

AGREEMENT BETWEEN ZONE 7 OF THE
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AND

KAISER SAND & GRAVEL COMPANY

THIS AGREEMENT is made and entered into this 21st day of January, 1987, by and between ZONE 7 OF THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (hereinafter referred to as "ZONE 7") and the KAISER SAND & GRAVEL COMPANY, a corporation (hereinafter referred to as "KAISER").

In consideration of the mutual promises and covenants herein contained, the parties agree as follows:

Section I. Definitions and Recitals.

A. As used in this Agreement, the following terms shall have the following meanings:

(1) "Valley" means the Livermore-Amador Valley of Alameda County, California.

(2) "Specific Plan" means the Specific Plan for Livermore-Amador Valley Quarry Area Reclamation adopted by the Board of Supervisors of Alameda County on November 5, 1981, as said Plan may be amended from time to time by the Board of Supervisors.

(3) "Lake H" and "Lake I" mean those water areas so designated on the Specific Plan.

(4) "Kaiser Properties" means the real property now or hereafter under the management and control of Kaiser, by

virtue of fee ownership or lease, that is subject to the Specific Plan. The Kaiser Properties as of the date hereof are described on Exhibit "A" attached hereto and incorporated by this reference.

(5) "Water management and related purposes" shall mean any and all actions to accomplish flood control and water conservation purposes, including but not limited to the capture of surface runoff waters that otherwise would flow from the Valley under Zone 7 water rights permits, and diversion of other waters into said lakes for replacing the loss of water through evaporation, mitigating the concentration of salts in the water due to evaporation, and recharging the groundwater basin for beneficial uses within the Valley.

B. Certain of the facts and circumstances surrounding this Agreement are as follows:

(1) Under permits issued by the County of Alameda, State of California for the mining of sand and gravel from lands owned or leased by Kaiser located in the Valley, Kaiser is required to obtain from said County an approved mine reclamation plan for its mining areas.

(2) The Specific Plan contemplates, among other things, the creation of a "chain of lakes" in the course of sand and gravel mining by Kaiser and other sand and gravel producers.

(3) It is contemplated that the chain of lakes system to be created pursuant to the Specific Plan will provide a surface water storage and conveyance facility for mitigating the

effects of mining on the water resources and will ultimately be granted to and operated by Zone 7 as a part of Zone 7's water resource management system under its authority contained in the Alameda County Flood Control and Water Conservation District Act.

(4) As part of its water resource management duties Zone 7 has in the past released and recharged imported State Project waters into the Valley groundwater basin for beneficial uses and, due in part to the above referenced release and recharge, the groundwater table in Kaiser's mining area has risen to the point at which Kaiser's ability to economically mine its reserves and to satisfactorily complete a reclamation plan was in doubt; and

(5) Kaiser and Zone 7 believe that by entering into and implementing this Agreement the three objectives set forth in Section II of this Agreement can be achieved to the mutual benefit of Kaiser, Zone 7 and the people within the Valley.

Section II. Objectives.

The objectives that the parties intend to achieve by this Agreement are as follows:

A. To preserve Zone 7's ability to maintain water quality and quantity within the groundwater basin of the Valley from which water is and will be withdrawn for municipal and other beneficial uses; and

B. To provide manageable groundwater levels within Kaiser's mining area in the Valley that will permit reasonable,

economic mining of sand and gravel from Kaiser's owned and leased reserves without major alteration to Kaiser's current mining methods; and

C. To provide a water management tool through creation of a chain of lakes, as set forth in the Specific Plan, that will be granted to Zone 7 and will enhance Zone 7's ability to manage the water resources of the Valley.

Section III. Improvement Obligations of Kaiser.

