accordance with Paragraph (a), the Owner shall pay the Contractor an additional amount equal to $_____ for each calendar day by which the time of completion so determined has been reduced.

Article 3. The Contract Price

The Owner shall pay the Contractor for the performance of this Contract, subject to any additions and deductions herein provided for the sum of Two Hundred Nine Thousand Four Hundred dollars ($ 209,400.00), lawful money of the United States of America, at the time and in the manner hereinafter provided.

Article 4. Progress Payments

As soon as practicable after the first day of each calendar month the Contractor shall present to the Owner an invoice equal to the percentage of the total amount of the Contract which has been completed from the start of the job up to the end of the preceding month plus the cost of materials suitably stored at the site thereof, together with such supporting evidence as may be required by the Owner. Subject to verification of such invoice by the Owner, the Owner as soon as practicable after receipt thereof shall pay the Contractor Ninety percent (90 %) of the amount thereof, less the aggregate of previous payments; and upon completion of the entire work, a sum sufficient to increase the total payments to Ninety percent (90 %) of the contract price. In the event at any time prior payments by the Owner equal such percentage of the contract price, no further payments shall be made until final payment is due.

Article 5. Acceptance and Final Payment

(a) Upon receipt of written notice from the Contractor that the work is ready for final inspection and acceptance, the Owner shall promptly make such inspection, and if and when it finds the work acceptable under the Contract and the Contract fully performed it shall promptly issue a final certificate stating that the work provided for in this Contract has been completed. The entire balance shall be paid to the Contractor by the Owner within 30 days after the date of said final certificate.

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

Article 6. Insurance Certificate

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

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. 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 the day and year first above written.

SOUTHWESTERN INDUSTRIAL
CONTRACTORS AND RIGGERS, INC.
Contractor

By W W Clay Fiske

Title President

AMERICAN SMELTING AND REFINING COMPANY
Owner

By Original Signed By
E P. HARRISON
Vice-President

General Provisions of the Contract

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Article 1. Notice

Written notice shall be deemed to have been duly served if delivered by hand or sent by registered mail, 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. Intent of Contract Documents

In case of conflict between plans and specifications, the specifications shall govern. The intention of this Contract is to include all labor and materials, equipment and transportation necessary for the proper execution of the work. Work not specifically shown on the drawings or enumerated herein but that is reasonably necessary for the proper completion of the project shall be provided by the Contractor the same as if shown on the drawings or enumerated herein. Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

Article 3. Drawings and Specifications

The Owner agrees to furnish without charge to the Contractor, five sets of specifications and prints of all drawings listed in the specifications. Where revised or additional drawings and specifications are prepared as hereinafter provided the Owner will furnish three sets of same to the Contractor.

The Owner agrees to furnish supplemental drawings as may be required to clarify the contract drawings. Supplemental drawings shall not enlarge nor decrease the scope of the work. Where alterations in the contract drawings and specifications affect the extent of the work, the changes shall be governed as provided in Article 14 of these General Provisions.

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

A. All of the Contractor's drawings which are made for this job.

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 job.

The Contractor shall make any corrections 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 responsibility for errors or discrepancies of any sort.

The Contractor also agrees 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.

As soon as the drawings referred to in subparagraphs A and B above are completed, checked and approved, the Contractor shall furnish three complete final sets of prints to the Owner.

Article 4. Order of Completion; Schedules

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.

Article 5. Contractor's Understanding

The Contractor shall satisfy itself as to the nature and location of the work, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this Contract. The Contractor may examine such logs of test borings and/or records of such other underground or submarine exploration as may be available.

Article 6. Materials, Appliances and Temporary Facilities

The Owner will not supply electricity, water, light, power, steam, compressed air or other utilities required for construction purposes unless specifically so provided in the Contract. Where such items are not supplied by the Owner they shall be furnished by the Contractor, and the Contractor shall, in either case, 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.

Unless otherwise specified, all materials incorporated in the permanent work shall be new and both workmanship and materials shall be of the best quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Contractor shall construct and maintain all necessary temporary facilities for the completion of the work. Upon completion of the work all such facilities shall, unless the Owner shall otherwise direct, be removed from the premises and the site cleared.

Article 7. 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, 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.

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.

Article 8. Patents

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

Article 9. Surveys, Permits and Regulations

If involved in the subject matter of this Contract, the base lines and mean datum will be established by the Owner; the control lines and levels and all general layout work will be the responsibility of the Contractor. All controls established by the Contractor shall be preserved and maintained throughout the life of the Contract.

