

TOLLING AGREEMENT

This Tolling Agreement ("Agreement") is entered into effective October ____, 2010 (the "Effective Date"), by and among Union Pacific Railroad Company ("Union Pacific") and Asarco, Inc. and Asarco, LLC (collectively, "Asarco"). Union Pacific and Asarco are referred to herein individually as "Party" and collectively as "the Parties."

RECITALS

WHEREAS, Union Pacific has filed an action in the United States District Court for the District of Nebraska, Case No. 8:10-cv-00235-LSC (the "FOIA Litigation"), alleging, in part, that the United States Environmental Protection Agency ("EPA") violated the Freedom of Information Act ("FOIA") and Federal Records Act ("FRA") by destroying and ordering the destruction of documents related to EPA's cleanup of lead contamination at the Omaha Lead Superfund Site ("OLS" or "Site") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*; and

WHEREAS, Asarco has paid over \$214 million to settle EPA's claims of lead contamination at the OLS pursuant to a settlement with the United States government approved by U.S. Bankruptcy Judge Richard S. Schmidt on June 5, 2009 in *In re: ASARCO, LLC*, No. Case No. 05-21207 (Bankr. S.D. Tex.) (the "Settlement"), but now asserts that the settlement amount constitutes more than its share of liability at the OLS; and

WHEREAS, Asarco asserts that Union Pacific is a Potentially Responsible Party ("PRP") at the OLS and has expressed its intention to recover from Union Pacific, pursuant to CERCLA and the doctrines of contribution and indemnity, a portion of the costs incurred as a result of the Settlement (the "Contribution Claims"); and

WHEREAS, Union Pacific disputes allegations that it is a PRP at the OLS and disputes Asarco's contention that Union Pacific is liable for any portion of the Settlement, based, in part, on evidence that the EPA pursued an improper and illegal cleanup at the OLS; and

WHEREAS, issues raised in the FOIA Litigation seriously call into question whether EPA pursued an improper and illegal cleanup at the OLS and whether EPA concealed or destroyed evidence that, if disclosed, may have prevented the Settlement between Asarco and EPA or reduced the Settlement amount; and

WHEREAS, Asarco now wishes to intervene and participate in the FOIA Litigation; and

WHEREAS, in the interest of judicial economy and to conserve Union Pacific's and Asarco's resources, the Parties have agreed to toll any applicable statute of limitations on the Contribution Claims until two years after the conclusion of the FOIA Litigation, without any admission of liability by the Parties or in any way altering the claims, defenses, or counterclaims available to any Party hereto, except as provided herein;

AGREEMENT

NOW, THEREFORE, the Parties stipulate and agree as follows:

1. The Parties acknowledge that the covenants and forbearance under this Agreement constitute adequate and sufficient consideration.
2. This Agreement only affects the rights and interests of the Parties and creates no rights, benefits, or interests for third parties that are not Parties to this Agreement, nor does this Agreement have any effect on the statute of limitations applicable to the claims of any third party.
3. The Parties expressly agree that all disputes arising under or related to the Contribution Claims that cannot be resolved through negotiations between the Parties first shall be submitted to mediation, arbitration, or a form of non-binding Alternative Dispute Resolution ("ADR") as subsequently agreed to by the Parties. The Parties shall endeavor in good faith to determine a method by which a mediator(s), arbitrator(s) or alternative dispute resolution service provider(s) are to be selected. In the event the Parties select arbitration as the ADR method, the non-binding arbitration methods considered by the Parties will include the traditional mining method. The Parties further agree that litigation is to be initiated among the Parties only if the Parties are unsuccessful in resolving all matters related to the Contribution Claims through ADR.
4. To respect the wishes of the Parties to defer resolution of the Contribution Claims until after the conclusion of the FOIA Litigation, the Parties wish to extend the applicable statute of limitations for the Contribution Claims pursuant to CERCLA such that Asarco may commence legal proceedings related to its Contribution Claims only during the first two years after a final judgment is obtained in the FOIA Litigation and any appeals therefrom are exhausted (the "FOIA Judgment Date"). Asarco shall have two years from the FOIA Judgment Date to submit its Contribution Claims to ADR. Contribution Claims submitted to ADR more than two years after the FOIA Judgment Date will be time-barred.
5. The time between the Effective Date of this Agreement and two years after the FOIA Judgment Date (the "Tolling Period") will not be included in computing the running of any statute of limitations applicable to any action or claim that is not a Contribution Claim as defined above, and which any Party may have with respect to the OLS under applicable federal, state or local law, including, but not limited to, common law, for damages, injunctive relief, or other relief.
6. The Tolling Period will not be considered in connection with any defense of laches, estoppel, or any other defense concerning the timeliness of filing a claim for relief.
7. No Party shall assert, plead or raise against any other Party in any fashion, whether by answer, motion or otherwise, any defense or avoidance based on the running of any statute of limitations during any portion of the Tolling Period, and any statute of limitations shall be tolled during and for the relevant period. The Parties agree to refrain from asserting as a defense or otherwise arguing in any subsequent proceeding between the Parties that the statute of limitations contained in 42 U.S.C. § 9613(g) is jurisdictional. Rather, the Parties agree that the statute of limitations is a waivable defense, as between the Parties. The assertions made by either party against EPA during the FOIA Litigation shall not be claimed by either party in mediation or ADR to constitute an admission or waiver of any claim or defense.