Kaiser shall complete that portion of the Specific Plan which lies within the properties now or hereafter under the fee ownership or leasehold control of Kaiser. In that connection:

A. Kaiser shall conduct its sand and gravel mining operations in such a manner as to create, at no cost to Zone 7, Lakes H and I, the appurtenant levees and conduits, and a diversion structure from the Arroyo Mocho into Lake H, all as shown on the Specific Plan;

B. The conduit to transfer water from Lake H to Lake I and the conduit under Mohr Avenue, if needed, will be 30-inch inside diameter with the necessary appurtenants for controlling the transfer of water from one lake to the other;

C. The diversion structure from the Arroyo Mocho into Lake H shall have a capacity of diverting the first 100 cubic feet per second of water into Lake H; provided, however, that Kaiser shall increase the capacity of such structure at the written request of Zone 7, if that request is given prior to Kaiser's commencement of construction thereof, and in the event

of such request for increased capacity, Zone 7 shall bear any and all increased costs associated with such increase in capacity;

D. Kaiser is required to, and has constructed, at its sole cost and expense, one-half of the 30-inch inside diameter conduit, with necessary appurtenants, between Lakes G and H, pursuant to plans submitted to and approved by Zone 7. Kaiser understands that Pleasanton Gravel Company ("PGC") is required to construct and bear the cost of the other one-half of such conduit, together with necessary appurtenants.

Section IV. Plans and Specifications.

Kaiser shall retain or engage appropriate qualified engineers registered by the State of California for the design and preparation of plans and specifications for the construction of the levees and diversion structures described in Section III to ensure the stability and integrity thereof. Said plans and specifications shall be developed in consultation with Zone 7 and completed plans and specifications shall be submitted to Zone 7 for review and approval prior to construction. Such approval shall not be unreasonably withheld. Should Zone 7 reasonably refuse its approval, Kaiser shall cause the plans and specifications to be altered or corrected so as to make them reasonably acceptable to Zone 7. Kaiser shall provide Zone 7 with periodic inspection reports of the construction activities to demonstrate that the work is being performed in accordance with the approved plans and specifications. Zone 7 may from time to time inspect construction activities to ensure general

conformance with the approved plans and specifications. Kaiser will reimburse Zone 7 for actual reasonable costs incurred for inspection of the facilities. Upon completion, Kaiser shall provide Zone 7 with a set of "as-built" plans.

Section V. Guarantees by Kaiser.

A. Kaiser shall guarantee the performance of the levees as constructed for a period of five (5) years after completion of construction, the date of which must be agreed to by Zone 7. Kaiser will maintain the levees at all times in a sound and acceptable condition as may be mutually determined by Kaiser and Zone 7 until granted to Zone 7. If grant to Zone 7 occurs after the expiration of the five-year guarantee period then acceptance of the grant by Zone 7 shall release Kaiser from all further obligation with respect to the levees.

B. Kaiser shall guarantee the performance of the water conveyance structures such as conduits and appurtenants and diversion structures for a period of two years after completion of construction, the date of which must be agreed to by Zone 7. Kaiser shall maintain said structures at all times in a sound working and acceptable condition as may be mutually determined by Kaiser and Zone 7 until granted to Zone 7. Upon acceptance of the grant by Zone 7, Kaiser shall further guarantee the integrity of the structure for a period of one year after grant and acceptance by Zone 7, provided, however, that in any event the structures shall be so guaranteed for not less than two years from completion of construction as aforesaid.

Section VI. Grants.

A. Upon completion of Lake I, Kaiser shall grant to Zone 7, at no cost, fee title to the lands containing all areas of Lake I, together with exterior and interior perimeters thereof sufficient to provide a minimum of 25 foot wide access. The boundaries of such lands shall be fenced by Kaiser, as may be required in any reclamation plan for such lands in effect at the time this agreement is executed. If desired and mutually agreed by Kaiser and Zone 7, Kaiser will grant certain exterior perimeters for earlier use by Zone 7.

B. In addition thereto, upon completion of Lake I, Kaiser shall grant to Zone 7, at no cost, fee title to the portion of the Kaiser Properties lying between the western boundary of the Lake I exterior perimeters described above and Martin Avenue (hereinafter called the "Buffer Zone"); provided, however, that the grant of the Buffer Zone shall specifically provide for a reversion of fee title to Kaiser in the event and to the extent that Zone 7 ceases to use the Buffer Zone, or portions thereof, for water management and related purposes. Should Zone 7 cease to use only a portion of the Buffer Zone for such purposes, then that portion, and only that portion, shall so revert to Kaiser. Such right of reversion shall expire 50 years after the acceptance of the grant of the Buffer Zone by Zone 7. In the event such a reversion occurs, then Zone 7 shall grant fee title to Kaiser or to its successors or assigns.

