

Document 7

PLAINTIFF'S EXHIBIT

CT-1549

AGREEMENT

THIS AGREEMENT made as of the 1st day of December, 1984, by and between TEXAS MINING COMPANY, a Texas Corporation (hereinafter called "Supplier"), and CERTAINTIED CORPORATION, a Maryland Corporation (hereinafter called "Buyer").

W I T N E S S E T H:

The parties hereto mutually agree as follows with respect to the sale and purchase of Pulverized Sand manufactured at Supplier's facilities (hereinafter called "Supplier's Plant") located on property leased from Buyer at Riverside, California.

I

SALES AND QUANTITY

Supplier agrees to sell to Buyer, and Buyer agrees to purchase from Supplier, all Pulverized Sand in excess of 2,000 Tons in any year used in Buyer's manufacture of Cement Products produced at its Plant located at Riverside, California, (hereinafter called "Riverside Plant"). Supplier's obligation to sell Pulverized Sand to Buyer shall not exceed 2,500 Tons Per Month (30,000 Tons Per Year). Upon six months' advance written notice by Buyer to Supplier, Buyer may increase the amount of Sand purchased to a maximum of 3,500 Tons Per Month (42,000 Tons Per Year).

Buyer shall be obligated to purchase and pay for all of the Riverside Plant requirements, if any, in excess of 2,000 Tons Annually.

II

TERM

This Agreement shall have a term ending November 30, 1987.

CTD006948

III
PRICE

Pulverized Sand will be delivered in Bulk form by Supplier to Buyer's Storage facilities at its Riverside Plant by Pneumatic Air Conveyors, at the following prices Per Ton of 2,000 Pounds each, F.O.B. Supplier's Riverside Plant:

September 1, 1984	-	\$42.07
September 1, 1985	-	\$44.55
September 1, 1986	-	\$47.55

IV
PRICE ADJUSTMENT OR TERMINATION

If, at any time after the expiration of twelve (12) months from the date of initial sale from Supplier to Buyer hereunder, Buyer has at that time a bonafide written offer or offers from third parties, copies ~~(with name and other indicia identifying third party removed)~~ of which Buyer shall provide to Supplier, for the sale of Pulverized Sand acceptable and suitable to Buyer and of like quality, term, and quantity, as the Pulverized Sand to be delivered hereunder from another party at a price less than the price of the Pulverized Sand to be delivered hereunder (as the price may then exist), then Buyer shall have the right, at its option, to terminate this Agreement upon giving Supplier notice thereof (90) ninety days in advance of the proposed termination of this Agreement setting forth the price offered, and furnishing to Supplier a copy of such other party's proposal ~~with other party's name and other identifying indicia removed~~; and PROVIDED FURTHER that Buyer shall first give Supplier the right to meet such price offered by such other party and if Supplier, within sixty (60) days after receipt of such notice, advises Buyer that Supplier will meet said price, then this Agreement shall continue in full force and effect and Buyer shall continue to purchase from Supplier and Supplier shall continue to sell to Buyer substantially all of the requirements of Buyer's Plant for Pulverized Sand, and from such date of notice of Supplier to Buyer, the price of such Pulverized Sand shall be the price which Supplier has agreed to meet. Likewise and from time to time thereafter, Buyer may receive bonafide offers for the sale to it of Pulverized Sand acceptable and suitable to Buyer and

of like quality, term, and quantity, to the Pulverized Sand to be delivered hereunder, and if such shall be a lesser price than the sale hereunder at that time, Buyer shall have a like option to terminate this Agreement upon like notice to Supplier and allowing Supplier the right to meet said proposed price for like quality Pulverized Sand acceptable and suitable to Buyer (in which event if such price is so met by Supplier, this Agreement shall continue) and provided at least twelve (12) months shall have elapsed since the last adjustment in price under this Article IV.

In the event Supplier declines to meet said price and Buyer chooses to accept the lower price from the third party, Buyer shall be obligated to purchase Supplier's facility at the Fair Market Value - Continued Use basis, but not less than the Book Value, and to assume Supplier's Contractual commitments with others within thirty (30) days of notice from Buyer to Supplier that Buyer chooses to accept the lower competitive offer. Supplier and Buyer agree to use the procedures set forth in Article XI for the determination of the Fair Market Value - Continued Use.

