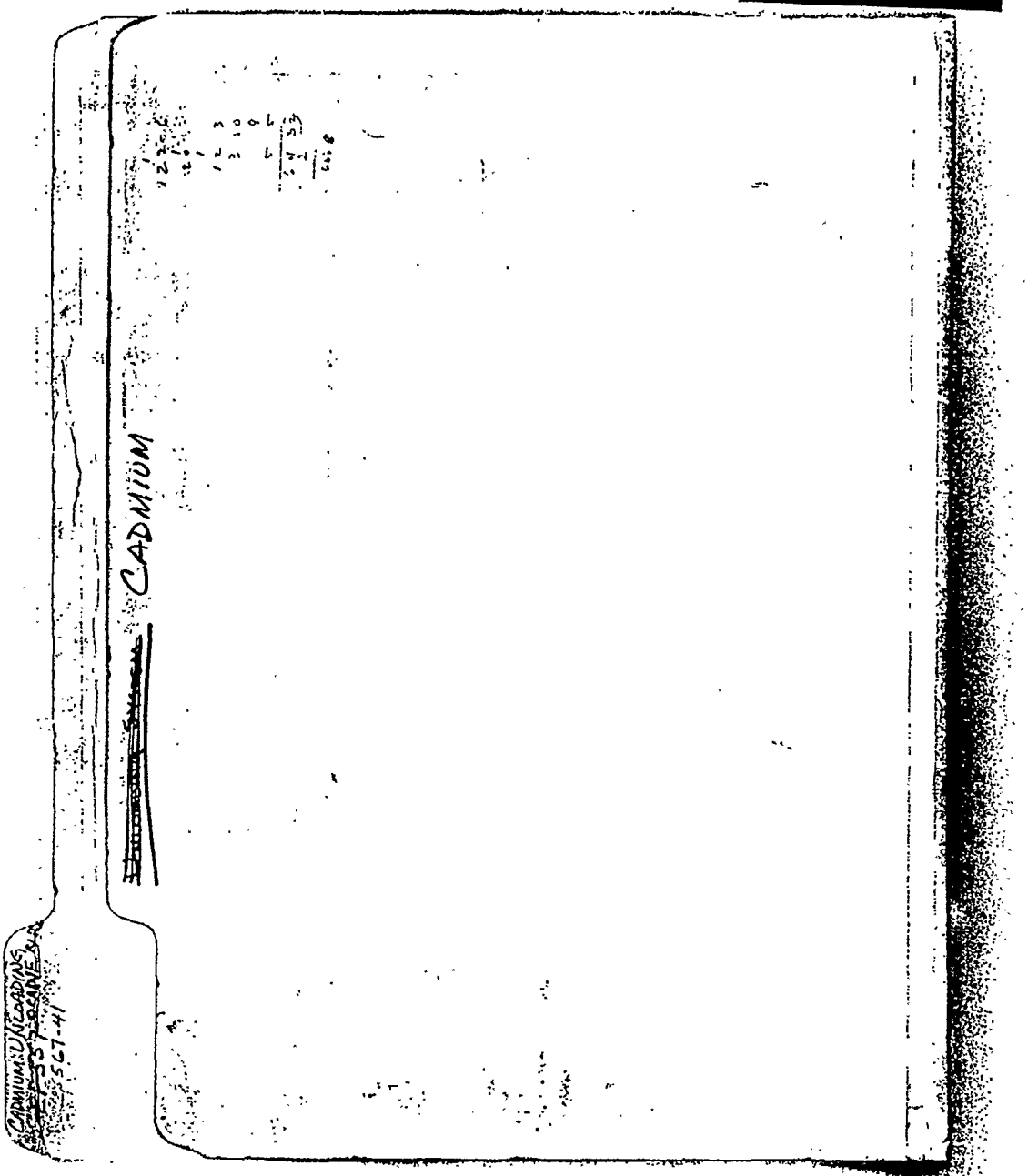
PLAINTIFF'S EXHIBIT

ASA-1086



	APPROVED BY
Purchasing	
Cash	
Legal	
Insurance	
Operating Dept.	
President	

Return to Purchasing Department

Engineering, Architectural
And/Or Consulting Services
Contract Form PD-58

Order No. _____

CONTRACT FOR

Design and Engineering of Crane Building
(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 24th day of September, 19 71, by and between C. F. Opel, Inc. whose address is P. O. Box AA, El Paso, Texas 79951 (hereinafter called the "ENGINEER") and AMERICAN SMELTING AND REFINING COMPANY, a corporation of the State of New Jersey, whose address is 120 Broadway, New York, N.Y. 10005 and P. O. Box 1111, El Paso, Texas 79999
(Insert address of plant or unit)

(hereinafter called the "Owner").

