

## **COOPERATION AGREEMENT AMONG GROUNDWATER SUSTAINABILITY AGENCIES IN THE 180/400 FOOT AQUIFER SUBBASIN**

This COOPERATION AGREEMENT (“Agreement”) establishing cooperation among the 180/400 Foot Aquifer Subbasin Groundwater Sustainability Agencies (“GSAs”) and providing for management is made and entered into and effective upon the date when the last Member signs this Agreement (“Effective Date”) by and among the County of Monterey acting in the capacity of its Groundwater Sustainability Agency (“MCGSA”) and the Salinas Valley Basin Groundwater Sustainability Agency (“SVBGSA”). Either MCGSA or SVBGSA are also referred to as a “Member” or collectively as “Members”.

### **Recitals**

**WHEREAS**, in 2014, the California legislature adopted, and the Governor signed into law, three bills (SB 1168, AB 1739, and SB 1319) collectively referred to as the “Sustainable Groundwater Management Act” (“SGMA”), that initially became effective on January 1, 2015, and that has been amended from time-to-time thereafter; and

**WHEREAS**, the stated purpose of SGMA, as set forth in California Water Code Section 10720.1, is to provide for the sustainable management of groundwater basins at a local level by providing local groundwater agencies with the authority, and technical and financial assistance necessary, to sustainably manage groundwater; and

**WHEREAS**, SGMA requires the designation of Groundwater Sustainability Agencies (“GSAs”) for the purpose of achieving groundwater sustainability through the adoption and implementation of Groundwater Sustainability Plans (“GSPs”) or an alternative plan for all medium and high priority basins as designated by the California Department of Water Resources (“DWR”); and

**WHEREAS**, each Member is a GSA, as defined by SGMA, duly organized and existing under and by virtue of the laws of the State of California, and each Member has water supply, water management or land use responsibilities within the 180/400 Foot Aquifer Subbasin (“Subbasin”), which is designated subbasin number 3-004.01 in the most recent edition of DWR Bulletin Number 118; and

**WHEREAS**, the California Department of Water Resources (“DWR”) on or about December 18, 2019 recognized County of Monterey as the exclusive GSA for an approximately 400-acre parcel within the Subbasin currently owned by RMC Pacific Materials, LLC and depicted in Exhibit A attached hereto (the “CEMEX Site”); and

**WHEREAS**, the SVBGSA is the exclusive GSA for the majority of the Subbasin, excluding the CEMEX Site and one other small area, also depicted in Exhibit A attached hereto; and

**WHEREAS**, Section 107027 (b) of SGMA allows for a single groundwater sustainability plan covering a basin to be adopted by one GSA or multiple GSAs; and

**WHEREAS**, members of this Agreement intend for a single GSP to be adopted for the entire Subbasin; and

**WHEREAS**, SVBGSA has prepared a draft GSP for the entire Subbasin, including the CEMEX Site; and

**WHEREAS**, Section 10720.7 of SGMA requires all basins designated as high or medium priority basins by the DWR in its Bulletin 118 be managed under a single GSP or coordinated GSPs pursuant to SGMA; and

**WHEREAS**, the Members have determined that the sustainable management of the Subbasin pursuant to SGMA may best be achieved through the cooperation of the Members operating through this Agreement; and

**WHEREAS**, the Members agree that this Agreement does not establish nor is it intended to establish a GSA; and

**WHEREAS**, the Members desire, through this Agreement, to enter into this Agreement for the purpose of organizing the various GSAs in the Subbasin and cooperating in the development and implementation of a single GSP for the Subbasin; and

**WHEREAS**, the governing board of each Member has determined it to be in the Member's best interest and in the public interest that this Agreement be executed;

**NOW THEREFORE**, in consideration of the matters recited and the mutual promises, covenants, and conditions set forth in this Agreement, the Members hereby agree as follows:

## **TERMS OF AGREEMENT**

### **ARTICLE 1. DEFINITIONS**

As used in this Agreement, unless context requires otherwise, the meanings of the terms set forth below shall be as follows:

