

MEMORANDUM

Accepted in Open Session
Manatee County Board of County Commissioners

3/20/18



To: Ed Hunzeker
County Administrator

Thru: Ron Schulhofer, Director
Public Works Department

From: Carmen Mosley, Sr. Fiscal Services Mgr./
Jane Oliver, Bond Coordinator
Public Works Department

Date: March 6, 2018

Subject: **THOMPSON AGGREGATE & MATERIALS (PDI-93-04)
RELEASE REQUIRED IMPROVEMENTS AGREEMENT
ACCEPT REQUIRED IMPROVEMENTS EXTENSION AGREEMENT
ACCEPT LETTER OF CREDIT AMENDMENT**

On January 26, 1995, Thompson Aggregate & Materials Co. Inc. entered into an Agreement with Manatee County to store aggregate materials at the location of 7611 US 41 North in Palmetto, FL. This agreement remains in effect until all materials have been removed and the property brought back to its original condition. This extension agreement and Letter of Credit Amendment extending the expiration date allows Thompson Aggregate & Materials Co. to remain compliant with the agreement with Manatee County. We therefore, per Resolution R-14-86, respectively request the County Administrator to approve the following:

- **Authorization to release the *Required Improvements Agreement* in the amount of \$27,300.00;**

LETTER OF CREDIT NO. S-4322 WILL REMAIN IN PLACE. This Letter will be used to secure the one (1) year extension for the required improvements agreement, (see below).

- **Acceptance of and authorization for County Administrator to execute the *Required Improvements Agreement*. This Agreement will be for a one (1) year extension, secured by a Letter of Credit previously accepted by the Board of County Commissioners.**
- **Acceptance of amended Letter of Credit, Amendment No. 9, dated December 22, 2016, issued through The Bank of Tampa;**
 - **Letter of Credit No. S-4322;**
 - **Expiration Date – January 26, 2019;**
 - **Amount of Performance Bond \$27,300.00.**

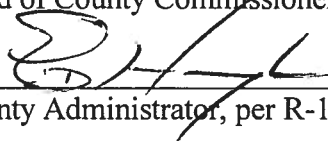
Public Works Department
Fiscal Division
1022 26th Avenue East, Bradenton, FL 34208
Phone number: (941) 708-7450

Instructions to Board Records

1. Copies of release request to: Claudia Campos (Claudia.campos@ManateeClerk.com), Julie Jensvold (Julie.jensvold@ManateeClerk.com), Abby Lindecamp (abby.lindecamp@ManateeClerk.com), Felicia Krumm (felicia@gometalroofing.com), and Jane Oliver (jane.oliver@mymanatee.org).

**MANATEE COUNTY, a political
subdivision of the State of Florida**

By: Board of County Commissioners

By: 
County Administrator, per R-14-86

RS/CM/jo

cc: Records Management
Ken LaBarr, Infrastructure Inspections Div. Mgr., Public Works
L. V. Thompson, Thompson Aggregate & Materials Co.

Attachments

RESOLUTION NO.R-14-86

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, PROVIDING FOR THE DELEGATION OF CERTAIN AUTHORITY TO THE COUNTY ADMINISTRATOR AND COUNTY ATTORNEY REGARDING PERFORMAMCE SECURITIES AND DEFECT SECURITIES PURSUANT TO SECTION 910 OF THE MANATEE COUNTY LAND DEVELOPMENT CODE; REPEALING RESOLUTION NO. R-08-169; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Section 910 of the Manatee County Land Development Code (the "Code") sets forth the procedures for approval of subdivision plats, including requirements for the posting of performance securities and defect securities with the County to secure the completion of certain public and private improvements; and

WHEREAS, pursuant to Resolution No. R-08-169, the Board of County Commissioners of Manatee County, Florida, (the "Board") delegated certain authority to the County Administrator and County Attorney to exercise the County's rights against such securities in accordance with the Code; and

WHEREAS, it is in the best interest of the public health, safety and welfare of the County for the Board to repeal Resolution No. R-08-169 in its entirety and replace it with this Resolution, to further implement the provisions of Section 910 of the Code; and

WHEREAS, the Board finds that by delegating the authority in the specific circumstances set forth herein, the County is better able to protect the public interest.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Manatee County, Florida:

Section 1. Findings. The findings set forth above are hereby adopted as findings of the Board and incorporated herein by reference.

