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Montana Department of
ENVIRONMENTAL QUALITY

PERMITTING AND COMPLIANCE DIVISION

Date: 3-16-07

Number of pages (including this cover page): _____

TO: Linda Jacobson

Fax Number: 303-312-7579 Telephone Number: _____

FROM: Denis Kirkpatrick

Telephone Number: 406-444-3983 FAX Number: 406/444-1374

Comments: _____

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Thank you.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	§	**Case No. 05-21207**
	§	
ASARCO LLC, *et al.*,	§	**Chapter 11**
	§	
Debtors.	§	**Jointly Administered**
	§	

MOTION FOR ORDER AUTHORIZING ASARCO LLC TO ENTER INTO CONTRACTS WITH HYDROMETRICS, INC. FOR (A) GROUNDWATER AND SURFACE WATER MONITORING AND (B) CAMU PHASE 2 CELL OVERSIGHT IN EAST HELENA, MONTANA

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN TWENTY (20) DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREED OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE RICHARD S. SCHMIDT, UNITED STATES BANKRUPTCY JUDGE:

ASARCO LLC ("ASARCO" or the "Debtor") respectfully files this Motion for Order Authorizing ASARCO LLC to Enter into Contracts with Hydrometrics, Inc. for (a) Groundwater and Surface Water Monitoring and (b) CAMU Phase 2 Cell Oversight in East Helena, Montana (the "Motion").

PARTIES, JURISDICTION, AND VENUE

1. On August 9, 2005, ASARCO filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in this Court. On April 11,

2005, several of ASARCO's wholly-owned direct or indirect subsidiaries (the "Asbestos Subsidiary Debtors"[1]) filed their voluntary petitions in this Court (the "Subsidiary Cases"). Later in 2005, several of ASARCO's other wholly-owned direct or indirect subsidiaries (the "2005 Subsidiary Debtors"[2]) filed similar petitions for relief in this Court. Further, on December 12, 2006, three more ASARCO subsidiaries (the "2006 Subsidiary Debtors"[3]) filed similar petitions for relief with this Court (collectively with ASARCO, the Asbestos Subsidiary Debtors and the 2005 Subsidiary Debtors, the "Debtors"). The Debtors' cases are collectively referred to as the "Reorganization Cases."

2. The Debtors remain in possession of their property and are operating their businesses as Debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. On April 27, 2005, an official committee of unsecured creditors was appointed in the Subsidiary Cases. An official committee of unsecured creditors has also been appointed in ASARCO's case (the "ASARCO Committee"). No trustee or examiner has been appointed in any of the Reorganization Cases.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This Court may hear and determine this Motion under the standing order of reference issued by the United States District Court for the Southern District of Texas under 28 U.S.C. § 157. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b). Venue of this

[1] The Asbestos Subsidiary Debtors consist of the following five entities: Lac d'Amiante du Québec Ltée (f/k/a Lake Asbestos of Quebec, Ltd.); Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc. (f/k/a/ Cement Asbestos Products Company); and Cement Asbestos Products Company.

[2] The 2005 Subsidiary Debtors are: ASARCO Consulting, Inc.; Encycle, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations Inc.; AR Sacaton, LLC, an Arizona limited liability company; Asarco Master, Inc.; Asarco Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; Covington Land Company; Government Gulch Mining Company, Limited; and Salero Ranch, Unit III, Community Association, Inc. Encycle/Texas, Inc. also filed a petition for relief; but its case, which was later converted to a chapter 7 case, is being administered separately.

[3] The 2006 Subsidiary Debtors are: Southern Peru Holdings, LLC; AR Sacaton, LLC, a Delaware limited liability company; and ASARCO Exploration Company, Inc.

proceeding is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 363 of the Bankruptcy Code.

RELIEF REQUESTED

4. The Debtor seeks authorization pursuant to section 363(b)(1) of the Bankruptcy Code to enter into contracts with Hydrometrics, Inc.,[4] an engineering and consulting firm, for (a) groundwater and surface water monitoring and (b) CAMU Phase 2 cell oversight at the East Helena, Montana lead smelter plant, as described in greater detail below.

