

ENVIRONMENTAL CUSTODIAL TRUST AGREEMENT

(Texas Custodial Trust)

BY AND AMONG

ASARCO LLC,

as Settlor,

_____,
as Custodial Trustee,

AND

**Texas Commission on Environmental Quality, and
United States Environmental Protection Agency,
as Beneficiaries**

As of _____, 2009

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ENVIRONMENTAL CUSTODIAL TRUST AGREEMENT

(Texas Custodial Trust)

This Environmental Custodial Trust Agreement (the "Agreement") is made this _____ day of _____, 2009, by and among ASARCO LLC ("ASARCO") as a debtor in possession in the Reorganization Cases (defined below) ("Settlor") and _____, not individually but solely in [his/its] capacity as Custodial Trustee ("Custodial Trustee") of the ASARCO Texas Custodial Trust established hereby (the "Texas Custodial Trust"), and the Beneficiaries (defined below).

RECITALS:

WHEREAS, on August 9, 2005, ASARCO filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, as amended (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division ("Bankruptcy Court") and on April 11, 2005, August 26, 2005, September 1, 2005 and October 13, 2005, various subsidiaries of ASARCO filed voluntary petitions for relief in the Bankruptcy Court, which cases have been jointly administered under Case No. 05-21207 (the "Reorganization Cases");

WHEREAS, the Settlor, American Smelting and Refining Company, the United States and the State have entered into that certain Consent Decree and Settlement Agreement Establishing a Custodial Trust for the Owned Smelter Site in El Paso, Texas and the Owned Zinc Smelter Site in Amarillo, Texas (the "Settlement Agreement") dated _____, 2009, with respect to Sites as defined herein (the portions of such "Sites" owned by the Settlor being referred to herein collectively as the "Designated Properties") located in the State;

WHEREAS, the Settlement Agreement provides for the transfer of the Designated Properties and Attendant Property Interests to the Texas Custodial Trust to be administered by the Custodial Trustee pursuant to this Agreement and the Settlement Agreement;

WHEREAS, in accordance with Article IV of the Settlement Agreement, the Texas Custodial Trust is established for the purposes of (a) owning the Designated Properties and carrying out administrative and property management functions related to the Designated Properties, (b) conducting, managing, and/or funding the implementation of future Environmental Actions with respect to the Designated Properties, and (c) selling, transferring or otherwise disposing of the Designated Properties;

WHEREAS, the Texas Custodial Trust is to be funded in the amount set forth in the Settlement Agreement;

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WHEREAS, this Agreement and the Settlement Agreement govern the Texas Custodial Trust, which is intended to qualify as a qualified settlement fund (for which no grantor trust election has been made) pursuant to section 1.468B-1 of the Treasury Regulations promulgated under the Internal Revenue Code (“Treasury Regulations”); and

WHEREAS, the Custodial Trustee shall be the exclusive holder of the assets described herein for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3);

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein and in the Settlement Agreement, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions.

The following terms as used in this Agreement shall have the definitions given below:

- 1.1.1 “Agreement” has the meaning as given in the preamble.
- 1.1.2 “Amarillo Site” means the former ASARCO-owned zinc smelter site in Amarillo, Texas set forth and further defined in Exhibit A of this Agreement.
- 1.1.3 “ASARCO Environmental Custodial Trusts” means the other environmental custodial trusts created pursuant to a settlement agreement approved by the Bankruptcy Court in the Reorganization Cases. These settlements consist solely of the Amended Settlement Agreement and Consent Decree Regarding Residual Environmental Claims for the Coeur D’Alene, Idaho, Omaha, Nebraska, and Tacoma, Washington Environmental Sites; the Amended Consent Decree and Settlement Agreement Regarding the Montana Sites; and the Amended Consent Decree and Settlement Agreement Establishing a Custodial Trust for Certain Owned Sites in Alabama, Arizona, Arkansas, Colorado, Illinois, Indiana, New Mexico, Ohio, Oklahoma, Utah, and Washington.
- 1.1.4 “Attendant Property Interests” means all appurtenances, rights, easements, rights-of-way appurtenant groundwater rights, associated surface water rights, claims, and filings, permits, and other interests in, to, related to, or benefiting the Designated Properties, with the exception of equipment and other items of personal property in Exhibit D to this Agreement.

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- 1.1.5 “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas Corpus Christi Division.
- 1.1.6 “Beneficiary” means the United States, on behalf of the United States Environmental Protection Agency, and the State of Texas, on behalf of the Texas Commission on Environmental Quality.
- 1.1.7 “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended.
- 1.1.8 “Closing Date” means the effective date of the Settlement Agreement, as that term is defined in the Settlement Agreement.
- 1.1.9 “Consent” means written consent.
- 1.1.10 “Court” means the Bankruptcy Court or if the Bankruptcy Court abstains from exercising jurisdiction or is otherwise without jurisdiction over any matter arising out of this Agreement, a United States District Court or the District Court of Travis County, Texas having competent jurisdiction with respect to such matters.
- 1.1.11 “Custodial Trust Account” means the Custodial Trust Account established to hold funds to implement necessary Environmental Actions, to pay real estate taxes, insurance, and other administrative costs of the Texas Custodial Trust, and fulfill the purposes of this Texas Custodial Trust.
- 1.1.12 “Custodial Trust Assets” means (a) those assets and properties, including the Funding, the Designated Properties, Attendant Property Interests, and the Transferred Contracts, to be transferred to the Texas Custodial Trust pursuant to the Settlement Agreement and (b) such other assets acquired or held by the Texas Custodial Trust from time to time pursuant to this Agreement, the Settlement Agreement, or an order of the Court.
- 1.1.13 “Custodial Trustee” means the Texas Custodial Trust by and through its trustee not individually but solely in its representative capacity.
- 1.1.14 “Custodial Trust Parties” means the Texas Custodial Trust, the Custodial Trustee and the employees, consultants, contractors, agents or other professionals or representatives employed by the Texas Custodial Trust or the Custodial Trustee. In the event the Custodial Trustee is a corporation, “Custodial Trust Parties” shall also include the Custodial

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Trustee's officers, directors, and shareholders. Each of the Custodial Trust Parties is, individually, a Custodial Trust Party.

- 1.1.15 "Custodial Trust Proceeds" means the proceeds of any liquidations, sale, lease, recovery or other disposition of or other proceeds in respect to the Custodial Trust Assets.
- 1.1.16 "Debtors" shall have the meaning given in the Settlement Agreement.
- 1.1.17 "Designated Properties" means the portions of the Sites owned by the Settlor as set forth in Exhibit B to this Agreement, including without limitation all fixtures, improvements, and equipment located thereon as of the Plan Effective Date except equipment and other items of personal property listed in Exhibit D to this Agreement. "Designated Property" means any one of the Designated Properties.
- 1.1.18 "Effective Date" means the effective date of this Agreement, which shall be the later of (i) the date this Agreement is executed by all parties to this Agreement; and (ii) the Plan Effective Date.
- 1.1.19 "El Paso Smelter Site" means the ASARCO-owned smelter facility site in El Paso, Texas as set forth and further defined in Exhibit A of this Agreement.
- 1.1.20 "Environmental Actions" means any response, removal, investigation, remediation, reclamation, closure, post-closure, corrective actions, institutional controls, and operation and maintenance activities selected and approved by the TCEQ with respect to the Designated Properties.
- 1.1.21 "Environmental Costs" mean the costs and expenses of implementing Environmental Actions with respect to the Designated Properties and related Sites.
- 1.1.22 "Environmental Law" means any applicable federal, tribal, state or local law, statute, ordinance, rule, regulation or code, any license, permit, authorization, administrative or court order, judgment, decree or injunction, including all common law, related to pollution, protection or restoration of health, safety or the environment, reclamation of mined lands, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of pollutants or Hazardous Substances, including, without limitation, CERCLA; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.*; the Toxic Substances Control Act, 15

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U.S.C. Section 2601, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f, *et seq.*; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. 651, *et seq.*, and any applicable tribal, state, or local law counterparts, as the same may be reauthorized or amended from time to time.