Section 2. Delegation of Authority. The Board hereby delegates to the County Administrator and the County Attorney, and their respective designees, the authority to accept, hold and draw upon performance securities and defect securities posted with the County pursuant to Section 910 of the Code. Such authority shall apply to any subdivision for which (a) the Board has approved the subdivision plat and a related improvements agreement in accordance with Section 910 of the Code. Such authority shall include, without limitation, the following:

- i. The authority to accept, hold, maintain and, upon completion of required improvements or expiration of the required defect guaranty period,

release performance securities and defect securities posted with the County pursuant to Section 910 of the Code;

- ii. The authority to administer and exercise the County's rights under any related improvements agreement, and to release such improvements agreement in accordance with the provisions thereof upon full performance by the developer;
- iii. The authority to sign and issue upon the County's behalf any notices of default when a developer defaults in its obligations under an improvements agreement (such notices of default to be issued to the obligor in default of its obligations and to any third-party guarantor, including any entity holding a letter of credit or surety bond in the County's favor);
- iv. The authority to call upon any such third-party guarantor to complete the required work or to provide the guaranteed monies to the County for the completion of same (in accordance with the performance security or defect security and the related agreement);
- v. The authority to draw upon a performance security or defect security whenever the County has the right to do so and it is necessary to do so in order to protect the public interest; and
- vi. The authority of the County Attorney to initiate judicial or administrative proceedings to enforce the County's rights under a performance security or defect security and related improvements agreement.

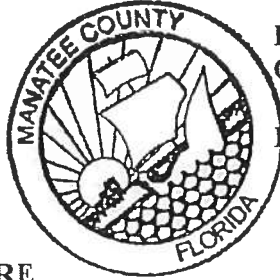
Such authority shall be vested concurrently in the County Administrator and the County Attorney. Should both such officials be unavailable, the authority shall rest with any Deputy County Administrator or any Assistant County Attorney designated in writing by the County Administrator or County Attorney, respectively.

Section 3. Repeal of Resolution No. R-08-169. Resolution No. R-08-169 is hereby repealed.

Section 4. Severability. If any section, sentence, clause, or other provision of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such section, sentence, clause, or other provision shall be deemed severable, and such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption by the Board of County Commissioners.

PASSED AND DULY ADOPTED with a quorum present and voting this 9th day of September, 2014.



BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

By: Larry Butta
Chairperson

ATTEST: R.B.SHORE
Clerk of the Circuit Court

By: Robin Liberty
Deputy Clerk

For: Thompson Aggregate & Materials
Securing Aggregate Removal from Site @ End of Operation
(Name of Project)

REQUIRED IMPROVEMENTS AGREEMENT

(In conjunction with a Letter of Credit as security guaranteeing removal of aggregate materials.

WHEREAS, THOMPSON AGGREGATE & MATERIALS CO., INC. (Developer) has made application to Manatee County, Florida (County), for approval of a proposed final site plan identified as THOMPSON AGGREGATE & MATERIALS (7611 US 41 North, Palmetto, FL 34211) f/k/a Vulcan Palmetto Railyard PDI-94-03 (F) (Project); and

WHEREAS, the Board of County Commissioners of Manatee County, has decreed by stipulation that the final site plan shall not receive approval unless the Developer has provided performance security guaranteeing to the satisfaction of the county that all aggregate materials will be removed from the property in question at the time the operation ceases; and

WHEREAS, in connection with the Project the Developer has submitted construction drawings for the Required Improvements which are on file with and have been approved by the County; and

WHEREAS, the developer desires to obtain approval of the project; and

WHEREAS, the developer has submitted a cost estimate certified by the engineer of Record to be an accurate reflection of the cost to remove any remaining aggregate material at the close of operation, and herewith tenders to the County a Letter of Credit which is in an amount representing at least 130% of that estimated cost.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

1. That the developer, in consideration of the County's approval of the proposed Project, and for other valuable consideration, hereby agrees to remove all remaining aggregate material to the original ground level at the time the operation ceases and to otherwise comply fully with the Land Development Code, any other conditions of the Project's approval, and all other applicable regulations, requirements, and agreements.
2. That the Developer herewith tenders to the County a Letter of Credit, Number S-4322, dated JANUARY 26, 2009, and AMENDMENT NO. 10 dated DECEMBER 27, 2017 with THE BANK OF TAMPA (Financial Institution), in the amount of TWENTY-SEVEN THOUSAND THREE HUNDRED & NO/100 Dollars (words), \$27,300.00 (numbers), expiring on the 26TH day of JANUARY, 2019. **NOTE: THIS LETTER OF CREDIT IS DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR UNLESS AT LEAST SIXTY (60) DAYS PRIOR NOTICE IS GIVEN THAT THE BANK OF TAMPA ELECTS NOT TO RENEW FOR ANY SUCH ADDITIONAL PERIOD.** Said bond shall not expire until the required removal of all aggregate material has been accomplished and inspected by Manatee County.

