

KAISER ENGINEERS
INTER-OFFICE MEMORANDUM



TO
AT

H. O. Tracy
Oakland

DATE **July 8, 1966**

FROM **J. G. Nelson**

COPIES TO

L. H. Oppenheim V. E. Cole
J. E. Hughes F. F. Havard
J. R. Connor A. E. Forster
P. C. Meyer D. J. Young
R. E. Bernard P. M. Rivard

AT **Oakland**

JOB NO. **6620**

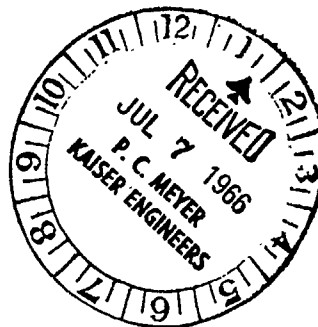
SUBJECT

American Smelting & Refining Company
Missouri Lead Smelter and Refinery
Contract

Attached for safekeeping are two fully executed copies of Asarco's contract on the above project dated 20th April, 1966. Also attached are Asarco's letter dated June 28, 1966 transmitting this contract to Mr. Havard, a letter from Mr. Havard dated July 1, 1966 indicating the omission of the word "affiliated" between the words "Contractor's" and "corporations" on Page 7 of the contract under Article 3.(b) 8 in the third line, and Asarco's letter dated July 5, 1966 confirming the insertion.

Xerox copies of these documents are distributed herewith to the above copy addressees.

JUN:ks
Attach.



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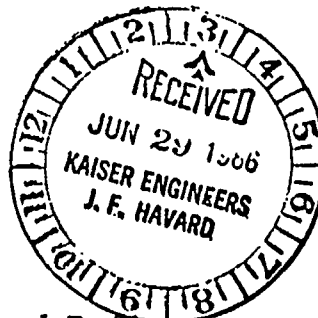


AMERICAN SMELTING AND REFINING COMPANY
PURCHASING DEPARTMENT
120 BROADWAY, NEW YORK, N.Y. 10005

J PAUL HARRISON
VICE PRESIDENT

June 28, 1966

Mr. J. F. Havard, Manager
Mineral Products Department
Kaiser Engineers, Inc.
300 Lakeside Drive
Oakland, California 94604



Re: Missouri Lead Smelter and Refinery
K.E. Job No. 6620

Dear Mr. Havard:

I enclose sixteen copies of contract dated April 20, 1966 covering Kaiser Engineers' services in connection with the construction of our lead plant at Glover, Missouri. All copies have been signed on behalf of Asarco. The changes suggested in your telex of June 22nd have been incorporated except for Article Y which was further modified. These changes in Article Y were given to Mr. Pisacane last week for transmittal to you.

It will be appreciated if you will return four fully signed copies to this office. Also, as provided in Article 5 of the principle agreement, we would like four copies of insurance certificate verifying coverage outlined in Article P. I assume this will be in the same form as the certificate dated March 7, 1966 which was forwarded to us by Mr. Fellmeth on June 2nd.

The courtesies extended during my recent visit to Oakland were very much appreciated and I am sure the agreement will prove mutually satisfactory.

Sincerely,

JPH/HH

cc: Messrs. R.L. Hennebach
B.J. DiSanto-A/M
F.T. Fellmeth-A/M
R.C. Skow-A/M

(W/out Enc.
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KAISER ENGINEERS, INC.

KAISER CENTER • 300 LAKESIDE DRIVE, OAKLAND, CALIFORNIA 94604

July 1, 1966

Mr. J. Paul Harrison, Vice President
American Smelting and Refining Company
Purchasing Department
120 Broadway
New York, New York 10005

Subject: Missouri Lead Smelter and Refinery
Kaiser Engineers Job No. 6620

Dear Mr. Harrison:

In accordance with the instructions in your letter of June 28, 1966, we attach four copies of the subject contract which have been executed in behalf of Kaiser Engineers, Inc.

We find the contract to be in accordance with our understandings. We do wish to call your attention to the omission of one word which was inadvertently left out of our draft of May 7, 1966 and thereafter the omission was perpetuated. On Page 7 of the contract under Article 3.(b) 8 in the third line the word "affiliated" should be inserted between the words "Contractor's" and "corporations". Please confirm that the omitted word may be inserted on your copies and on ours.

We are arranging to have the insurance certificate in four copies forwarded to you as you have requested. These copies will be sent next week.

We thoroughly enjoyed your visit to our Oakland office and regret that you were unable to stay longer. We too are certain that the agreement for this project will prove to be mutually satisfactory to both parties and that American Smelting and Refining Company will be operating a fine facility when the project is completed.

cc: V. E. Cole
A. E. Forster
J. G. Nelson ✓
D. J. Young

Sincerely,

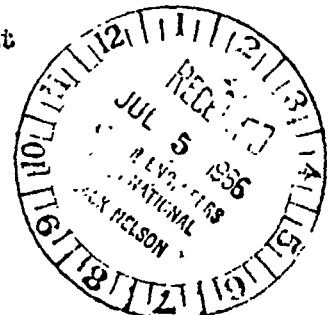
KAISER ENGINEERS, INC.