- 1.1. "Agreement" means this Cooperation Agreement.
- 1.2. "CEMEX Site" has the meaning set forth in the recitals above.
- 1.3. "Committee" means any committee established pursuant to Article 8 of this Agreement.
- 1.4. "Coordination Agreement" means a legal agreement adopted between two or more GSAs that provides the basis for coordinating multiple GSAs or GSPs within a basin. Coordination Agreements are required if multiple GSAs in a basin prepare multiple GSPs.
- 1.5. "County GSA" or MCGSA means the County of Monterey Groundwater Sustainability Agency.
- 1.6. "Effective Date" means the date on which the last Member executes this Agreement.
- 1.7. "GSA Workgroup" has the meaning set forth in Article 7 of this Agreement.
- 1.8. "GSA" means a groundwater sustainability agency.

1.9. “GSP” means a groundwater sustainability plan.

1.10. “Management Area” refers to an area within a basin for which a GSP may identify different minimum thresholds, measurable objectives, monitoring, or projects and management actions unique to that area based on differences in water use sector, water source type, geology, aquifer characteristics, or other factors.

1.11. “Member” means each party to this Agreement that satisfies the requirements of Article 6 of this Agreement, including any new members pursuant to Article 6 of this Agreement.

1.12. “Member’s Governing Body” means the board of directors, board of supervisors, council, trustees or other voting body that controls the individual public agencies that are Members.

1.13. “Project Agreement” has the meaning assigned to it in Article 11 of this Agreement.

1.14. “SGMA” has the meaning assigned to it in the first Recital of the Agreement.

1.15. “Specific Project” means a project undertaken by some, but not all Members, pursuant to Article 11 of this Agreement.

1.16. “SVBGSA” means Salinas Valley Basin Groundwater Sustainability Agency.

1.17. “State” means the State of California.

1.18. “Subbasin” means the 180/400 Foot Salinas Aquifer Subbasin, to reflect the most recent Bulletin 118 boundaries and as currently shown on the map attached to this Agreement as Exhibit B, which is incorporated herein by this reference. (DWR basin 3-004.01).

## **ARTICLE 2. PURPOSE OF THE AGREEMENT**

2.1. The purposes of this Agreement are to: (a) develop, adopt, and implement a single, legally sufficient GSP for the Subbasin in order to implement SGMA requirements and achieve the sustainability goals outlined in the GSP; (b) cooperatively carry out the purposes of SGMA in the Subbasin; (c) coordinate basin-wide public involvement and stakeholder outreach and engagement in implementing the Subbasin GSP; (d) specify the terms under which MCGSA designates SVBGSA to manage the CEMEX Site under SGMA and implement the SVBGSA’s GSP for the CEMEX Site, as well as the Subbasin and (e) to maintain mutual respect for the autonomy of individual Members and preservation of each Member’s separate legal authorities, powers, duties and rights as separate public agencies and GSAs, except as set forth in this Agreement.

## **ARTICLE 3. TERM**

3.1. This Agreement shall become effective on the Effective Date and shall continue in full force and effect until terminated pursuant to the provisions of Article 13.

## **ARTICLE 4. PRESERVATION OF POWERS**

4.1 Preservation of Powers. Each Member retains its powers granted through SGMA or otherwise afforded by law. Each Member reserves its rights, in its sole and absolute discretion, and all Members confirm that nothing contained herein shall:

4.1.1. Alter any water right, contract right, or any similar right held by any Member or any Member's landowners or customers, or amend a Member's water delivery practice, course of dealing, or conduct.

4.1.2. Limit or interfere with any Member's rights and authorities over its own internal matters, including, but not limited to, a Member's legal rights to surface water supplies and assets, groundwater supplies and assets, facilities, operations, water management, and water supply matters.

4.1.3. Modify or limit any Member's police powers, land use authorities, well permitting or any other authority.

## **ARTICLE 5. BASIN COOPERATION**

5.1. Each Member recognizes the benefits of cooperation amongst the GSAs within the Subbasin and, to that end, will in good faith, and with the consent of each Member's governing body, take actions to help effect the timely adoption of a single GSP for the entire Subbasin. Therefore, the members consent that each may adopt a single GSP for the entire Subbasin pursuant to Section 10727(b) of SGMA.