Unless otherwise specified, the Owner shall furnish all land surveys required. Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the Contractor. Permits, licenses and easements for any permanent structures or any permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, Contractor shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work. If the Contractor performs any work knowing it to be contrary to any such law, ordinance, rule or regulation, and without such notice to the Owner, Contractor shall bear all costs arising therefrom.

Article 10. Protection of the Public and of Work and Property

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 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. Contractor shall also so act if so instructed by the Owner.

Any compensation claimed by the Contractor on account of emergency work of this nature shall be determined by mutual agreement and failing which, by arbitration.

Article 11. Inspection of 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, laws, ordinances, or any public authority require any item of material, equipment or work to be specially tested or approved, the Contractor 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.

Article 12. Supervision and Superintendence

The Contractor shall maintain a competent staff at all times to supervise the work.

The Contractor shall keep on the work, during its progress, 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 the written request of the Contractor.

The Contractor shall use its best judgement 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, the Contractor shall apprise the Owner of all relevant facts and implications of the particular labor problem 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 affecting the work or damage or losses to its other operations.

Article 13. Qualification and Performance of Contractor's Employees

The Contractor shall at all times supply a sufficient number of skilled workmen to diligently pursue the work. All workmanship and materials shall be the best in its class and shall conform to all codes, rules, regulations and ordin-

ances 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 14. Changes in the Work

The Owner, without invalidating this Contract, may at any time order extra work or make changes by altering, adding to or deducting from the work. If such extra work or changes involve a change in cost or in the time required for completion, the contract price shall be increased or decreased by the fair value thereof and the time for completion shall be increased or decreased by the reasonable time allocable thereto. The Owner will itemize the changes to be made and upon receipt of written notice of same the Contractor agrees to submit promptly to the Owner, in triplicate, an itemized statement of the extension or reduction in the time for completion of this Contract which the Contractor deems such reasonable time, and his calculation of the adjustment in the contract price, resulting from the changes or extra work. This must be done before work on the changes is begun unless the Owner gives written order to proceed immediately.

In case the parties shall be unable to agree upon the increase or decrease, in the time for completion or in the contract price, resulting from such extra work or changes, the Contractor shall nevertheless proceed with the work, including such extra work or changes, and the dispute shall be settled by arbitration.

No extra work or change shall be made except by written order of the Owner, and no claim for an addition to the contract price or increase in the time for completion shall be valid unless the additional work 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. If the correction of such discrepancies, errors or omissions involves an increase or decrease in costs or time of completion, the contract price or time of completion shall be adjusted accordingly in the manner provided above as in the case of a change in the work.

Article 15. Deductions for Uncorrected Work

If the Owner deems it inexpedient to correct work that has been damaged through the fault or neglect of the Contractor, or that was not done in accordance with the Contract, an amount to compensate the Owner fully for such damage or non-compliance shall be deducted from the contract price. If the parties cannot agree on the amount of such deduction, it shall be determined by arbitration.

Article 16. Correction of Work before Final Payment

At any and all times before final payment, 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 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. Any dispute under this Article shall be determined by arbitration.

Article 17. Correction of Work After Final Payment

Neither the final certificate nor final payment nor any provision in this Contract shall relieve the Contractor of liability for faulty materials or workmanship and the Contractor shall replace such materials and remedy such workmanship and 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 determined by arbitration.

Article 18. 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 of the Contractor's property should be appointed or if the Contractor files a petition or if a trustee of the Contractor's 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 workmen or proper materials, or if he should fail to make prompt payments to Subcontractors or for material or labor, or disregard laws, ordinances or the instructions of the Owner, or otherwise be guilty of a substantial violation of any provision of the contract which he shall have failed to correct promptly after service of written notice thereof by the Owner, then the Owner may, without prejudice to any other right or remedy, terminate the employment of the Contractor for the Contractor's default and take possession of the premises and of all

materials, tools and appliances thereon and finish the work by whatever method the Owner may deem 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 all the general damages of the Owner caused by the Contractor's default, including the expence of finishing the work and compensation to the Owner for the Owner's managerial and administrative services, such excess shall be paid to the Contractor. If such damages shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. In the event the Contractor and the Owner are unable to agree upon the amount to be paid or reimbursed the dispute shall be settled by arbitration.

