

SUBLEASE AGREEMENT

(West Parcel)

This Sublease Agreement by and between SLOOP & WITMAN, a partnership consisting of Paul Samuel Sloop, Henry William Witman III and Gordon Denson Sloop, (herein called "LESSEE"), and SAN DIEGO CONSOLIDATED CO., a California corporation, (herein called "SUBLESSEE"), is made in view of the following facts:

1. LESSEE is in possession of certain real property owned by the CITY OF SAN DIEGO, (herein called "CITY"), by virtue of a Lease Agreement, dated December 30, 1965, between CITY and LESSEE (City Document No. 694595). Said real property (herein called "LEASED PREMISES") consists of a Portion of Sec. 35, T12S, R1W, SBBM, San Diego County, and is designated in red outline on "Exhibit A" attached hereto as part of this agreement.
2. The Lease Agreement requires LESSEE to maintain the drainage of that portion of Santa Ysabel Creek which runs through the LEASED PREMISES so as to confine its waters to a prescribed channel. In order to create the prescribed channel it is understood by the parties that sand, gravel and soil will be removed from the Creek. The Lease Agreement gives LESSEE the right to remove and sell said excess materials. LESSEE, subject to the terms of this agreement and for the considerations contained herein, desires to grant the exclusive right to remove and sell said materials and other rights described herein to SUBLESSEE.
3. SUBLESSEE's principal business is selling sand, gravel and soil, and commodities whose ingredients include sand, gravel or soil. In expectation of being able to remove and process sand, gravel and soil for sale, SUBLESSEE, subject to the terms of this agreement and for the term thereof, is willing to excavate and remove sand, gravel and soil.

IT IS THEREFORE AGREED BETWEEN THE PARTIES AS FOLLOWS:

- A. DEMISE: Subject to all the covenants and conditions herein set

forth, LESSEE leases to SUBLESSEE and SUBLESSEE hires from LESSEE:

1. Such land adjacent to both sides of the Santa Ysabel Creek lying within the LEASED PREMISES as SUBLESSEE shall reasonably require from time to time during the term hereof to exercise its rights and perform its duties herein provided and to maintain a sand, gravel and soil processing plant, including associated access roads, stockpiles, maintenance and office facilities, bunkers, conveyors, volume or weight measuring apparatus, parking areas and utilities; and such other land lying with the LEASED PREMISES, as mutually agreed upon, as SUBLESSEE shall reasonably require to maintain apparatus away from the area of the Creek channel.

2. Sufficient roadways across the LEASED PREMISES as will provide SUBLESSEE, during the term hereof, with reasonable ingress and egress to and from State Highway 78 or any other public thoroughfare and the land described in Subparagraph 1 of this Paragraph A. Such roadways shall be developed and maintained by SUBLESSEE and shall be kept reasonably dustfree so as to constitute no hazard to the agricultural crops of LESSEE. LESSEE shall have the right to use said roadways in connection with its use of the LEASED PREMISES, but only in a manner which will not interfere with SUBLESSEE's use thereof.

B. PURPOSE: The subleased premises shall be used by SUBLESSEE only for the purpose of mining, processing and removing sand, gravel and soil from the Santa Ysabel Creek channel, and operations incidental thereto.

C. TERM: The term of this Lease shall be from March 1, 1969, through February 28, 1974, unless sooner terminated as herein provided. However, SUBLESSEE shall have the option to renew this Sublease as provided for in Paragraph D hereunder.

D. OPTION TO RENEW TERM:

1. SUBLESSEE shall have the right and option to extend this Sublease for two (2) additional consecutive terms of five (5) years each, each such additional term of five (5) years for which this right and option

is exercised to commence at the expiration of the immediately preceding term, upon condition that written notice of the exercise of the option for such term is given to the LESSEE at least one (1) year before the expiration of the immediately preceding term. Upon timely exercise of said right and option, and if SUBLESSEE does not withdraw its option as hereinafter provided, this Sublease shall continue in full force and effect under the terms, covenants and conditions herein except base rent which may be modified as provided in Subparagraph 2 of this Paragraph D. In the event SUBLESSEE shall fail to give LESSEE written notice of its exercise of its option for a five (5) year renewal term, the option for additional terms shall thereafter be and become null and void and of no further force and effect.