ORIGINAL SIGNED BY
J. F. HAVARD

J. F. Havard, Manager
Mineral Projects Department

JFH:eg
enclosures

cc: Mr. D. J. DiSanto
Mr. F. T. Fellmeth



KAISER
ENGINEERS

ENGINEERING-CONSTRUCTION-CONTRACTING SINCE 1914

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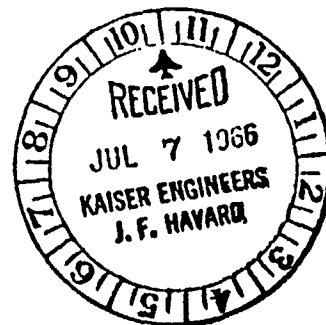
AMERICAN SMELTING AND REFINING COMPANY
PURCHASING DEPARTMENT
120 BROADWAY, NEW YORK, N.Y. 10005

J PAUL HARRISON
VICE PRESIDENT

July 5, 1966

VIA AIR MAIL

Mr. J. F. Havard, Manager
Mineral Projects Department
Kaiser Engineers, Inc.
300 Lakeside Drive
Oakland, California 94604



Re: Missouri Lead Smelter and Refinery
Kaiser Engineers Job No. 6620

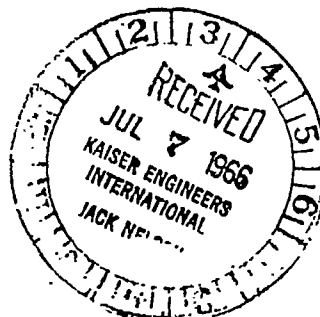
Dear Mr. Havard:

With reference to the second paragraph of your letter of July 1st, this will confirm our agreement to insert the word "affiliated" between the words "Contractor's" and "corporations" on page 7 of the subject contract in the third line under Article 3.(b) 8.

Very truly yours,

JPH/HH

cc: Messrs. B.J. DiSanto
F.T. Fellmeth



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CONTRACT FOR
LEAD SMELTER AND REFINERY

AT

AMERICAN SMELTING AND REFINING COMPANY' PLANT

AT

GLOVER, MISSOURI

	APPROVED BY
TO:	
Engineering _____	
Purchasing _____	
Credit _____	
Legal _____	
Insurance _____	
Traffic _____	
Comptroller _____	
Operating Vice President _____	
RETURN TO PURCHASING DEPARTMENT	

THIS AGREEMENT, made the 20th day of April, 1966 by and between KAISER ENGINEERS, INC., whose address is 300 Lakeside Drive, Oakland, California 94604 (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, N.Y. 10005 (hereinafter called the "Owner").

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 Work

The Contractor shall furnish all plans, engineering, procurement (as required), labor, materials, transportation, tools, equipment and other facilities, except such items as are being furnished or furnished and installed by the Owner, required for the construction and installation of facilities for a lead smelter and refinery at the property of the Owner at Glover, Missouri, with an estimated ultimate future capacity of approximately 180,000 short tons of lead per year after installation of necessary supplemental facilities.

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All to be in accordance with the requirements and provisions hereof and of the attached "General Provisions", the description of facilities set forth below, the list of Owner's drawings attached hereto as Exhibit "A" and the Travel Subsistence and Allowance Policy attached hereto as Exhibit "B", all of which are incorporated herein by reference, made a part hereof and together with this Agreement are hereinafter referred to collectively as the "Contract".

The facilities comprising a complete lead smelter and refinery plant including the required auxiliaries with respect to which said services are to be performed are generally described as follows:

1. A concentrate truck unloading dock for transfer of concentrates to gondola type railroad cars.
2. Scale house, truck scale and track scale.
3. A thaw house for railroad cars.
4. A railroad yard system for the plant.
5. An In-plant unloading and reclaim arrangement for sinter charge feed material and blast furnace feed material.
6. A sinter production plant including a feed proportioning system, dust control system, gas handling flues, baghouse and stack and any other related appurtenances.
7. A blast furnace with all the auxiliaries, including a slag granulating and handling system, with a water cooling pond, a blast furnace charge system, dust and fume control system and gas flue system with baghouse, and any other related appurtenances.
8. Auxiliary plant facilities as follows:
 - a. Water storage and distribution system including items required for fire protection and sanitary sewer disposal system.

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- b. Bucking and Sampling building and equipment facilities.
 - c. Shop, warehouse, and lunchroom building and equipment facilities.
 - d. Laboratory, office and change house building and equipment facilities.
 - e. A 100 psi air system for the plant.
 - f. Garage for plant locomotive.
9. A complete refinery and shipping facility.
10. Electrical substation, in-plant electricals and yard lighting.
11. In-plant roads and yard paving.
12. A security fence surrounding the plant.
13. Parking areas.
14. The engineering work performed for the Plant will make space provision for future installation of the following additions:
- a. A sulfuric acid plant for treatment of sinter plant off-gases.
 - b. Ponds and cooling towers.
 - c. Another blast furnace with its auxiliary requirements.
 - d. Extension of the refinery facility in the kettle area.

Article 2. Time of Completion

The work to be performed under this Contract shall be commenced April 20, 1966 with estimated completion date of December 31, 1967.