BRIEF BACKGROUND

5. ASARCO has operated a lead smelter plant in East Helena, Montana since 1888, and continues to own the plant. As part of its efforts to clean up the East Helena facility, ASARCO has previously obtained Court approval to retain Hydrometrics to submit a proposal for the design of the second phase of a Corrective Action Management Unit (the "CAMU") to fill with construction debris from the smelter, to design the remediation cap components for the smelter site for use once the demolition is completed, and to provide certain technical support for 2006 interim measure/groundwater sampling activities at the smelter.

6. ASARCO now wishes to retain Hydrometrics for two additional projects at the East Helena plant. First, Hydrometrics would provide consulting services under the Interim Measures Project that would include conducting groundwater and surface water monitoring, and field and technical support for groundwater and surface water related work associated with ongoing site demolition and remediation activities. This project should cost approximately

[4] Hydrometrics Inc., a Montana company ("Hydrometrics"), was formerly part of ASARCO Consulting Inc. f/k/a Hydrometrics Inc., a Delaware company ("ACI"). ACI is a subsidiary of Encycle Inc., which is a subsidiary of ASARCO and one of the Debtors herein. Hydrometrics was formed when the company now known as ACI sold its Helena Montana office, customer base, and the name Hydrometrics to a group of former employees, effective April 12, 2002.

$114,121.00. A true and correct copy of Hydrometrics' proposal and budget regarding this project is attached hereto as Exhibit A.

7. Second, Hydrometrics would assist ASARCO with oversight and quality assurance for construction of the CAMU Phase 2 Cell. Hydrometrics would provide daily oversight inspection, assist the contractor with segregation of clay-rich soil for clay liner construction, provide quality assurance testing for items of construction that require it, and produce a final construction report. Hydrometrics anticipates that if Court approval is obtained, work on this project would begin around the first of April and be completed by the end of October. The cost would be approximately $151,000. A true and correct copy of Hydrometrics' proposal and budget regarding this project is attached hereto as Exhibit B.

8. Payment will be made based on the actual hours performed and invoices, according to the schedules of Hydrometrics' Professional Fee Schedule for the year 2007 attached hereto as Exhibit C. These rates apply to all of the projects described herein.

9. ASARCO believes that Hydrometrics is well-qualified to do the work. Hydrometrics designed the Phase 1 CAMU cell for the East Helena smelter, which was completed in 2001, as well as the Phase 2 CAMU. The knowledge and experience gained on its previous work at the smelter will be valuable in regards to the current projects.

10. If the Court approves ASARCO's selection of Hydrometrics for these two projects, ASARCO will enter into contracts with Hydrometrics, using its standard form professional services contract. A true and correct copy of this form contract is attached hereto as Exhibit D.

LAW AND ARGUMENT

11. Section 363(b)(1) of the Bankruptcy Code permits a debtor in possession, after notice and a hearing, to use, sell or lease property of the estate other than in the ordinary course of its business.

12. In the exercise of its business judgment, ASARCO seeks authority to enter into contracts with Hydrometrics to (a) groundwater and surface water monitoring and (b) CAMU Phase 2 cell oversight. The Debtor believes that entry into these agreements with Hydrometrics is necessary to complete the remediation work at the East Helena smelter, is in the interests of public health and safety, and is in the best interests of ASARCO's estate.

CERTIFICATE OF SERVICE

13. In compliance with Bankruptcy Local Rule 9013(f) and contemporaneously with this pleading, the Debtor has filed as a separate document a Certificate of Service containing the names and addresses of the parties served, the manner of service, the name and address of the server, and the date of service.

WHEREFORE, ASARCO respectfully requests that the Court enter an order granting the Motion and granting such other and further relief as is just and proper.

Dated: March 14, 2007

Respectfully submitted,

BAKER BOTTS L.L.P.

Jack L. Kinzie
State Bar No. 11492130
James R. Prince
State Bar No. 00784791
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Dallas, Texas 75201-2980
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and

BAKER BOTTS L.L.P.

