PLAINTIFF'S EXHIBIT

ASA-1586

Revised 3/63

TO:	APPROVED BY
Purchasing	
Credit	
Legal	
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Operating Vice President	

RETURN TO PURCHASING DEPARTMENT

Construction or Repair Contract Form PD-19 Under $100,000.00

ORDER NO. _____

CONTRACT FOR

Enclosing HiLine Car Loading Points
(Insert name of job)

AMERICAN SMELTING AND REFINING COMPANY'S El Paso Plant

at El Paso, Texas
(Insert town and state)

THIS AGREEMENT, made the First day of March, 1971,

by and between Southwestern Industrial Contractors & Riggers, Inc., whose address is

1730 Bassett Ave., P.O. Box 1611, 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)

WITNESSETH:

The Contractor and Owner agree as follows:

Article 1. Scope of the work

The Contractor shall furnish all shop drawings, field engineering, labor, tools, equipment, transportation, materials and other facilities, except such items as are hereinafter listed as being furnished or furnished and installed by the Owner, for Enclosing HiLine Car Loading Points (hereinafter called the "work")
(Insert name of job)

at the El Paso plant of the Owner at El Paso, Texas
(Insert town & state)

in accordance with the drawings and specifications listed below, all of which are incorporated herein by reference and made a part hereof:

(List Specifications and Drawings)

As Per Southwestern Quote of 18 January 1971

Article 2. Time of Completion

The work shall be commenced March 15, 1971 and shall be substantially completed March 31, 1971.

Article 3. Payment (to be deleted if progress payments are to be made)

The Owner shall pay the Contractor for the performance of this Contract, the sum of Six Thousand Five Hundred and Fifty. dollars, ($ 6550), lawful money of the United States of America within 30 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 be or were filed) satisfactory to the Owner that all charges for labor and material incorporated in the work and all other indebtedness connected with the work for which liens could be filed have been paid and that the work is free of all liens and encumbrances.

Article 3. Payments (to be deleted if progress payments are not to be made)

The Owner shall pay the Contractor for the performance of this contract, the sum of _____ dollars, ($_____), lawful money of the United States, as follows:

On or about the _____ day of each calendar month, commencing _____, 19___, the Owner shall pay the Contractor _____ per cent (_____%) based on the contract prices, of the labor and materials incorporated in the work and of materials suitably stored at the site thereof up to the end of the next preceding calendar month, as estimated by the Owner, less the aggregate of previous payments; and upon completion of the entire work, a sum sufficient to increase the total payments to _____ per cent (_____%) of the contract price. Final payment of the remaining (_____%) of the contract price shall be due _____ days after completion of the work.

Before each such payment is due, the Contractor shall submit evidence satisfactory to the Owner (including, if requested, partial waivers, or in the case of final payment, 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 be or were filed) that all charges for labor and material incorporated in the work and all other indebtedness (except, in the case of payments other than final payment, indebtedness not then due) connected with the work for which liens could be filed have been paid and that the work is free of all liens and encumbrances.

Article 4. Payments Withheld

The Owner may withhold all or part of any 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 probable filing of claims by other parties against the Contractor or the 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 (e) damage to the Owner's property or the work of another contractor.

Article 5. Liens

If any lien remain unsatisfied after payment of the full contract price has been made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such 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 6. 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 7. 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 the Contractor's expense, replace and repair any materials or portions of the work which the Owner shall deem defective 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.

Article 8. Protection by Contractor

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. 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 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.

The Contractor shall use its best judgement and skill in dealing with labor matters, and take all reasonable steps to avoid labor dispute. In the event of any strike or threat of strike, slowdowns, featherbedding, or other like practices, the Contractor shall apprise the Owner of all relevent 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 9. Contractor's Liability Insurance

The Contractor shall maintain such insurance as will indemnify it against claims under workmen's compensation acts and against any other claims for damages for personal injury, including death, which may arise from operations under this contract, whether such operations be by the 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 and shall provide insurance coverage in amounts not less then those stated therein.

Article 10. 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 of 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 11. 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 12. Compliance with Laws and Ordinances

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 performs any work contrary to any such law, ordinance, rule or regulation, he shall bear all costs arising therefrom.

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 13. 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 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 drawing or specifications furnished by the Owner.

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. Such order may be made the Owner on its own behalf or at the request of the Contractor, upon discovery by the Contractor of any discrepancy between the plans and the physical conditions encountered. If such extra work or changes involve a change in cost, the contract price shall be increased or decreased by the fair value thereof. The Owner will itemize the changes to be made and upon receipt of written notice of same, the Contractor will submit promptly to the Owner, in triplicate, an itemized statement of his calculations of the adjustment in the contract price resulting from the changes or extra work. This must be done before work on the change is begun unless the Owner gives written order to proceed immediately. No work or change shall be made, except by written order of the Owner and no claim for an addition to the contract price shall be valid unless the additional work was so ordered. Any dispute under this Article shall be subject to arbitration.

Article 15. 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 expense of finishing the work and compensation to the Owner for the Owner's managerial and administrative service, 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 16. Correction of Work after Payment

Neither payment nor any provision in this 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 of the Contractor's work hereunder. The Owner shall give notice of observed defects with reasonable promptness. Any dispute under this Article shall be subject to arbitration.

Article 17. Arbitration

All disputes which are herein stated to be subject to arbitration shall be submitted to and determined by arbitration. 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. There shall be one arbitrator who shall be chosen by the American Arbitration Association, whose arbitration rules shall be followed.

Article 18. Subcontracts

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

Article 19. Assignment

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

Article 20. Coordination of Work

The Contractor shall conduct the work hereunder so as to cause a minimum of interference with the Owner's operation. Where interference with the Owner's operations become absolutely necessary, permission shall be requested by the Contractor not less than seventy-two (72) hours in advance.

Article 21. Undertakings by the Owner

The Owner agrees to obtain and pay for any permits, licenses and easements required for permanent structures or changes, 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 Owner's said plant, to a point adjacent to or within 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 22. 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 23. 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.

Article 24. 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 INDUSTRIAL
CONTRACTORS AND RIGGERS, INC.
Contractor

By W. Clay Fiske

Title President.

AMERICAN SMELTING AND REFINING COMPANY
Owner

By [illegible]

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 Enclosing Wedge Roaster Loading Area

AT El Paso Smelting Works

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)*	CGL-551188	6/1/71		
BODILY-INJURY			EACH PERSON $ 100,000 EACH ACCIDENT $ 300,000	$100,000 $300,000
PROPERTY-DAMAGE			EACH ACCIDENT $ 100,000	$ 25,000
CONTRACTOR'S PROTECTIVE LIABILITY				
BODILY-INJURY	CGL-551188	6/1/71	EACH PERSON $ 100,000 EACH ACCIDENT $ 300,000	$100,000 $300,000
PROPERTY-DAMAGE			EACH ACCIDENT $ 100,000	$ 25,000
AUTOMOBILE				
BODILY-INJURY	CAF-591037	6/1/71	EACH PERSON $ 100,000 EACH ACCIDENT $ 300,000	$100,000 $300,000
PROPERTY-DAMAGE			EACH ACCIDENT $ 100,000	$ 25,000
WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY	WC-58792	6/1/71	Statutory Limits	COMPLY WITH APPLICABLE STATE LAW
			EACH ACCIDENT $ 100,000	$ 25,000

DATE February 24, 1971

Employers Casualty Company
Texas Employers Insurance Association
INSURANCE COMPANY

El Paso, Texas
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.