3. CONDITIONS OF THE SECURITY FOR THE BENEFIT OF THE COUNTY:
 - (a) The Developer shall remove the remaining aggregate material to the satisfaction of the County in accordance with the final site plan thereto approved by the County, at least three (3) months prior to the expiration date of the Letter of Credit and shall indemnify and safe harmless the County against or from all claims, costs, expenses, damages, injury, or loss, either direct or consequential including without limitation all engineering, legal, and contingent costs which the county may sustain on account of the failure of the Developer to fulfill within the times specified its obligations as described herein.
 - (b) Alternatively, if the Developer should fail to refuse to complete the removal of all aggregate material from the property at the cessation of operation, the County, at its option, shall have the right to remove or cause to be removed the aforesaid aggregates. In the event the County should exercise such right, the county shall have the unqualified right to draw funds for the purpose of the removal of all aggregate material from the property, or causing the same to be done, and for paying costs incidental to the exercise of its rights hereunder, in such amounts as the County shall in its sole discretion determine, in accordance with the terms of the Letter of Credit.
4. The Developer agrees that is liable to the County for all costs and damages, as described above, that the County may incur in connection with the removal of all aggregate material from the property, without regard to the amount of the Letter of Credit identified above. Should the Developer fail or refuse to complete the removal of the aggregate material, as required, nothing herein shall be construed as affecting the County's right to resort to any and all legal and equitable remedies against the Developer, including specific performance, to which the Developer hereby agrees.
5. This Agreement shall become effective upon the execution hereof by both parties hereto.

(Required Impv Agreement)
SIGNED AND SEALED this

4 day of December, 2017

For: Thompson Aggregate & Materials

WITNESSES:

Beatriz Larrabee
Witness
Type or Print Name

Melissa Webber
Witness
Type or Print Name

Thompson Aggregate & Materials

BY: [Signature]
Developer
Signature
L.V. Thompson
Type or Print Name

Title (If attorney-in-fact Attach Power of Attorney)

5015 E. Hillsborough Ave.

Postal Address

Tampa FL 33610

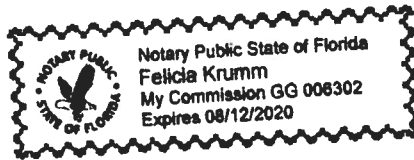
City State Zip

NOTARY ACKNOWLEDGMENT

STATE OF: Florida
COUNTY OF: Hillsborough

The foregoing instrument was acknowledged before me this 4th day of December, 2017 by L.V. Thompson, as President, (Title), on behalf of the corporation identified herein as Developer and who is personally known to me or who has produced _____ (Type of Identification) as identification.

NOTARY SEAL:



[Signature]
Notary Public
Print Name of Notary

Approved and accepted for and on behalf of Manatee County, Florida, this 1st day of March, 2018.

MANATEE COUNTY

A political subdivision of the State of Florida
By: [Signature] Board of County Commissioners
By: [Signature] County Administrator

NOTARY ACKNOWLEDGMENT

STATE OF: FLORIDA
COUNTY OF: MANATEE

The foregoing instrument was acknowledged before me this 1st day of March, 2018, by Ed Hunziker, as County Admin., (Title), on behalf of the corporation identified herein as Developer and who is personally known to me or who has produced _____ (Type of Identification) as identification.

NOTARY SEAL:



[Signature]
Notary Public
KATHLEEN C. ELLIS
Print Name of Notary



The Bank of Tampa

International Banking Division
4503 Woodland Corporate Blvd., Suite 100
Post Office Box One
Tampa, Florida 33601-0001
813-872-1236

DATE December 27, 2017

AMENDMENT TO IRREVOCABLE LETTER OF CREDIT NO. S-4322
AMENDMENT NO. 10

<p>ADVISING BANK</p>	<p>APPLICANT Thompson Aggregate & Materials Co., Inc. 5015 E. Hillsborough Avenue Tampa, Florida 33610</p>
<p>BENEFICIARY Board of County Commissioners 1112 Manatee Avenue West, 4th Floor Bradenton, Florida 34205 For: Thompson Aggregate & Materials 7611 US 41 North, Palmetto, FL 34211</p>	

OUR LETTER OF CREDIT NUMBER S-4322 DATED January 26, 2009 ISSUED IN YOUR FAVOR IS HEREBY AMENDED AS FOLLOWS:

- In accordance with the automatic renewal clause contained therein, the expiry date of this Standby Letter of Credit is hereby extended for one additional year, up to January 26, 2019.



UNLESS WE ARE NOTIFIED WITHIN (20) DAYS FROM DATE OF THIS AMENDMENT BY THE BENEFICIARY OF NON- ACCEPTANCE, WE WILL CONSIDER THE AMENDMENT IN ITS ENTIRETY TO BE ACCEPTED.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

VERY TRULY YOURS,

Authorized Signature

THIS AMENDMENT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION)
INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600.