/s/ Tony M. Davis
Tony M. Davis
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COUNSEL TO DEBTORS AND DEBTORS-IN-POSSESSION

EXHIBIT A

March 1, 2007

Masseurs Jon Nickel and Blaine Cox
ASARCO LLC
PO Box 1230
East Helena, MT 59635

Dear Jon and Blaine,

Thank you for the opportunity to conduct groundwater and surface water monitoring for the East Helena Plant. I have attached a budget for the tasks necessary to conduct groundwater monitoring, monitoring well installation and abandonment oversight, data analysis and reporting.

Scope of Services

Consulting Services will be provided under the Interim Measures Project to include groundwater and surface water monitoring, and field and technical support for groundwater and surface water related work associated with ongoing site demolition and remediation activities. Specific tasks include the following:

- Semi-annual monitoring of 131 groundwater sites and six surface water monitoring sites with additional follow-up conformational monitoring as required based on water quality results
- Bimonthly monitoring of EH-100 series wells consists of monitoring 16 groundwater sites
- Support for installation and development of four additional monitoring wells
- Abandonment of 6-10 monitoring wells related to demolition and capping activities
- Drilling support for continued site characterization work. Includes drilling oversight on stratigraphic boreholes, oversight on installation of a test well for groundwater capture and aquifer testing and
- Provide support with compilation of data, preparation of maps and assistance with reports.

A breakdown of cost assumptions is shown in the attached spreadsheet.

We look forward to working with Asarco on this project. Please call me at (406) 443-4150, Ext. 179 if you any comments or concerns about this proposal.

Sincerely,

Michael J. Oelrich, P.E.
Civil Engineer

Attachment

c: Mike Wignot

Project: Asarco East Helena Interim Measures
Location: East Helena, Montana

Job No: 1054
Date 2/9/2007
Est. By gtb

Task			Quantity	Units	Unit Price	Cost Total
1.	**Groundwater Monitoring**					
	Semi-Annual Monitoring (per event)	Project Manager	8	hr	$100.00	$800.00
		Scientist I (2)	200	hr	$65.00	$13,000.00
		Vehicle Support	2	wks	$105.00	$210.00
		Filters	120	ea	$16.00	$1,920.00
		WL meter	2	wks	$75.00	$150.00
		YSI multi-probe	2	wks	$300.00	$600.00
		Waste Water Tank	2	wks	$144.00	$288.00
		Marsh McBirney	1	day	$80.00	$80.00
		Latex gloves	15	box	$18.00	$270.00
		ERA Standards	1	ea	$300.00	$300.00
		Tyvex coveralls	12	ea	$12.00	$144.00
		Misc. Expenses	1	ea	$200.00	$200.00
					Subtotal per event	**$17,962.00**
					Subtotal per year	**$35,924.00**
	EH-100 Series Bi-Monthly Monitoring (per event)	Project Manager	3	hr	$100.00	$300.00
		Scientist I (2)	50	hr	$65.00	$3,250.00
		Vehicle Support	2	days	$35.00	$70.00
		Filters	20	ea	$16.00	$320.00
		WL meter	2	days	$25.00	$50.00
		YSI multi-probe	2	days	$100.00	$200.00
		Waste Water Tank	2	days	$48.00	$96.00
		Latex gloves	2	box	$18.00	$36.00
					Subtotal per event	**$4,322.00**
					Subtotal per year	**$17,288.00**
2	**Monitoring Well Installation and Abandonment Oversight**					
	Monitoring Well Installation for APSD and Speiss/Dross Slurry Wall	Project Manager	8	hr	$100.00	$800.00
		Scientist II	80	hr	$76.00	$6,080.00
		Vehicle Support	1	wk	$105.00	$105.00
		WL meter	1	wk	$75.00	$75.00
		Latex gloves	3	box	$18.00	$54.00
		Misc.	1	ea	$200.00	$200.00
					Subtotal	**$7,314.00**
	Well Development	Scientist II	20	hr	$76.00	$1,520.00
		Technician II	20	hr	$54.00	$1,080.00
		Vehicle Support	2	days	$35.00	$70.00
		Misc	1	ea	$100.00	$100.00
					Subtotal	**$2,770.00**
	Well Abandonment Oversight	Project Manager	4	hr	$100.00	$400.00
		Scientist II	80	hr	$76.00	$6,080.00
		Technician II	40	hr	$54.00	$2,160.00
		Vehicle Support	1	wk	$105.00	$105.00
		Misc	1	ea	$200.00	$200.00
					Subtotal	**$8,945.00**

