

**PERFORMANCE AGREEMENT
Restoration of Wastewater Treatment Sites**

FILE NO.

THIS AGREEMENT entered into this 15 day of September, 2005, by and between the LOS OSOS COMMUNITY SERVICES DISTRICT, hereinafter called the "APPLICANT," and the COUNTY OF SAN LUIS OBISPO, a political subdivision in the State of California, hereinafter referred to as "COUNTY."

1. The APPLICANT shall deposit with COUNTY satisfactory security (cash, cashier's or certified check, certificate of deposit, letter of credit, or surety bond) in the amount of Two Hundred Twenty-Five Thousand and Sixty Dollars (\$225,060.00) to guarantee satisfactory site restoration of three wastewater treatment construction sites pursuant to section 3311 of the 1997 Uniform Building Code.

2. If APPLICANT desires to submit a surety bond as security, it shall consist of a faithful performance bond with a responsible corporate surety conditioned upon the faithful performance by APPLICANT of all of the covenants and conditions required to be performed by APPLICANT by this Agreement. The surety or sureties on any and all furnished by APPLICANT must be satisfactory to COUNTY.

3. This Agreement guarantees site restoration to a non-erosive and non-hazardous condition at the following three construction sites where grading necessary for wastewater treatment will be undertaken by APPLICANT:

- a. The wastewater treatment facility site on Los Osos Valley Road (APN #074,229,017), and;
- b. The Broderson effluent disposal site on Broderson Road. (APN #074,022,074), and;
- c. The South Bay Well Site and Staging Area for Whitaker Construction at the SW Corner of Nipomo Road and South Bay Blvd.

4. APPLICANT shall complete all necessary site restoration required in order to eliminate hazardous conditions at each of the three sites listed in paragraph 3 (the "Restoration Work") to the satisfaction of the San Luis Obispo County Director of Planning and Building or her authorized representative ("Department of Planning and Building") within sixty (60) days of cessation of work at any of the three sites.

5. The Department of Planning and Building shall review the completed Restoration Work for the compliance with the terms and conditions of this Agreement within a reasonable amount of time after receipt of written notification from the APPLICANT requesting such review. If all conditions of this Agreement are met, COUNTY shall refund the deposit or release the surety within a reasonable amount of time after completion of review. In the event that the Department of Planning and Building determines that the terms and conditions have not been complied with, it shall notify the APPLICANT in writing of the terms and conditions not in compliance.

6. If the Restoration Work is not satisfactorily completed within the time set in Paragraph 4 above, the COUNTY may elect to complete the same. If the COUNTY does elect to complete the

Restoration Work, the COUNTY may, at its option, declare the bond or deposit or other security forfeited and utilize the proceeds to complete the Restoration Work, or the COUNTY may complete the Restoration Work and recover the full cost and expense thereof, including reasonable attorney's fees from the APPLICANT and the surety.

7. No waiver by the COUNTY at any time of any of the terms, conditions or covenants of this Agreement shall be deemed as a waiver at any time thereafter of the same or of any other term, condition or covenant herein contained.

8. Permission is hereby granted to the COUNTY, or its authorized agent, to enter upon the parcels which are the subject of this Agreement for the purpose of inspection or completion of any and all of the Restoration Work under this Agreement.

9. APPLICANT shall defend, indemnify and save harmless the County of San Luis Obispo, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, judgments or liability occasioned by the performance or attempted performance of the provisions hereof, or in any way arising out of the Agreement, including, but not limited to, those predicated upon theories of violation of statute, ordinance or regulation, violation of civil rights, inverse condemnation, equitable relief, or any wrongful act or any negligent act or omission to act on the part of the APPLICANT or of agents, employees, or independent contractors directly responsible to the APPLICANT; providing further that the foregoing obligations to defend, indemnify and save harmless shall apply to any wrongful acts, or any passively negligent acts or omissions to act, committed

jointly or concurrently by the APPLICANT, the APPLICANT's agents, employees, or independent contractors and the County, its agents, employees, or independent contractors. Nothing contained in the foregoing indemnify provision shall be construed to require the APPLICANT to indemnify the COUNTY against any responsibility or liability; (a) in contravention of Section 2782 of the Civil Code; or (b) for Restoration Work performed by County or its agents, employees and independent contractors

10. It is understood and agreed by the parties hereto that this Agreement shall bind the heirs, executors, administrators, successors, and assigns of the respective parties to the Agreement.

11. Pursuant to Board of Supervisor's Resolution No. 80-362, the San Luis Obispo County Director of Planning and Building or his duly authorized representative may execute this Agreement on behalf of the COUNTY.

APPLICANT

Los Osos Community Services District

By: 

BRUCE S. BUEL, General Manager

COUNTY OF SAN LUIS OBISPO

VICTOR HOLANDA, AICP

Director of Planning and Building
County of San Luis Obispo

By: 

Dated: 9-15-05