- 1.1.23 “Funding” shall have the meaning given in Section 2.1.2 hereof.
- 1.1.24 “Hazardous Substances” means all materials, substances, or wastes defined, designated, regulated or classified as hazardous, toxic or radioactive, under any Environmental Laws, whether by type or by quantity, and shall include petroleum or any derivative or by-product thereof and asbestos containing materials.
- 1.1.25 “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.
- 1.1.26 “Parties” means the Settlor, Custodial Trustee, and Beneficiaries.
- 1.1.27 “Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, charitable foundation, unincorporated organization, government or any agency or political subdivision thereof or any other entity.
- 1.1.28 1.1.30 “Plan Administrator” means the administrator of any plan of reorganization confirmed by an order of the Bankruptcy Court in the Reorganization Cases.
- 1.1.29 “Plan Effective Date” shall have the same meaning as the term “Effective Date” as such term is defined in the Settlement Agreement.
- 1.1.30 “Reorganization Cases” has the meaning given in the recitals to this Agreement.
- 1.1.31 “Reorganized ASARCO” shall have the meaning given in any plan of reorganization confirmed by an order of the Bankruptcy Court in the Reorganization Cases.
- 1.1.32 “Reorganized Debtors” shall mean any debtors under a confirmed plan of reorganization in the Reorganization Cases.
- 1.1.33 “Settlement Agreement” means that certain Consent Decree and Settlement Agreement Establishing a Custodial Trust for the Owned Smelter Site in El Paso, Texas and the Owned Zinc Smelter Site in

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Amarillo, Texas executed by Beneficiaries and Settlor on _____, 2009, and approved by the Bankruptcy Court.

- 1.1.34 “Sites” means the sites set forth in Exhibit A to this Agreement.
- 1.1.35 “State” means the State of Texas.
- 1.1.36 “Superfund” means the “Hazardous Substance Superfund” established by 26 U.S.C. § 9507 or, in the event such Hazardous Substance Superfund no longer exists, any successor fund or comparable account of the Treasury of the United States to be used for removal or remedial actions to address releases or threats of release of hazardous substances.
- 1.1.37 “Texas Commission on Environmental Quality” (“TCEQ”) means the agency of the State known as the Texas Commission on Environmental Quality, being the agency of the State with primary environmental oversight authority over such Designated Properties as specified in the Settlement Agreement as well as any successor departments or agencies of the State.
- 1.1.38 “Texas Custodial Trust” means the trust established pursuant to this Agreement and has the same meaning as the term “Custodial Trust” as defined in the Settlement Agreement.
- 1.1.39 “Transferred Contracts” means those contracts and agreements relating to the Designated Properties listed in Exhibit C to this Agreement.
- 1.1.40 “United States” means the United States of America on behalf of agencies and departments named in the Settlement Agreement.
- 1.1.41 “USEPA” means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

ARTICLE 2
THE TEXAS CUSTODIAL TRUST

2.1 Creation of and Transfer of Assets to the Texas Custodial Trust.

- 2.1.1 Pursuant to the Settlement Agreement, the Parties hereby establish, on behalf of the Beneficiaries named herein, and Settlor hereby transfers, assigns, and delivers to the Texas Custodial Trust, on behalf of the Beneficiaries, all fee ownership or other interests of Settlor in and to the Custodial Trust Assets and Debtors shall retain no ownership or other interest whatsoever in the Designated Properties or the Attendant Property Interests (except to the extent provided by Subparagraph 12(i)(2) of the Settlement Agreement). The transfer of ownership shall be by quit claim

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deed, in a form substantially similar to the quit claim deed attached as Exhibit E to this Agreement, of all of the Debtors' rights, title and interests and shall be free and clear of all claims, liens, and interests against the Debtors other than any liability to the Governments under the Settlement Agreement, but subject to any existing *in rem* claims other than liens for the payment of monetary claims such as property taxes or other monetary claims asserted or that could have been asserted in the Reorganization Cases. Debtors shall pay all property taxes relating to the Designated Properties prorated through the Plan Effective Date. The Custodial Trustee hereby accepts and agrees to hold the Custodial Trust Assets in the Texas Custodial Trust for the benefit of the Beneficiaries for the purposes described in Section 2.2 below, subject to the terms of the Settlement Agreement, this Agreement, and any applicable orders of the Court

- 2.1.2 On the Plan Effective Date, the Settlor shall cause to be transferred to the Custodial Trust Account cash in the amount of **Fifty-Two Million Eighty Thousand Dollars (\$52,080,000)**, reduced in accordance with Paragraph 12(e) of the Settlement Agreement, which constitutes the "Funding" and represents the aggregate amounts approved by the Court as sufficient to pay the Environmental Costs and the costs of administering the Texas Custodial Trust. Neither the Settlor nor any successors thereto shall have any further obligation to provide any funding to the Texas Custodial Trust.
- 2.1.3 The Custodial Trustee shall obtain general and professional liability insurance in the amount of \$_____ Million Dollars, the cost of which shall be paid out of the Custodial Trust Account, for the benefit of the Parties and the Texas Custodial Trust. Said amount of liability insurance may be amended from time to time with consent of TCEQ and the United States.
- 2.1.4 For all federal income tax purposes, the Custodial Trustee and the Settlor shall treat the transfer of the Custodial Trust Assets by the Settlor to the Texas Custodial Trust as a transfer to a qualified settlement fund pursuant to section 468B of the Internal Revenue Code and related Treasury Regulations. The Custodial Trustee will at all times seek to have the Texas Custodial Trust treated as a "qualified settlement fund" as that term is defined in Treasury Regulation section 1.468B-1. The Custodial Trustee will not elect to have the Texas Custodial Trust treated as a grantor trust. The Texas Custodial Trust will be treated as a separate taxable entity. The Custodial Trustee shall cause any taxes imposed on the earnings of the Texas Custodial Trust to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Texas Custodial Trust under applicable tax laws.