2. Base rent for any renewal term shall be as set forth by SUBLESSEE in its notice of exercise of option to renew unless LESSEE within thirty (30) days of delivery of said notice by SUBLESSEE, notifies SUBLESSEE in writing of the base rent it proposes for the renewal term, which base rent shall not exceed One Hundred Fifty (150%) per cent of the base rent for the immediately preceding term. SUBLESSEE shall have the option during the thirty (30) days following delivery of LESSEE's notice, if any, to (1) secure the written agreement of the parties as to the base rent for the renewal term, or (2) withdraw its exercise of option to renew by delivery to LESSEE of a written notice of withdrawal. If by the end of said thirty (30) days the parties have not agreed in writing what the base rent will be or SUBLESSEE has not delivered its withdrawal, then the base rent for the renewal term will be as set forth by LESSEE in its written proposal.

E. RENTAL:

1. The base rent is payable monthly in advance beginning March 1, 1969, by mail to LESSEE, P. O. Box 185, San Luis Rey, California 92068, and shall be One Hundred Fifty Dollars (\$150.00) per

month. Except as elsewhere provided herein, no other remuneration in any form shall be paid by SUBLESSEE to LESSEE or CITY or any other person or body under the terms of this agreement.

2. Should SUBLESSEE in any month during the term of this Sublease, or renewal thereof, "wash and classify" (as that term is used in the sand, gravel and soil industry) any sand, gravel or soil, the rent for that month shall be (1) the sum of One Hundred Fifty Dollars (\$150.00) (base rent) or, (2) a sum equal to \$.075 times the number of tons of all "washed and classified" sand, gravel or soil removed from the premises during that month (royalty), whichever sum is the greater. The royalty will not apply to any removed sand, gravel or soil which is not "washed and classified" even though it is removed concurrently with "washed and classified" materials. It is contemplated by the parties that SUBLESSEE will sublease additional land from LESSEE along the Santa Ysabel Creek under terms and conditions similar to those set forth in this Sublease. In determining the rent due under each sublease, including this Sublease, for any month during which "washed and classified" sand, gravel or soil is removed from the premises, the subleases shall be considered as one sublease so that the SUBLESSEE will not be required to pay any more than the total of the base rent under all subleases unless the total of the royalties from all subleases exceeds the total of the base rents under all subleases.

F. INSURANCE: SUBLESSEE agrees to take out and maintain public liability insurance with an insurance carrier satisfactory to CITY and LESSEE to protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever, resulting directly or indirectly from any act or activities of SUBLESSEE or any person acting for SUBLESSEE or under SUBLESSEE's control or direction and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of SUBLESSEE or any person acting for

SUBLESSEE or under SUBLESSEE's control or direction. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term and any additional terms of this Sublease in the amounts of not less than TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) for one person injured in one accident, and not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for more than one person injured in one accident, and not less than FIFTY THOUSAND DOLLARS (\$50,000.00) with respect to any property damage. If SUBLESSEE does not keep such insurance in full force and effect, LESSEE may take out the necessary insurance and pay the premium, and the repayment thereof shall be added to the rents due LESSEE by SUBLESSEE and shall be paid as such on the next day upon which rent becomes due. Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which SUBLESSEE may be held responsible for the payment of damages to persons or property resulting from his activities or the activities of any person or persons for which he is otherwise responsible.

During the term of this Sublease, SUBLESSEE agrees to defend in the name of, and on behalf of LESSEE and CITY, all claims or suits for damages and all fixed costs and interest on all such legal proceedings and pay all sums which LESSEE and CITY may become liable to pay as damages imposed upon LESSEE and CITY by law arising out of accidental bodily injury, death or property damage by any person as a result of SUBLESSEE's activities.

1. This paragraph shall not apply to any injury, death or property damage caused or contributed to by LESSEE or CITY, or any officers, agents, partners or employees of LESSEE or CITY;

2. Neither LESSEE or CITY shall voluntarily assume any liability or incur any expenses or settle any claims involving SUBLESSEE in any way whatsoever without the prior written consent of SUBLESSEE; and

3. SUBLESSEE shall deliver to LESSEE, a certificate of

bodily injury and property damage liability insurance issued by a company licensed in the State of California to transact such business, indicating that SUBLESSEE has bodily injury and property damage liability insurance as required in this provision, and indicating that the policy has been endorsed or does otherwise cover the contractual liability imposed by this agreement, and that the insurance company shall notify LESSEE if said policy be terminated or limited in any manner prior to the termination date specified in the certificate.

During the term of this Sublease, LESSEE shall have the right to increase, in the same amounts required of LESSEE by CITY, the minimum insurance coverage requirements herein set out if, in the reasonable opinion of the City Manager of CITY, the existing insurance becomes inadequate, due to any cause. SUBLESSEE agrees to take out and maintain such increased coverage within sixty (60) days following written notice thereof by LESSEE.