5.2. MCGSA designates SVBGSA as the manager of the CEMEX Site for groundwater management purposes under SGMA, including the implementation and enforcement, if necessary, of the GSP. SVBGSA agrees to undertake all reasonable and necessary actions to comply with SGMA at the CEMEX Site, including but not limited to taking actions to review, adopt and implement the GSP, including filing of annual reports and documents required by SGMA. SVBGSA further agrees to schedule and conduct all required or requested meetings of SVBGSA or MCGSA for adoption, implementation and management of the GSP. SVBGSA also agrees to assist MCGSA in the development and adoption process of the GSP, including but not limited to analysis and response to comments on the GSP as well as drafting amendments to the GSP.

5.3. MCGSA authorizes SVBGSA to exercise any and all legal authorities in compliance with applicable law for the CEMEX Site. In the event MCGSA disagrees with SVBGSA's use of legal authority affecting the CEMEX Site, MCGSA may promptly, and no later than sixty (60) calendar days following the disputed action, provide notice of disagreement and proceed to dispute resolution in accordance with Article 9.2.

5.4. Nothing herein is intended to or shall be construed as a waiver, relinquishment, abandonment, or infringement of the legal authorities of the County GSA for the CEMEX Site, or of any other legal authority of the County of Monterey.

5.5. The Members shall, whenever and as often as reasonably requested to do so by any other Member, execute, acknowledge, and deliver or cause to be executed, acknowledged, and delivered, any and all documents and instruments as may be necessary, expedient or proper in the reasonable opinion of the requesting Member to carry out the purposes and intent of this Agreement.

## **ARTICLE 6. MEMBERS**

6.1. Initial Members. The initial Members of this Agreement shall be the County of Monterey Groundwater Sustainability Agency and Salinas Valley Groundwater Sustainability Agency.

6.2. New Members. Additional Parties may join the Agreement and become a Member provided that the prospective new member: (a) is an established GSA in the Subbasin as provided by SGMA (Water Code §10723); (b) pays its share of all previously incurred costs, if any; (c) pays all applicable fees and charges, if any; and (d) receives unanimous consent to join from the existing Members, evidenced by the execution of a written amendment to this Agreement signed by all Members, including the new public agency.

## **ARTICLE 7. GSA Workgroup**

7.1. Formation of the GSA Workgroup. This Agreement shall hereby establish the GSA Workgroup that will meet upon the request of any Member. Without amending this Agreement, the composition of the GSA Workgroup may be altered from time to time to reflect the withdrawal of any Member and/or the admission of any new Member. The GSA Workgroup shall consist of the following representatives, who shall be appointed in the manner set forth in Article 7:

7.1.1. One (1) representative appointed by the governing body of each Member, who shall be a member of the governing body of the Member (each, a “Member Director”).

7.1.2. One (1) alternate representative appointed by the governing body of each Member, who may be a member of the governing body or designee of the Member (each, an “Alternate Member Director”).

7.2. Purpose of the GSA Workgroup. The purpose of the GSA Workgroup shall be to establish: (a) a GSA cooperation forum of Member Directors; (c) a mechanism whereby Members raise, and attempt in good faith to resolve, disputes that may occur between and among Members pursuant Article 9.2 of this Agreement; and (d) if necessary, a mechanism to make advisory recommendations to the Members concerning implementation of the GSP for the CEMEX Site.

7.3. Alternate Member Directors. Alternate Member Directors shall not participate as a Member Director in any discussions or deliberations of the GSA Workgroup unless appearing as a substitute for a Member Director due to absence. If the Member Director is not present, the Alternate Member Director appointed to act in his/her place shall have the authority to act in his/her absence. Alternate Member Directors are encouraged to attend all GSA Workgroup meetings and stay informed on current issues before the GSA Workgroup.