V QUALITY

The Pulverized Sand to be produced by Supplier and delivered to Buyer hereunder shall conform to Buyer's Specification No. 501 for Pulverized Sand which is attached hereto and marked "Exhibit A". Buyer shall have the right at any time and from time to time to change said Specifications, provided and machinery and equipment of Supplier in use at that time can produce Pulverized Sand with the changed Specifications and provided the Raw Material available to Supplier is of such quality that it will meet such changed Specifications after being Pulverized, and Supplier agrees in writing to such changes in Specifications,

VI CHANGE IN SOURCE OF RAW MATERIAL

Supplier has previously delivered to Buyer Pulverized Sand meeting the Specifications set forth above. If the Pulverized Sand delivered

hereunder is changed materially from the quality or composition of the Pulverized Sand delivered for testing and such change(s) causes the Supplier's Pulverized Sand to be incompatible with the processes used in Buyer's Plant by Buyer, then all deliveries hereunder and the obligations of both Buyer and Supplier shall terminate without penalty or damages to either party; however, that Supplier having notified Buyer of such changes in advance, Supplier will first be allowed ninety (90) days in which to correct any change in its Pulverized Sand so as to make the same compatible with the Buyer's process and if such correction is timely made, this Agreement shall continue in force. During such ninety (90) day period, Buyer may purchase Pulverized Sand from others without being in violation of the Terms of this Agreement.

VII

INTERRUPTION OF DELIVERIES

Force Majeure shall include any stoppage or interruption caused directly or indirectly by fire, flood, windstorm, explosion, strike, lockout, war, insurrection, lawful orders of any Court, Regulatory Body having jurisdiction over the parties hereto, or failure of raw material sources to ship raw material, or any other matter beyond control of either of the parties hereto. Any interruption of deliveries caused by Force Majeure shall not cause termination of this Agreement nor shall the same result in damages or liability by or to either party. The quantity to be delivered hereunder shall be reduced to the extent of the deliveries omitted for such Force Majeure unless both parties agree that the total quantity to be delivered hereunder shall remain unchanged.

In the event of a mechanical failure in Supplier's Riverside facilities during the Term of this Agreement for any reason other than Force Majeure, and by reason of such failure Supplier is unable to meet the deliveries provided for in this Agreement, and Buyer is required to purchase Pulverized Sand of like quality from another source because of some reason for interruption of deliveries, then Supplier shall credit Buyer for the difference between the then existing delivered price hereunder and the actual price paid by Buyer for the Pulverized Sand delivered from the other source; however, Supplier shall not be required to pay the difference if the difference is greater than that which would occur if Buyer were to use Sand from Supplier's Brady, Texas, facility.

VIII BILLING

Billings to Buyer shall be based upon the quantities delivered into Buyer's storage facilities at Buyer's Riverside Plant by Pneumatic Conveyor and each billing shall be accompanied by an analysis of the Pulverized Sand showing that it conforms with the Specifications provided in Article V hereof. Payments for Pulverized Sand so delivered shall be due to Supplier at its offices in Arlington, Texas, on or before thirty (30) days following the date of billing.

IX MEASUREMENT

Buyer shall maintain and operate at Buyer's Riverside Plant accurate weighing devices which shall be certified annually by the State of California, Division of Weights and Measures. Buyer shall weigh the product delivered at the time of use in its equipment at that Plant and shall furnish the Supplier copies of its weigh slips giving weight of the product so delivered and used. Should any error in such devices be detected, appropriate adjustment shall be made.

X REGULATORY BODIES

This Agreement is subject to all present and future valid Laws and Lawful Orders of all Regulatory Bodies, now or hereafter, having jurisdiction over the parties hereto; and should either of the parties be required by force of any Law or Regulation imposed by Order to do any act inconsistent with the provisions hereof, this Agreement shall nevertheless continue in force and effect but be deemed to have been modified to conform with the requirements of such Law or Regulation. Notwithstanding the foregoing or any other provision of this agreement Buyer will have the right to terminate this Agreement without liability if continued performance hereof or manufacturing of its Asbestos Cement Products, would be contrary to or in conflict with any Law, Regulation or Order of any Regulatory Body.

XI

BUYER'S OPTION TO PURCHASE FACILITIES UNDER CERTAIN CONDITIONS

If Supplier shall elect not to renew this Agreement or should this Agreement be terminated by Supplier for any reason other than that contained in Article IV above, then Buyer shall have the right and option to purchase from Supplier for cash all facilities of Supplier located on the premises leased from Buyer under Lease dated December 31, 1964, as amended, at a price equal to the Fair Market Value - Continued Use as appraised by an Independent Appraisal Firm acceptable to both Buyer and Supplier, however, in the event the parties can not agree upon an Independent Appraisal Firm, they shall submit the matter to a Judge of a Federal District Court in which the Supplier's facilities are located who shall then make the selection of the Independent Appraisal Firm from a list of Appraisal Firms to be submitted by each party. In no event shall the sale price be less than the Supplier's Net Book Value. Buyer shall assume all outstanding Contractual and Lease obligations of Supplier. Such option is to be exercised by Buyer giving written notice thereof to Supplier within thirty (30) days after such termination of the obligations of the parties to sell and purchase Pulverized Sand under this Agreement, and if such option is so exercised, closing of said purchase shall occur within thirty (30) days of receipt of said notice of exercise. Failure to notify Supplier of the exercise of Buyer's option shall cause such option to terminate.