2.2 Objective and Purpose.

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- 2.2.1 The exclusive purposes and functions of the Texas Custodial Trust are to own the Designated Properties, carry out administrative and property management functions related to the Designated Properties, conduct, manage, and/or fund implementation of future Environmental Actions with respect to the Designated Properties, and ultimately to sell, transfer or otherwise dispose of all or part of the Designated Properties, if possible, all as provided in the Settlement Agreement, with no objective or authority to engage in any trade or business. With respect to the El Paso Smelter Site, the purposes of this Texas Custodial Trust further include: 1) addressing contamination (including without limitation Hazardous Substances) on and in the structures, soils, surface water, and groundwater at such site; and 2) remediating such site to standards that are protective of human health and the environment with the oversight of the TCEQ.
- 2.2.2 With respect to the Amarillo Designated Property (as defined in Attachment B), the Custodial Trustee shall, within sixty days of the Plan Effective Date, take actions to sell portions of the site that are not subject to Environmental Actions in accordance with Section 2.13 of this Agreement.
- 2.2.3 The Texas Custodial Trust is established pursuant to this Agreement and the Settlement Agreement and approved by the Bankruptcy Court for the purpose of resolving claims asserting environmental liabilities of the Settlor with respect to the Designated Properties and the other purposes set forth in this Agreement and the Settlement Agreement. The Bankruptcy Court shall retain continuing jurisdiction over the Texas Custodial Trust. The Texas Custodial Trust satisfies all the requirements of, and is intended by the Parties to be classified as, a qualified settlement fund (for which no grantor trust election has been made) pursuant to section 468B of the Internal Revenue Code and related Treasury Regulations.

2.3 Holder of Custodial Trust Assets.

The Texas Custodial Trust shall be the exclusive holder of the Custodial Trust Assets and the Custodial Trust Account described herein for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012 (b)(3).

2.4 Management of Custodial Trust Assets.

- 2.4.1 Consistent with this Agreement and the Settlement Agreement, the Custodial Trustee shall fund future Environmental Actions pursuant to CERCLA, RCRA, or similar state or federal statutes with respect to a particular Designated Property. The Custodial Trust Account shall fund the administrative costs of the Texas Custodial Trust that have been expressly approved by the TCEQ.

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2.4.2 The Custodial Trustee may enter into a consent decree or consent order with the United States and/or the TCEQ to facilitate implementation of Section 2.4 with respect to such Designated Properties.

2.5 Remaining/Excess Funds in Custodial Trust Account.

Upon the completion of all final actions and disbursement of all final costs for the Designated Properties and related Sites, any funds remaining in the Custodial Trust Account shall be transferred as follows: (1) for all funds remaining from the initial \$52,080,000 payment to the Texas Custodial Trust (which shall be reduced pursuant to Paragraph 12(e) of the Settlement Agreement), to the following in the order designated: (A) first, in accordance with instructions provided by the United States Department of Justice and the TCEQ to custodial trust accounts that may be established for property in Texas, with remaining actions to be performed and a need for additional trust funding, including but not limited to the Federated Metals State Superfund site and the Encycle/Texas site, or to TCEQ or USEPA for their oversight costs at the Designated Properties and/or Sites; provided, notwithstanding anything to the contrary in this Agreement, no funds shall be transferred to an account to the extent that expenditures by, or work funded by, such account may reduce (directly or indirectly) any liabilities of ASARCO, the Debtors, the Reorganized Debtors, Americas Mining Corporation, ASARCO USA Incorporated, their successors, their affiliates, or any Persons related to any of the preceding (within the meaning of section 468B(d)(3) of the Internal Revenue Code); (B) second, then in accordance with instructions provided by the United States Department of Justice after consultation with the TCEQ, to any of the other custodial trust accounts established under any other ASARCO Environmental Custodial Trust for a property in another State with remaining actions to be performed and a need for additional trust funding; and (C) third, then to the Superfund; (2) for remaining funds from the proceeds of sale of all or a portion of the El Paso Designated Property, to the Reorganized Debtors for the benefit of: (i) Reorganized Debtors to the extent of any resulting taxes relating to this Subsection 2.5(2) incurred by the Reorganized Debtors, and (ii) the creditors of Debtors as provided in the plan of reorganization that is ultimately approved by the Bankruptcy Court.

2.5.1 The creditors or their representatives shall not by virtue of their interest from the proceeds from this possible sale have standing to object to the manner in which the El Paso Designated Property is remediated. The Custodial Trustee shall use ordinary and prudent judgment in considering a proposal to sell the real estate associated with the El Paso Designated Property and may consider criteria other than sales price. Any sale by the Custodial Trustee shall however be for at least fair value.

2.5.2 In addition, the TCEQ and the United States may agree in writing at any time after one year from the Plan Effective Date that based on new information about the estimated cost of cleanup or administration or the assumption of liability by a financially qualified buyer or other party for

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remediating a Site, that the funding in the Custodial Trust Account is more than is conservatively projected to be needed. Upon such an agreement, any such excess funding remaining in the Custodial Trust Account shall be transferred as set forth in Section 2.5 (subject to the limitation described therein).

2.6 Work Performed and Disbursements by the Texas Custodial Trust.

Payments from the Texas Custodial Trust shall be made as provided in accordance with Subparagraphs 12(g) and (h) of the Settlement Agreement.

2.7 Investment and Safekeeping of Custodial Trust Assets.

2.7.1 The Custodial Trust Account, initial funding consisting of Fifty-Two Million Eighty Thousand Dollars (\$52,080,000), reduced pursuant to Paragraph 12(e) of the Settlement Agreement, shall be held in trust by a Corporate Trustee [name of bank selected] defined pursuant to the Bank Trust Agreement attached as Exhibit _____. (Incorporated by reference as if fully set forth herein). The Custodial Trustee shall be under no liability for interest or producing income on any moneys received by the Texas Custodial Trust hereunder and held for distribution or payment as provided in this Agreement, except as such interest shall actually be received by the Texas Custodial Trust. Investments of any moneys held by the Texas Custodial Trust shall be administered in a manner consistent with the standards and requirements applicable to a trustee in connection with a Chapter 7 liquidation; provided, however, that the right and power of the Texas Custodial Trust to invest the Custodial Trust Assets, the Custodial Trust Proceeds, or any income earned by the Texas Custodial Trust, shall be limited to the right and power to invest such assets (pending periodic distributions in accordance with Article 3 hereof) in demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured, or other temporary liquid investments, such as Treasury bills; and provided further, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust, within the meaning of Treasury Regulation section 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise (although the Parties acknowledge and agree that the Texas Custodial Trust is properly characterized for federal tax purposes as a qualified settlement fund within the meaning of Section 1.468B-1 of the Treasury Regulations, and not as a liquidating trust under Section 301.7701-4(d) of the Treasury Regulations).

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- 2.7.2 The Custodial Trustee is expressly prohibited from holding any or all of the Funding or Custodial Trust Proceeds in a common, commingled, or collective trust fund, and from holding any or all of the Funding or Custodial Trust Proceeds in a common, commingled, or collective trust fund with the assets of any other entity.
- 2.7.3 Nothing in this section shall be construed as authorizing the Custodial Trustee to cause the Texas Custodial Trust to carry on any business or to divide the gains therefrom, including without limitation, the business of an investment company, a company “controlled” by an investment company, or a company required to register under the Investment Company Act of 1940, as amended. The sole purpose of this section is to authorize the investment of the funds in the Custodial Trust Account or any portions thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Texas Custodial Trust.
- 2.7.4 The Custodial Trust Parties shall not incur any liability for following any written direction or order to act (or to refrain to act) from any Beneficiary so long as such written direction is not inconsistent with this Agreement and the Settlement Agreement.