C. Zone 7 shall accept the granted lands containing Lake I, the Buffer Zone and the levee(s), structure(s), and appurtenance(s) upon satisfactory inspection of the facilities for water management and related purposes. After acceptance by Zone 7 of the granted lands provided for in Section VI.A and B, above, Zone 7 shall grant to Kaiser without cost appropriate use licenses and easements on said lands for uses not inconsistent with Zone 7's water management goals and objectives. Subject to all other provisions of this agreement, determination of consistency with Zone 7's water management goals and objectives shall be within Zone 7's sole discretion. Kaiser's right to use licenses and easements under this subsection C shall be limited to uses requested and undertaken by Kaiser not later than five (5) years after Zone 7's acceptance of the granted lands.

D. All grants under this Section VI shall reserve to Kaiser all oil, gas, hydrocarbon and mineral (including rock, sand and gravel) rights; provided, however, that Kaiser's exercise of such rights shall not be inconsistent with Zone 7's water management goals and objectives. Determination of consistency with Zone 7's water management goals and objectives shall be within Zone 7's sole discretion.

Section VII. Monitoring.

Kaiser shall continue during the mining period to cooperate with Zone 7 in a monitoring program to determine the effects of Kaiser's mining on the quality and quantity of groundwater in the Valley.

Section VIII. Control of Groundwater Level.

In order to achieve the objectives stated in Section II of this Agreement:

A. Zone 7 has ceased the release and recharge of imported State Water Project Entitlement Water into the Valley groundwater basin. The Zone has further modified its recharge program by utilizing a major portion, if not all, of its stored local conservation water through its water treatment plants instead of recharging same. The Zone will continue to do so until such time as it is determined by Zone 7 that its ability to maintain water quality and quantity within the groundwater basin as stated in Section II is impaired.

B. Kaiser shall take reasonable measures and actions to repercolate, store and reuse waters produced by virtue of its sand and gravel extraction and processing operations.

C. Subject to other applicable laws and regulations, Kaiser may discharge excess groundwater from its sand and gravel extraction and processing operations, even though such water may subsequently flow out of the Valley. Any available recharge capacity in the Arroyo del Valle may be utilized by Kaiser for repercolation of water. Kaiser, at its expense has and shall obtain, install, operate and maintain necessary meters for measuring all discharges into streams and records of same shall be submitted to Zone 7. Any new meters and their installation shall be subject to the approval of Zone 7.

Section IX. Payments by Kaiser.

A. In consideration of this agreement Kaiser will pay Zone 7 the amount of One and One-Half Cents (\$0.015) per ton of sand and gravel sold by Kaiser until completion of Kaiser's sand and gravel operations. Payments will be made by March 1 annually based on the sand and gravel sales during the preceding fiscal year, currently beginning on December 21 of each year and ending on December 20 of the following year. In the event Kaiser should change its fiscal year, such payment shall be made within 70 days following the end of such new fiscal year. All such payments shall be made by check made payable to Zone 7 Water Agency. The first annual payment will be made by March 1, 1987 for sand and gravel sales in fiscal year 1985-1986. The last annual payment is due on the date of the last such sale and will be made within 60 days of that date.

B. In addition, Kaiser shall at the conclusion of mining by Kaiser, grant to Zone 7, at no cost, fee title to a portion of their lands containing Kaiser's desilting pond (the "pond"), together with appropriate access thereto, as shown on Exhibit B, attached hereto and incorporated by this reference; provided, however, that the grant of the pond shall specifically provide for a reversion of fee title to Kaiser in the event that Zone 7 ceases to use the pond for water management and related purposes. In the event such a reversion occurs, then Zone 7 shall grant fee title to Kaiser or to its successors and assigns. In its sole discretion, Kaiser shall be entitled to reclaim a

portion of the pond, beginning at the southwesterly portion of the pond. Any portion of the pond so reclaimed will not be part of this grant. Kaiser shall be entitled to drain water from portions of their remaining properties into the pond pursuant to plans reviewed and approved by Zone 7.