8. Nothing in this Agreement constitutes an admission or acknowledgment of any fact, conclusion of law, or liability of any Party.
9. This Agreement does not constitute an admission or acknowledgment by any Party regarding the applicability of any statute of limitations or similar defense concerning the timeliness of commencing legal action to any claim asserted by any Party against any other Party.
10. The Parties reserve all rights and defenses which they may have, except as set forth in this Agreement, to contest or defend any claim or action the other Party may assert or initiate against them.
11. Upon execution of this Agreement, by authorized representatives of each of the Parties, Union Pacific agrees to support any efforts by Asarco to intervene in the FOIA Litigation.
12. The Parties agree to pay their own respective costs and attorney's fees incurred in connection with the FOIA Litigation. Upon Asarco's intervention in the FOIA Litigation, the Parties agree to cooperate and coordinate in the FOIA Litigation by, inter alia, sharing expert witnesses on issues specifically related to electronic discovery, the FOIA, the FRA, the Administrative Procedure Act, or the EPA's general duty to retain documents as part of an administrative record for the OLS. To the extent that Asarco and Union Pacific share expert witnesses on scientific or technical matters related to the contamination or remediation of the OLS, Asarco hereby waives any conflict of interest related to Union Pacific's use of such experts in any other proceeding between the Parties related to the OLS.
13. Asarco's intervention in the FOIA Litigation and the subject matter litigated in that case shall not be asserted by either Party to constitute a waiver of any claim or position related to the Contribution Claims that either Party may have against the other Party to be resolved subsequently in ADR between the Parties. Asarco agrees not to file or serve any pleadings, motions, discovery or other litigation materials in the FOIA Litigation without prior review by Union Pacific. However, such prior review by Union Pacific shall not be construed as Union Pacific's endorsement of or agreement with the content of such litigation materials.
14. The Parties enter into this Agreement with the intention of avoiding prolonged and complicated litigation regarding the Contribution Claims and expediting and promoting efficient resolution of the FOIA Litigation. To further promote cooperation among the Parties, upon the request of Union Pacific, Asarco agrees to cooperate in providing informal oral status reports of any actions taken to vacate the Settlement based on information gathered in the FOIA Litigation. Union Pacific agrees to make reasonable efforts to coordinate requests for information so as to minimize the number of requests.
15. This Agreement contains the entire agreement between the Parties, and no statement, promises, or inducements made by any Party, or agent or representative of any Party that is not contained in this Agreement shall be valid or binding. This Agreement may not be enlarged or altered except by writing signed by all the Parties.
16. The undersigned representatives of the Parties certify that they are fully authorized to enter into the terms and conditions of this Agreement, and to execute and bind such Parties to this

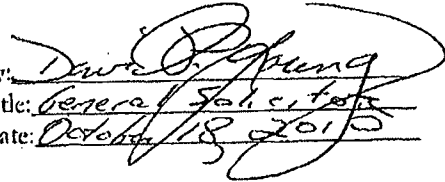
Agreement. The Parties understand and agree that by execution hereof, they are binding themselves and their successors and assigns to the terms of this Agreement.

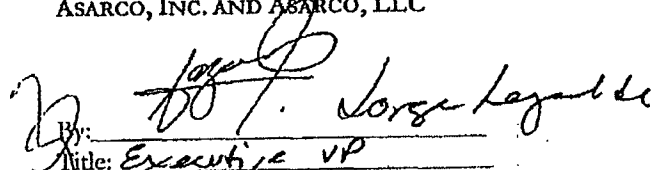
17. This Agreement may be executed in duplicate originals. A facsimile signature shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have caused this Agreement to be executed by their duly authorized representatives.

UNION PACIFIC RAILROAD COMPANY

ASARCO, INC. AND ASARCO, LLC

By: 
Title: General Counsel
Date: October 18, 2010

By: 
Title: Executive VP
Date: October 13, 2010