2.8 Insurance Policy to Cover Future Response Actions.

Only at the direction of the TCEQ in consultation with the United States, shall the Custodial Trustee investigate the possible purchase of an insurance policy to cover future Environmental Actions at one or more of the Designated Properties. If, and only if, the TCEQ and the United States direct the Custodial Trustee in writing to purchase such insurance, shall the Custodial Trustee use Custodial Trust Assets to purchase such insurance.

2.9 Access and Deed Restrictions.

The Custodial Trustee shall provide the TCEQ and the United States and their representatives and contractors with reasonable access at all reasonable times to the Designated Properties for the purposes of conducting Environmental Actions or related activities at or near the Designated Properties. The Custodial Trustee shall implement any institutional controls or deed restrictions requested by the Beneficiaries with respect to any of the Designated Properties. The Custodial Trustee shall execute and record in the appropriate local real estate records any easements or deed restrictions restricting the use of the Designated Properties requested by the Beneficiaries in order to protect public health, welfare or safety or the environment or ensure non-interference with or protectiveness of any action. The Custodial Trustee shall abide by the terms of any institutional controls or deed restrictions in place or of record as to any Designated Property.

2.10 Accounting.

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The Custodial Trustee shall maintain proper books, records, and accounts relating to all transactions pertaining to the Texas Custodial Trust, and the assets and liabilities of, and claims against or assumed by, the Texas Custodial Trust in such detail and for such period of time as may be necessary to enable the Custodial Trustee to make full and proper accounting in respect thereof in accordance with Article 6 below and to comply with applicable provisions of law and good accounting practices. Except as otherwise provided herein or by the Settlement Agreement, the Custodial Trustee shall not be required to file any accounting or seek approval of the Court with respect to the administration of the Texas Custodial Trust, or as a condition for making any payment or distribution out of the Custodial Trust Assets. Beneficiaries shall have the right to inspect such books and records.

2.11 Liability.

As provided in Section IV, Paragraph 15 and Section VI of the Settlement Agreement and subject to Section VII of the Settlement Agreement, the Custodial Trust Parties are deemed to have resolved their civil liability under CERCLA, RCRA, the Clean Water Act (“CWA”) and similar state environmental statutes to the United States and the State at the conclusion of the Environmental Actions, and have protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) or similar state law for matters addressed in the Settlement Agreement. The Custodial Trust Parties shall have the benefits of the covenant not to sue as set forth in Section VI of the Settlement Agreement and of contribution protection set forth in Section IV, Paragraph 14 of the Settlement Agreement. However, in the event that the Court finds that the Texas Custodial Trust in any material respect exacerbates conditions at any of the Designated Properties, is seriously or repeatedly deficient or late in performance of the work, or violates the provisions of this Agreement, the Settlement Agreement, or other related implementation agreements, the United States and the TCEQ may jointly direct that (i) the Custodial Trustee be replaced in accordance with this Agreement or (ii) that all remaining funds and future proceeds or income, if any, attributable to the Custodial Trust Assets in the Texas Custodial Trust be paid to the TCEQ and USEPA to be used in accordance with the terms of this Agreement and the Settlement Agreement (including, without limitation, Section 2.5 of this Agreement); provided, however, so long as title to any Designated Property remains in the name of the Texas Custodial Trust or the Custodial Trustee, funds deemed reasonably sufficient by the Beneficiaries to cover property taxes and other property management costs to be paid by the Texas Custodial Trust for any such Designated Property be left in the Custodial Trust Account.

2.12 Termination.

Consistent with the terms of the Settlement Agreement, the Custodial Trustee shall not unduly prolong the duration of the Texas Custodial Trust, shall proceed as expeditiously as possible with the Environmental Actions with respect to the Designated Properties as contemplated by this Agreement, and shall at all times endeavor to resolve, settle, or otherwise dispose of all claims against Custodial Trust Assets and to effect the distribution of Custodial Trust Assets and other receipts relating thereto to the Beneficiaries and the others who receive distributions hereunder in accordance with the terms hereof, and to terminate the Texas Custodial Trust as soon as practicable consistent with this Agreement and the Settlement Agreement.

2.13 Property Disposition.

The TCEQ or the United States, may at any time propose in writing to take ownership of any of the Designated Properties transferred to the Texas Custodial Trust or any part thereof. Any such proposed transfer and the terms thereof are subject to the consent of the TCEQ and the United States. The Custodial Trustee shall obtain the approval of TCEQ and the United States for the sale or lease or other disposition of all or part of the Designated Properties prior to any such sale, lease, or other disposition. With the prior approval of the TCEQ and the United States, the Custodial Trustee may sell or lease all or part of the Designated Properties prior to completion of the Environmental Actions at such Designated Properties if such sale or lease does not limit or impede Environmental Actions necessary to address the Designated Properties or Sites. In the event of any approved sale or lease or other disposition under this Paragraph, any net proceeds from the sale or lease or other disposition shall be paid to the Texas Custodial Trust. No sale of the El Paso Designated Property shall take place out of the bankruptcy estate. Any sale of such property shall only take place after the El Paso Designated Property has been transferred to the Texas Custodial Trust in accordance with the terms of this agreement. The following is included in this Agreement at the sole request and direction of the TCEQ: Prior to the TCEQ or the United States taking ownership of any portion of the El Paso Smelter Site, the Custodial Trustee shall provide the City of El Paso the opportunity to propose its own plan regarding disposition of the El Paso Smelter Site to the Custodial Trustee, the TCEQ, and the United States, which may include private or public entities taking ownership and completing remediation of such Designated Property.

2.14 Payments or Proceeds to the Texas Custodial Trust.

All payments received by the Custodial Trustee and any Custodial Trust Proceeds must be immediately placed by the Custodial Trustee into the Custodial Trust Account to be used for the purposes set forth in this Agreement. Such amounts include payment by TCEQ of up to \$420,000 that the TCEQ may receive in settlement of other claims in the Reorganization Cases.

ARTICLE 3
WORK AND DISTRIBUTIONS

3.1 Payments and Expenses of the Texas Custodial Trust.

On January 1 of each calendar year, or within sixty days after the Plan Effective Date in the case of the first such period, the Custodial Trustee shall provide the TCEQ and USEPA with balance statements, proposed budgets, fee schedules, and associated scopes of work for the administrative and environmental expenses of the Texas Custodial Trust for that calendar year, which may be approved, disapproved, or modified in whole or in part by the TCEQ after consultation with USEPA. If disapproved, such budget, fee schedule, or scope of work shall be revised and resubmitted as expeditiously as possible. No expenses may be incurred or paid by the Custodial Trustee that are inconsistent with the approved budget, unless the TCEQ, in consultation with USEPA, approves a revised budget; however, the Custodial Trustee may incur or pay ongoing or recurring expenses approved in the prior year's budget that occur between the time a proposed annual budget is submitted and the time it is approved. Each annual budget shall include a future year forecast of expenditures, with annual details for at least the next three years (or such longer period as the TCEQ and the United States shall reasonably request). The Custodial Trustee shall regularly, but not less often than annually, and otherwise upon the reasonable request of the TCEQ and the United States, provide documentation to the TCEQ and the United States to substantiate compliance with the applicable approved budget and application of Custodial Trust Assets consistently with the terms this Agreement and the Settlement Agreement. The approved budget shall be funded by the transfer of the approved amount from Custodial Trust Account in accordance with the approved fee schedule. Further, by January 1 of each year during the term of the Texas Custodial Trust and within nine (9) months after termination of the Texas Custodial Trust, the Custodial Trustee shall prepare and submit to the Beneficiaries an annual report with respect to the Custodial Trust Account. The annual report shall pertain to the prior calendar year, or if the report is a final report, such period from the most recent annual report to the termination of the Custodial Trust Account.