Article 19. Removal of Equipment

In the case of termination of this Contract before completion from any cause whatever, the Contractor shall promptly remove any part or all of Contractor's equipment and supplies from the property of the Owner, failing which the Owner shall have the right to remove such equipment and supplies at the expense and at the risk of the Contractor, without liability of the Owner for any damage to, or loss of the same.

Article 20. 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, notwithstanding the time for completing the entire work or such portions may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with this Contract. If such prior use increases the cost of or delays the work, the Contractor shall be entitled to extra compensation in reimbursement thereof, or extension of time equal to the delay or both, as the parties may agree upon, and failing agreement the dispute shall be determined by arbitration.

Article 21. Payment 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:

(a) Damaged or defective work not remedied.

(b) Claims filed or reasonable evidence indicating proable filing of claims by other parties against the Contractor or Owner.

(c) Failure of the Contractor to make payments properly to Subcontractors or for material or labor.

(d) A reasonable doubt that this Contract can be completed for the balance then unpaid or within the time specified.

(e) Damage to the Owner's property or the work of another Contractor.

Article 22. 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.

Article 23. Indemnity by Contractor

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.

Article 24. 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 25. Damages to Owner's Property

The Contractor shall be responsible, and reimburse the Owner, for any loss or expense to the Owner 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. Where such damage includes damage to the work it shall be repaired at the expense of the Contractor.

Article 26. Surety Bonds

If the Owner has so requested prior to the signing of this Contract, the Contractor shall furnish bond covering the faithful performance of this Contract and the payment of all obligations arising thereunder, in such form as the Owner may prescribe and with such sureties as it may approve. If such bond was required by instructions given previous to the receipt of bids, the premium shall be paid by the Contractor; if subsequent thereto, it shall be paid by the Owner.

Article 27. Liens

Neither the final payment nor any progress payment shall become due until the Contractor, if required, 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 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. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

Article 28. Assignment

The Contractor shall not assign nor 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.

Article 29. Coordination of Work

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

Article 30. Subcontracts

The Contractor shall, as soon as practicable after the execution of this Contract, notify the Owner in writing of the names of any Subcontractors proposed to be employed in any part of the work and shall not employ any such Subcontractor 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 incompetent or unfit.

The Contractor agrees to require each Subcontractor to execute a contract in writing binding such Subcontractor to the terms of this Contract insofar as applicable to his work, and requiring such Subcontractor, to the extent applicable, to assume toward the Contractor all the obligations and responsibilities that the Contractor assumes toward the Owner, unless specifically noted to the contrary in a written subcontract approved in writing by the Owner.

The Contractor shall be fully responsible to the Owner for the acts and omissions of all Subcontractors and of persons directly or indirectly employed by them. 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, including one who furnished material worked to a special design according to the plans or specifications of this work, but excluding one who merely furnished material not so worked.

Article 31. Arbitration

All disputes which are herein stated to be subject to arbitration shall be submitted to and determined by arbitration. Demand for arbitration shall be filed in writing by either party with the other within a reasonable time after cause thereof has arisen and in no case later than the time for final payment. 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.

Article 32. 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 33. Use of Technical Information

All blueprints, drawings, specifications and bills of material furnished to the Contractor by the Owner or prepared by the Contractor under the direction of the Owner are and shall at all times remain the property of the Owner and are considered loaned to the Contractor only for use in the performance of this Contract and the Contractor shall not use or permit the use of any of them for any other purpose without the Owner's prior written consent. Said blueprints, drawings, specifications and bills of material shall be treated as confidential information by the Contractor, who agrees not to disclose, dispose of, reproduce, copy or publish, or permit the reproduction, copying or publication of them or any part of them without the written consent of the Owner, and will take all reasonable precautions to prevent any such occurrences.

Article 34. Cleaning Up

The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by Contractor's employees or the work, and at the completion of the work Contractor shall remove all Contractor's

rubbish from and about the site and all Contractor's tools, scaffolding and surplus materials and shall leave the work "broom-clean" or its equivalent, unless more exactly specified.

Article 35. 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 36. 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 drawings relating thereto, the lists and specifications of materials, 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.

AMERICAN SMELTING AND REFINING COMPANY

FORM # INSURANCE-1 Revised 11/56

INSURANCE-CERTIFICATE

AMERICAN SMELTING AND REFINING COMPANY REQUIREMENTS FOR CONTRACTORS AND SUBCONTRACTORS.

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

_____

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

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, N.Y.

