

MEMORANDUM



Public Works Department
Fiscal Services Division
1022 26th Ave. E.
Bradenton, FL 34285

MANATEE COUNTY FLORIDA

Phone: 941-708-7450
Fax: 941-708-7502
www.mymanatee.org

To: Vicki Tessemer, Board Records Manager, Clerk of the Circuit Court

Thru: Carmen Mosley, Fiscal Operations Division Manager *C. Mosley*

From: Jane Oliver, Bond Coordinator *Jane Oliver*

Date: April 4, 2013

APPROVED IN OPEN SESSION

APR 09 2013

Subject: LAKE ST. CLAIRE BORROW PIT
RELEASE RECLAMATION AGREEMENT (Previous Owner)
RELEASE LETTER OF CREDIT
ACCEPT RECLAMATION AGREEMENT (New Owner)
ACCEPT LETTER OF CREDIT

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

NOTE: Property has changed ownership; therefore new owner is responsible for financial assurances

Please schedule on your consent calendar for the next available Board of County Commissioner's Agenda, the following "Form of Motion":

- **Authorization to release the Agreement in Conjunction with Letter of Credit as Security Insuring Compliance of Site Reclamation** in the amount of \$98,579.00;
- **Authorization to release and return Letter of Credit, and any amendments associated with this Letter, in conjunction with the above Agreement.** Funds will be returned to Wade Parker, Sr. Vice President of Regions Bank located at ;1900 5th Avenue North, Birmingham, AL 35203;
 - **Letter of Credit No. 92-2511812289-30001** issued through Regions Bank;
 - **Amount of Security \$98,579.00;**

Originals to Jane Oliver (vj)

Vicki Tessemer – Lake St. Claire Borrow Pit
April 4, 2013
Page 2

- **Acceptance of**, and authorization for Chairman to execute the *Agreement in Conjunction with Letter of Credit as Security Insuring Performance and Compliance of Site Reclamation* in the amount of \$98,579.00;
- **Acceptance of**, and authorization for Chairman to execute the Letter of Credit in conjunction with the above Agreement;
 - **Letter of Credit** No. 0264237321 issued through Wells Fargo;
 - **Expiring** April 2, 2018;
 - **Amount** of Security \$98,579.00.

CM/jo

cc: Records
Charlie Hunsicker, Director, NRD
Rob Brown, Division Manager, NRD
William Clague, County Attorney's Office
Dan Wolfson, Finance Director
Alissa Powers, NRD
Karen Dakin, ESDA Realty, Inc.
Regions Bank
Wells Fargo

Attachments

MEMORANDUM



Natural Resources Department
Environmental Protection Division
202 6th Avenue East
Bradenton, FL 34208

MANATEE COUNTY FLORIDA

Phone: 941.742.5980
Fax: 941.742.5996
www.myanatee.org

To: Jane Oliver, Public Works Department
From: Alissa Powers, Environmental Program Manager, NRD AOP
Date: April 3, 2013
Subject: Lake St. Claire Borrow Pit

Attached is the new Letter of Credit and Agreement in Conjunction with the Letter of Credit for the Lake St. Claire Borrow Pit. The Letter of Credit is for \$98,579.00. This Letter of Credit is to replace the existing Letter of Credit for this project.

I have reviewed the bonds and amounts and have determined that they meet the requirements of The Manatee County Land Development Code Section 732.

Accordingly, please schedule with the Clerk of the Circuit Court's consent calendar for the next available Board of County Commissioner's Agenda, the following "Form of Motion".

- **Authorization to release** the following *Agreement in Conjunction with Letter of Credit as Security Insuring Compliance of Site Reclamation* for completion of site reclamation in the amount of \$98,579.00;

Authorization to release and return the following Letter of Credit, in conjunction with the above Agreement to Verna Asset Management, LLC, 100 North Tampa Street, Suite 3400, Tampa, Florida 33602, Attn: Kathryn Ball;

NOTE: The property has change ownership and therefore the new owner is responsible for the financial assurances.