3.2 Remuneration for the Custodial Trustee's Start-Up Fees and Expenses.

The Custodial Trustee shall be entitled to remuneration from the Texas Custodial Trust of up to \$_____ for its fees and expenses in connection with the formation of the Texas Custodial Trust prior to the Effective Date.

3.3 Liens by Government.

Notwithstanding anything to the contrary in this Article 3, the Texas Custodial Trust hereby grants to the TCEQ and the United States, a first-priority lien on and security interest in the Custodial Trust Assets to secure the payment of all amounts owed to, accrued or reserved on account of the Texas Custodial Trust or to be retained by the Custodial Trustee hereunder or otherwise due hereunder. The Texas Custodial Trust agrees to take appropriate actions and execute appropriate documents to perfect the TCEQ's, and the United States' liens and security interest hereunder.

3.4 Manner of Payment.

Payments made by the Texas Custodial Trust pursuant to the Settlement Agreement and this Agreement shall be in United States dollars by checks drawn on a domestic bank (whose deposits are federally insured) selected by the Custodial Trustee, or by wire transfer from such a domestic bank, at the option of the Custodial Trustee.

3.5 Unclaimed Distributions.

In the event that funds remain in the Texas Custodial Trust at its termination, the amounts remaining shall be transferred as set forth in Section 2.5 of this Agreement.

ARTICLE 4
THE CUSTODIAL TRUSTEE

4.1 Appointment.

4.1.1 The Settlor hereby appoints _____ not individually but solely in its representative capacity, selected by the TCEQ and the United States, to serve as the Custodial Trustee, and the Custodial Trustee hereby accepts such appointment and agrees to serve in such representative capacity, effective upon the Effective Date of this Agreement. Subject to the provisions of Section 4.10 herein, the term of the Custodial Trustee shall be for ten (10) years at which time the Custodial Trustee may be re-appointed or terminated. Any successor Custodial Trustee shall be appointed by the Beneficiaries in accordance with Section 4.11 of this Agreement. If the Custodial Trustee is not reappointed and no successor Custodial Trustee is appointed by the expiration of the Custodial Trustee's term, the Court may reappoint the Custodial Trustee or appoint a successor Custodial Trustee.

4.1.2 After consultation with the United States and the State, the Texas Custodial Trust is authorized to obtain the services of an environmental consultant to implement the future Environmental Actions (the "Consultant"). The Consultant shall obtain environmental, general and professional liability insurance in the sum of \$25,000,000 or such lesser amount as agreed to by the Texas Custodial Trust after consultation with the United States and States. The beneficiary of the insurance policies shall be the Texas Custodial Trust and the policies shall cover negligence committed by the Consultant in implementing the future Environmental Actions or any other negligence committed by the Consultant. The legal relationship of the Consultant to the Texas Custodial Trust and Custodial Trustee is that of an independent contractor professional, not that of an entity employed by the Texas Custodial Trust or the Custodial Trustee. The Consultant shall not be deemed a Custodial Trust Party.

4.2 Generally.

The Custodial Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the Texas Custodial Trust, this Agreement, and the Settlement Agreement and not otherwise. The Custodial Trustee shall have the authority to bind the Texas Custodial Trust, and any successor Custodial Trustee, or successor or assign of the Texas Custodial Trust, but shall for all purposes hereunder be acting in its representative capacity as Custodial Trustee and not individually. Notwithstanding anything to the contrary contained herein, the Custodial Trustee shall not be required to take action or omit to take any action if, after the advice of counsel, the Custodial Trustee believes in good faith such action or omission is not consistent with the Custodial Trustee's fiduciary duties.

4.3 Powers.

In connection with the administration of the Texas Custodial Trust, except as otherwise set forth in this Agreement or the Settlement Agreement, the Custodial Trustee is authorized to perform any and all acts necessary to accomplish the purposes of the Texas Custodial Trust. The powers of the Texas Custodial Trust shall, without any further Court approval or order, include, without limitation, each of the following: (i) to receive, manage, invest, supervise and protect the Custodial Trust Assets, withdraw, make distributions and pay taxes and other obligations owed by the Texas Custodial Trust or the Custodial Trust Account from funds held by the Custodial Trustee and/or the Texas Custodial Trust (or the Custodial Trust Account) in accordance with the Settlement Agreement, and withhold and pay to the appropriate taxing authority any withholding taxes on distributions from the Texas Custodial Trust; (ii) to engage employees and professional Persons to assist the Texas Custodial Trust and/or the Custodial Trustee with respect to the responsibilities described herein; (iii) to make distributions of the Custodial Trust Assets from the Custodial Trust Account for the purposes contemplated in the this Agreement and the Settlement Agreement; and (iv) to effect all actions and execute all agreements, instruments and other documents necessary to implement this Agreement, including to exercise such other powers as may be vested in or assumed by the Texas Custodial Trust and/or the Custodial Trustee pursuant to this Agreement and any order of the Court or as may be necessary and proper to carry out the provisions of the Settlement Agreement. No Person dealing with the Texas Custodial Trust shall be obligated to inquire into the authority of the Custodial Trustee in connection with the protection, conservation, or disposition of Custodial Trust Assets. The Custodial Trustee is authorized to execute and deliver all documents on behalf of the Texas Custodial Trust to accomplish the purposes of this Agreement and the Settlement Agreement.

4.4 Other Professionals.

The Custodial Trustee shall have the authority, after approval by the TCEQ and the United States, to retain on behalf of the Texas Custodial Trust and pay such third parties as the Custodial Trustee (in accordance with a budget approved by the TCEQ and the United States) may deem necessary or appropriate to assist the Custodial Trustee in carrying out its powers and duties under this Agreement and the Settlement Agreement, including, without limitation, (i) counsel to the Texas Custodial Trust and/or Custodial Trustee, (ii) a public accounting firm to

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perform such reviews and/or audits of the financial books and records of the Texas Custodial Trust as may be appropriate in the Custodial Trustee's reasonable discretion and to prepare and file any tax returns or informational returns for the Texas Custodial Trust or the Custodial Trust Account as may be required, and (iii) environmental consultants, custodians, security personnel, engineers, surveyors, brokers, contractors, and clerks. The Custodial Trustee may pay all such Persons compensation for services rendered and expenses incurred in accordance with a budget approved as provided in Section 3.1.

