

**ESCROW AGREEMENT
(Tax Refund)**

This Escrow Agreement dated June __, 2006, (the "Agreement") is among Asarco, LLC ("ASARCO"), the United States of America (the "United States," together with ASARCO LLC, the "Parties"), and Wells Fargo Bank, National Association acting hereunder not in its individual capacity but solely as escrow agent (the "Escrow Agent").

Recitals

WHEREAS, ASARCO Incorporated, a New Jersey corporation ("ASARCO NJ"), was merged with and into ASARCO LLC, a Delaware limited liability company, pursuant to an Agreement and Plan of Merger Certificate of Merger dated February 17, 2005 (the "Merger Agreement"). As a result of the merger ASARCO NJ ceased to separately exist, and ASARCO LLC, *inter alia*, became "responsible and liable for all the liabilities and obligations of [ASARCO NJ], and any claim existing or action or proceeding pending by or against [ASARCO NJ] may be prosecuted as if the Merger had not taken place, or [ASARCO LLC] may be substituted in its place" Merger Agreement § 2.1(e).

WHEREAS, on April 11, 2005, several of ASARCO's wholly owned subsidiaries (the "Subsidiary Debtors") filed voluntary petitions in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the "Bankruptcy Court"). On August 9, 2005, ASARCO filed its voluntary petition in this Court, and thereafter, several additional ASARCO subsidiaries (collectively with ASARCO and the Subsidiary Debtors, the "Debtors") filed voluntary bankruptcy petitions in this Court. The bankruptcy cases of the Debtors (the "Reorganization Cases") are being jointly administered as Case No. 05-21207.

WHEREAS, ASARCO, will be seeking authority under Bankruptcy Rule 9019 to sign certain documents that will enable ASARCO to claim a tax refund (the "Tax Refund"). In addition, ASARCO and the United States have entered into that certain agreement relating to alleged setoff rights of the United States of America and establishing escrow account (the "Setoff Rights Agreement").

WHEREAS, the Setoff Rights Agreement and this Escrow Agreement are subject to approval by the Bankruptcy Court.

WHEREAS, the purpose of this Escrow Agreement is to implement the escrow provisions of the Setoff Rights Agreement.

WHEREAS, pursuant to the Setoff Rights Agreement, the United States and ASARCO have agreed to escrow any proceeds of the Tax Refund, and the Escrow Agent agrees to hold and distribute such funds in accordance with this Escrow Agreement.

Article 1: Directions

1.01 Receipt of Escrowed Property:

In accordance with the terms of the Setoff Rights Agreement, the United States (or ASARCO if it receives the Tax Refund) shall deposit any proceeds of the Tax Refund with the Escrow Agent, the aggregate sum claimed which is \$_____, to be deposited into the escrow account (hereinafter referred to as the “Escrow Property”).

1.02 Disbursements:

The Escrow Agent shall disburse funds from the Escrow Property to such person or persons, as directed by an order of the Bankruptcy Court.

1.03 Investments:

(a) The Escrow Property shall be credited by Escrow Agent and recorded in an escrow account. Escrow Agent shall be permitted, and is hereby authorized to deposit, transfer, hold and invest (1) \$_____ of the Escrow Property received under this Escrow Agreement (“Tranche 1”), in one or more U.S. Treasury Bills having a maturity or a term to maturity of 6 months or less and (2) the balance of the Escrow Property received under this Escrow Agreement (“Tranche 2”), including principal and interest, in the Wells Fargo Advantage 100% Treasury Money Market Fund, a Money Market Mutual Fund (“Wells Fargo Advantage Fund”), during the period of this escrow. Escrow Agent may invest the Escrow Property in alternative investments in accordance with joint written instructions as may from time to time be provided to Escrow Agent and signed by counsel for each of the Parties. Any interest received by Escrow Agent with respect to the Escrow Property, including reinvested interest, shall become part of the Escrow Property.