- **Acceptance of**, and authorization for Chairman to execute the *Agreement in Conjunction with Letter of Credit as Security Insuring Performance and Compliance of Site Reclamation* for Phase I;
- **Acceptance of** and authorization for Chairman to execute the Letter of Credit in conjunction with the above Agreement;
 - **Letter of Credit No.** 0264237321 issued through Wells Fargo Bank;
 - **Amount of Performance** \$98,579.00;

I would appreciate receiving a copy of the executed documents after they are accepted and signed by the Board of County Commissioners.

Thank you for your assistance on this matter.

Attachments: Agreement in Conjunction with Letter of Credit as Security Insuring Compliance of Site Reclamation
Letter of Credit No. 0264237321

cc (w/o attachments):

Rob Brown, Environmental Protection Division Manager, NRD
William Clague, CAO
Kathryn Ball, Verna Asset Management, LLC
Tom Robinson, Wells Fargo



For: Lake St. Claire Borrow Pit
Name of Project

**AGREEMENT IN CONJUNCTION WITH
LETTER OF CREDIT AS SECURITY INSURING PERFORMANCE AND
COMPLIANCE OF SITE RECLAMATION**

WHEREAS, ESDA Reality, a Florida Inc., (“Landowner”) is the Landowner of the project properties and has made application to Manatee County, Florida (“County”) to revise an approved Operating Permit, originally approved pursuant to SP-07-02 (Special Permit for Major Earthmoving), for the purpose of to revise an approved Operating Permit, originally approved pursuant to EM-07-02 and to replace the Letter of Credit which ensures site reclamation with a Letter of Credit ensuring same; and,

WHEREAS, ESDA Reality, a Florida Inc. authorized to do business in the State of Florida, (“Landowner”) has an agreement with Dakin Natural Soils, a Florida Inc. (“Operator”) under which Operator has been granted the right to enter into and upon the property to operate the Borrow Pit thereon; and,

WHEREAS, the County in accordance with Section 732.4.2 of the Manatee County Land Development Code requires when the operator is not the owner of the land being mined then the Landowner and Operator shall be co-applicants as principals jointly and severally liable as co-principals on the Letter of Credit, securing reclamation performance. Hereinafter the Operator and the Landowner shall be known as the “Co-applicants”; and,

WHEREAS, the County, in accordance with the Land Development Code, the Special Permit and the Operating Permit, shall require security to be posted by the co-applicants to ensure the completion of Site Reclamation is an amount which represents at least one hundred thirty (130) percent of that cost; and,

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, it is hereby understood and agreed:

1. The Co-applicants, in consideration of the County’s issuance of a revised Operating Permit to the Landowner for the Project, and for other valuable considerations, hereby guarantees the performance of said Earthmoving and Reclamation Site Plan for Phase I, as shown on Exhibit 5A-1 and hereby agrees to fully comply with the requirements of the Comprehensive Plan and Chapters 732 of the Land Development Code.
2. The Co-applicants herewith tender unto the County a Letter of Credit No. 0264237321 in the amount of Ninety Eight Thousand Five Hundred Seventy Nine and no/100 Dollars (\$98,579.00), dated 4/2/13 issued by Wells Fargo Bank, N.A., redeemable in favor of Manatee County Government as security for the completion of the Phase I Site Reclamation in connection with the revised Operating Permit EM 07-02(R2).

