MEMORANDUM

To: Cheri Coryea  
Acting County Administrator

Thru: Chad Butzow, Interim Director  
Public Works Department

From: Carmen Mosley, Sr. Fiscal Services Mgr.  
Brandy Wilkins, Bond Coordinator  
Public Works Department

Date: April 23, 2019

Subject: DAKIN NATURALS SOILS BORROW PIT
RELEASE AGREEMENT AND LETTER OF CREDIT
ACCEPT NEW AGREEMENT AND LETTER OF CREDIT
ACCEPT WETLAND MITIGATION AGREEMENT
FOR APPROVED BORROW PIT

On April 9, 2013, the Board of the County Commissioners accepted an Agreement in Conjunction with Letter of Credit as Security Insuring Performance and Compliance of Site Reclamation from Dakin Natural Soils, Inc and ESDA Reality. At this time, ESDA Reality, a Florida Inc. (“Landowner”), and Dakin Natural Soils, a Florida Inc. (“Landowner”) are requesting to provide a new agreement and Letter of Credit for the Dakin Natural Soils Borrow Pit in the amount of $364,577.00. Acceptance of this request will insure performance and compliance of site reclamation for Dakin Natural Soils Borrow Pit. The Environmental Protection Division of the Parks & Natural Resources Department has reviewed the request and documents and determined that they meet the requirements of the Manatee County Development Code Section 702. We therefore, respectively request the County Administrator on behalf of the Board of County Commissioners per R-14-86 adopted on September 9, 2014, to approve the following form of motion:

- **Authorization to release** Agreement in Conjunction with Letter of Credit as Security Insurance Performance and Compliance of Site Reclamation in the amount of $133,949.00;

- **Authorization to release and return** the Letter of Credit, and any amendments associated with this letter, in conjunction with the above referenced Agreement. Documents will be returned to Karen E. Dakin with ESDA Reality, Inc. located at 9801 289th Street East, Myakka City, FL 34251;

- **Letter of Credit** No. 0264237321 issued through Wells Fargo Bank N.A.;
- **Amount** of Performance Bond $133,949.00;

- **Acceptance of**, and authorization for the County Administrator to execute Agreement in Conjunction with Letter of Credit as Security Insuring Performance and Compliance of Site Reclamation;
Dakin Natural Soils Borrow Pit
April 23, 2019
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- **Accept and Execute** Letter of Credit securing performance and compliance of site reclamation for Dakin Natural Soils Borrow Pit;
  - **Letter of Credit No.** 4067286 issued through First Florida Integrity Bank;
  - **Expiration Date** – March 15, 2024
  - **Amount** - $364,577.00.

**MANATEE COUNTY, a political subdivision of the State of Florida**
By: Board of County Commissioners

By: [Signature]
County Administrator, per R-14-86

**Instructions to Board Records**
Copies of release request to: Julie Jensvold (Julie.jensvold@manateeclerk.com), Danielle Heaton (Danielle.heaton@manateeclerk.com), Robin Hamilton (Robin.hamilton@manateeclerk.com), Alissa Powers (Alissa.powers@mymanatee.org), and Brandy Wilkins (brandy.wilkins@mymanatee.org).

cc: Records Management
    Ken LaBarr, Infrastructure Inspections Division Manager
    Alissa Powers, Environmental Program Manager, PNRD

Attachment
AGREEMENT IN CONJUNCTION WITH
LETTER OF CREDIT FOR 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, EM-19-01, approved pursuant to SP-07-02 (Special Permit for Major Earthmoving), for the purpose of continued major earthmoving operations at Dakin Natural Soils Borrow Pit, and to provide a Letter of Credit which ensures site reclamation of Phase 1, Phase 2 and Phase 3; and,

WHEREAS, ESDA Reality, a Florida Inc. (“Landowner”), has an agreement with Dakin Natural Soils, a Florida Inc. (“Operator”), and will operate the Borrow Pit; and,

WHEREAS, the County in accordance with Section 702.51 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; and,

WHEREAS, Co-applicants have submitted an Engineer’s Opinion for Reclamation Security (attached) of Phase 1, Phase 2 and Phase 3 and the Security provided for herein guarantees 130% of the site reclamation costs of ($364,577); 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 an 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 1, Phase 2 and Phase 3, as shown on Exhibit 1 of EM-19-01 and hereby agrees to fully comply with the requirements of the Comprehensive Plan and Chapters 702 of the Land Development Code.

2. The Co-applicants herewith tender unto the County a Letter of Credit No. 4067286 in the amount of Three Hundred Sixty Four Thousand Five Hundred Seventy Seven and no/100 Dollars ($364,577.00), dated March 15, 2019, issued by First Florida Integrity Bank, redeemable in favor of Manatee County Government as security for the completion of Phase 1, Phase 2 and Phase 3 Site Reclamation in connection with the Operating Permit for Dakin Natural Soils Borrow Pit.
3. In the event the Co-applicants should fail or refuse to expeditiously perform in accordance with the Site Reclamation requirements, 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 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.