Article 3. The Contract Price

(a) In consideration of the performance of the Contract, the Owner agrees to reimburse the Contractor for all costs and expenses incurred by the Contractor defined in (b) below as "Reimbursable Costs" and to pay the Contractor a Fixed Fee of Four Hundred Twenty-five Thousand Dollars (\$425,000)

(b) The words "Reimbursable Costs" as used herein shall mean the cost to the Contractor of the following items used or consumed or incurred in performance of the work hereunder, excluding however, any of such items supplied by Owner:

1. Job Office and all necessary temporary facilities such as buildings, use of land not furnished by the Owner, access roads and utilities. The costs of these items include construction, furnishings and equipment, maintenance during the period that they are needed, and such demolition and removal as may be ordered by the Owner, title to all such facilities, except

those supplied or obtained on a rental basis with the Owner's consent, shall be and remain in the Owner.

2. All materials whether for temporary or permanent construction.
3. Supplies, services and utilities, fuel, lubricants, power, light, water and telephone service.
4. Rental for plant and equipment which, with the consent of the Owner, is used on a rental basis, at rental rates and terms of use approved by the Owner. If the rental rates do not include an allowance for running repairs and repair parts needed for ordinary maintenance of the plant and equipment, then such items of cost are to be included as Reimbursable Costs.
5. The actual cost of all necessary tools, plant, machinery and equipment purchased for the work by the Contractor; and the cost of operation, maintenance and repair (including supplies and spare parts) of all such items, whether purchased for the work by the Contractor or supplied for the Contractor's use by the Owner. Title to all of such items shall be and remain in the Owner and they shall be turned over to the Owner, upon completion of the work, or upon termination of this Contract.

6. All transportation costs on tools, equipment and materials.
7. All salary and wage costs of Contractor's field personnel engaged in the performance of the work, exclusive of corporate officers unless assigned full time to the work. In determining salary and wage costs of field personnel there shall be added to salaries and wages of field personnel who are not covered by union agreement an amount equal to twenty-four percent (24%) of such salaries and wages to cover Contractor's cost of payroll taxes, workmen's compensation and employer's liability insurance, group life, hospital and medical insurance, retirement plans and all sick leave, vacation and holiday allowances for such personnel. Such percentage shall be subject to revisions resulting from any statutory increases or decreases in the applicable payroll increments and a single adjustment of the initial 24% after the field staff has been established. Salary and wage costs of Contractor's field personnel who are covered by union agreements shall include wages and salaries of such personnel, payroll taxes, workmen's compensation and employer's liability insurance and Contractor's costs incurred for vacations, sick leave, pensions and other employee benefits in accordance with such union agreements. As referred to herein and elsewhere in this Contract "corporate officers" shall mean the Chairman of the Board, the President, Vice Presidents,

the Secretary and the Treasurer of Contractor.

8. All salary and wage costs of Contractor's home and branch office personnel (including personnel on the payrolls of Contractor's corporations on loan for the performance of the work), exclusive of corporate officers and accounting personnel unless assigned full time to the work, for all time expended in the performance of the work, including all salaries and wages plus an amount equal to twenty and six tenths percent (20.6%) thereof, to cover Contractor's cost of payroll taxes, workmen's compensation and employer's liability insurance, group life, hospital and medical insurance, and all sick leave, vacation and holiday allowances for such personnel. Such percentage shall be subject to revision resulting from statutory increases or decreases in the applicable payroll increments.
9. Bond premiums and all premiums on public liability, property damage and other insurance normally carried by Contractor for similar work (exclusive of the all-risk insurance to be carried by Owner as provided below) and premiums on other insurance coverage authorized or required by the Owner. The Owner shall obtain all-risk insurance covering the construction of this facility with a policy written in the name of Owner and Contractors and Subcontractors, and Owner's responsibility for any loss sustained under said all-risk policy shall be as set forth in Article R of the General Provisions.

10. All sales, use, excise, privilege, business, occupation, gross receipts and all other taxes paid by the Contractor in connection with the work, but excluding income taxes based on net income derived from this Contract.
11. All fees for permits, licenses and easements, which are required for the prosecution of the work.
12. The actual cost to the Contractor of transportation, travel, living accommodations and board furnished in respect of field personnel in connection with the performance of this Contract, and all actual costs of transportation and travel incurred by home and branch office personnel (including corporate officers) who are required to travel in connection with the performance of the contract work (incurred in accordance with the policies and practices which the Contractor uniformly applies throughout its organization). Copy of such policy and mutual agreement clause is attached hereto as Exhibit "B".
13. All subcontracts approved by the Owner.
14. Losses, damages, costs or expenses of every kind, or any combination thereof, not compensated to Contractor by insurance or otherwise, actually incurred or sustained by the Contractor in connection with the work, including

but not limited to any arising out of Contractor's obligations to Owner under this Contract; provided, however, that such losses, damages, costs and expenses incurred or sustained by Contractor due to the failure of the corporate officers of Contractor or a representative of Contractor having supervision of the work as a whole to exercise the standard of care normally exercised by duly qualified persons in the performance of comparable work shall be reimbursable to Contractor only to the extent the total amount of all such losses, damages, costs and expenses due to all such failures exceeds the amount of Contractor's Fixed Fee. Without limiting the generality of the foregoing, such costs, losses, damages and expenses shall include costs of reconstruction, replacement or correction of work performed by Contractor and Contractor shall be paid for such services, in addition to such costs, an additional fee proportionate to the Fixed Fee set forth above; provided, however, that any such costs which by operation of the above proviso are not reimbursable to Contractor shall not be taken into account in determining the amount of such additional fee.