ACCEPTED IN OPEN SESSION

APR 09 2013

For: Lake St. Claire Borrow Pit
Name of Project

3. In the event the Co-applicants should fail or refuse to expeditiously perform in accordance with the Earthmoving, Construction and Reclamation Site Plans, the County or its assigns, shall give written notice to the Co-applicants to correct or cure the deficiencies asserted by the County. The Co-applicants shall, within thirty (30) days after receipt of written notice satisfactorily undertake to perform corrective actions. If at the end of that period, the deficiencies have not been corrected or satisfactory actions have not been undertaken to commence the corrections, the County, its agents, or its assigns, at its option, shall notify the Clerk of its intentions to commence the corrections the County or its agents shall have the right to enter upon the project site to initiate, correct, or complete the Site Reclamation, in accordance with the requirements of the Land Development Code, the Special permit, or the Operating Permit and the various plans, proposals and certifications submitted with the application for the Operating Permit.
4. In the event the County does give notice and undertakes to correct the above stated deficiencies, the County shall have the right to draw upon the security provided by the co-applicants for all costs or expenses, direct or incidental, incurred in the exercising of its rights hereunder. Further, the County shall not be responsible for any penalties incurred or interest lost by Co-applicant by the exercising of County's rights hereunder. Should this amount of security not be maintained following demand by the County, County shall be authorized to suspend the revised Operating Permit, and upon said suspension, Co-applicants shall cease operation forthwith.
5. The Co-applicants agree to indemnify, defend and hold harmless the County from any suits, actions, claims, losses or damage of any nature based upon or arising out of any damage to person or property caused by or arising from any act, omission, performance or nonperformance of the Co-applicants, their agents, servants, employees, or others under the Co-applicants' direction or control; and to pay County all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings that the County sustains because of a default by the Co-applicants under their approvals without regard to the amount of the security identified above. Should Co-applicant fail to, or refuse to complete such matters, as required, nothing herein shall be construed as affecting the County's right to resort to any and all remedies against Co-applicant, including specific performance.
6. It is anticipated that the Co-applicants may request an amendment to this Agreement to provide for an alternative form of security and the associated agreements related to said security. Upon application, the county shall review proposed security and related agreements for compliance with the Land Development Code and approval of such shall not be unreasonably withheld.
7. The parties hereby agree that any and all actions or disputes arising out of this Agreement shall be governed by the laws of the State of Florida, and any such actions shall be brought in the Twelfth Judicial Circuit in and for Manatee County, Florida.

For: Lake St. Claire Borrow Pit
Name of Project

8. This Agreement shall run with the land and shall be binding on the Operator and Landowner and their successors and assigns. The Landowner, at Landowner's expense, shall record this Agreement against the project site described in Exhibit "A" hereto in the Public Records of Manatee County no later than thirty (30) days after the execution of this Agreement by all parties. Upon full performance and satisfaction of the requirements of the Borrow Pit Reclamation Plan, this Agreement and Letter of Credit, and Section 732 of the Land Development Code, the County shall provide a written release to the Co-applicants which can be recorded in the Public Records.

9. All notices required or authorized under this Agreement shall be given in writing and shall be delivered by U.S. mail or by hand delivery to the parties, addressed as follows:

ESDA Realty, Inc.

Attention: Karen E. Dakin
9801 289th Street East
Myakka City, FL 34251

Dakin Natural Soils

Attention: Jerry Dakin
9801 289th Street East
Myakka City, FL 34251

Chairman
Manatee County
Board of County Commissioners

P.O. Box 1000
Bradenton, Florida 34270

10. If any part of this Agreement or any application thereof to any person or circumstances is declared invalid for any reason, then such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable and the remaining provisions of this Agreement, and all applications thereof not having been declared invalid, shall remain in effect.

SIGNED AND SEALED this _____ day of _____, 20____ For: Lake St. Claire Borrow Pit

WITNESSES:
Scott Cagle
Witness
Type or Print Name
MPB0001
Witness
MARIA W. BARROSO
Type or Print Name

ESDA Realty, Inc.
(Landowner)
BY: Karen E. Dakin
Signature
Karen E. Dakin, Managing Member
Type or Print Name
Title (If attorney-in-fact Attach Power of Attorney)
9801 289th ST E
Postal Address
MYAKKA CITY FL 34251
City State Zip

NOTARY ACKNOWLEDGMENT

STATE OF: Florida
COUNTY OF: Manatee

The foregoing instrument was acknowledged before me this 2nd day of April, 2013, by Karen Dakin, as Owner, (Title), on behalf of the corporation identified herein as Developer and who is personally known to me or who has produced Dr. Lie (Type of Identification) as identification.