7.4. Terms. The term for each member of the GSA Workgroup is four (4) years and these individuals may be reappointed. Each Member Director and Alternate Member Director shall serve at the pleasure of the appointing Member’s governing body and may be removed from the GSA Workgroup by the appointing Member’s governing body at any time. If, at any time, a vacancy occurs on the GSA Workgroup, a replacement shall be appointed by the

appropriate Member to fill the unexpired term of the previous Member Director's seat pursuant to this Article 7 and within ninety (90) days of the date that such position becomes vacant.

7.5. Removal of GSA Workgroup Members. A Director who no longer meets the qualifications set forth in Article 7.1 is automatically removed from the GSA Workgroup. Upon removal of a Member Director, the Alternate Member Director shall serve as a Member Director until a new Member Director is appointed.

## **ARTICLE 8. OTHER COMMITTEE FORMATION**

8.1. Other Committees. The GSA Workgroup may, upon unanimous vote, form additional committees to assist in the implementation of this Agreement and SGMA, including committees comprised of staff or consultant representatives from the Members. Committee meetings shall be noticed to and open to other Members.

## **ARTICLE 9. DECISION-MAKING AND DISPUTE RESOLUTION**

9.1. Decision-making Authority. Topics where the Members desire coordinated decision-making will be considered by the GSA Workgroup, and the Member Directors will strive for unanimous recommendations that will be presented to each Member's governing body for consideration. Such topics include, but are not limited to, implementation of the GSP, including adaptive management measures, and associated financial arrangements. When unable to reach unanimous recommendations, the GSA Workgroup will outline the areas in which it does not agree, providing some explanation to inform the respective GSAs' governing bodies. The recommendations of the GSA Workgroup notwithstanding, ultimate decision-making authority for topics considered by the GSA Workgroup resides with each Member's governing body in accordance with Article 4.1.

9.2. Dispute Resolution. It is the desire of Members to informally resolve all disputes and controversies related to this Agreement, whenever possible, at the least possible level of formality and cost. If a dispute occurs, staff representatives of the disputing Members shall meet and confer in an attempt to resolve the matter. If informal resolution cannot be achieved, the matter will be referred to the GSA Workgroup for further good faith efforts to resolve the dispute. With unanimous consent, the GSA Workgroup may engage the services of a trained mediator or retain technical consultants to assist with dispute resolution. In the event the GSA Workgroup is unable to resolve the dispute, any Member may resort to available legal and equitable remedies to resolve disputes.

## **ARTICLE 10. MANAGEMENT AREAS**

10.1. Formation of Management Areas. The Members do not, at this time, contemplate management areas. However, the Members reserve the right to amend the GSP to create Management Areas within the Subbasin. A Management Area could be defined along the boundaries of one or more Member's jurisdictional boundaries, or it could be defined along other boundaries. In accordance with SGMA, any definition of Management Areas would be for the purposes of enhancing the ability of the GSAs to achieve and maintain sustainable groundwater management in the Subbasin. If Management Areas are formed, the following shall apply:

10.1.1. Common and Management Areas Chapters. The GSP will be organized so that there are GSP chapters or sections that address issues common to all Members followed by Management Area chapters or sections that may include specific minimum

thresholds, measurable objectives, monitoring protocols and projects. All chapters must be consistent with the Subbasin sustainability goals.

10.1.2. Management Area Lead Responsibilities and Coordination. Each of the Members will have the responsibility to cooperatively develop their relevant Management Area chapter(s) for inclusion into the GSP. The development of all Management Area chapters will be coordinated through the GSA Workgroup to ensure consistency and efficiency.

10.1.3. Retention of Powers Granted through SGMA. If Management Areas are formed for the CEMEX Site, County GSA shall have the sole right to: 1) approve the sections or chapters of the GSP related to Sustainable Criteria and Projects and Actions as applicable within the CEMEX Site Management Area; 2) consider the interests of beneficial uses and users as required by Water code §10723.4 and GSP regulation §354.10; and 3) exercise the powers, without limitation, conferred upon a GSA by SGMA.

10.1.4. Failure to Submit Management Area Chapter. In the event of a failure by any Member to develop and submit a Management Area chapter within the deadline set by mutual agreement, failure to comply may lead to withdrawal or termination of this Agreement pursuant to Article 13 of this Agreement, or other legal remedies available to the Members.