4.5 Limitation of the Custodial Trustee's Authority.

The Texas Custodial Trust and the Custodial Trustee shall not and are not authorized to engage in any trade or business with respect to the Custodial Trust Assets or any proceeds therefrom except as and to the extent deemed in good faith by the Custodial Trustee to be reasonably necessary or proper for the conservation or protection of the Custodial Trust Assets, or the fulfillment of the purposes of the Texas Custodial Trust; provided, however, that in no event shall the Texas Custodial Trust conduct industrial operations on the Designated Property (e.g., shall not operate a smelter and shall not sell, dispose, or transfer the El Paso Smelter Designated Property as an operating smelter facility). The Texas Custodial Trust and the Custodial Trustee shall not take any actions that would cause the Texas Custodial Trust to fail to qualify as a qualified settlement fund (for which no grantor trust election has been made) under Section 468B of the Internal Revenue Code and the related Treasury Regulations.

4.6 Reliance by the Custodial Trust Parties.

Except as may otherwise be provided herein: (a) the Custodial Trust Parties may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties; (b) the Custodial Trust Parties may consult with legal counsel, financial or accounting advisors and other professionals to be selected by them, and the Custodial Trust Parties shall not be personally liable for any action taken or omitted to be taken by them in accordance with the advice thereof; and (c) Persons dealing with the Custodial Trust Parties shall look only to the Custodial Trust Assets to satisfy any liability incurred by the Custodial Trust Parties to such Person in carrying out the terms of this Agreement and the Settlement Agreement or any order of the Court, and the Custodial Trust Parties shall have no personal obligation to satisfy any such liability.

4.7 Compensation of the Custodial Trustee.

The Texas Custodial Trust shall pay its own reasonable and necessary costs and expenses, and shall reimburse the Custodial Trustee for the actual reasonable out-of-pocket fees and expenses to the extent incurred by the Custodial Trustee in connection with the Custodial Trustee's duties hereunder, including, without limitation, necessary travel, lodging, postage, photocopying, telephone and facsimile charges upon receipt of periodic billings, all in accordance with an annual budget or fee schedule approved by the Beneficiaries. The Custodial Trustee and employees of the Texas Custodial Trust and the Custodial Trustee who perform

services for the Texas Custodial Trust shall be entitled to receive reasonable compensation for services rendered on behalf of the Texas Custodial Trust in accordance with an annual budget or fee schedule approved by the Beneficiaries.

The Custodial Trust Assets shall be subject to the claims of the Custodial Trustee, and the Custodial Trustee shall be entitled to reimburse itself out of any available cash in the Custodial Trust Account and the Texas Custodial Trust shall be obligated to pay, for actual out-of-pocket expenses and for actual hours worked.

All compensation and other amounts payable to the Custodial Trustee shall be paid from the Custodial Trust Assets.

4.8 Liability of Custodial Trust Parties.

In no event shall the Custodial Trust Parties be held liable to any third parties for any liability, action, or inaction of any other party including each other. The Custodial Trust Parties shall, further, be indemnified and exculpated in accordance with Section 4.9 of this Agreement.

4.9 Exculpation and Indemnification.

The Custodial Trust Parties shall be exculpated and indemnified, consistent with the provisions of 4.9.1 and 4.9.2, for any claims, causes of action, or other assertions of liability arising out of or in connection with:

- (a) The ownership of Custodial Trust Assets;
- (b) The discharge of duties and powers conferred upon the Texas Custodial Trust and/or Custodial Trustee by this Agreement, the Settlement Agreement, any order of the Court, or applicable law or otherwise, including the making of payments in accordance with this Agreement, the Settlement Agreement, or any order of the Court, and the implementing of the provisions of this Agreement, the Settlement Agreement, or any order of the Court; and
- (c) Any claim against Settlor.

4.9.1 Exculpation

No Custodial Trust Party shall be personally liable unless the Court finds, by a final order, that the Custodial Trust Party was grossly negligent or committed fraud or willful misconduct after the Effective Date in relation to the Custodial Trustee's duties that are alleged to be the basis for liability. Each Custodial Trust Party shall be and hereby is exculpated by all Persons, including, without limitation, holders of claims and other parties in interest, of and from any and all claims, causes of action and other assertions of liability arising out of or in connection with the matters contained in the provisions of Section 4.9(a), (b), and

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(c). No person including without limitation, holders of claims and other parties in interest will be allowed to pursue any claims or causes of action against any Custodial Trust Party for the matters contained in the provisions of Section 4.9(a), (b), and (c). However, nothing in this paragraph or this Agreement shall preclude the Beneficiaries from enforcing the terms of the Settlement Agreement or this Agreement against the Parties.

4.9.2 Indemnification

The Texas Custodial Trust shall indemnify, defend and hold harmless (without the Custodial Trust Parties having to first pay from their personal funds) the Custodial Trust Parties from and against any and all claims, causes of action, liabilities, obligations, losses, costs, judgments, damages or expenses (including attorneys' fees) and any other assertion of liability arising out of or in connection with the matters contained in the provisions of Section 4.9 (a), (b) and (c), to the fullest extent permitted by applicable law, provided that such indemnification shall be limited to funds in the Custodial Trust Account. Without limiting the foregoing, any such judgment against a Custodial Trust Party and any such costs of defense relating to any Custodial Trust Party shall be paid by the Texas Custodial Trust consistent with the terms and conditions of this Section 4.9.2. Notwithstanding the foregoing, to the extent gross negligence, fraud, or willful misconduct of any Custodial Trust Party is alleged and the Court finds, by a final order, that such Custodial Trust Party is grossly negligent or committed fraud or willful misconduct after the Effective Date in relation to the Texas Custodial Trustee's duties, there shall be no indemnification, of that Custodial Trust Party, for any judgments arising from such allegations of gross negligence, fraud, or willful misconduct. It shall be an irrebuttable presumption that any action taken, or inaction, consistent with Court approval shall not constitute gross negligence, willful misconduct, or fraud.

4.10 Termination.

The duties, responsibilities and powers of the Custodial Trustee will terminate on the date the Texas Custodial Trust is dissolved under applicable law in accordance with the Settlement Agreement, or by an order of the Court; provided that Sections 2.10, 4.6, 4.8 and 4.9 above shall survive such termination, dissolution and entry. The Custodial Trustee may resign by giving not less than sixty (60) days prior written notice thereof to the Court, TCEQ, and United States; however, such resignation is not effective until the TCEQ has appointed a successor trustee and this successor accepts the appointment. The Custodial Trustee may be terminated for any reason upon notice by both TCEQ and the United States or upon completion of any ten (10) year term or by order of the Court for (i) gross negligence, fraud or willful misconduct immediately upon notice and the appointment of a temporary or permanent successor; (ii) having in any material respect exacerbated conditions at any of the Designated Properties, being seriously or repeatedly deficient or late in performance of the work, or violating the provisions of this Agreement, the

Settlement Agreement, or other related implementation agreements, upon notice and the appointment of a temporary or permanent successor.

4.11 Appointment of Successor Custodial Trustees.

Any successor Custodial Trustee shall be proposed by the TCEQ and the United States and appointed by the Court. Any successor Custodial Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Texas Custodial Trust records. Thereupon, such successor Custodial Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of its predecessor in the Texas Custodial Trust with like effect as if originally named herein; provided, however, that a removed or resigning Custodial Trustee shall, nevertheless, when requested in writing by the successor Custodial Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Custodial Trustee under the Texas Custodial Trust all the estates, properties, rights, powers, and trusts of such predecessor Custodial Trustee.