Buyer shall also have right of refusal to purchase all facilities of Supplier should Supplier receive an acceptable offer from a third party to purchase said facilities. Written notice thereof to be given by Supplier to Buyer in like manner as stated above who shall then have thirty (30) days to exercise said option. (Any sale by Supplier must impose on the Purchaser the obligation to assume and comply with the terms of this Agreement.)

XII

MISCELLANEOUS

(1) Supplier shall maintain a Laboratory with necessary equipment to run the tests required to determine whether or not the production to be

delivered meets the Specifications set out in Article V, and Buyer shall have access to the same. In lieu of maintaining a Laboratory, Supplier may have testing performed by an Independent Laboratory at Supplier's expense.

(2) Upon delivery of the Pulverized Sand provided for herein, Buyer shall test the material to its satisfaction to determine its acceptability as soon as practicable but not later than at the end of one (1) working day following receipt and if the same is accepted by Buyer, Supplier shall have no further duty or liability to Buyer as to the particular Pulverized Sand so delivered, and upon delivery and acceptance, Buyer shall thereafter assume all responsibility therefor.

(3) In the event material not meeting the quality called for in Article V is delivered by Supplier to Buyer, Supplier shall be responsible for loading and disposing of such material and for cleaning Buyer's storage tanks if contaminated or lacking quality.

(4) Buyer shall save and hold harmless Supplier from all claims arising out of Buyer's operations or any defects in the product of Buyer's Plant allegedly caused by the Pulverized Sand to be delivered hereunder. Supplier agrees to save and hold harmless Buyer from any claims resulting or growing out of Supplier's operations up to the time of delivery of the Pulverized Sand and the acceptance thereof by Buyer.

(5) Supplier shall maintain in storage at Supplier's premises, 250 tons of Pulverized Sand which shall be available for sale and delivery to Buyer.

(6) Supplier shall maintain in dry storage in Silos at Supplier's Plant, 250 Tons of Raw Unfinished Material and shall maintain in open storage stocked at Supplier's Plant, an additional 500 Tons of Raw Unfinished Material.

(7) Provided Supplier is delivering to Buyer substantially all of the quantities of Pulverized Sand used in Buyer's Plants up to the maximum provided in Article I, nothing in this Agreement shall be construed as restricting Supplier from selling Pulverized Sand to parties not a party to this Agreement.

(8) Any notice, request, demand, report, or bill provided for in this Agreement shall be in writing and shall be considered as duly delivered when mailed by United States Certified or Registered Mail addressed to the party to whom such notice is to be given as follows:

Supplier: Texas Mining Company
2212 Arlington Downs Road
Suite 103
Arlington, Texas 76011

Buyer: CertainTeed Cororation
Pipe and Plastics Group
P.O. Box 860
Valley Forge, Pennsylvania 19482

or at such other address as may hereafter be designated by either party in written notice to the other.

(9) Sales Tax, if any, shall be borne by Buyer.

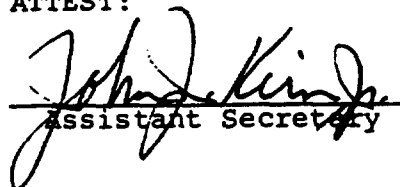
(10) This Agreement supersedes that certain Agreement entered into between Supplier and Buyer dated September 1, 1981, and said Agreement is hereby terminated by mutual consent.

XIII ASSIGNABILITY

This Agreement shall not be assigned in whole or in part by either of the parties hereto without the written consent of the other. All terms, conditions, and provisions contained in this Agreement shall be binding upon the assigns of either the parties hereto. Consolidations, mergers, or other Corporate reorganizations shall not be construed to be assignments requiring written consent.

IN WITNESS WHEREOF, the respective parties hereto have caused this Agreement to be executed by their respective Officers thereunto duly authorized and their Corporate Seals to be affixed thereto by a Secretary or an Assistant Secretary, all as of the date first hereinafter set forth.

ATTEST:


Assistant Secretary

SUPPLIER:

TEXAS MINING COMPANY

Vice President

ATTEST:


Assistant Secretary

BUYER:

CERTAINTED CORPORATION
Pipe and Plastics Group



President



CERTAIN-TEED PRODUCTS CORPORATION
PIPE DIVISION

SPECIFICATIONS CLASSIFICATION

Standard Purch. Spec. Specification

T.C.D. REF. NO.