8. This Agreement shall run with the land and shall be binding on the Operator and Landowner and their successors and assigns.

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.
For: Dakin Natural Soils Borrow

SIGNED AND SEALED this 31st day of March, 2019

WITNESSES

Karen Dakin
Witness

Type or Print Name

Witness

ESDA Realty, Inc.
(Owner)

BY: Karen Dakin
Signature
Karen E. Dakin, Managing Member
Type or Print Name

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

NOTARY ACKNOWLEDGMENT

STATE OF: Florida
COUNTY OF: Manatee

The foregoing instrument was acknowledged before me this 31st day of March, 2019 by
Karen Dakin, as Managing Member (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:

LEAH M. MARTIN
Notary Public - State of Florida
Commission # FF 221692
My Comm. Expires Aug 9, 2019
Bonded through National Notary Assn.

Approved and accepted for and on behalf of Manatee County, Florida, this ______ day of ________, 2019.

MANATEE COUNTY
A political Subdivision of the State of Florida
By: Board of County Commissioners
By:________________________
County Administrator

NOTARY ACKNOWLEDGMENT

STATE OF: Florida
COUNTY OF: Manatee

The foregoing instrument was acknowledged before me this 16th day of April, 2019 by
Chevi Gayle, as County Administrator (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:

MARianne Lopez
Notary Public - State of Florida
Commission # FF 24519
My Comm. Expires Jan 9, 2019
County Public - State of Florida
Bonded through National Notary Assn.
Pit

SIGNED AND SEALED this 31st day of March, 2019

WITNESSES:

Lydia Wilters
Witness

Meyssa Geisler
Witness

Scott Eagle
Witness

Dakin Natural Soils, Inc.
Operator

BY:

Signature

Jerry Dakin, President
Title (If attorney-in-fact Attach Power of Attorney)

Postal Address

City State Zip

NOTARY ACKNOWLEDGMENT

STATE OF: Florida
COUNTY OF: Manatee
The foregoing instrument was acknowledged before me this 31st day of March, 2019, 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 ________________ (Type of Identification) as identification.

NOTARY SEAL:

Approved and accepted for and on behalf of Manatee County, Florida, this ______ day of ________, 2019.

MANATEE COUNTY
A political Subdivision of the State of Florida
By: Board of County Commissioners
By: ________
County Administrator

NOTARY ACKNOWLEDGMENT

STATE OF: ________________
COUNTY OF: ________________
The foregoing instrument was acknowledged before me this __________ day of __________________, 20__, by __________________, as __________________, (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:
LETTER OF CREDIT FOR
SECURITY INSURING PERFORMANCE AND COMPLIANCE OF SITE RECLAMATION

First Florida Integrity Bank
3560 Kraft Road
Naples, Florida 34105

March 15, 2019

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

Re: Our Clean Irrevocable Credit # 4067286
For: Dakin Natural Soils, Inc.

Dear Commissioners:

By order of ESDA Realty, Inc. and Dakin Natural Soils, Inc., ("Co-Applicants"), we hereby open our Clean Irrevocable Credit No. 4067286: in favor of Manatee County, Florida ("County"), in the amount of $364,577.00, effective as of the date this Credit is accepted and approved, and expiring at our office at the close of business on March 15, 2024 which is sixty (60) months later.

This letter of credit is given as security to insure compliance of site reclamation the Dakin Natural Soils Borrow Pit, fka Lake St. Claire Borrow Pit. This letter of credit shall operate as security for operating permit number EM-15-01 and EM-07-02(R2) and EM-19-01 and the terms of the Agreement In Conjunction, With Letter of Credit As Security Insuring Compliance With Site Reclamation between ESDA Realty, Inc., and Dakin Natural Soils, Inc. and Manatee County currently being applied for in conjunction with Dakin Natural Soils Borrow Pit. This stated amount of this letter of credit represents 130% of the site reclamation costs.

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 County has provided to the Co-Applicant 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 reclamation 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 documents(s) (the “Drawing”) to First Florida Integrity Bank Naples, Florida 34105, Attention: Thomas Robinson.

This Letter of Credit is subject to the International Standard Practice 1998 (“ISP98”) International Chamber of Commerce Publication No. 590 and the laws of the State of Florida.

Sincerely,

Thomas Robinson
Senior Vice President
First Florida Integrity Bank

ATTEST/WITNESS:

By: HALLIE CALABRO

Printed Name: HALLIE CALABRO

* * * * * * * * * * * *

Approved and accepted for and on behalf of Manatee County, Florida, this ______ day of ________, 2019.

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

By: Stephen R. Johnson
Chairperson

ATTEST: Deputy Clerk