4.12 Bond.

Notwithstanding any state law to the contrary, the Custodial Trustee, including any successor Custodial Trustee, upon written request from TCEQ or the United States shall post a bond.

ARTICLE 5
BENEFICIARIES

5.1 Beneficiaries.

Beneficial interests in the Texas Custodial Trust shall be held by each of the Beneficiaries.

5.2 Identification of Beneficiaries.

5.2.1 In order to determine the actual names, addresses and authorized representatives of a Beneficiary, the Texas Custodial Trust and the Custodial Trustee shall be entitled to rely conclusively on the name(s) and address(es) of authorized representatives for such a Beneficiary listed in this Section 5.2.1 (who may from time to time provide additional or replacement names and addresses of authorized representatives) or listed in any written notice provided to the Custodial Trustee by an authorized representative of such Beneficiary.

TCEQ: 1) Texas Commission on Environmental Quality
Attn: Project Manager for the ASARCO El Paso Smelter Facility
Mail Code 127
P.O. Box 13087
Austin, Texas 78711

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- 2) Executive Director
Texas Commission on Environmental Quality
Re: ASARCO El Paso Smelter Facility
Mail Code 109
P.O. Box 13087
Austin, Texas 78711

- 3) Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Re: ASARCO El Paso Smelter Facility
Mail Code 218
P.O. Box 13087
Austin, Texas 78711

United States: [insert names, addresses]

5.2.2 The Custodial Trustee shall send copies of all reports, budgets, annual balance statements, and other documents that the Custodial Trustee is required to submit to a Beneficiary under the Settlement Agreement, this Agreement, and related implementation documents, including any unilateral orders, consent decrees, or administrative orders on consent to the following persons as applicable:

[insert US and State contacts]

United States:

For the USEPA:

[insert contact]

For the IBWC (to receive electronic versions of documents only):

Legal Advisor

United States Section, International Boundary and Water Commission

4171 N. Mesa, C-100

El Paso, Texas 79902

5.3 Non-Beneficiaries.

Upon the Plan Effective Date, the Settlor shall have no interest, including, without limitation, any reversionary interest, in the Texas Custodial Trust, any Custodial Trust Assets, or the proceeds thereof (except to the extent provided in Section 2.5 of this Agreement).

5.4 Transfer of Beneficial Interests.

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The interests of a Beneficiary in the Texas Custodial Trust, which are reflected only on the records of the Texas Custodial Trust maintained by the Texas Custodial Trust, are not negotiable and may be transferred only after written notice by such Beneficiary to the Texas Custodial Trust, by order of the Court, or by operation of law. The Texas Custodial Trust shall not be required to record any transfer in favor of any transferee which, in the sole discretion of the Texas Custodial Trust, is or might be construed to be ambiguous or to create uncertainty as to the holder of the interest in the Texas Custodial Trust. Until a transfer is in fact recorded on the books and records maintained by the Texas Custodial Trust for the purpose of identifying Beneficiaries, the Texas Custodial Trust, whether or not in receipt of documents of transfer or other documents relating to the transfer, may nevertheless make distributions and send communications to Beneficiaries, as though it has no notice of any such transfer, and in so doing the Texas Custodial Trust and Custodial Trustee shall be fully protected and incur no liability to any purported transferee or any other Person. Interests in the Texas Custodial Trust may not be transferred to ASARCO, the Debtors, the Reorganized Debtors, Americas Mining Corporation, ASARCO USA Incorporated, their successors, their affiliates, or any Persons related to any of the preceding (within the meaning of section 468B(d)(3) of the Internal Revenue Code), except to the extent provided in Section 2.5 of this Agreement.

ARTICLE 6
REPORTING AND TAXES6.1 Reports.

As soon as practicable after the end of each calendar quarter beginning with the quarter ended after assets are first received by the Texas Custodial Trust and ending as soon as practicable upon termination of the Texas Custodial Trust, the Texas Custodial Trust shall submit to the Beneficiaries a written report, including: (a) financial statements of the Texas Custodial Trust at the end of such calendar quarter or period and the receipts and disbursements of the Texas Custodial Trust for such period; and (b) a description of any action taken by the Texas Custodial Trust in the performance of its duties which, as determined by outside counsel, accountants or other professional advisors, materially and adversely affects the Texas Custodial Trust and of which notice has not previously been given to the Beneficiaries. The Texas Custodial Trust shall promptly submit additional reports to the Beneficiaries whenever, as determined by outside counsel, accountants or other professional advisors, an adverse material event or change occurs which affects either the Texas Custodial Trust or the rights of the Persons receiving distributions (including, without limitation, the Beneficiaries) hereunder. The Texas Custodial Trust shall also provide the reports or information required by Article 3 of this Agreement. Within thirty (30) days following the determination that a distribution will be made to the Reorganized Debtors from the Texas Custodial Trust, the Texas Custodial Trust will notify the Reorganized Debtors in writing of the total amount of such distribution and the date that such determination was made.

6.2 Other.

The Texas Custodial Trust shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Texas Custodial Trust, that are required by any applicable governmental unit.

6.3 Reports in Support of Insurance Claims.

The Texas Custodial Trust shall also file (or cause to be filed) reports and cost analyses in support of claims against insurance carriers at the request of the United States and the TCEQ and shall provide the United States and the TCEQ a copy of any such reports and cost analyses.

6.4 Taxes.

The Custodial Trustee shall be the “administrator,” within the meaning of Treasury Regulation Section 1.468B-2(k)(3), of the Texas Custodial Trust. Subject to definitive guidance from the Internal Revenue Service or a judicial decision to the contrary, the Custodial Trustee shall file tax returns and pay applicable taxes with respect to the Texas Custodial Trust in a manner consistent with the provisions of Treasury Regulation Section 1.468B-2. All such taxes shall be paid from the Custodial Trust Assets.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 Amendments and Waivers.

Any provision of this Agreement may be amended or waived by mutual consent of the Texas Custodial Trust, the TCEQ and the United States; provided, however, that no change shall be made to this Agreement that would alter the provisions of Section 7.2 hereof or adversely affect the federal income tax status of the Texas Custodial Trust as a “qualified settlement fund” for which no grantor trust election has been made (in accordance with Section 2.1.4 hereof), or, unless agreed to in writing by the affected Custodial Trustee, the rights of the Custodial Trustee. Technical amendments to this Agreement may be made as necessary, to clarify this Agreement or enable the Custodial Trustee to effectuate the terms of this Agreement, in a manner consistent with the Settlement Agreement with the mutual consent of the Texas Custodial Trust, the TCEQ and the United States.

7.2 Tax Treatment.

The Texas Custodial Trust created by this Agreement is intended to be treated as a qualified settlement fund (for which no grantor trust election has been made) pursuant to section 468B of the Internal Revenue Code and related Treasury Regulations for federal income tax purposes, and to the extent provided by law, this Agreement shall be governed and construed in all respects consistent with such intent.

