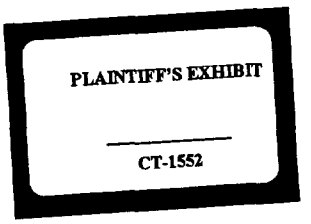
Document 10



A G R E E M E N T

THIS AGREEMENT made and entered into as of this 1st day of January, 1980, by and between TEXAS MINING COMPANY, (herein sometimes referred to as "Supplier") and CERTAIN-TEED CORPORATION, (herein sometimes referred to as "Buyer").

W I T N E S S E T H:

WHEREAS, Buyer is the Owner and Operator of a Plant located adjacent to the northern limits of the City of Hillsboro, Texas, (herein sometimes referred to as "Buyer's Plant") and said Buyer's Plant is involved in the manufacture of asbestos cement products wherein Buyer is the user of pulverized sand (presently using approximately 16,000 tons thereof each year); and

WHEREAS, Supplier has previously delivered to Buyer pulverized sand pursuant to an Agreement originally dated October 31, 1963, and Buyer desires to continue Supplier as the supplier of pulverized sand complying with the specifications attached hereto and made a part hereof; and

WHEREAS, Supplier is able to supply the demand of such plant and furnish the pulverized sand as herein outlined and, in order to accomplish the same, Supplier is willing to sell and deliver unto Buyer the pulverized sand specified herein and Buyer is willing to purchase the same, all as herein below set forth;

NOW THEREFORE, it is agreed by and between Supplier and Buyer:

I

SALES AND QUANTITY

Supplier agrees to sell to Buyer during the term of this Agreement and Buyer agrees to purchase from Supplier substantially all of Buyer's requirements of pulverized sand produced by Supplier for use in Buyer's Plant for the manufacture of asbestos cement products. Supplier's obligation to sell pulverized sand to Buyer shall not exceed Two Thousand Five Hundred (2,500) tons thereof per month unless Buyer gives Supplier notice six (6) months in advance. Upon six (6) months advance notice by Buyer to Supplier, Supplier's obligation to sell pulverized sand hereunder to Buyer may be increased up to a maximum of Three Thousand (3,000) tons thereof per month. Buyer is granted the privilege of purchasing up to but not exceeding fifteen percent (15%) of Buyer's annual requirements of pulverized sand per year from other Suppliers.

Provided Supplier is delivering to Buyer substantially all of the quantities of pulverized sand used in Buyer's Plant up to the maximum provided in this Article, nothing in this Agreement shall be construed as restricting Supplier from selling pulverized sand to parties not a party to this Agreement.

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II

TERM

The Term of this Agreement shall be three (3) years from January 1, 1980, which term may be extended by mutual agreement between Supplier and Buyer unless otherwise terminated by either party by giving written notice prior to September 1, 1982.

III

BASE PRICE

Pulverized sand will be delivered in bulk form by Supplier to Buyer's storage facilities at its Hillsboro, Texas, Plant by truck or rail shipment freight collect, at a price of Seventeen Dollars and Fifty Cents ($17.50) per ton of 2,000 pounds each, F.O.B. Supplier's Brady, Texas Plant. The price of Seventeen Dollars and Fifty Cents ($17.50) shall be referred to as the Base Price.

IV

ADJUSTMENTS TO BASE PRICE

Said Base Price shall be adjusted retroactive to the effective date of any increase or decrease after the date hereof affecting the following items of Supplier's costs:

a. Labor wages, costs including vacation pay, payments to welfare and pension funds or payments for any other employee fringe benefits required of Supplier to be paid.

b. Raw material costs including transportation costs from Supplier's raw material source(s) to Supplier's Plant.

c. All cost of complying with Federal, State or local regulations relating to health, safety, air, water, noise, and solid waste pollution, whether such regulations increased or decreased, as the

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case may be, by the amount that the increase or decrease of such Basic Costs at Supplier's facilities have increased or decreased. Such price adjustments shall take place from time to time on the first day of the month following such time as such Basic Costs at Supplier's facilites have increased or decreased. Such price adjustments shall take place from time to time on the first day of the month following such time as such Basic Costs so changed by an amount of at least ten percent (10%), Supplier will furnish and deliver to Buyer a statement showing the basis for said requested increase or decrease, as the case may be.