15. Out-of-pocket expenses, such as telegrams, telephone charges, consultant's fee and other items incidental to the work.

16. Move-in, move-out costs of Contractor's personnel relocated by reason of performance of work under this contract, including traveling, transportation and moving expenses incurred in accordance with the policies and practices Contractor uniformly applies throughout its organization. (See Exhibit "B")
17. An amount equal to seventy-five percent (75%) of the total salary and wage costs under Paragraph (b) 8 above, to cover overhead costs, including rent, light, heat, water, furniture and equipment, office supplies and local telephone services, accounting expense and retirement plans.
18. Any other cost not specifically listed under this Article 3 (b) but covered elsewhere in this Contract and, subject to the approval of Owner (which approval shall not unreasonably be withheld), such other costs which are reasonable and necessary to the performance of the Contract work.

In determining Reimbursable Costs, Owner shall be given proper credit for the following items:

- i. Such discounts on invoices as may be reasonably obtainable provided that the Owner advances sufficient funds to pay the invoices within the discount period.

ii. Any amounts received and retained by Contractor on account of sale by Contractor of materials, tools or equipment the cost of which has been reimbursed by Owner and taken over by the Contractor by arrangement with the Owner for Contractor's sale at the completion of the work.

iii. Any rebates, refunds, returned deposits or other allowances received and retained by Contractor relating to the work.

(c) Reimbursable Costs shall not include, and the Contractor shall not be reimbursed for, the cost of any of the following items incurred by the Contractor:

1. Overhead or general expenses of any kind, except as these may be provided for in (b) above.
2. Interest on capital employed either in plant or in expenditures on the work, except as may be provided for in (b) above.
3. Contributions, bad debts, entertainment expense.
4. Extra cost of any premium time, or overtime in excess of the regular work week unless prior approval for the specific premium time or overtime is given by Owner's project engineer or his authorized field representative.

Article 4. Terms of Payment

(a) Requests for reimbursement, substantiated by copies of supporting invoices and copies of payrolls or other data, shall be rendered by Contractor to Owner as mutually agreed but at least monthly to cover withdrawals from the revolving fund provided for in paragraph (b) below during the previous period. Such requests shall be due and payable by the Owner within fifteen (15) days after Owner's receipt thereof subject to the provisions of paragraph (b) below.

(b) It is the intention of the parties that the cost of the work will be financed in its entirety by Owner. In order to accomplish this objective, Owner shall from time to time during the course of the work advance funds to Contractor in amounts to be mutually agreed upon to be used by Contractor as a revolving fund in paying Reimbursable Costs specified in Article 3 hereof, as the same accrue. As payments are made by Owner to Contractor on its requests for reimbursement covering withdrawals from the revolving fund, the amounts so paid shall be deposited by Contractor in said revolving fund to replenish the same. If at any time or from time to time the amount of the revolving fund, in the opinion of the Owner, shall exceed the foreseeable requirements of Contractor, the Contractor shall pay to Owner such portion thereof as will not be needed, and upon completion of the work and full payment to Contractor, Contractor shall pay to Owner the full amount then remaining in the revolving fund. All funds received by Contractor for purposes of said revolving fund shall be deposited in a bank account or accounts clearly showing the special character thereof.

(c) Ninety percent (90%) of the Contractor's Fixed Fee, provided for in Article 3 hereof, shall be paid by Owner to Contractor in monthly installments as it accrues, based on the percentage of completion of the work as determined by Owner from estimates submitted by Contractor.

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(d) Within thirty (30) days after completion of the work and

the Owner's acceptance thereof, Owner shall pay to Contractor the unpaid balance of all costs and expenses reimbursable to Contractor hereunder and the unpaid balance of the Fixed Fee. Owner shall accept the work with reasonable promptness after completion.

Article 5. Insurance Certificate

Prior to commencement of the work hereunder the Contractor shall file with the Owner completed certificates of insurance evidencing insurance coverage provided for hereunder.

Article 6. 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 7. 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.

KAISER ENGINEERS, INC.
Contractor

By J. E. Lee

Title Vice President

AMERICAN SMELTING AND REFINING COMPANY
Owner

By J. Paul Harrison

Title Vice President

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General Provisions of the Contract

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GENERAL PROVISIONS

Article A. Notice

Written notice shall be deemed to have been duly served if delivered by hand or sent by registered mail, postage prepaid, 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 B. Order of Completion; Schedules; Estimates of Expenditures

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.

The Contractor will furnish to the Owner, at any time requested by the Owner, a statement of estimated expenditures to be made during any period, in such form and with such itemization as the Owner may request.