7.3 Cooperation.

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No later than the earlier of (i) 90 days after the Closing Date, or (ii) the Plan Effective Date, the Debtor shall make available to the Custodial Trustee all environmental information and/or data in the state and condition in which such records are found regarding the El Paso Designated Property and the Amarillo Designated Property in possession of Debtor or its contractors. With respect to environmental information and/or data located at the Debtor's offices in Tucson, upon request of the Custodial Trustee, the Debtor shall ship all non-privileged information and/or data maintained by Tom Aldrich and the employees who report to him to the Trustee. With respect to any non-privileged environmental information and/or data not maintained by Tom Aldrich and the employees who report to him, the Debtor shall provide reasonable assistance to the Trustee in locating such records and the Bankruptcy Court will retain jurisdiction to hear any discovery disputes. With respect to environmental information and/or data located at the Sacaton warehouse, to the extent that any indices, itemizations or other characterizations of the documents exist and are reasonably available, those shall be promptly furnished to the Trustee. The Debtor shall provide reasonable assistance to the Governments in locating requested records.

7.4 Situs of the Texas Custodial Trust.

The situs of the Texas Custodial Trust herein established is the State of Texas and the laws of the State of Texas shall control with respect to the construction, administration, and validity of the Texas Custodial Trust and to the construction and interpretation of this Agreement, without giving effect to rules governing the conflict of law.

7.5 Severability.

If any provision of this Agreement or application thereof to any Person or circumstance shall be finally determined by the Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

7.6 Sufficient Notice.

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the Person for whom such notice is intended, to the name and address set forth in the case of a Beneficiary in Section 5.2 of this Agreement or such other address provided in writing to the Texas Custodial Trust by an authorized representative of the respective Beneficiary.

7.7 Headings.

The section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or any term or provision hereof.

7.8 Actions Taken on Other Than Business Day.

If any payment or act under the Settlement Agreement or this Agreement is required to be made or performed on a date that is not a business day, then the making of such payment or the performance of such act may be completed on the next succeeding business day, but shall be deemed to have been completed as of the required date. For the purposes of this Agreement, a business day shall be any of the days Monday through Friday excluding national holidays.

7.9 Consistency of Agreements and Construction.

To the extent reasonably possible, the provisions of this Agreement shall be interpreted in a manner consistent with the Settlement Agreement. Where the provisions of this Agreement are irreconcilable with the provisions of the Settlement Agreement, the provisions of the Settlement Agreement shall prevail, with the exception of Article 4, in which case this Agreement controls.

7.10 Compliance with Laws.

Any and all distributions of Custodial Trust Assets shall be in compliance with applicable laws, including, but not limited to, applicable federal and state securities laws.

7.11 Preservation of Privilege.

In connection with the rights, claims, and causes of action that constitute the Custodial Trust Assets, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Texas Custodial Trust shall vest in the Texas Custodial Trust and its representatives, and the Parties are authorized to take all necessary actions to effectuate the transfer of such privileges.

7.12 Uniform Custodial Trust Act

The Texas Custodial Trust is intended to be governed by the terms of this Agreement and shall not be subject to any provision of the Uniform Custodial Trust Act as adopted by any state, now or in the future

7.13 Information Sharing with City of El Paso.

This Section 7.13 is included in this Agreement at the sole request and direction of the TCEQ. Upon completion of all or significant portions of the Environmental Actions at the El Paso Smelter Site, the Custodial Trustee shall advise the Beneficiaries and the City of El Paso. Additionally the Custodial Trustee shall provide the City of El Paso with no less than forty-five days notice of any proposed sale or disposition of any/all of such property. Communications and notices to the City of El Paso shall be through the following representative: **(name, contact,**

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title), unless and until a different representative is designated by the City through a written communication to the Custodial Trustee.

The City of El Paso may provide the Custodial Trustee its input on any proposed sale or disposition of the property which the Trustee may consider. However, the City of El Paso shall not have veto power over any disposition or sale and the approval or non-approval of any disposition or sale shall rest solely with TCEQ and the USEPA.

Every six months during the course of Environmental Actions at the El Paso Smelter Site, the Custodial Trustee shall advise the City of El Paso through its above representative of the status of Environmental Actions. Additionally, the Custodial Trustee shall provide the City of El Paso's representative with final approved copies of the reports prepared under Section 6.1 hereof at the time such final reports are provided to the Beneficiaries.

The City of El Paso may provide its input concerning Environmental Actions at the El Paso Smelter Site to the Custodial Trustee, the TCEQ, and the USEPA. However, the City of El Paso shall expressly not have veto power over any decisions on Environmental Actions. Such decisions, and the approval or non-approval thereof, shall rest solely with TCEQ and the United States.

7.14 International Boundary and Water Commission (IBWC) Site.

The Custodial Trustee in evaluating groundwater impacts at the El Paso Smelter Site shall consult with IBWC through its representative listed in Paragraph 5.2.2 and may, with the consent of TCEQ, combine remediation efforts/funds to address groundwater issues if the Custodial Trustee and IBWC conclude there is overlap and that combining efforts relating to groundwater would be cost effective and in the best interests of both the Texas Custodial Trust and IBWC.

7.15 Covenant Not to Sue by Custodial Trustee.

With respect to the Texas Designated Properties and Sites and the El Paso Metals Site, the Custodial Trustee covenants not to sue and agrees not to assert claims or causes of action against the United States or the TCEQ for any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law; any claims against the United States or the TCEQ, including any of their departments, agencies or instrumentalities pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613; and any claims arising out of the response activities at the Designated Properties or the Sites. With respect to the Dona Ana Site, the Custodial Trustee covenants not to sue and agrees not to assert claims or causes of action against the United States for any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law; any claims against the United States, including any of

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their departments, agencies or instrumentalities pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613; and any claims arising out of the response activities at the Designated Properties or the Sites. Nothing in this Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

IN WITNESS WHEREOF, the Parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as the date of the first above written.

ASARCO LLC

By: _____

(Title)

Name: _____

By: _____

(Title)

Name: _____

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

By: _____

Mark R. Vickery, P.G.

Executive Director

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FOR THE UNITED STATES

U. S. ENVIRONMENTAL PROTECTION AGENCY

By: _____

(Title)

Name: _____

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FOR THE UNITED STATES

U. S. DEPARTMENT OF JUSTICE

By: _____

(Title)

Name: _____

CUSTODIAL TRUSTEE

_____ not individually, but in **[its/his]** fiduciary capacity as Custodial Trustee of the Texas Custodial Trust

By: _____
_____, not individually, but solely as _____
of _____, not individually, but **[its/his]** fiduciary
capacity as Custodial Trustee of the Texas Custodial Trust

EXHIBIT A

Definition of Sites

1. The El Paso smelter site in El Paso County, Texas includes the El Paso Smelter Designated Property, any further description in the proofs of claim, and any location at which hazardous substances from this property have come to be located (the “El Paso Smelter Site”).
2. The Amarillo zinc smelter site in Potter County, Texas includes the Amarillo Designated Property, any further description in the proofs of claim, and any location at which hazardous substances from this property have come to be located (the “Amarillo Site”).

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EXHIBIT B

El Paso Smelter Designated Property

Amarillo Designated Property

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EXHIBIT E