4. This paragraph shall not apply to any injury, death, or property damage caused by reason of the fact that excavation and removal of material has or has not been undertaken, including, but not limited to, injury, death or property damage caused or alleged to have been caused by the presence or lack of water, diversion of water, flooding, landslides, land slippage, erosion, excavation and removal of material or failure to excavate and remove materials.

G. TAXES: During the term of this Sublease:

1. SUBLESSEE shall pay and discharge before delinquency, all taxes and assessments, including possessory interest taxes, which may be levied against the personal property of SUBLESSEE and the improvements, except roadways, constructed and maintained by SUBLESSEE.

2. LESSEE shall pay and discharge before delinquency all taxes and assessments, including possessory interest taxes, which may be levied against the land, easements, gravel, sand and soil subject of this Sublease whether levied against LESSEE or SUBLESSEE.

H. HOLDING OVER: Any holding over after the expiration or other termination of the terms of this Sublease for any cause shall be deemed a tenancy from month to month, at the rental under this Sublease and shall otherwise be on the terms and conditions here so far as applicable. Such holding over shall include any time employed by SUBLESSEE in removing stockpiles, fixtures, equipment and improvements as provided in Paragraph I hereof.

I. REMOVAL OF IMPROVEMENTS: LESSEE agrees that all fixtures and improvements installed by SUBLESSEE in accordance with the provisions herein, and not being a replacement or repair of any improvement or improvements existing and belonging to CITY or LESSEE shall be and remain the property of SUBLESSEE. SUBLESSEE shall have the right to remove said fixtures and improvements prior to expiration or any other termination at SUBLESSEE's own expense, provided that any damage to CITY's or LESSEE's property or improvements shall be repaired and the premises left in as good order and condition as when SUBLESSEE took possession of the subleased premises. In the event SUBLESSEE does not so remove said fixtures and improvements prior to the expiration or any other termination of this agreement, LESSEE may remove, or sell, or destroy same at SUBLESSEE's expense, and SUBLESSEE agrees to pay to LESSEE reasonable cost of any such removal, sale or destruction, together with the reasonable cost of repair of damages to CITY's or LESSEE's property or improvements resulting from such removal, sale, or destruction. Provided, however, any of SUBLESSEE's fixtures or improvements which, for any valid reason, cannot be removed prior to or upon expiration or other termination which, in the opinion of LESSEE, does not restrict or interfere with the use of said premises by LESSEE or its assigns and which do not create a hazard on said premises, may, at LESSEE's option, remain on said premises for any reasonable time, not exceeding ninety (90) days. At LESSEE's option any property, real or personal, not removed by SUBLESSEE may be deemed abandoned.

J. ASSIGNMENT: SUBLESSEE shall not assign this Sublease, or any interest therein, and shall not sublet the said premises or any part thereof, or any right or privilege appurtenant thereto, without the prior written consent of the City Manager of CITY and of LESSEE. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without consent shall be void, and shall, at the option of LESSEE, terminate this Sublease. This Sublease shall not, nor shall any interest therein, be assignable, as to the interest of SUBLESSEE, by operation of law, without the written consent of the City Manager and LESSEE. Provided, however, LESSEE shall not unreasonably withhold any consent referred to herein. Provided, further, nothing contained herein shall be construed to restrict SUBLESSEE from selling any sand, gravel or soil removed from the Creek or from permitting under SUBLESSEE's strict supervision, any person, company or corporation to excavate and remove sand, gravel or soil so long as no covenants or conditions of this Sublease are violated thereby.

K. CONDITIONS OF SAND, GRAVEL & SOIL REMOVAL:

1. SUBLESSEE shall excavate and remove sand, gravel and soil from that portion of the Santa Ysabel Creek lying within the LEASED PREMISES so as to create a channel of 150 feet width (measured at valley floor elevation). SUBLESSEE shall excavate said channel and remove the sand, gravel and soil by whatever method deemed most practical except that finished side slopes shall be at a minimum of three (3) feet horizontal to each one (1) foot vertical and the finished floor shall be not more than ten (10) feet below adjacent natural valley floor elevations. The surfaces of the finished floor and sideslopes of said channel shall be of natural material and SUBLESSEE shall not be responsible for riprapping or otherwise improving said surfaces under this agreement.