(b) The Escrow Agent may purchase or sell to itself or any affiliate, as principal for agent. If such investment can be registered, it shall be registered in the name of the Escrow Agent for the benefit of the Parties in accordance with this Escrow Agreement and held by the Escrow Agent. The Escrow Agent shall be entitled to sell or redeem any such investments, as necessary to make any payments or distributions required under this Agreement, in the following order. Payments or distributions required under this Agreement shall be made first from Tranche 2, unless there are insufficient funds to make the required payments or distributions from the investments in Tranche 2, in which case, the Escrow Agent shall be entitled to sell or redeem any such investments in Tranche 1 in order to make such payments or distributions. The Escrow Agent may act as purchaser or agent in the making or disposing of any investments. The Escrow Agent shall have no responsibility or liability for any diminution of the Funds held in the escrow account which may result from any investment made pursuant to this Escrow Agreement, including any losses on any investment required to be liquidated prior to maturity in order to make a payment or distribution required hereunder.

(c) The investments in the Wells Fargo Advantage Fund are not obligations of, or endorsed or guaranteed by, the Escrow Agent or its affiliates and are not insured by the Federal Deposit Insurance Corporation.

(d) Such investments will be made as soon as possible following the availability of such funds to the Escrow Agent for investment, taking into consideration the regulations and requirements (including cut-off times) of the Federal Reserve wire system, the investment provider and the Escrow Agent, and compliance with standard operating procedures of such parties.

(e) The Escrow Agent shall send statements to each of the Parties on a monthly basis reflecting activity in the Escrow Account for the preceding month. Although the Parties recognize that they may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Parties hereby agree that confirmations of permitted investments are not required to be issued by the Escrow Agent for each month in which a monthly statement is rendered. No statement need be rendered for the Escrow Account if no activity occurred for such month.

1.04 Tax Reporting:

(a) Tax Reporting Parties agree that, for tax reporting purposes, all interest or other taxable income earned from the investment of the Escrow Property in any tax year shall be deemed to be income of ASARCO.

(b) Certification of Tax Identification Number Prior to closing, ASARCO shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 and other forms and documents that the Escrow Agent may reasonably request. The Parties understand that if such tax reporting documentation is not so certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code of 1986, as amended, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Escrow Agent pursuant to this Agreement.

(c) Tax Allocation To the extent that the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of funds held or payments made hereunder, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Property. ASARCO agrees to indemnify and hold the Escrow Agent harmless from and against any taxes, additions for late payment, interest, penalties and other expenses that may be assessed against the Escrow Agent on or with respect to any payment or other activities under this Agreement unless any such tax, addition for late payment, interest, penalties and other expenses shall arise out of or be caused by the actions of, or failure to act by, the Escrow Agent.

1.05 Termination:

Upon order of the Bankruptcy Court that this Escrow Agreement should be terminated, all of the Escrow Funds held by the Escrow Agent pursuant to the terms of this Escrow Agreement, shall be paid by Escrow Agent to the person or persons directed by an order of the Bankruptcy Court, and all obligations of Escrow Agent hereunder shall terminate effective on the date provided in the order of the Bankruptcy Court.

Article 2: Compensation of the Escrow Agent

The Escrow Agent shall be entitled to compensation for its services according to the schedule attached hereto as Appendix A. The Escrow Agent may deduct from the Escrow Property its fee upon funding of the escrow account. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by the Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under the Escrow Agreement are not fulfilled, or the Escrow Agent renders any material service not contemplated in the Escrow Agreement, or there is any assignment of interest in the subject matter of the Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to the Escrow Agreement, or the subject matter hereof, then the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses, including reasonable attorney's fees, occasioned by any delay, controversy, litigation or event, and the same shall be recoverable from the Escrow Property, upon agreement of the Parties and the Escrow Agent or order of a Court of competent jurisdiction. If escrow fees, expenses or indemnification obligations are not paid within 30 days, the Escrow Agent in its sole discretion, may deduct its fees for such amounts from the interest earned on the Escrow Property or from amounts that have become payable to ASARCO hereunder.

Article 3: Provisions Concerning Escrow Agent

3.01 Authority of Parties:

The Escrow Agent shall be under no duty or obligation to ascertain the identity, authority, and/or rights of any of the Parties, or their agents.