W I T N E S S E T H:

The Engineer and the Owner agree as follows:

Article 1. Scope of Work

The Engineer shall furnish and perform the various services required for Designing and detailing a steel storage building approximately 70-ft x 130-ft complete with craneway.

as outlined in the specifications listed below. Any attachments referred to are incorporated herein by reference and made a part hereof.

C. F. Opel Proposal Dated May 12, 1971
American Smelting and Refining Company Equal Opportunity Policy Statement Dated November 19, 1970

Article 2. Time of Completion

The services outlined above shall be commenced on or about October 15th and shall be completed on or about November 15th, 1971.

Article 3. The Contract Price

In consideration of the performance of the Contract, the Owner agrees to reimburse the Engineer as follows:

Engineer's fee in the amount of $ 3331 for performance of work plus the reimbursable costs specified as follows:

As outlined in Appendix "A".

None

Article 4. Progress Payments (If Specified under Article 3).

The Owner shall make payments on account of this Contract as follows:

(a) As early as possible after the first day of each calendar month commencing with _____ 19__ the Engineer shall present to the Owner a statement, on forms provided or approved by the Owner, of all reimbursable costs incurred during the preceding month. This statement shall be accompanied by copies of supporting invoices and such copies of payrolls, or totalization and distribution of same, as may be required, lists of plant and equipment used with rates for same, together with any other information as the Owner may require to allow it to verify the accuracy of the statement. As soon as practicable after receipt of such statement and upon verification thereof the Owner shall pay _____% of such amount to the Engineer.

Article 5. Acceptance and Final Payment

(a) Upon receipt of written notice in the form of a final certificate from the Engineer 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 that the work provided for in this Contract has been completed, the entire balance due the Engineer, including the amount of his fee, shall be paid by the Owner to the Engineer within 30 days after the date of acceptance of the work by the Owner.

(b) Before issuance of the final certificate, the Engineer 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 case of disputed indebtedness or liens the Engineer may submit, in lieu of evidence of payment, a surety bond in form satisfactory to the Owner, guaranteeing payment of all such disputed amounts.

Article 6. Insurance

The Engineer shall maintain such insurance as will indemnify it against claims made 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 Engineer or any of its subcontractors or anyone directly or indirectly employed by either of them.

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

It is understood Engineer will maintain insurance coverage in such amounts and for such periods as are sufficient to protect Owner from any liability as a result of the professional errors and/or omissions of the insured (Engineers/Architects) or any person employed by the insured, and will furnish evidence of the same to Owner.

Article 7. Title to the Work

All drawings, specifications survey reports, models and other items included in the scope of the work completed or in the course of completion and furnished by the Engineer shall be and become the property of the Owner at the

completion of this agreement or upon its cancellation, and the said items may be used by the Owner entirely at its own discretion as it may deem advisable at any time. Drawings, specifications survey reports and other data shall at all times be treated as confidential by the Engineer. This clause shall survive the termination for any reason of this agreement.

The Engineer agrees that the Owner shall have full and exclusive mechanical, process and design patent, copyright, and/or Trademark rights in this country and abroad on all of the Engineer's work for the Owner insofar as they pertain to the services or work being performed hereunder, without extra cost to the Owner. The Engineer agrees at the Owner's request to cause the person or persons making any invention or inventions in connection with the conception or development of the Owner's processes, products or plants hereunder, to sign all papers necessary for Letters Patent on said invention or inventions which Owner shall have prepared, provided said person or persons shall be in the employ of the Engineer upon presentation of said papers for signature, and to execute any and all assignments necessary to vest all right, title and interest in and to said inventions, applications and patents in the Owner. It is understood that no costs or expenses of any kind in connection with obtaining the aforesaid patents, application and assignments shall be imposed on or borne by the Engineer or by any person associated with the Engineer.

Article 8. Status of Engineer and its Personnel

It is understood and agreed that the status of the Engineer hereunder is that of an independent contractor, that the personnel of the Engineer performing services or work hereunder shall under no circumstances be deemed to be employees of the Owner, and that any workmen's Compensation Insurance coverage for such personnel will be the sole responsibility of the Engineer. Notwithstanding the aforesaid understanding, the general instructions of the Owner in connection with accomplishing the work to be done hereunder shall be followed by the personnel of the Engineer.

During tenure of contract, Owner shall have prerogative to request changes in personnel of Engineer's employees assigned to this work when in the opinion of the Owner their work is not conducive to required scope of work.