KIND OF INSURANCE	DESCRIPTION OF POLICY			REQUIRED MINIMUM
	NUMBER	EXPIRES	LIMITS OF LIABILITY	
CONTRACTOR'S PUBLIC LIABILITY (COMPREHENSIVE INCLUDING CONTRACTUAL)*				
BODILY-INJURY				
PROPERTY-DAMAGE				
CONTRACTOR'S PROTECTIVE LIABILITY				
BODILY-INJURY				
PROPERTY-DAMAGE				
AUTOMOBILE				
BODILY-INJURY				
PROPERTY-DAMAGE				
WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY				

DATE _____ _____ INSURANCE COMPANY

_____ _____

CITY STATE AUTHORIZED REPRESENTATIVE

*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 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.

AMERICAN SMELTING AND REFINING COMPANY

FORM # INSURANCE-1 Revised 11/56

INSURANCE-CERTIFICATE

AMERICAN SMELTING AND REFINING COMPANY REQUIREMENTS FOR CONTRACTORS AND SUBCONTRACTORS.

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE DESCRIBED BELOW HAVE BEEN ISSUED TO Southwestern Industrial Contractors and Riggers, Inc.

THESE POLICIES ARE NOW IN FORCE, COVERING WORK BY THE ASSURED FOR AMERICAN SMELTING AND REFINING COMPANY ON CONTRACT For Modification of Slag Dump Trestle

AT El Paso, Texas

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, N.Y.

KIND OF INSURANCE	DESCRIPTION OF POLICY			REQUIRED MINIMUM
	NUMBER	EXPIRES	LIMITS OF LIABILITY	
CONTRACTOR'S PUBLIC LIABILITY (COMPREHENSIVE INCLUDING CONTRACTUAL)*				
BODILY-INJURY				
PROPERTY-DAMAGE				
CONTRACTOR'S PROTECTIVE LIABILITY				
BODILY-INJURY				
PROPERTY-DAMAGE				
AUTOMOBILE				
BODILY-INJURY				
PROPERTY-DAMAGE				
WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY				

DATE _____

CITY _____ STATE _____ AUTHORIZED REPRESENTATIVE _____

*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 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.

Bond No. A E 71017-35

Employers·Commercial Union Companies

PERFORMANCE BOND

The American Institute of Architects,
A.I.A. Document No. A-311 September, 1963 Edition

KNOW ALL MEN BY THESE PRESENTS:

That - SOUTHWESTERN INDUSTRIAL CONTRACTORS AND RIGGERS, INC. -
(Here insert the name and address or legal title of the Contractor)

- EL PASO, TEXAS -, as Principal, hereinafter called Contractor,

and, - AMERICAN-EMPLOYERS' INSURANCE COMPANY -, incorporated under the laws of the state of Massachusetts, with its Home Office in Boston, as Surety, hereinafter called Surety, are held and firmly bound unto

- AMERICAN SMELTING AND REFINING COMPANY -
(Here insert the name and address or legal title of the Owner)

as Obligee, hereinafter called Owner, in the amount of TWO HUNDRED NINE THOUSAND FOUR HUNDRED - - -

THE HARDEMAN ACT STATUTORY PAYMENT BOND
TEXAS

KNOW ALL MEN BY THESE PRESENTS, That we, - SOUTHWESTERN INDUSTRIAL CONTRACTORS AND RIGGERS, INC. -

of EL PASO, TEXAS, Original Contractor (hereinafter called the Principal), as Principal

and - AMERICAN EMPLOYERS' INSURANCE COMPANY -

(hereinafter called the Surety), as Surety, are held and firmly bound unto - AMERICAN SMELTING AND REFINING COMPANY - (hereinafter called the Owner) in the amount of

TWO HUNDRED NINE THOUSAND FOUR HUNDRED - - - - - - - Dollars ($ 209,400.00)

for the payment whereof the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the 20th day of AUGUST 19 70, to make modifications to Slag Trestle for Asarco, El Paso Plant

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the said Principal shall promptly pay claimants for all labor sub-contracts, materials and specially fabricated materials performed or furnished under or by virtue of said contract and duly authorized normal and usual extras thereto (not to exceed 15% of said contract price), then this obligation shall be void, otherwise to remain in fully force and effect; labor, subcontracts, materials and specially fabricated materials shall be construed in accordance with Article 5452, Vernon's Revised Civil Statutes of Texas, 1925, as amended by the Acts of the Regular Session of the 57th Legislature, 1961.