3.02. Waiver of Setoff:

Except as specifically set forth in Article 2 above, the Escrow Agent expressly waives, and agrees not to assert, any right(s) of setoff it may have to or against the funds in the Escrow Account.

3.03 Other Agreements:

The Escrow Agent shall not be a party to, or bound by, any agreement between the Parties other than this Agreement whether or not a copy and/or original of such agreement is held as Escrow Property; and, the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement between the Parties.

3.04 Deposited Instruments and/or Funds:

The Escrow Agent assumes no responsibility for the validity or sufficiency of any instrument held as Escrow Property, except as expressly and specifically set forth in this Agreement. The Escrow Agent will under no circumstances be deemed to be a fiduciary to the Parties or any other person.

3.05 Late Payments or Performance:

The Escrow Agent may accept any payment or performance required under this Agreement after the date such payment or performance is due, unless subsequent to such date, but prior to the actual date of payment or performance, the Escrow Agent is instructed in writing by counsel for each of the Parties, jointly, not to accept such payment or performance.

3.06 Escheat:

The Parties are aware that under Texas law, Escrow Property which is presumed abandoned may escheat to the State. The Parties do not intend for the Escrow Property to be abandoned or escheated to the State. The Escrow Agent shall notify the Parties in writing through their counsel 120 days prior treating the Escrow Property as being abandoned and escheatable to the State by operation of law. The Escrow Agent shall have no liability to the Parties, their respective heirs, legal representatives, successors, and assigns, should any or all of the Escrow Property become escheatable or escheat by operation of law.

3.07 Non-Liability:

The Escrow Agent shall not be liable for any act or omission while acting in good faith and without gross negligence. Any act or omission by the Escrow Agent pursuant to the advice of its attorneys shall be conclusive evidence of such good faith and lack of gross negligence. Whenever any question arises concerning the Agreement, the Escrow Agent shall incur no liability for any delay reasonably required to obtain such advice of counsel. The Escrow Agent shall not be liable for the alteration, modification or elimination of any right permitted or given under the joint instructions set forth in Section 1.02 and/or in any document deposited under the Agreement pursuant to any Statute of Limitations or by reason of laches. The Escrow Agent shall have no further responsibility or liability whatsoever to the Parties following a complete distribution of the Escrowed Property pursuant to this

Agreement. The Escrow Agent shall not incur any liability with respect to any act or omission in reliance upon any document, including any written notice or instruction provided for in the Escrow Agreement. In performing its obligations hereunder, the Escrow Agent shall be entitled to presume, without inquiry, the due execution, validity and effectiveness of all documents it receives, and also the truth and accuracy of any information contained therein. The Escrow Agent shall not be responsible or liable for any diminution of principal of the Escrowed Property or any interest penalty, whatsoever, for any reason. The Escrow Agent will never be required to advance its own funds or incur personal financial liability in performing its duties under this Escrow Agreement. The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the parties to this Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument or document between the other parties hereto, in connection herewith, including without limitation the Setoff Rights Agreement. This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Agreement or any other Agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

3.08 Disagreements:

If any disagreement or dispute arises between the Parties concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Agreement, the Escrow Agent:

- a. Shall be under no obligation to act, except under process or order of court, or until it has been adequately indemnified to its full satisfaction, and shall sustain no liability for its failure to act pending such process, court order or indemnification; and
- b. May, in its sole and absolute discretion, interplead the Escrow Property or that portion of Escrowed Property it then holds in the Bankruptcy Court in the Reorganization Cases, or any other court of competent jurisdiction, and name each of the Parties in such interpleader action. Upon filing the interpleader action, the Escrow Agent shall be relieved of all liability as to the Escrowed Property and shall be entitled to recover from the Parties, its reasonable attorneys' fees and other costs incurred in commencing and maintaining such action from the Escrowed Property. The Parties, by signing this Agreement submit themselves to the jurisdiction of such court. In no event shall the

institution of such interpleader action impair the rights of the Escrow Agent described elsewhere in this Agreement.