Project: Asarco East Helena Interim Measures
Location: East Helena, Montana

Job No: 1054
Date 2/9/2007
Est. By gtb

Task			Quantity	Units	Unit Price	Cost Total
3	**Data Analysis and Supplemental Investigation(s)**					
	Data Analysis & Reporting					
		Project Manager	40	hr	$100.00	$4,000.00
		Scientist II	80	hr	$76.00	$6,080.00
		Drafting	60	hr	$60.00	$3,600.00
		Specialist III	40	hr	$54.00	$2,160.00
		Misc.	1	ea	$200.00	$200.00
					Subtotal	**$16,040.00**
	Supplemental Investigation(s)					
		Project Manager	40	hr	$100.00	$4,000.00
		Scientist II	80	hr	$76.00	$6,080.00
		Technician II	80	hr	$54.00	$4,320.00
		Equipment	1	ea	$1,000.00	$1,000.00
					Subtotal	**$15,400.00**
4	**CAMU Statistical Analysis and Reporting**					
		Project Manager	4	hr	$100.00	$400.00
		Scientist III	60	hr	$86.00	$5,160.00
		Scientist II	40	hr	$76.00	$3,040.00
		Drafting	20	hr	$60.00	$1,200.00
		Specialist III	10	hr	$54.00	$540.00
		Misc.	1	ea	$100.00	$100.00
					Subtotal	**$10,440.00**
					Total	**$114,121.00**

EXHIBIT B

January 30, 2007

Masseurs Blaine Cox and Jon Nickel
ASARCO LLC
P.O. Box 1230
East Helena, MT 59635

Dear Blaine and Jon,

Thank you for the opportunity to assist with oversight and quality assurance for construction of the Corrective Action Management Unit (CAMU) Phase 2 Cell. I have attached a budget for the tasks necessary to provide daily oversight inspection, assist the contractor with segregation of clay-rich soil for clay liner construction, provide quality assurance testing for items of construction that require it, and produce a final construction report. I anticipate that this project will begin around the first of April and be completed by the end of October.

SCOPE OF WORK

Our contract for design of the CAMU Phase 2 cell ended recently with the release of a bid solicitation on January 25th. The purpose of this scope of work is to describe the work effort necessary to assist with bidding and awarding the project to a qualified construction contractor, providing quality assurance and testing of certain construction items, and providing oversight and documentation of the CAMU Phase 2 cell construction.

Bidding Assistance

Under this work item, we propose to attend the prebid site visit, field questions from prospective Bidders, issue responses, and prepare addenda to the contract if necessary to address the concerns of the Bidders. We will also assist as needed with analysis of the proposals or of subcontractors' capabilities.

Quality Assurance Testing

A Quality Assurance Plan (QAP) will be prepared that identifies specific items of QA that will be provided, establishes a testing frequency, and establishes pass-fail criteria. Records of testing will be provided to you by the end of each week that they were accomplished, with the exception of liner seam testing, which must be sent to an independent laboratory. Quality assurance testing is required to ensure proper construction of several of the CAMU Phase 2 Cell components, including:

- Excavation and stockpiling – Plasticity and gradation testing
- Subgrade – Density testing
- Compacted Clay Liner – Density testing
- HDPE Liner – Seam strength testing
- Cushion Material – Gradation testing.