4

SPECIFICATION NO.

501

PAGE NO.

1

SUPERSEDES

May 15, 1968

DATE OF ISSUE

September 11, 1965

DESCRIPTION

Pulverized Silica

A. GENERAL

1. Description

Pulverized silica, for purposes of this specification, consists of a high purity grade of natural occurring crystalline sand or silica which has been subjected to grinding and classification processes in order to control its fineness. In some cases it may be necessary to wash the sand or silica in order to improve its purity and color. The refined pulverized silica shall be white to light gray in color.

B. USE

Pulverized silica reacts chemically with free calcium hydroxide formed during high pressure steam curing of Portland Cement.

C. LOT SIZE

For sampling and inspection purposes, a lot shall be defined as the quantity of pulverized silica shipped in a single carrier, or in one day.

D. REQUIREMENTS

1. Special

1.1 Initial Approval

All pulverized silica suppliers shall be approved in writing by the Technical Services Manager - Materials of Certain-teed Asbestos and Plastics (CAP) Division. Any change in the source of the silica or in its processing by an approved supplier must be authorized in writing by the Technical Services Manager - Materials before the end product may be supplied to CAP Division plants.

2. Chemical and Physical Requirements

Chemical and physical requirements shall be in accordance with Tables A and B.

CTD006957

PREPARED BY:

E. Wersham

APPROVED BY:

388

R & D

MFG.

SALES

I.E.

OTHERS

JP

AT

DD



CERTAIN-TEED PRODUCTS CORPORATION
PIPE DIVISION

SPECIFICATIONS CLASSIFICATION

Standard Purchasing Specification

T.C.G. REF. NO.

4

SPECIFICATION NO.

501

PAGE NO.

2

SUPERSEDES

May 15, 1968

DATE OF ISSUE

September 11, 1969

DESCRIPTION:

Pulverized Silica

E. TEST METHODS

1. Chemical and Physical

The following tests will be conducted in accordance with the applicable CAP Division Test Methods.

Test	Test Method
Free Moisture Content	TM - 30
Loss on ignition	TM - 31
Total silica (SiO_2)	TM - 25
Per cent available SiO_2	TM - 25
Surface area	TM - 3
Wet sieve analysis	TM - 24

F. ACCEPTANCE AND REJECTION

CAP Division reserves the right to reject any lot of pulverized silica which does not conform to the requirements of this specification. If any lot is rejected, the supplier shall be advised within 24 hours and the reason for the rejection explained.

G. PACKAGING AND MARKING

Pulverized silica shall be supplied in bulk shipments by railroad car, truck or direct pipe line. Unless otherwise specified, each lot shall be marked as CPC 501 Silica and identified by the delivery date. All invoices shall include this information.

CTD006958

PREPARED BY:

APPROVED BY:

R & D

MFG.

SALES

I.E.

OTHERS

TECHNICAL SPECIFICATIONS

CertainTeed

CertainTeed Corporation
Pipe and Plastics Group

SPECIFICATIONS CLASSIFIED AS:

A/C Standard Purchasing Specification

T.C.O. REF. NO.

8

SPECIFICATION NO.

501

PAGE NO.

3

SUPERSEDES:

April 25, 1973

DATE OF ISSUE:

January 19, 1984

DESCRIPTION:

Pulverized Silica

TABLE A.

Chemical Requirements - Type A and Type B

<u>Ingredient or Item</u>	<u>Max. %</u>	<u>Min. %</u>
Free Moisture Content	1.0	
Loss on Ignition	1.0	
Total SiO ₂		95.0
Available SiO ₂		90.0

TABLE B

Physical Requirements

<u>Item</u>	<u>Requirement</u>	
	<u>Type A</u>	<u>Type B</u>
Surface Area, Blaine sq. cm./gram		
a. 98 + % SiO ₂ (Total)	--	3200 ± 400
b. 96 - 98% SiO ₂ (Total)	3300 ± 300	--
c. 95 - 96% SiO ₂ (Total)	3600 ± 300	--
Residue on U.S. Std. No. 220 Mesh Sieve, %, Max.	10.0	15.0
Residue on U.S. Std. No. 325 Mesh Sieve, %, Max.	35.0	40.0

CTD006959

PREPARED BY:

J. L. Mayorga

APPROVED BY:

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SALES

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1.14 R.L.M.

[Signature]

CJS

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CONFIDENTIAL DOCUMENT - NOT TO BE DISTRIBUTED TO UNAUTHORIZED PERSONNEL