PROVIDED, HOWEVER, that the Owner having required the said Principal to furnish this bond in order to comply with the provisions of Article 5472d of Vernon's Revised Civil Statutes of Texas, added by Acts of the regular Session of the 57th Legislature, 1961, all rights and remedies on this bond shall inure solely to such claimants and shall be determined in accordance with the provisions, conditions and limitations of said Article to the same extent as if they were copy at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument, this 16th day of SEPTEMBER 19 70.

SOUTHWESTERN INDUSTRIAL CONTRACTORS AND RIGGERS, INC. (SEAL)
(Principal)

By /s/ Clay Fiske, Pres
(Title)

AMERICAN EMPLOYERS' INSURANCE COMPANY

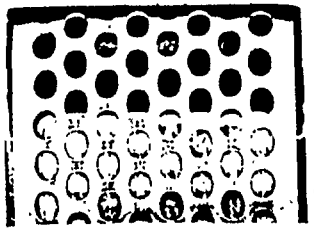
BOSTON, MASSACHUSETTS
(Surety)

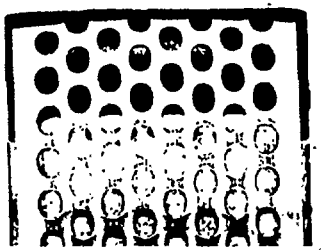
By R. S. Crowell, (Surety)
Attorney-in-Fact

The foregoing bond is hereby approved this _____ day of _____ 19__

_____
(Owner

By _____
(Title





9/9/70

ENCLOSED PLEASE FIND CERTIFICATE OF INSURANCE FOR CARTER ENTERPRISES FOR ASARCO JOB WHICH WE TRUST WILL BE FOUND IN ORDER.

THANK YOU,

ANN BOYLES

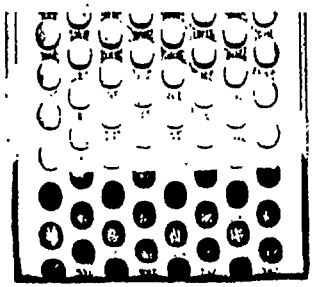
TO

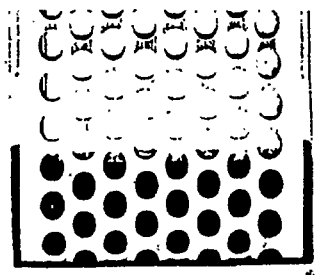
SOUTHWEST INDUSTRIAL CONTRACTORS
AND RIGGERS, INC.
P.O. BOX 1611
EL PASO, TEXAS 79948

BOB BOYLES INSURANCE AGENCY

Insurance — Mortgage Loans

POST OFFICE BOX 764 79945
1000 EAST YANDELL DRIVE 79902
EL PASO, TEXAS
Phones: 533-5515 — 532-5469





Great American Insurance COMPANIES

Certificate of Insurance

XX Great American Insurance Company ☐ American National Fire Insurance Company
(Herein called the Company)

In the event of cancelation of the policies designated below, it is the intent of the Company to mail 10 days prior notice thereof to:

SOUTHWEST INDUSTRIAL CONTRACTORS & RIGGERS, INC.
P.O. BOX 1611
EL PASO, TEXAS 79948

NOTE: This Certificate of Insurance neither affirmatively nor negatively amends, extends, nor alters the coverage afforded by the policy or policies numbered in this certificate.

The Company certifies that the following insurance policies have been issued to:

NAME OF INSURED			ADDRESS OF INSURED	
W.O. Carter dba CARTER ENTERPRISES			3633 BUCKNER, EL PASO, TEXAS	
TYPE OF INSURANCE	POLICY NUMBER	POLICY PERIOD	LIMITS OF LIABILITY	
			BODILY INJURY	PROPERTY DAMAGE
WORKMEN'S COMPENSATION and EMPLOYERS' LIABILITY				
COMPREHENSIVE GENERAL LIABILITY				
MANUFACTURERS' AND CONTRACTORS' LIABILITY				
OWNERS' AND CONTRACTOR PROTECTIVE LIABILITY				
OWNERS' LANDLORDS AND TENANTS' LIABILITY				
COMPLETED OPERATIONS AND PRODUCTS LIABILITY				
COMPREHENSIVE AUTOMOBILE LIABILITY				
AUTO LIABILITY — OWNED AUTOS				
AUTO LIABILITY — HIRED AUTOS				
AUTO LIABILITY — OTHER NON-OWNED AUTOS				
CO				
OTHER				

This Certific

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