Article 9. Compliance with Laws and Ordinances

If for any reason the Engineer's or any of its Subcontractor's employees or agents acquire a status imposing liability on the Owner for employer's contributions or taxes under the Federal Insurance Contribution Act, the Federal Unemployment Tax Act, any State Unemployment Tax Act, or any other Act, Statue or Regulation thereunder, the Engineer shall be exclusively liable for, and shall indemnify the Owner against, the same and it 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. Owner's Right to Terminate Contract

If the Engineer should commit an act of bankruptcy, or make an assignment for the benefit of creditors, or if a receiver of the Engineer's property should be appointed, or if the Engineer should file a voluntary petition in bankruptcy, or if a trustee of the Engineer's property should be appointed under the reorganization or readjustment provisions of the Bankruptcy Act, or if the Engineer at any time should refuse or neglect to supply sufficient properly skilled

personnel, or if he should fail to make prompt payments to subcontractors, or disregard applicable laws or ordinances or the instructions of the Owner, or should he otherwise violate any provision of the contract and fail to correct such violation promptly after service of written notice thereof by the Owner, then the Owner may, without prejudice to any of its other rights or remedy in the premises, terminate the employment of the Engineer, take possession of drawings, specifications, surveys, models, etc. and finish the work by whatever method the Owner may deem expedient.

Article 11. Arbitration

In case of any dispute or difference which may arise as to whether the work done hereunder shall fail to comply with the plans and specifications or with any of the provisions of this contract, such dispute or difference and the question of full performance of the Engineer of the obligations herein imposed shall be submitted to a board or arbitration to be selected in the following manner:

Unless otherwise provided by law, the parties may agree upon one arbitrator; otherwise, there shall be three, one named in writing by each party, and the third chosen by these arbitrators. Provided, however, that if either of the parties hereto shall fail to name an arbitrator within ten (10) days after being requested in writing to do so by the other, the arbitrator so named by the latter shall be and act as the sole arbitrator; and provided further, that in the event each of the parties names an arbitrator but the arbitrator so selected shall fail to select a third within ten (10) days, then he shall be designated by the presiding officer of the Bar Association nearest the location of the work. If there be more than one Bar Association in such locality, it shall be the senior association or the one longest established. The decision of the arbitrator or arbitrators shall be in writing and shall be final.

Article 12. Subcontracts

The Engineer will not employ any Subcontractor without the prior written approval of the Owner and the Engineer will require each such Subcontractor to execute a contract in writing containing provisions similar 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. Nothing herein shall be deemed to create a contractual relationship between any such Subcontractor and the Owner.

Article 13. Assignment

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

Article 14. 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 15. 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 except by an agreement in writing duly executed by the parties or their duly authorized agents.

Article 16. Additional Provisions

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

C. F. OPEL, INCORPORATED

Engineer

By _____

Title President

AMERICAN SMELTING AND REFINING COMPANY

Owner

By _____

Title Purchasing Agent

Appendix "A" To Contract Form PD-58

"Reimbursable costs" shall be the sum of the costs to the Engineer of the following items:

A. 1. Direct cost of current actual salaries for all Engineer's employees who actually contribute time to the project in proportion to the time they devote to it. These salaries are to be in accordance with the hourly wage rates shown on Exhibit "B" attached.

2. In addition to the direct salaries, Engineer will be paid _____ percent (____%) of such salaries to cover all fringe benefits which include payroll taxes and insurance, vacation, sick leave and holiday allowances.

The total for Item A will be the direct salaries, plus _____percent (____%) for fringe benefits.

B. Overhead as _____ percent (____%) of the total of Item A above.

C. Actual cost of all out-of-pocket expenses incurred by Engineer in the performance of this work which will include:

Actual traveling and living expenses for all personnel when required to leave the District Office on duties directly applicable to the job.

Telephone, telegraph, office equipment and supplies blueprints, postage and other minor expenses directly applicable to the Job.

Required inspection and testing.

No salaries of the Engineer's executive officers, including and above General Manager, and no part of the expenses of conducting the Contractor's Main Office or regularly established Branch Offices, and no overhead expenses of any kind, except as above provided, shall be included in the cost of the Job unless otherwise expressly provided herein.

D. It is agreed that the Engineer's "Reimbursable Cost" shall be increased or decreased, as the case may be, by an amount equal to the total effect of the following:

1. Routine changes in salary and wage rates and any statutory changes in payroll taxes.

2. Extra cost of any premium time, or overtime in excess of the regular work week, plus ____% for fringes affected by the extra cost on such premium time or overtime. All overtime must be first approved by the Owner.