Article C. Materials, Appliances and Temporary Facilities

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

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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. Should the Owner wish to change the type and character of the facilities to conform to continued usage thereof in other construction or operation, it shall be its prerogative to change and retain any such facilities.

Article D. 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 take such immediate steps as are necessary to change the status of such employee 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; and the costs thereof incurred by Contractor shall be reimbursable under Article 3(b).

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 E. Patents

Contractor in purchasing equipment pursuant to this agreement will include in all purchase orders therefor the following Standard Patent Indemnity Provisions used by Contractor in its normal purchasing procedures:

"Seller represents that it has fully investigated all specifications, including any furnished by Purchaser, in connection with the goods, and based on such investigation and its past experience and superior knowledge with respect to such goods, has determined that the production thereof will not infringe any patent, trademark or copyright. Seller warrants to Purchaser and its successors in interest that the sale or use of the goods and any services covered by this order, whether manufactured in accordance with Purchaser's specifications or otherwise, do not and will not infringe upon any patent, trademark or copyright and Seller shall indemnify and hold Purchaser and its successors in interest free and harmless from and against any and all "claims, demands, costs and liabilities, including legal expenses, arising out of any such infringement or claim of infringement. Purchaser is relying upon the experience, skill and superior knowledge of Seller with respect to the goods and makes no representation that Seller will be safe in manufacturing the goods as required under this order. In no event shall Purchaser or its successors in interest be liable to Seller for any patent, copyright or trademark infringement or claim thereof."

In the event Contractor in the actual performance of this agreement with Owner is notified in writing by any third party of the necessity for acquiring a patent license or immunity under any patent license or immunity which is not acquired pursuant to the aforementioned

Standard Patent Indemnity Provision, Contractor will promptly notify Owner in writing thereof and promptly provide Owner with all relevant facts. The foregoing shall constitute the only obligations of Contractor to Owner with respect to patent rights and in no event shall this agreement be deemed to have transferred any rights to Owner under any patent rights of Contractor.

Article F. Regulations

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work.

Article G. 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 the 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. The Contractor shall also so act if so instructed by the Owner.

Article H. 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.

Article I. Contractor's Covenants; Supervision and Superintendence

The Contractor recognizes the relationship of confidence established between the Contractor and the Owner by this Contract which is based on a cost-plus-fee arrangement. The Contractor covenants to use its best skill and judgment in performing the work, to do such work at the lowest cost practicable, and to perform all such work in a workmanlike manner with efficiency and diligence.

The Contractor shall maintain a competent staff at all times to supervise the work. The Contractor shall submit to the Owner for approval, prior to the time the Contractor begins performance of the work, a complete organization chart of all key personnel that the Contractor proposes to employ at the site.

The Contractor shall keep on the work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Owner.

The Contractor shall use its best judgment 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 problems 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 or increases in the cost of the work or damage or losses to its other operations.

Article J. Qualification and Performance of Contractor's Employees

The Contractor shall use its best efforts at all times to supply a sufficient number of skilled workmen to diligently pursue the work. All workmanship and materials shall conform to all codes, rules, regulations and ordinances 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 K. Changes

(a) Owner may at any time by written order or authorization issue instructions making changes, additions or deletions in the plans and specifications relating to the work hereunder. Contractor shall take cognizance of such changes, additions and deletions in performance of its work hereunder. Subject to the provision of paragraph (b) below, if such instruction results in a material increase or decrease in the amount or character of the work to be done under this Contract the Fixed Fee shall be equitably adjusted. As soon as practicable after Owner's changes, additions or deletions which result in such material increases or decreases, Owner and Contractor shall agree on the amount of any net increase or decrease in the amount of the Fixed Fee.

(b) The Fixed Fee provided for herein shall not be adjusted because of errors or omissions in computing the estimated cost of facilities or the estimated time for completion thereof, nor shall it be adjusted because Owner elects to furnish certain of the services described in Article 1 of the Agreement.

Article L. Correction of Work after Final Payment

(a) Neither the final certificate nor final payment nor any provision in this Contract shall relieve the Contractor of responsibility for the correction of faulty workmanship performed directly by it. At Owner's request at any time within one year following initial operation of the plant, Contractor agrees to remedy such

faulty workmanship and for any such services Contractor shall be paid therefor in accordance with paragraph (b) 14 of Article 3. The Owner shall give notice of observed defects with reasonable promptness.

(b) Provisions approved by Owner concerning warranties and guaranties of work performed by Contractor's subcontractors and vendors, and concerning indemnities, will be included in each applicable subcontract and purchase order for the benefit of Owner, and Contractor shall take such appropriate action as Owner may request in respect of the enforcement of subcontractors' and vendors' warranties, guarantees, and indemnities.

Article M. Owner's Right to Terminate Contract

If the Contractor should be adjudged a bankrupt, or make any assignment for the benefit of creditors, or if a Receiver of Contractor's property should be appointed, or if the Contractor files a petition or 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 materials or labor, or disregard laws, ordinances or the instructions of the Owner, or otherwise be guilty of a substantial violation of any provision of this Contract which the Contractor shall have failed to correct promptly after service of written notice thereof by the Owner, then the Owner, may, without

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prejudice to any other right or remedy, terminate the employment of the Contractor for Contractor's default and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method Owner may deem expedient.