Section X. Successors; Recording.

The parties to the Agreement recognize that Kaiser may in the future subdivide the Kaiser Properties and may transfer title to all or portions of the Kaiser Properties to others. Accordingly, Kaiser agrees that this Agreement is binding upon Kaiser and upon each and all of its successors in interest to any and all portions of the Kaiser Properties that are granted to Zone 7. Where appropriate, the term "Kaiser" as used herein includes such successors. A memorandum of this Agreement shall be recorded with the Alameda County Recorder so that all persons acquiring an interest of any nature in any portions of the Kaiser Property within the area of the Specific Plan will have notice of this Agreement. Except as provided in Section XVI, below, the obligations of Kaiser, including each and all of its successors in interest to any portion of the Kaiser Properties that are to be granted to Zone 7, are joint and several and any one of such persons may be called upon and required to perform the obligations herein undertaken by Kaiser with respect to the particular portion of the Kaiser Properties acquired by such persons.

Section XI. Indemnity.

Each party agrees to indemnify and hold and save the other party harmless from any and all claims, expenses, and damages whatsoever, including, but not limited to, third party claims for personal injury or property damage, arising out of any actions or omissions of the indemnifying party, its employees, officers, agents or representatives, pursuant to or in any way connected with this Agreement.

Section XII. Insurance.

At all times during the mining period and while Kaiser is making active use of any granted property, Kaiser shall maintain in full force and effect, at its sole cost, policies of insurance with at least the following coverages:

A. Workers Compensation - statutory limits.

B. Automobile Liability Insurance with limits of not less than \$5,000,000 per person and \$5,000,000 per occurrence for bodily injury and property damage.

C. Comprehensive General Liability Insurance with the following limits: \$5,000,000 each occurrence for bodily injury and \$5,000,000 each occurrence for property damage.

Kaiser shall provide Zone 7 with certificates evidencing the required coverages, which certificates shall contain a provision that the policies will not be cancelled or amended without at least thirty (30) days written notice to Zone 7. The minimum insurance limits listed above shall be adjusted January 1, 1992, and every five (5) years thereafter based upon

the increase in the Consumer Price Index for the San Francisco Bay Area, or such other, comparable index as may be in effect at that time, for the preceding five (5) year period, or as may otherwise be agreed between the parties.

Section XIII. No Bonding.

It is recognized that Alameda County, in approving Kaiser's individual reclamation plan will require Kaiser to provide security for the construction of all reclamation features of the reclamation plan, including the water management aspects at the proper time. Accordingly, no additional security shall be required of Kaiser for the faithful performance of Kaiser's obligations contained herein.

Section XIV. Specific Performance.

By reason of the specialized nature of this Agreement and because the extent of any damage caused to either party by the other by reason of any breach of this Agreement may be extremely difficult to determine, it is agreed by the parties hereto that an action for damages may be an inadequate remedy for any breach, and that specific performance, without precluding any other remedy available in equity or at law, will be necessary to furnish either party hereto with an adequate remedy for the breach hereof.

Section XV. Changes in Specific Plan.

In the event of any amendment or alteration of the Specific Plan that changes the nature or scope of the Specific Plan or any material detail of the levees, conduits or diversion

structures envisioned by the Specific Plan as it exists on the date of this Agreement, Kaiser and Zone 7 shall cause this Agreement to be amended to be consistent with the revised Specific Plan. In connection with any such amendment of this Agreement, the parties, to the extent possible, shall maintain the anticipated cost to Kaiser in complying with its obligations under this Agreement at the same approximate level as the anticipated cost of the original facility, less costs, if any, previously incurred by Kaiser for portions of the original facility concept that are not adaptable to the revised facility concept.

Section XVI. Force Majeure.