All costs of complying with Federal, State, or local regulations relating to health, safety, air, water, noise and solid waste pollution as they relate to Supplier's ball mill operations only (hereinafter referred to health and safety items), whether such regulations were promulgated before or after the date hereof. Any capital expenditures for such items shall result in an adjustment to the Base Price through use of depreciation costs of such items.

Supplier shall be able to make expenditures as provided in this paragraph for health and safety items up to the amount of $50,000 per item. Any health and safety item of compliance in excess of $50,000 shall be subject to the approval of Buyer prior to being added to the Base Price. However, in the event that Supplier declines to make such expenditure without being able to adjust the Base Price and Buyer refuses to permit the Base Price adjustment, then this Agreement may be terminated by Supplier without such termination acting as breach of the Agreement.

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Any increase or decrease in the aforementioned health and safety item cost area (adjustments) shall be passed through on a dollar for dollar basis to the Buyer. Accordingly, if the adjustments result in an increase in the costs to Supplier of producing a ton of pulverized sand, the Base Price shall be increased by the amount of said increase in Supplier's cost. If the adjustments result in a decrease in the cost to Supplier of production of pulverized sand, the Base Price shall be decreased by the amount of said decrease in Supplier's cost. Supplier shall furnish and deliver to Buyer, upon written request, a statement showing the cost of the health and safety items as of the date of said first delivery, under this Agreement, including their relationship to Supplier's total manufacturing cost for pulverized silica at such time. In order to substantiate the increased costs, Supplier shall furnish Buyer a copy of appropriate letters, notices, or orders which require Supplier to make changes, modifications and/or additions to its Plant and/or equipment in order to comply with Federal, State, or local regulations relating to health, safety, air, water, noise and solid waste pollution. Further, Supplier shall furnish copies of bills or invoices from contractors hired to perform such work or supply materials for such work.

In addition to the above costs, the Base Price shall be escalated $.90 per ton as of the first anniversary date of this Agreement, and remain in effect during the second twelve (12) month period of this Agreement; and shall be escalated an additional $1.05 per ton as of the second anniversary date of this Agreement, and remain in effect during the third twelve (12) month period of this Agreement.

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V

PRICE ADJUSTMENT OR TERMINATION

If, at any time after the expiration of twelve (12) months from the date of initial sales from Supplier to Buyer hereunder, Buyer has at that time a bonafide written offer or offers from third parties for the sale of pulverized sand acceptable and suitable to Buyer and of like quality, quantity and term as the pulverized sand to be delivered hereunder at a price less than the price of the pulverized sand to be delivered by Supplier (as the price may then exist), then Buyer shall have the right, at its option, to terminate this Agreement upon giving Supplier notice thereof ninety (90) days in advance of the proposed termination of this Agreement setting forth the price offered and furnishing to Supplier a copy of such third parties' proposal; and PROVIDED FURTHER that Buyer shall first give Supplier the right to meet such price offered by such third party and if Supplier, within sixty (60) days after receipt of such notice, advised 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 pulverized sand requirements of Buyer's Plant 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 subject to escalation contained in Article IV herein. Likewise and from time to time thereafter,

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Buyer may receive bonafide offers for the sale to it of pulverized sand acceptable and suitable to Buyer and of like quality, quantity and term for pulverized sand to be delivered hereunder. If such quality, quantity and term shall be at a lesser price than the price hereunder at that time, Buyer shall have a like option to terminate this Agreement upon like notice to Supplier, allowing Supplier the right to meet said proposed price for like quality and quantity of pulverized sand acceptable and suitable to Buyer.

In the event such price is so met by Supplier, this Agreement shall continue, and provided further, at least twelve (12) months shall have elapsed since the last adjustment in price under this Article IV.

VI

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, dated September 11, 1969, which is attached hereto and marked "Exhibit 'A'". Buyer shall have the right at any time from time to time to change said specifications, provided the 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.

Upon delivery of the pulverized sand, Buyer shall reject the same within one (1) working day after delivery thereof if the pulverized sand fails to meet Buyer's said specifications. Failure to notify Supplier of rejection within such time shall be deemed an acceptance of the pulverized sand as delivered.