In such case the Contractor shall be reimbursed for (a) all reimbursable costs and expenses incurred by it in the performance, and prior to termination, of this Contract for which the Contractor has not theretofore been reimbursed, and (b) for any such costs and expenses incurred within a reasonable time thereafter including relocation of its field personnel and such other costs and expenses as may be approved by the Owner. The Contractor shall also be entitled to receive an equitable portion of the Fixed Fee based upon the actual work performed at the time of termination, less payments on account of the Fixed Fee which have been previously made. If payments previously made on account of the Fixed Fee exceed such proportionate part thereof, the Contractor shall pay to the Owner an amount equal to such excess.

Article N. 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 the Contractor's equipment and supplies from the property of the Owner.

Article O. Use of Completed Portions

The Owner shall have the right to take possession of and use

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any completed or partially completed portions of the work; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with this Contract.

Article P. 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 Q. 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 wilful 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. The indemnification under this Article shall be limited to the recoveries obtained under public liability, property damage and such other insurance as is maintained by Contractor hereunder at the time such injury or harm occurs, unless such loss is excluded from reimbursable costs under paragraph (b) 14 of Article 3 in which case Contractor shall indemnify Owner without regard to the extent of its insurance coverage.

Owner and Contractor hereby release each other from any liability for damage to property howsoever caused in connection with the work hereunder to the extent that the party involved is insured for such damage. If any of the insurance policies of Owner and/or Contractor do not permit release of other persons or firms from liability before a loss, endorsement to such policies shall be obtained from respective insurance carriers as may be necessary to effect a waiver of the right of subrogation by such insurance carriers against the parties to this Contract.

Article R. Owner's Responsibility for Certain Casualties

The Owner shall be responsible for and shall maintain insurance to cover 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. Contractor and all subcontractors will be named assureds under such policy.

Article S. Damages to Owner's Property

The Owner shall obtain all-risk insurance covering the construction of this facility with a policy written in the name of Owner and Contractors and Subcontractors.

Article T. Liens

The Contractor shall, if any subcontractor refuses to furnish a release or receipt in full, advise Owner and take all necessary steps as directed by Owner in resolving such disputes with any subcontractor in order to protect Owner's property against liens contemplated by this Article.

Article U. Assignment

Except as provided in Article W, Contractor shall not assign or 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.

This Contract may be assigned by Owner to any subsidiary of

Owner provided that in case of such assignment Owner shall remain responsible for the performance by such subsidiary of its obligations hereunder.

Article V. Arbitration

Any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement of the parties shall be submitted to arbitration upon the written demand of either party within a reasonable time after the parties have failed to reach agreement thereon.

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;

The arbitrator may consider questions of law in connection with reaching his decisions on questions of fact but nothing herein shall be construed as making final the decision of such arbitrator on a question of law.

Article W. Subcontracts

The Contractor shall, prior to the issuance of bids, notify the Owner in writing of the names of any subcontractors proposed for inclusion in such bid list and shall not award any subcontract 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 unsatisfactory.

The Contractor shall include in all subcontracts such terms and provisions as the Owner may require or approve.

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 for the furnishing of labor and/or materials at the jobsite but does not include one who, pursuant to purchase order, furnished material worked to a special design according to the plans or specifications of this work or one who merely furnished material not so worked.

Article X. Title to the Work

Subject to payment by Owner to Contractor for the costs thereof, 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 Y. Confidential Information

All plans, drawings and specifications prepared by Kaiser or supplied to Kaiser by Asarco under this Agreement shall be and remain the property of Asarco. Plans, drawings and specifications prepared by Kaiser may be reused by Asarco, its affiliated companies and licensees; but, except for the herein described Asarco Lead Smelting and Refining facility at the property of Asarco at Glover, Missouri, Kaiser shall have no liability by way of warranty or otherwise on account of such reuse and Asarco shall indemnify and save Kaiser harmless in respect of any liability which may arise against Kaiser at any time in the future on account of such reuse. Anything to the contrary herein notwithstanding, nothing herein shall in any way restrict Asarco's right to use in any way any plans, drawings and specifications prepared by Asarco or supplied to Kaiser by Asarco.

Kaiser agrees to keep in confidence all plans, drawings and specifications prepared by Kaiser or supplied to Kaiser by Asarco/ and all information disclosed to Kaiser by Asarco/relating to updraft sintering, the bell for the vacuum dezincing kettle and crust handling; and, Kaiser further agrees that it will not disclose or use any of said drawings or information without Asarco's written consent. The foregoing provisions of this paragraph Y shall not apply to (1) information which, at the time of disclosure is in the public domain; (2) information which after disclosure enters the public domain by publication or otherwise except by a breach of

of this Agreement by Kaiser; (3) information which at the time of disclosure was in Kaiser's possession or in the possession of any affiliated or associated company of Kaiser; or (4) information which Kaiser can show was acquired by Kaiser after the date of this Agreement from a third party who is lawfully in possession of such information and can lawfully disclose the same to Kaiser.