The parties recognize that unforeseen events may occur which may either delay or prevent Kaiser's performance of its obligations under this Agreement. Such events include, without limitation, governmental action or inaction, including but not limited to any present or future laws, orders, regulations, directives or policies, enacted, adopted or instituted by any government or governmental corporation, agency or bureau which affect or may affect Kaiser's business; labor strikes, boycotts and other troubles; riots, wars, earthquakes, floods, and acts of God; and any other cause or occurrence reasonably beyond Kaiser's control. To the extent that such events, directly or indirectly, cause a delay in Kaiser's performance, then the time for Kaiser's performance hereunder shall be extended by the duration of such delay. Should such events totally and permanently prevent

Kaiser's performance hereunder, or result in a termination of Kaiser's mining activities on the Kaiser Properties, then the parties shall seek an amendment to the specific plan, and Kaiser's improvement obligations as set forth in Section III, above, to the extent not already completed at the time of such event, shall be terminated as to Kaiser.

Section XVII. Miscellaneous.

A. Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, discretion, agreement or determination of either party hereto, such terms are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review, discretion, agreement or determination to be arbitrary, capricious, or unreasonable.

B. If it becomes necessary to amend or add to the terms, conditions, scope or requirements of this Agreement, such amendment or addition shall only be made after mutual agreement of Kaiser and Zone 7 and the execution of a written modification of this Agreement.

C. Zone 7 intends to execute agreements with PGC and Lone Star Industries ("LSI") comparable to this Agreement, covering, among other things, PGC's and LSI's development and ultimate grant to Zone 7 of the portions of the chain of lakes water management facility within their respective mining areas.

D. All notices that are required either expressly or by implication to be given by one party to the other under this

Agreement shall be in writing, signed by Zone 7 by its General Manager, and by Kaiser by its duly authorized representative. All such notices shall be deemed to have been given if delivered personally or if enclosed in a properly addressed envelope and deposited with the United States Postal Service, postage fully prepaid, for delivery by registered or certified mail. Unless and until formally notified otherwise, Zone 7 shall address all notices to the Kaiser Sand & Gravel Company as follows:

Kaiser Sand & Gravel Company
P. O. Box 580
Pleasanton, CA 94566

and Kaiser shall address all notices to Zone 7 as follows:

Zone 7
Alameda County Flood Control and
Water Conservation District
5997 Parkside Drive
Pleasanton, CA 94566

E. Section headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions hereof.

F. Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other default or matter. None of the covenants or agreements contained herein can be waived except by the written consent of the party waiving such provision.

G. This Agreement represents the entire understanding of Kaiser and Zone 7 as to those matters contained herein. No

prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

H. This Agreement will remain in full force and effect until all the provisions contained herein have been completed on the date to be mutually determined.

State of California
County of Alameda } ss.

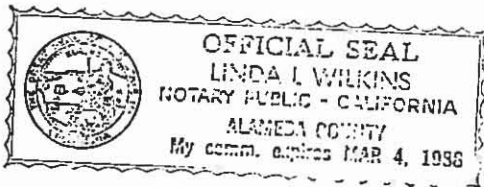
On this the 21st day of January 1987, before me,

LINDA L. WILKINS

the undersigned Notary Public, personally appeared

ROBERT A. GOOD

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence
to be the person(s) who executed the within instrument as
President or on behalf of the corporation therein
named, and acknowledged to me that the corporation executed it.
WITNESS my hand and official seal.



Notary's Signature

Linda L. Wilkins
LINDA L. WILKINS

By: [Signature]

By: [Signature]

Chairman, Board of Directors

APPROVED AS TO FORM:

RICHARD J. MOORE, COUNTY COUNSEL

By: [Signature]

Assistant County Counsel

prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

H. This Agreement will remain in full force and effect until all the provisions contained herein have been completed on the date to be mutually determined.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

ATTEST:

KAISER SAND & GRAVEL COMPANY

By: _____

By: R. T. G. Good
President

ATTEST:

ZONE 7 OF ALAMEDA COUNTY FLOOD
CONTROL AND WATER CONSERVATION
DISTRICT

By: Mundana

By: Dwight A. Walker
Chairman, Board of Directors

APPROVED AS TO FORM:

RICHARD J. MOORE, COUNTY COUNSEL

By: Richard J. Moore
Assistant County Counsel

