ROAD MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20_____, by and between VIBORG SAND AND GRAVEL, INC., a California corporation, hereinafter referred to as the "Applicant," and the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, hereinafter referred to as the "County."

WITNESSETH:

WHEREAS, by Board of Supervisor Resolution 2008-454, dated December 16, 2008, the Applicant has an approved Conditional Use Permit and Reclamation Plan, DRC2006-00039, to conduct sand and gravel mining operations and haul quarried material from a portion of the Estrella River over Airport Road, County Road No. 5237.

WHEREAS, the operations authorized by the Conditional Use Permit cause continued heavy usage of these roads which will require additional maintenance expense to the County for subsequent repairs; and

WHEREAS, as a condition of approval of said Conditional Use Permit, the Applicant is required to enter into a road maintenance agreement with the County to compensate the County in accordance with Section 22.36.110 of the County's Land Use Ordinance for increased road costs which will be incurred because of Applicant's operations; and

WHEREAS, execution and performance of the provisions of this agreement by Applicant will satisfy the road maintenance agreement requirement imposed by condition 39 of the conditions of approval of said Conditional Use Permit.

NOW THEREFORE, in consideration of the approval of said use, it is agreed by and between Applicant and County hereto as follows:

1. Maintenance fee rate. For the purposes of this agreement, the current additional road maintenance expense, i.e. maintenance fee, equals $2.15 per truckload ($0.11 per cubic yard) for each and every truckload (cubic yard) of quarried material hauled over these roads.

2. Maintenance fee increase. The maintenance fee rate set by this agreement is subject annually to a neutral or positive adjustment based on the *California Department of Transportation Price Index for Selected Highway Construction*, with a beginning index set by the project date of approval by the hearing body, December 16, 2008. The maintenance fee rate set by this agreement may also be adjusted by County in conjunction with any subsequent application by Applicant for a land use permit including, but not limited to, an application for a site plan, development plan or reclamation plan. However, if a new rate is not established at the same time as a condition of any subsequent land use permit, then the most current adjusted maintenance fee rate remains in full force and affect.

3. Applicant records. The Applicant agrees to keep records of all quarried material produced at the site as authorized in the above Conditional Use Permit and transported

on each of the above County roads, and to permit a duly authorized representative of the County Public Works Department to inspect such records during regular business hours in order to verify tonnage hauled during any period.

4. County records. The County shall keep accurate records of all funds expended on each of the above County roads. The Applicant shall have the right to inspect these records during the regular business hours of the County.

5. Quarterly reports. On or before the fifteenth day of each quarter calendar year, the Applicant shall prepare and transmit to the County Public Works Department a quarterly written report delineating the tonnages of all quarried material produced at the site authorized in the above Conditional Use Permit and transported on each of the above County roads by the Applicant and Applicant's agents, employees, and independent contractors during the preceding three (3) months.

6. Payment. From these reports or any other reliable information, the Applicant shall compute the amount that is due and payable to the County of San Luis Obispo for payment of the maintenance fee required by this Agreement. The amount shall be calculated as follows: the current maintenance fee rate times the number of truckloads (cubic yards) hauled the previous three (3) months. This payment is due on the fifteenth of each new quarter calendar year. Any amount due and unpaid by applicant shall accrue interest at the rate of eighteen percent (18%) per annum.

7. Limitation on maintenance fee. Notwithstanding any other provision of this agreement, the maintenance fee required herein shall apply only to products produced at and transported from the site and facilities authorized by Conditional Use Permit DRC2006-00039.

8. Transportation permit. A transportation permit issued by the County Public Works Department, and associated additional fees in addition to the maintenance fee required herein, shall be required for any vehicle which exceeds the weight and size limits specified in Division 15 of the Vehicle Code of the State of California.

9. Indemnification. The Applicant shall defend, indemnify and save harmless the San Luis Obispo County, 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 this 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 safe 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 indemnity provisions shall be construed to require the Applicant to indemnify the County against any responsibility or liability in contravention of Section 2782 of the Civil Code.

10. No assignment without consent. Applicant shall not have the right to assign or transfer this agreement, or any part hereof, without the prior written consent of the Director of Public Works.

11. Effect of waiver. County's waiver of breach of any one term, covenant, or other provision of this agreement, is not a waiver of breach of any other term, nor subsequent breach of the term or provision waived.

12. Law governing and venue. This agreement has been executed and delivered in, and shall be interpreted, construed and enforced pursuant to and in accordance with the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the County of San Luis Obispo, and such County shall be the venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this agreement.

13. Enforceability. If any term, covenant, condition, or provision of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

14. Notices. Unless otherwise provided, all notices herein required shall be in writing and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to County shall be addressed as follows:

To the County:	Director of Public Works County of San Luis Obispo County Government Center, Room 207 San Luis Obispo, California 93408.
To the Applicant:	Viborg Sand and Gravel, Inc. Attention: Paul Viborg 1529 North River Road Paso Robles, California 93446.

Either party may change the address above by providing notice in writing to the other party. Subsequent notices shall be addressed and transmitted to the new address.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPLICANT

VIBORG SAND AND GRAVEL, INC.,
a California Corporation

By: _____
its President/VP

By: _____
its Secretary

COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson of the Board of Supervisors

ATTEST:

_____
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: _____
Deputy County Counsel

Dated: 4/20/2015

Revision date: March 2015