Asarco recognizes that it will be necessary for Kaiser to use certain of said confidential information in order to solicit bids from Vendors and Sub-Contractors for the Asarco Lead Smelting and Refining facility at Glover, Missouri; and, Asarco consents to such use upon the understanding that Kaiser will solicit bids for such proposals only from Vendors and Sub-Contractors from a bidders' list approved by Asarco, and that, prior to any such solicitation, Kaiser will require such bidders to agree to the non-disclosure of such information on terms consistent with Kaiser's obligations to Asarco hereunder.

Asarco hereby advised Kaiser that all information relating to Updraft Sintering disclosed hereunder to Kaiser by Asarco has been received by Asarco in confidence from the Broken Hill Associated Smelters Proprietary Ltd. and that Asarco is required to make all reasonable efforts to keep such information secret and confidential so long as it remains unpublished.

Article Z. Records and Accounts, Inspection and Audit

The Contractor shall keep at the Site, or other location authorized in writing by the Owner, records and books of account

showing the actual costs of all items of freight, cartage, labor, materials, equipment and subcontracts and all other expenditures of whatever nature which enter into the work and will regularly furnish copies of any reports requested by the Owner. The system of accounting and control of accounting to be employed by the Contractor shall be such as is satisfactory to the Owner. All books, records and papers of the Contractor relating to such costs shall at all times be available for the inspection and audit of the Owner, and the Contractor shall preserve them to such extent and for such period as may be required by the Owner, but in any event not less than three years after the completion of the Contract.

The Contractor shall forward monthly, for audit, to the Traffic Department of the Owner at its New York office, all receipted freight bills, cartage bills, bills of lading and other transportation bills. These shall be consecutively numbered by the Contractor starting with No. 1. The Contractor further authorizes the Owner, on its behalf, to file and prosecute any overcharge claims against the carriers and there shall be credited to the Owner the amount of all such overcharges which may be collected.

Article AA. Cleaning Up

The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by Con-

tractor's employees or authorized subcontractors of the work, and at the completion of the work Contractor shall remove all the Contractor's rubbish from and about the site and all the Contractor's tools, scaffolding and surplus materials and shall leave the work "broom-clean" or its equivalent.

Article BB. 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 CC. Purchase and Rental of Material and Equipment

The Contractor agrees to:

(1) Secure in advance the Owner's specific written approval of the final complete form of any rental agreement (including any agreement for rental of equipment owned by the Contractor) before renting, or using on a rental basis, any construction equipment. The Contractor shall endeavor to secure rental agreements from equipment firms that will permit the Owner, at its option, to

purchase the equipment during the construction period or at its termination, at a price (to be set forth in the agreement), less rental paid (after deducting the amounts, if any, expended by the lessor for maintenance or repairs during the period the equipment was under rental on this work);

(2) Rent its equipment, if available, at a rental rate of 75% of the Associated Equipment Distributors rental rates as listed in the annual issue of "Compilation of Rental Rates for Construction Equipment" prepared by Associated Equipment Distributors of Chicago, Illinois. Furthermore, if Owner elects, Contractor shall extend the rental contracts to purchase options with full credit for rent paid applied against purchase price;

(3) Purchase no tools, equipment or materials except after invitations for bids have been extended to a reasonable number of responsible competitive suppliers, and, except as otherwise required by the Owner, to purchase only upon the basis of the most favorable terms offered with respect to price, quantity and delivery;

(4) Take advantage of all discounts, rebates and allowances including cash discounts, confidential prices, etc., for the benefit of the Owner;

(5) Include in all contracts for the purchase of materials, supplies, or equipment, suitable provisions designed to obtain for the Owner the benefit of any decrease in (a) cost to the suppliers of items not manufactured by them, (b) labor costs

and (c) suppliers' prices, or prevailing prices, on comparable items.

- (6) (a) Consult with and obtain the Owner's Purchasing Department approval before placing orders in excess of \$5,000.00.
- (b) submit inquiries for proposals and prices to all suppliers which the Owner shall request;
- (c) if requested to do so, furnish to the Owner for its approval before placement of orders, copies of all proposals and prices received.

E. BIT "A"

LIST OF PRINTS RECEIVED FROM ASARCO
FOR BIDDING PURPOSES
February 15, 1965

<u>No.</u>	<u>Title</u>
MLS-12410	Glover Site Location Plan
MLS 12420	Plant Arrangement Plan
MLS 12444	Sectional Elevations through Plant Site
MLS-12442	Receiving and Proportioning Bins - General Arrangement and Sections
MLS 12491	Receiving and Charge Preparations - Platform Layout Plan
MLS 12490	Blast Furnace & Drossing Plant - Plan and Sections
MLS 12421	Kettle Floor and Storage Area - General Arrangement Plan
MLS 11623	Charge Preparation - Sections Showing Proportioning - Bin & Clean-up Conveyor Arrangement
MLS 11702	Charge Preparations - Proportioning & Surge Bins Elevations
MLS 11703	Charge Preparation Plant - Crusher Layout
MLS 11624	Charge Preparation - Mixer and Pelletizers Arrangement
MLS 11622	Sinter Crusher & Charge Preparation - Sectional Elevation
MLS 11701	Sinter Handling Layout - Sectional Elevation
MLS 11704	Blast Furnace Charge Bins - Bin & Feeder Details
MLS 11700	Sinter Machine Layout.
MLS 11707	Blast Furnace - Scrap Iron Conveyor - Arrangement
MLS 11708	Blast Furnace - Section Thru Blast Furnace Building
MLS 11709	Blast Furnace - Charge Hopper Moistening Arrangement