NOTARY SEAL

LORI OSBORNE
Commission # DD 874468
Expires May 24, 2013
Bonded Thru Troy Fain Insurance 800-385-7019

Lori Osborne
Notary Public
LORI OSBORNE
Print Name of Notary

Approved and accepted for and on behalf of Manatee County, Florida, this 2nd^{9th} day of April, 2013.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

BY: [Signature]
VICE Chairman

ATTEST: [Signature]
R. B. Shore, Clerk of the Circuit Court



For: Lake St. Claire Borrow Pit

SIGNED AND SEALED this _____ day of _____, 20____

WITNESSES:
[Signature]
 Witness
Scott Cagle
 Type or Print Name
[Signature]
 Witness
Maria W. Barroso
 Type or Print Name

Dakin Natural Soils, Inc.
 (Operator)
 BY: [Signature]
 Signature
Jerry Dakin, President
 Type or Print Name

 Title (If attorney-in-fact Attach Power of Attorney)
9801 289th ST E.
 Postal Address
Hyakka City Fl 34251
 City State Zip

NOTARY ACKNOWLEDGMENT

STATE OF: Florida
COUNTY OF: Manatee

The foregoing instrument was acknowledged before me this 2nd day of April, 2013, by Jerry Dakin, as President, (Title), on behalf of the corporation identified herein as Developer and who is personally known to me or who has produced Dr. Lic (Type of Identification) as identification.

NOTARY SEAL

 LORI OSBORNE
 Commission # DD 874468
 Expires May 24, 2013
 Bonded Thru Troy Fain Insurance 800-385-7018

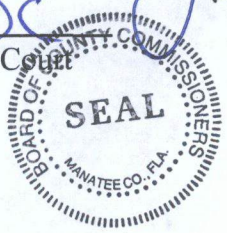
[Signature]
 Notary Public
Lori Osborne
 Print Name of Notary

Approved and accepted for and on behalf of Manatee County, Florida, this 2nd day of April, 2013.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

BY: [Signature]
 Vice-Chairman

ATTEST: [Signature]
 R. B. Shore, Clerk of the Circuit Court





LETTER OF CREDIT FOR
SECURITY INSURING PERFORMANCE AND COMPLIANCE OF SITE
RECLAMATION

Wells Fargo Bank, N.A.
5801 Pelican Bay Blvd., Suite 101
Naples, Florida 34108

April 2, 2013

Board of County Commissioners
Manatee County, Florida
Bradenton, FL 33505

Re: Our Clean Irrevocable Credit No. 0264237321
For (Lake St. Claire Borrow Pit)

Dear Commissioners:

By order of ESDA Realty, Inc. and Dakin Natural Soils, Inc., ("Co-Applicants"), we hereby open our Clean Irrevocable Credit No.0264237321 in favor of Manatee County, Florida ("County"), in the amount of (NINETY-EIGHT THOUSAND FIVE HUNDRED SEVENTY NINE/100 DOLLARS (\$98,579.00), effective as of the date this Credit is accepted and approved, and expiring at our office at the close of business on April 2, 2018, which is sixty (60) months later.

This letter of credit is given as security to insure compliance of site reclamation that has not yet been completed in connection with the operating permit associated with the Lake St. Claire Borrow Pit. This letter of credit shall operate as security for the new operating permit number EM-07-02(R2) and the terms of the Agreement In Conjunction With Letter of Credit As Security Insuring Performance and Compliance With Site Reclamation between ESDA Realty, Inc. and Dakin Natural Soils, Inc. and Manatee County currently being applied for in conjunction with Lake St. Claire Borrow Pit. It shall replace the Letter of Credit currently securing operating permit EM-07-02(R) as stated in the Agreement in Conjunction with Letter of Credit as Security Insuring Compliance with Site Plan dated March 24, 2010. This stated amount of this letter of credit represents 130% of the site reclamation costs.