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In the event material not meeting the quality called for in Article VI is delivered by Supplier to Buyer, Supplier shall be responsible for disposing of such material. However, if Buyer fails to give Supplier notice that the sand fails to meet Buyer's specifications within the time limits as stated in this Article VI, Buyer shall be liable for any and all demurrage or redelivery charges assessed by the railroads or trucking companies.

VII

COMPATIBILITY - CHANGE IN QUALITY

Supplier has previously delivered to Buyer pulverized sand meeting the specifications set out in Article VI. 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; provided, however, that Supplier will first be allowed ninety (90) days in which to correct any change in its pulverized sand so as to make its sand compatible with 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 such purchase being in violation of the terms of this Agreement.

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VIII

INTERRUPTION OF DELIVERIES

Force Majeure shall include any stoppage or interruption caused directly or indirectly by fire, windstorm, explosion, strike, lockout, war, insurrection, lawful orders of any court or regulatory body having jurisdiction over the parties hereto, or any other matter beyond the control of either of the parties hereto. Stoppage or interruption caused by Force Majeure shall not result in damages nor liability of either party hereto nor be grounds for termination of this Agreement. Should deliveries be interrupted by strike against a railroad carrier of Supplier's pulverized sand (which would be Force Majeure as above set forth), Supplier will at Buyer's option, truck said pulverized said to Buyer's Plant facilities and sell the same to Buyer at a price increased by an amount, if any, equal to the increase in transportation costs. 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 hereuder shall remain unchanged.

IX

BILLING

Billings to Buyer shall be based upon the quantities delivered or truck as the case may be and each billing shall be accom- Y an analysis of the pulverized sand showing that it conforms Buyer's specifications referred to in Article VI hereof. Pay- pulverized sand so delivered shall be due to Supplier at its las, Texas. Payment is net thirty (30) days following the ing.

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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 by force of any law or regulation imposed by order or be required 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. —

XI

MISCELLANEOUS

(A) Supplier shall maintain a laboratory with necessary equipment to run the wet screen analysis, Blaine surface area and moisture content to determine whether or not the product to be delivered meets the specifications set out in Article VI. Buyer shall have access to the analytical results.

(B) Supplier shall maintain in storage on Supplier's premises, One Hundred Fifty (150) tons of pulverized sand which shall be available for sale and delivery to Buyer.

(C) 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 either certified or registered, postage prepaid United States Mail addressed to the party to whom such notice is to be given as follows:

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Supplier: Texas Mining Company
2104 East Randol Mill Road
Suite 101
Arlington, Texas 76011

Buyer: Certain-Teed Corporation
Piping & Plastics Group
Hillsboro, Texas

with a copy to:

Certain-Teed Corporation
Pipe & Plastics Group
Purchasing Department
P. O. Box 1100
Blue Bell, Pennsylvania 19422

(D) 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 no later than at the end of one (1) working day following receipt as set forth in Article VI, and if the same is accepted by Buyer, Supplier shall have no futher 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.

(E) Buyer shall save and hold harmless Supplier from all claims and demands of third parties resulting from claims arising out of Buyer's operations or any use of 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.

(F) Sales tax, if any, shall be borne by Buyer.

(G) This Agreement supersedes that certain Agreement entered into between Supplier and Buyer dated January 1, 1977, and said Agreement is hereby terminated by mutual consent.

XII

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 on the permitted assigns of either of 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 hereinabove set forth.

SUPPLIER

ATTEST: TEXAS MINING COMPANY

By _____

Title: Assistant Secretary Title: Vice President

BUYER

Attest: CERTAIN-TEED CORPORATION

By _____

Title: V-P Materials Management Title: President - Pipe & Plastics Group

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TABLE A

Chemical Requirements

Ingredient or Item	Max. %	Min. %
Free moisture content	1.0	
Loss on ignition	1.0	
Total $Si\ O_2$		95.0
Available $Si\ O_2$		90.0

TABLE B

Physical Requirements

Item	Requirement
Surface area, Blaine sq. cm./gram	
a. Over 96% $Si\ O_2$ (total)	3300±300
b. Under 96% $Si\ O_2$ (total)	4000±300
Residue on U. S. Std. No. 200 mesh sieve, %, Max.	10.0
Residue on U. S. Std. No. 325 mesh sieve, %, Max.	35.0

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