3.09 Indemnification:

ASARCO hereby indemnifies and holds harmless the Escrow Agent from and against, any and all loss, liability, cost, damage and expense, including, without limitation, reasonable counsel fees, which the Escrow Agent may suffer or incur by reason of any action, claim or proceeding brought against the Escrow Agent arising out of or relating in any way to this Escrow Agreement or any transaction to which this Escrow Agreement relates, unless such loss, liability, cost, damage or expense has been finally adjudicated to have been primarily caused by the gross negligence or willful misconduct of the Escrow Agent. To the same extent, the United States hereby releases the Escrow Agent from any and all loss, liability, costs, damage and expense, including, without limitation, reasonable attorney's fees, and agrees not to pursue any such claim, action or proceeding against the Escrow Agent unless such action, claim or proceeding is the result of the willful misconduct of the Escrow Agent. Such indemnification and release shall survive the Escrow Agent's resignation or removal, or the termination of this Escrow Agreement. The Escrow Agent may consult counsel of its choice with respect to any question arising under the Escrow Agreement, and the Escrow Agent shall not be liable for any action taken or omitted in good faith upon advice of such counsel.

Article 4: General Terms and Conditions

4.01 Extension of Benefits:

This agreement shall be binding upon, inure to the benefit of, and be enforceable by, the respective heirs, legal representatives, successors, and assigns of all of the Parties and the Escrow Agent. The foregoing notwithstanding, no assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written notice of such assignment shall be delivered to and acknowledged by the Escrow Agent.

4.02 Governing Law:

This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

4.03 Notices:

All notices, requests, demands, and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or by certified mail, return receipt requested, and postage prepaid. If any notice is mailed, it shall be deemed given on the date such notice is deposited in the United States mail. If any notice is personally delivered, it shall be

deemed given upon the date of such delivery. If notice is given to a party, it shall be mailed or delivered to the addresses set forth below. It shall be the responsibility of each of the Parties to notify the Escrow Agent in writing of any name or address changes.

If to ASARCO:

ASARCO LLC
1150 North 7th Avenue
Tucson, AZ 85705-6606
Attn: Tom S.Q. Yip
Vice President and Chief Financial Officer
Phone: 520.798.7720
Fax: 520.798.7781

If to the United States:

David Dain
Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
601 D Street N.W., Mail Room 2121 (PHB)
Washington, D.C. 20004
Phone: 202.514.3644
Fax: 202.514.4180

If to Escrow Agent:

Wells Fargo Bank, National Association
1445 Ross Avenue, 2nd Floor, MAC T5303-022
Dallas, Texas 75202
Attn: Amy C. Perkins
Phone: 214.740.1315
Fax: 214.777.4086

4.04 Entire Agreement:

This Agreement sets forth the entire agreement and understanding of the Parties hereto.

4.05 Amendment:

This Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by each of the Parties or their Counsel and the Escrow Agent.

4.06 Waivers:

The failure of any party to the Agreement at any time or times to require performance of any provision under this Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to the Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Agreement.

4.07 Headings:

Section headings of this Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Agreement.

4.08 Counterparts:

This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument

4.09 Resignation or Removal of Escrow Agent:

The Escrow Agent may resign at any time by furnishing written notice of its resignation to each of the Parties. The Parties may remove the Escrow Agent at any time by furnishing to the Escrow Agent a joint written notice of its removal. Such resignation or removal, as the case may be, shall be effective upon delivery of such notice. If the other parties hereto have failed to appoint a successor prior to the expiration of thirty (30) calendar days following receipt of the notice of resignation or removal, the Escrow Agent may appoint a successor or may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto.

4.10 Payment Direction:

ASARCO shall endorse any refund checks or drafts or other documents, to the extent necessary, so that the refunds can be deposited into the Escrow Account.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed the day and year first set forth above.

Respectfully submitted,

ASARCO LLC, a Delaware limited liability company

By: _____
THOMAS A. ALDRICH
Vice President of Environmental Affairs
8222 South 48th Street, Suite 220
Phoenix, AZ 85044

ASARCO LLC, a Delaware limited liability company

By: _____
TOM S.Q. YIP
Vice President and Chief Financial Officer
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(202) 514-3644

By: _____
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(303) 844-1363