## **ARTICLE 11. SPECIFIC PROJECTS**

11.1. Member Specific Projects. In addition to the general activities undertaken by all Members, any Member may initiate a Specific Project to implement or comply with SGMA or the GSP. The Member proposing a Specific Project shall provide advance notice of their intent to undertake such project to the GSA Workgroup prior to committing to the Specific Project. The other Members shall promptly and not later than (60) days later respond to the Member proposing the Specific Project with notice of intent to participate or to not participate in the Specific Project. Upon notice of intent to participate, the affected Members shall negotiate a Project Agreement as set forth in section 11.2, below. If the other Members are not interested in participating in the Specific Project, then the proposing Member may individually pursue the Specific Project pursuant to section 11.3, below.

11.2. Project Agreement. Prior to undertaking any Specific Project in Article 11.1 for which a notice to intent to participate is made, the Members electing to participate in the Specific Project shall enter into a Project Agreement. A Member may elect not to participate in a Specific Project by providing notice and not entering into the Project Agreement. Each Project Agreement shall provide the terms and conditions by which the Members that enter into the Project Agreement will participate in the Project. All assets, rights, benefits, and obligations attributable to the Specific Project shall be assets, rights, benefits, and obligations of those Members that have entered into the Project Agreement. Any debts, liabilities, obligations, or indebtedness incurred in regard to a particular Specific Project shall be the debts, liabilities, obligations, and indebtedness of those Members that have executed the Project Agreement in accordance with the terms thereof and shall not be the debts, liabilities, obligations, and indebtedness of those Members that have not executed the Project Agreement.

11.3. Specific Projects Undertaken by One Member. All assets, rights, benefits and obligations attributable to Specific Projects undertaken by one Member shall be the assets, rights, benefits and obligations of that Member. Any debts, liability, obligations, or indebtedness incurred in regard to such Specific Projects shall be the debts, liabilities, obligations and indebtedness of the Member undertaking the Specific Project.

## **ARTICLE 12. FINANCIAL PROVISIONS**

12.1. The Members acknowledge that the cost of the GSP was previously funded in a fair and equitable manner and no party shall seek reimbursement from the other for any cost incurred for the completion of the GSP. Following GSP adoption, as needed, continuing cooperation may be funded by Member contributions. If the Members decide that cost-sharing is required for any contract or expenditure made pursuant to this Agreement, any cost-sharing allocations shall be agreed to in writing by the Members in advance of executing any contracts with consultants, vendors, or other contractors or incurring any expense. Any such contracts shall be drafted in a manner that reflects that consultants, vendors, or contractors hired to perform work under this Agreement are working on behalf of the Members and will be expected to work with the Members on a collective basis and with each Member on an individual basis, as needed. Such contracts shall be made enforceable by the Members. The contracts shall include appropriate indemnity and insurance provisions agreed upon by the Members. In the event a Member acts as the official contracting party and executes a contract on behalf of the Members (the "Contracting Party"), the Contracting Party shall:

12.1.1. comply with all applicable local, state, and federal laws including, without limitation, the California Public Contract Code and California Labor Code;

12.1.2. provide the other Members a reasonable opportunity to review any bids received and to review and provide input on any draft contract prior to its execution;

12.1.3. not approve any change orders that increase the cost of the original contract by more than 10% without prior consultation and written consent of the other Members;

12.1.4. provide diligent oversight of the work conducted by any contractor, vendor, or consultant under contract executed pursuant to this Agreement; and

12.1.5. maintain complete, accurate, and clearly identifiable records with respect to all contracts executed, and provide to the other Members, upon reasonable request, all records, documents, reports, conclusions, work product, and other information related in any way to any contract executed on behalf of the Members pursuant to this Agreement.