Construction Oversight

Daily site visits will be conducted to inspect the construction contractor's work, provide necessary guidance and direction, and record the construction process with a daily log and photographs. Some work items require specific oversight, such as looking for over-sized material in the compacted clay liner or cushion construction. Much of this specific oversight will be identified in the QAP. At other times, oversight will be much more general in nature and involve simple oversight of the work to see that it meets the design intent of the drawings and specifications. A daily log will be used to record such things as weather conditions, types and number of personnel and equipment on site, and CAMU components being worked on that day. Copies of these logs will be provided to you on a weekly basis and any potential problems with the construction quality or product will be brought to your attention immediately with a recommendation for addressing the discrepancy.

Final Construction Report

Once construction of the CAMU Phase 2 cell is complete for 2007, we will prepare a Final Construction Report, documenting the construction work, the result of QC and QA testing, and a summary of the final construction product. A photo log will be included to help document the construction progress. The Final Construction Report will be the project submittal for this task.

Monitoring Plan

The Montana Department of Environmental Quality has requested a Sampling and Monitoring Plan and the Operation and Maintenance Plan be developed for the Phase 2 CAMU cell. These two plans will be the project submittal for this task.

The attached budget is our best estimate of the costs necessary to complete this project. There may be issues or regulatory requirements that arise that neither of us are aware of at this time that could affect this estimate. However, Hydrometrics is committed to completing this scope of work without exceeding the attached budget unless prior approval is obtained from Asarco. Please call me if you any comments or concerns about this proposal. My phone number is (406) 443-4150, extension 179.

Sincerely,

Michael J. Oelrich, P.E.
Civil Engineer

Attachment

CAMU PHASE 2 CELL CONSTRUCTION OVERSIGHT BUDGET

Task 1. Bidding Assistance					**$5,500**
Pre-bid Site Visit	*Engineer V*	16	hr	$103.00	$1,648
	Engineer III	16	hr	$86.00	$1,376
Respond to comments/questions	Engineer V	8	hr	$103.00	$824
	Engineer III	16	hr	$86.00	$1,376
Issue responses and addenda	Specialist III	4	hr	$54.00	$216
Copies & Misc					$60
Task 2. QA Testing					**$62,500**
Data Analysis & Engineering	Engineer V	40	hr	$103.00	$4,120
Supervision of QA and Testing	Engineer III	188	hr	$86.00	$16,168
Field Sampling and Testing (47 days)	Engineer I	376	hr	$65.00	$24,440
Lab Soil Testing (2 x 18 days)	Technician I	288	hr	$48.00	$13,824
Density Testing Equipment		47	day	$50.00	$2,350
Liner Lab Testing		15	ea	$100.00	$1,500
Copies & Misc					$98
Task 3. Construction Oversight					**$65,000**
Response to problems or concerns	Engineer V	80	hr	$103.00	$8,240
Supervision and oversight	Engineer III	242	hr	$84.00	$20,328
	Engineer I	484	hr	$65.00	$31,460
CAD Changes	Technician III	40	hr	$60.00	$2,400
Correspondence	Specialist III	24	hr	$54.00	$1,296
Mileage		1800	mi	$0.65	$1,170
Copies & Misc.					$106
Task 4. Final Construction Report					**$9,500**
Review	Engineer V	8	hr	$103.00	$824
Report Preparation	Engineer III	40	hr	$84.00	$3,360
	Engineer I	40	hr	$65.00	$2,600
	Technician III	16	hr	$60.00	$960
	Specialist III	16	hr	$54.00	$864
Copies & Misc.					$892
Task 5. Monitoring Plans					**$8,500**
Review	Engineer V	8	hr	$103.00	$824
	Engineer III	24	hr	$84.00	$2,016
	Scientist III	40	hr	$84.00	$3,360
	Technician III	16	hr	$60.00	$960
	Specialist III	8	hr	$54.00	$432
Copies & Misc.					$908
ESTIMATED TOTAL: TASKS 1 – 5					**$151,000**