2. SUBLESSEE is not obligated to complete the creation of said channel within any definite period of time, however, SUBLESSEE shall

during the entire term hereof, excavate and remove all sand, gravel and soil from the channel which it can sell at the then current competitive undelivered market prices for such materials. In addition, SUBLESSEE, during the entire term hereof shall excavate and remove quantities of sand, gravel and soil equal to the quantities of such materials it sells or removes from any other geographical location not owned by CITY within a five (5) mile radius of the LEASED PREMISES. Provided, however, once SUBLESSEE has created a channel of the prescribed width and depth at any point along said Creek, its obligation to excavate and remove as to that point shall cease and be deemed satisfied. Provided further, nothing contained in this paragraph shall be construed to limit the amount of sand, gravel and soil SUBLESSEE can excavate and remove while this Sublease is in effect from any point along said Creek whether or not excavation and removal to the prescribed depth and width was once accomplished.

3. SUBLESSEE in removing all excess sand, gravel and soil, shall maintain the working channel clear of stockpiles and other obstruction except that the removal of any materials encountered other than sand, gravel and soil shall not be the responsibility of SUBLESSEE. SUBLESSEE shall be allowed reasonable space along the banks of said channel for stockpiling said material.

4. SUBLESSEE shall have the exclusive right to sell excess material excavated and removed from said channel in accordance with the provisions of this agreement and to retain the proceeds therefrom.

5. LESSEE shall furnish to SUBLESSEE, at a cost of \$12.00 per acre foot delivered to SUBLESSEE's washing and cleaning site, all the water that may be available on the LEASED PREMISES which SUBLESSEE may require for washing and cleaning material to be removed, provided, however, that such washing and cleaning shall be conducted upon LEASED PREMISES in a location where the wash water is reclaimed, and provided further that such water is not need by LESSEE to irrigate the LEASED PREMISES. SUBLESSEE shall pay for the cost of installing

and maintaining all pipelines, valves and meters from LESSEE's existing pipeline to SUBLESSEE's washing and cleaning site. SUBLESSEE shall have the right to develop ponds of reasonable size and depth within the channel as a means of reclaiming said washing and cleaning water and SUBLESSEE may use said reclaimed water without cost. In the event there is insufficient water from the premises to meet SUBLESSEE's water requirements, LESSEE shall furnish SUBLESSEE with sufficient imported water if available from the City of San Diego or other public agency to meet its needs at a cost to SUBLESSEE not to exceed the then prevailing rate charged by the City of San Diego or other public agency to LESSEE for imported water.

6. SUBLESSEE shall have the option (without affecting its rights under subparagraph 5), without cost to LESSEE or CITY to drill, install and equip, a well at such location on said LEASED PREMISES as approved by CITY's Property Director and use such water for its own purposes without cost. However, LESSEE shall have the right to direct SUBLESSEE to stop pumping from the well during times when pumping by SUBLESSEE would reduce the quantity of water available on the LEASED PREMISES. All pumping equipment appurtenant to SUBLESSEE's well shall remain the property of SUBLESSEE.

7. LESSEE agrees to provide all necessary rights and permits to the power and telephone companies to supply power and telephone service to SUBLESSEE's plant, equipment and operations. SUBLESSEE shall pay for all installation and service costs in connection therewith.

8. SUBLESSEE shall not be responsible for any grading or movement of material other than that necessary to and directly connected with the removal of excess sand, gravel and soil and the final finishing of the said channel floor and sideslopes as agreed herein.

9. SUBLESSEE is not responsible for removal of any granite outcroppings, huge boulders or other material not reasonably identified as sand, gravel and soil in the building materials or landscaping industries. SUBLESSEE shall not engage in any use of explosives in connection with this agreement.

L. ORAL REPRESENTATIONS: It is specifically understood and agreed hereby that this Sublease contains the complete expression of the whole agreement between the parties hereto, and that there are no promises, representations, agreements, warranties or inducements, neither expressed orally nor implied by the said parties, except as are fully set forth herein, and further, that this Sublease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the parties.

M. NOTICES: All notices provided for in this Sublease shall be deemed delivered if sent by certified mail, postage prepaid, when deposited in the United States mail addressed as follows or such other address as the parties may designate in writing to the other:

Lessee

Sloop & Witman
Post Office Box 185
San Luis Rey, California 92018

Sublessee

San Diego Consolidated Co.
Post Office Box 3098,
San Diego, California 92103

DATED: April 11, 1969

SLOOP & WITMAN

By: [Signature]
LESSEE

SAN DIEGO CONSOLIDATED CO.

By: [Signature]
SUBLESSEE

CONSENT OF CITY

The CITY OF SAN DIEGO, LESSOR, under the above-described Lease Agreement, hereby consents to the foregoing Sublease Agreement.

DATED: _____

THE CITY OF SAN DIEGO

By: _____

City Manager

LESSOR