ACCEPTED IN OPEN SESSION

APR 09 2013

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

Funds under this Letter of Credit are available and will be paid promptly to the County hereunder not exceeding the aggregate amount of this Letter of Credit, against the County's sight draft on us mentioning this Letter of Credit, accompanied by a statement purporting to be signed by a County Engineer to the effect that such funds are required to exercise the County's right to correct the Defects and to pay costs incidental thereto, and that at least 30 days in advance of the presentation of the sight draft for payment, the Letter of Credit

Page 2

County has provided to the Co-Applicants by certified Mail, return receipt requested, notice of the County's intentions to draw funds on this Letter of Credit.

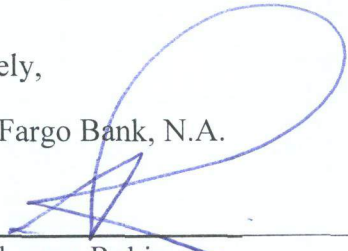
Funds will also be available to the County if an extension of this Letter of Credit or substitution of security is not posted to complete the five (5) year period of time for "the posting of a defect security" as required by Ordinance 90-01. Notice will be given in the same manner as to remedy defects, but the statement of the County's Engineer shall not be necessary. The amount of any draft under this Letter of Credit shall be endorsed on the reverse side hereof. If the planting is completed prior to the (5) year expiration date, the County agrees to release this Letter of Credit within (30) days of such completion.

Payment under this Letter of Credit will be effected upon presentation of your draft accompanied by the required document(s) (the "Drawing") to Wells Fargo Bank, N.A., 5374 Fruitville Road, Sarasota, Florida 34232, Attention: Thomas Robinson and a copy of such drawing sent simultaneously by facsimile to Wells Fargo Bank - Naples Fax Number 239-598-7522.

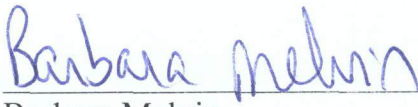
Sincerely,

Wells Fargo Bank, N.A.

By: _____


Thomas Robinson
Vice President

ATTEST/WITNESS:



Barbara Melvin
Vice President

Approved and accepted for and on behalf of Manatee County, Florida, this
9 day of September, 2013.

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

By: [Signature]
Printed Name:
"Title"

ATTEST: [Signature]
R.B. Shore, Clerk of Circuit Court



Clerk of the Circuit Court - Manatee County
 R.B."Chips" Shore
 P.O. Box 25400 Bradenton FL 34206
 Visit our website: "www.manateeclerk.com"

ES DA REALTY
 FRONT COUNTER

RECEIPT
 #1 of #1

Thank You - Rec.# 420210125 -
 420210125
 Case No: 2013 RC 000004 - 2013 RC 000004
 Bk./Pg./Doc.# 2468/376/3140319 -
 2468/383/3140319
 04/16/2013 15:30:24
 scarpazza RECORDING CASH BOOK
 CHECK/MONEY 1009 69.50
 ORDER
 MASTER CARD 7784249 10.00
 Total 79.50
 Receipt(s) Amount 79.50
 Change 0.00

AR PAYOR: Book# Page#
 DOC TYPE: AGR CALC AMOUNT: \$0.00
 PAGES: 8 FILE#
 Receipt: 420210125 4/16/13 3:34PM By: HHOOEY

CODE	RECEIPT DESC.	FUND	ACCOUNT	QTY	FEES
R	RECORDING TRUST	199	000000341150	0	4.50
R	RECORDING FEES	001	000000341100	0	33.00
R	CLERK CT TECH FUND	199	000000341160	0	15.20
R	FL ASSOC COURT CLERK	001	000000208911	0	0.80
R	BD OF COUNTY COMM	001	000000208912	0	16.00
C	COPIES	001	000000341400	8	8.00
CC	CERTIFYING COPIES	001	000000341400	1	2.00



RECEIPT TOTAL: \$79.50
 GRAND TOTAL: \$79.50

Receipt#
 420210125 thru 420210125

OFFICE HOURS *****8:30 AM - 5:00 PM
 "Pride in Service with a Vision to the Future"

THIS RECEIPT MUST BE VALIDATED BY CENTRAL CASHIERING