EXHIBIT C

YEAR 2007

PROFESSIONAL FEE SCHEDULE

Position	Rate ($ per hour)
Specialist I	$41.00
Specialist II	$48.00
Specialist III	$54.00
Specialist IV	$58.00
Specialist V	$63.00
Specialist, Senior	$68.00
Specialist classification includes Administration, Records, Secretarial	
Technician I*	$48.00
Technician II*	$54.00
Technician III*	$60.00
Technician IV*	$63.00
Technician V*	$68.00
Technician, Senior	$73.00
Technician classification includes Biology, Chemistry, Computer, Drafting, Environmental, Geology, Geochemistry, Health, Hydrology, Hydrogeology, Laboratory, Reclamation, Resource, Safety, Toxicology	
Engineer/Scientist I	$65.00
Engineer/Scientist II	$76.00
Engineer/Scientist III	$86.00
Engineer/Scientist IV	$94.00
Engineer/Scientist V	$103.00
Engineer/Scientist VI	$109.00
Registered Professional	$115.00
Engineering classification includes Chemical, Civil, Geological	
Scientist classification includes Biology, Chemistry, Computer, Environmental, Geology, Geochemistry, Health, Hydrology, Hydrogeology, Reclamation, Resource Specialist, Safety, Toxicology	
Project Manager I	$92.00
Project Manager II	$100.00
Project Manager III	$107.00
Project Manager IV	$110.00
Project Manager V/Senior Advisor or Reviewer	$120.00

* These positions charged at rate shown plus 25% for time over 8 hours/day or 40 hours/week or on holidays and weekends.
- All expert witness fees are charged at 1.5 times the rates shown above.
- Terms -- A finance charge of 1.5% per month will be charged on all bills 30 days past due from invoice date.

01/01/07

EXHIBIT D

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made the _ day of_____ 199_____

by and between: _____

whose address is: _____

(hereinafter called the "CONSULTANT") and _____

whose address is: _____

(hereinafter called the "OWNER").

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

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

2. **SCOPE of SERVICES**

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

3. **TIME for PERFORMANCE**

   The CONSULTANT shall commence Services on or about _____ and complete the Services by _____. In performing the Services, time shall be of the essence.

4. **MATERIALS, EQUIPMENT and LABOR**

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

5. **PAYMENTS**

   The OWNER shall pay CONSULTANT the agreed amount for Services rendered in accordance with the terms set forth in Exhibit A. CONSULTANT shall submit invoices monthly and such invoices shall be paid within 30 days of receipt.

6. **WARRANTY**

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

7. FORCE MAJEURE

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

8. CONSULTANT CLAIMS

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

9. SUBCONTRACTS

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

10. ASSIGNMENT

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

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

CONSULTANT acknowledges that compliance with laws and providing a safe and healthy workplace and protection of the environment is an OWNER priority. CONSULTANT agrees to abide by that priority in all of its actions that relate to OWNER. CONSULTANT agrees, represents and warrants that in providing Services hereunder it will maintain copies of and will fully comply with all applicable federal, state and local laws, rules, regulations, standards and other governmental requirements including but not limited to: the Federal Occupational Safety and Health Act ("OSHA"), Federal Mine Safety and Health Act ("MSHA") the statutes enforced by the U.S. Environmental Protection Agency ("EPA"), their state and local equivalents and all regulations, policies and orders issued by or

pursuant to them (the "Acts"). The inclusion in this Agreement of any specific laws or regulations shall not relieve CONSULTANT of its obligation to comply with all federal, state and local laws, rules, statutes, regulations and ordinances. CONSULTANT further agrees that any of its officers, agents, employees, contractors or subcontractors that enter OWNER's premises will be trained, certified and/or licensed both as required by such laws and Acts and in the methods and procedures for compliance with them. CONSULTANT acknowledges and agrees that it has instituted a policy that mandates compliance with this provision.

12. ENVIRONMENTAL HEALTH AND SAFETY PROVISIONS

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

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

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

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

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

(e) CONSULTANT agrees to provide and utilize safe, functional equipment and nonhazardous materials and to possess or obtain, prior to entering OWNER's site, any training, testing, licenses or certifications that are necessary, appropriate or required for utilizing all equipment, materials and tools used to perform this Agreement. CONSULTANT also agrees to maintain such equipment, materials and tools in good order and working condition, and utilize personal protective equipment whenever appropriate or required by law or OWNER's policies.