## **ARTICLE 13. WITHDRAWAL AND TERMINATION**

13.1. Withdrawal. A Member may unilaterally withdraw from this Agreement by providing notice of withdrawal, in writing, to the other Members. Notices of withdrawal submitted after the GSP has been adopted by the GSAs and transmitted to DWR shall not be effective until the Members have met, conferred and satisfactorily resolved issues associated with withdrawal to ensure that the withdrawal does not cause the Subbasin to be noncompliant



with SGMA and potentially subject the Subbasin to probationary status, including, if applicable, the Members negotiating and adopting a Coordination Agreement under SGMA.

13.2. Termination of Agreement. This Agreement may be rescinded by unanimous written consent of all Members.

13.3. Right of Member in Event of Withdrawal or Termination. Upon withdrawal or termination of a Member, the Member shall be entitled to use all relevant, non-confidential data or other information developed by any Member or the Members under SGMA or used in the implementation of the GSP.

13.4. Financial Obligations. Upon withdrawal or termination of a Member, the Member shall remain responsible for any outstanding financial obligation agreed to pursuant to Article 11 or 12.

#### **ARTICLE 14. MISCELLANEOUS**

14.1. No Predetermination or Irretrievable Commitment of Resources. Nothing in this Agreement shall constitute a determination by any of its Members that any action shall be undertaken or that any unconditional or irretrievable commitment of resources shall be made, until such time as the required compliance with all local, state, or federal laws, including without limitation the California Environmental Quality Act, National Environmental Policy Act, or permit requirements, as applicable, has been completed.

14.2. Notices. Notices hereunder shall be sufficient if delivered via electronic mail, First-Class mail or facsimile transmission to the addresses as specified in Exhibit A.

14.3. Amendment. This Agreement may be amended at any time, by unanimous agreement of the Members, provided that before any amendments shall be operative or valid, they shall be in writing and signed by all Members hereto.

14.4. Agreement Complete. This Agreement constitutes the full and complete agreement of the Members. This Agreement supersedes all prior agreements and understandings, whether in writing or oral, related to the subject matter of this Agreement that are not set forth in writing herein.

14.5. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

14.6. Execution in Counterparts. The Parties intend to execute this Agreement in one or more counterparts each of which shall be considered an original Agreement.

14.7. Withdrawal by Operation of Law. Should the participation of any Member to this Agreement be decided by the courts to be illegal or in excess of that Member's authority or in conflict with any law, the validity of this Agreement as to the remaining Members shall not be affected thereby.

14.8. Assignment. The rights and duties of the Members may not be assigned or delegated without the written consent of all other Members. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void.

14.9. Binding on Successors. This Agreement shall inure to the benefit of, and be binding upon, the successors or assigns of the Members.

14.10. Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and any action related to the terms of this Agreement will be filed in Monterey County Superior Court.

14.11. GSA Status. By execution hereof, each Member represents that it is a legal entity authorized to be a Groundwater Sustainability Agency pursuant to California Water Code §§ 10723 and/or 10724.

14.12. Indemnity. In lieu of the provisions of Government Code section 895.6, and pursuant to Government Code section 895.4, each Member agrees to defend, indemnify and hold harmless the other Member, and its officers, employees and agents, from any and all claims, suits, judgments, damages, penalties, costs, expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees, and any other professional fees) that arise from or are related in any way to each Member, its employees, officers, or other agents in the operation and/or performance of this Agreement; provided, however, that no Member shall indemnify or hold harmless another Member for that other Member's own negligent acts, errors, or omissions, or willful misconduct, in the operation and/or performance of this Agreement. This indemnity shall survive the termination of this Agreement and the withdrawal of any Member to this Agreement.

14.13. Joint Defense. In the event of any challenge to the Subbasin GSP as it relates to the CEMEX Site, or made subject to a claim or penalty regarding the same, the Members shall meet and confer to determine whether to further coordinate and cooperate by undertaking joint defense, including utilizing a common interest/joint defense agreement.

IN WITNESS WHEREOF, the parties hereto, pursuant to resolutions duly and regularly adopted by their respective governing boards, have caused their names to be affixed by their proper and respective officers as of the date of execution of this Agreement.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chair, County of Monterey GSA

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chair, SVBGSA

APPROVED AS TO FORM AND LEGALITY

By: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