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<u>NO</u>	<u>Title</u>
MLS 11710	Blast Furnace - Granulated Slag Tank - Arrangement
MLS 11711	Lead Refinery - Typical Section
MLS 11715	Lead Casting - Sections Thru Lead Kettles
MLS 11717	Blast Furnace Baghouse Elevations and Sections
MLS 11716	Sinter Plant Baghouse - Sectional Elevations
MLS 12721	Receiving and Charge Preparations - Ground Floor Plan
MLS 12490	Blast Furnace & Drossing Plant - Plan and Sections
MLS 12442	Receiving and Proportioning Bins - General Arrangement and Sections
MLS 12444	Sectional Elevations Through Plant Site
MLS 12421	Kettle Floor and Storage Area - General Arrangement Plan
MLS 11718	Bucking and Sampling Building - General Arrangement
MLS 12424	Shops and Warehouse - General Arrangement Plan and Sections
MLS 12448	Office - Laboratory - Change House - Time Office - Etc., Floor Plan

EXHIBIT "B"

TRAVEL AND SUBSISTENCE ALLOWANCE POLICYTravel Status and Expenses

All Company employees (including officers, executives, administrative heads) who are required to travel in connection with Company business are reimbursed for all actual travel and out-of-pocket expenses meeting the test of reasonableness.

An employee shall be considered in travel status when he is beyond a twenty-five (25) mile radius of the office to which he is permanently assigned on a trip approved by the Company and related to the performance of the contract and will be compensated for salary on the basis of an eight-hour day, 40-hour week, schedule unless otherwise specifically approved by the Client.

Travel expenses include:

- . Actual out-of-pocket costs of meals, gratuities, hotel rooms, laundry and valet services and other associated out-of-pocket expenses.
- . Actual costs of rail, plane (coach accommodations when possible), bus or other form of public transportation.
- . Actual costs of fuel, lubricants and fees from recognized automobile rental agencies. Expenses of parking, automobile storage, road and bridge tolls, taxi fees, etc. Travel by personal automobile is reimbursed at the rate of eight cents per mile.
- . Actual costs of telecommunications, photostats, blueprints and other engineering materials and supplies and other necessary out-of-pocket expenses, considered reasonable, are also reimbursable. The respective project engineers of Owner and Contractor shall mutually agree in advance as to the individuals required to travel on duty directly applicable to the job.

Moving and Living Expenses

- . Administrative, technical and supervisory employees (and such others as the Owner may specifically approve) who are directed to and actually report for work under the contract may be allowed actual transportation, traveling and moving expenses for themselves, members of their household and household effects from their present location to the location of the office to which they are transferred or assigned (other than a temporary assignment) and, upon the termination of the assignment or the conclusion of the work under the contract, for the actual transportation, traveling and moving expenses of returning themselves, members of their households and household effects to their former location or equivalent distance.
- . The employee shall be entitled to reimbursement for actual and reasonable expenses for himself and dependents at the new location for a period of time sufficient to enable him to locate suitable housing and establish residence. Such period of time will not normally exceed thirty (30) days beyond his arrival at the location but the period of time may be extended in cases where there is a critical shortage of adequate housing.
- . The traveling expense contemplated in the first paragraph of this section (Moving and Living Expenses) shall be limited to the types of expenses listed under Travel Expenses. The cost of moving household goods and furnishings shall include packing and shipping by public carrier, together with a reasonable amount of liability insurance and storage. If the employee does not desire to move his household goods and furnishings, or part thereof, to the location of his new assignment, he shall be entitled to reimbursement for the cost of storage thereof until his return to his former location.

Moving and Living Expenses - Continued

In the event an employee chooses to move his personal housetrailer into the area by licensed common carrier, as an alternative to moving his household goods in accordance with the previous paragraph, he will be reimbursed for the actual expenses incurred in transporting the trailer into the area where he is assigned, plus a reasonable amount of liability insurance. Such employee may be considered in travel status while awaiting the arrival of the trailer but not exceeding one day after its arrival.

Reimbursement for transportation of the employee and/or members of his household by public carrier will be for the actual costs thereof. Reimbursement for transportation by private automobile will be at the rate of eight cents per mile, based on the Rand-McNally Standard Table of Distances, with a variation not to exceed ten percent. Reimbursement for living expenses enroute will be made only for a reasonable period of time, based upon the most direct route and existing conditions (excluding unauthorized stopovers).

Where the job requirements are such that personnel mentioned in the first paragraph of this section are on temporary assignment (usually defined as six (6) months or less), the employee shall be reimbursed for the type of expenses listed under Travel Expenses.

Employee on a temporary assignment to the site shall be entitled to reimbursement of expenses of returning (for personal reasons) to his permanently assigned location or equivalent distance and back to the site during the period of assignment provided the period of assignment is for two months or longer. Period of absence shall be considered approved leave and shall be limited to a reasonable period of time.