AMERICAN SMELTING AND REFINING MPANY

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 C. F. OPEL, INC. AND ELECTRIC MAINTENANCE CORPORATION

THESE POLICIES ARE NOW IN FORCE, COVERING WORK BY THE ASSURED FOR AMERICAN SMELTING AND REFINING COMPANY ON CONTRACT FOR DESIGN AND ENGINEERING OF CRANE BUILDING AT EL PASO, TEXAS - 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)*	A-E-2076-47	10-30-71		
BODILY-INJURY			EACH PERSON $ 100,000.00 EACH ACCIDENT $ 500,000.00	$100,000 $300,000
PROPERTY-DAMAGE			EACH ACCIDENT $ 500,000.00	$ 25,000
CONTRACTOR'S PROTECTIVE LIABILITY				
BODILY-INJURY			EACH PERSON $ EACH ACCIDENT $	$100,000 $300,000
PROPERTY-DAMAGE			EACH ACCIDENT $	$ 25,000
AUTOMOBILE	A-E-2076-47	10-30-71		
BODILY-INJURY			EACH PERSON $ 100,000.00 EACH ACCIDENT $ 500,000.00	$100,000 $300,000
PROPERTY-DAMAGE			EACH ACCIDENT $ 500,000.00	$ 25,000
WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY	A-E-1026-23	10-30-71	Statutory - State of Texas, New Mexico and Elsewhere in the United States	COMPLY WITH APPLICABLE STATE LAW
			EACH ACCIDENT $ 100,000.00	$ 25,000

DATE 9-23-71

AMERICAN EMPLOYERS INSURANCE COMPANY

INSURANCE COMPANY

AMERICAN INSURANCE AGENCY

EL PASO (CITY) TEXAS (STATE)

Jack L. Elliott

AUTHORIZED REPRESENTATIVE

This certificate neither affirmatively or negatively amends, extends or alters the coverage afforded by the policies issued by the Company named herein.

*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

C. F. OPEL, INC.
CONSTRUCTION • ENGINEERING • MAINTENANCE
FOR INDUSTRY
(915) 544-5820 • P. O. BOX AA • EL PASO, TEXAS 79951

May 12, 1971

American Smelting & Refining Co.
El Paso Smelting Works
El Paso, Texas

Attn: Mr. Bill Nasmyth
Chief Engineer

Re: Engineering for Rail Located Storage Building

Gentlemen:

In accordance with your request of May 11, 1971 for a proposal to design and detail the above referenced storage building, we offer the following for your consideration.

A lump sum bid of Three Thousand Three Hundred Thirty One Dollars ($3,331.00) to include all necessary engineering design, field erection drawings and shop detail drawings.

We have made preliminary manhour estimates that indicate approximately 472 manhours will be required for the project with hours allocated to drawings as follows:

Item	Quantity	Description	Hours
1.)	1	Roof Framing Plan (erection)	55
2.)	1	Elevation (erection)	65
3.)	1	Sheet of Sections & Details	40
4.)	1	Foundation - A.B. Setting (Sepia of 1.)	40
5.)	1	Foundation Details	32
6.)	1	Shop Drawing - Columns	16
7.)	1	Shop Drawing - Girts, Purlins & X-Bracing	32
8.)	1	Shop Drawing - Eve Strut and Bridge Details	48
9.)	1	Lighting and Conduit Plan	40
10.)	1	Wiring Diagrams	32
11.)	1	Sheating Elevations (Sepia of 2.)	16
12.)	1	Sheating Plan (Sepia of 1.)	16
			432
		Engineering	40
		Total estimated hours	472

Est 52-55 Tons

Above hours are all inclusive I.E. include all engineering, drafting and checking.

Thank you for this opportunity to bid and work with you.

Very truly yours,

C.F. OPEL, INC.

John R. Miracle

John R. Miracle, Manager
Design Engineering

JRM:mc

OK FOR 130' LENGTH 8-9-71 JRM

AM ICAN SMELTING AND REFINING COM NY
EL PASO SMELTING WORKS
P. O. Box 1111
El Paso, Texas 79999

W. R. KELLY, Manager
P. A. DeSANTIS, Superintendent

ANDREW LIEBERT, Accounting Manager
R. O. COVINGTON, Supply Agent

November 19, 1970

AMERICAN SMELTING AND REFINING COMPANY

EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

Our Plant has a long-standing policy that its employment practices shall provide equal opportunity for all employees without regard to race, color, creed, sex or national origin.

We in ASARCO are ever mindful of our obligations and responsibilities to the Communities in which we operate and to the Nation as a whole. One of our chosen responsibilities is to insure equal employment opportunities for all, without regard to race, color, creed, sex or national origin--except where sex is a bona fide occupational qualification.

Our hiring practices, promotions and transfers at all levels of employment must continue to be based on an individual's qualifications and ability to perform satisfactorily the job requirements with due regard to seniority, while furthering the principles of Equal Employment Opportunity.

Within ASARCO our management must provide the lead in establishing procedures to continue successfully this declared policy of non-discrimination. The effectiveness of this policy requires a high degree of cooperation on the part of all ASARCO personnel, at every job level within the Company; as Supervisors you are responsible for the continued promotion and enforcement of this Policy throughout your organization.

Mr. A. R. Scasta, Personnel and Safety Director, will continue to administer our Equal Employment Opportunity Program. I know he will have your close and active cooperation in this matter.

W. R. Kelly

W. R. KELLY
MANAGER