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

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

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

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

13. EFFECT OF OWNER'S VOLUNTARY ACTIONS

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

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

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

14. ENVIRONMENTAL SAFETY AND HEALTH VIOLATIONS AND ASSESSMENTS

CONSULTANT acknowledges that violations by CONSULTANT of health, safety, environmental and other statutory and regulatory laws and authority may result in

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

15. CONFIDENTIALITY and CONFLICTS of INTEREST

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

16. STATUS AND RESPONSIBILITY OF CONSULTANT AND ITS PERSONNEL

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

17. INSURANCE

A. Minimum Scope and Limits of Insurance

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

1. Workers' Compensation	Statutory
2. Employer's Liability Insurance	Not less than $1 million each accident.

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

B. Other Insurance Provisions

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

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

(a) name the OWNER, its parents, subsidiaries, agents and affiliated companies, and its directors, officers, agents and employees as *Additional Insureds*;

(b) expressly include a *severability of interest* clause; and

(c) be *primary insurance* as respects the OWNER, its parents, subsidiaries, agents and affiliated companies, and its directors, officers, agents and employees.

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

2. With respect to all coverages except Professional Liability Insurance, every policy shall contain a *Waiver of Subrogation* endorsement in favor of the OWNER, its parents, subsidiaries, agents and affiliated companies, and its directors, officers, agents and employees.

C. Verification of Coverage

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

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

D. Subcontractors

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

18. INDEMNIFICATION

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

19. RIGHT TO TERMINATE AGREEMENT

A. Termination For Cause.

OWNER may terminate or cancel this Agreement in whole or in part for cause if: (1) CONSULTANT's performance does not conform in all respects to CONSULTANT's warranty or the terms of this Agreement; (2) CONSULTANT

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

B. *Termination For Convenience (Without Cause).*

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

20. DISPUTES

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

21. GOVERNING LAW

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

22. CONFLICTS

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

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

OWNER:	**CONSULTANT:**
By:_____	By:_____
Its:_____	Its:_____
Date:_____	Date:_____
By:_____	
Its:_____	
Date:_____	

PROFESSIONAL SERVICES AGREEMENT

EXHIBIT A

SCOPE OF SERVICES:

_____

_____

_____

_____

_____

_____

_____

PAYMENT

1. Hourly Rate Plus Expenses: Unless otherwise specified below, Consultant shall charge Owner at its standard hourly rate of $_____ plus reasonable and necessary expenses incurred by Consultant in performing the Services required under this Agreement.

2. Alternate Payment Method: The Consultant's fees and disbursements for performing the required scope of Services shall be handled as follows:

   _____

   _____

   _____

3. NOTE - All services, fees and costs invoiced to Owner shall include detailed descriptions and backup documentation, unless waived by Owner in writing.

PAYMENT LIMITATION

1. The Consultant shall not charge for and the Owner shall not be liable for any fees or other charges by Contractor in excess of: $_____.

(FORM PSA Rev. 6/99)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	§	Case No. 05-21207
	§	
ASARCO LLC, *et al.*,	§	Chapter 11
	§	
Debtors.	§	Jointly Administered
	§	

ORDER AUTHORIZING ASARCO LLC TO ENTER INTO CONTRACTS WITH HYDROMETRICS, INC. FOR (A) GROUNDWATER AND SURFACE WATER MONITORING AND (B) CAMU PHASE 2 CELL OVERSIGHT IN EAST HELENA, MONTANA

Upon consideration of the Motion for Order Authorizing ASARCO LLC to Enter into Contracts with Hydrometrics, Inc. for (a) Groundwater and Surface Water Monitoring and (b) CAMU Phase 2 Cell Oversight in East Helena, Montana (the "Motion"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtor and its estate and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that ASARCO is authorized, in its discretion, to enter into contracts with Hydrometrics, Inc. for the work at the East Helena, Montana smelter plant, as described in the Motion; it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated:

RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE