

STOCKPILING AGREEMENT

This STOCKPILING AGREEMENT (“Agreement”) is made and entered into by and between H & J Contracting, Inc. (“H & J”), and the School Board of St. Lucie County (“School Board”).

WITNESSETH:

WHEREAS, the School Board owns parcels of property located on S.E. Tiffany Avenue in St. Lucie County, Florida, bearing Property Appraiser Tax Identification Nos. 3414-501-3205-250-3 and 3414-501-3212-250-5, and more fully described in the attached Exhibit “A” (together, the “Property”); and

WHEREAS, H & J desires to stockpile certain fill material, not to exceed 80,000 cubic yards (“Material”), on that part of the Property lying ~~north~~~~south~~ of the conservation easement (“Easement”) granted to the South Florida Water Management District (“SFWMD”) in connection with its issuance to the School Board of Environmental Resource Permit No. 56-00274-S-17 (“Permit”), as such Easement is shown on the attached Exhibit B; and

WHEREAS, the School Board desires to retain a portion of the Material as compensation for H & J’s stockpiling such Material on the Property; and

WHEREAS, the School Board has determined that for the period this Agreement will be in effect the Property will not be needed for educational or ancillary purposes; and

WHEREAS, H & J and the School Board desire to reduce their agreement to writing.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements set forth below, the parties agree as follows:

The above recitals are reincorporated herein and made a part of the Agreement.

ARTICLE 1

USE OF THE PROPERTY

1.1 Permitted Uses. Subject to the requirements set forth in paragraph 1.2 of this Agreement, H & J shall be permitted to enter into and use the Property for the following purposes:

- (a) Storage, stockpiling, handling, processing and sale or other disposition of Material ~~excavated from the City of Port St. Lucie EWHIP Howard Creek segment project~~;

- (b) Uses and activities incidental to H & J's stockpiling operations, including clearing and grubbing as necessary for the operation; and
- (c) Ingress and egress over, across and through the Property in a reasonable manner to facilitate stockpiling or the transportation, removal, sale or other disposition of Material, including maintaining a stabilized access road. All site access shall be from Walton Road.

1.2 Requirements. During the entire term of this Agreement, including any renewal, H & J shall meet the following requirements at its sole expense:

- (a) Stockpiling of the Material shall not exceed 20 feet in height above the adjacent undisturbed buffer.
- (b) All areas to be used for stockpiling Material shall be cleared and grubbed and cleared of deleterious material prior to placement of the fill. All cleared material shall be properly disposed of off-site in accordance with local, regional, state and federal laws regulations and ordinance; no burning or other disposal of cleared material shall occur on the Property. Cleaning and grubbing shall meet the requirements of FDOT section 110 and shall be performed within the limits of area of stockpiling.
- (c) That portion of the Property used for stockpiling Material shall be maintained and secured, and all activities on the Property that are authorized by this Agreement shall be appropriately supervised.
- (d) A minimum 50 foot wide vegetative buffer shall be maintained from all property lines and from the boundaries of the Easement.
- (e) Upon removal from the Property of all Material except that to be retained by the School Board, all areas of the Property affected by stockpiling and other activities shall be leveled and stabilized with grass.
- (f) Appropriate measures shall be undertaken to prevent erosion and sedimentation into adjacent wetlands, the Easement and other conservation areas, drainage systems, and all other off site locations and facilities.
- (g) No clearing, grubbing, stockpiling of Material, or vehicular or equipment activity or movement shall occur on or over any portion of the Easement, and all terms and conditions of the Permit shall be observed.

~~(g)~~(h) All deficiencies noted by the School Board or any agency exercising jurisdiction over H & J's use of the Property shall be corrected within 14 days of notification. In the event a noted deficiency is not corrected within such time, the School Board may correct the deficiency and charge all costs to H & J.

~~(h)~~(i) All additional requirements, limitations, and obligations set forth in Article 3 of this Agreement shall be observed.

1.3 Term. The initial term of this Agreement shall be for two (2) years commencing July 13, 2011. This Agreement may be renewed for two additional terms of one (1) year each upon written agreement of the parties executed not later than sixty (60) days prior to the end the then-current term.

1.4 Exclusivity. Throughout the entire term of this Agreement, including any renewal, H & J shall have the sole and exclusive right to the storage, stockpiling, handling, processing and sale or other disposition of the Material on the northern portion of the Property, except for that portion of the Material to be retained by the School Board as set forth herein.

1.5 Monitoring. The School Board may monitor the operations of H & J at any time at the School Board's own cost.

ARTICLE 2

COMPENSATION

2.1 H & J shall leave on the Property for the School Board's use at the end of the initial two year term of this Agreement a minimum of 20,000 cubic yards of clean suitable fill Material. The balance of the Material shall remain the property of H & J for its use, including the sale of the Material by H & J until expiration of the term of this Agreement, including any renewal. The intent of the suitable fill material is for the construction of parking lot and shallow foundations.

2.2 In the event this Agreement is renewed for a third year, as described in paragraph 1.3 above, H & J shall leave on the Property for the School Board's use at the end of the third year a minimum of 30,000 cubic yards of clean suitable fill Material.

2.3 In the event this Agreement is renewed for a fourth year, as described in paragraph 1.3 above, H & J shall leave on the Property for the School Board's use at the end of the fourth year a minimum of 40,000 cubic yards of clean suitable fill Material.

2.4 If at expiration of the term of this Agreement, including any renewal, there remains on the Property any Material in excess of the minimum amount specified in paragraph 2.1,

2.2, or 2.3, whichever is applicable, all such remaining Material shall be retained by the School Board as compensation for the costs of removal or other disposition of such excess Material.

2.5 At expiration of the term of this Agreement, including any renewal, H & J shall obtain from a licensed land surveyor a topographic survey of that portion of the Property used for stockpiling Material to determine the amount of Material remaining by comparison to the existing topographic survey of the Property. In the event the minimum amount of Material specified in paragraph 2.1, 2.2, or 2.3, whichever is applicable, does not remain on the Property, the School Board will provide to H & J written notification of the deficiency. H & J shall have 30 days to remedy the deficiency and provide a new survey. In the event H & J does not remedy the deficiency within such time, the School Board will request bids for placement on the Property of fill material in the amount of the deficiency, and H & J shall be responsible for the full cost of such of such remediation, including all bidding expenses.

2.6 The School Board shall not in any manner whatsoever be responsible or liable for any cost or expense incurred by H & J in any of its occupancy, use, alteration, maintenance, or improvement of the Property, nor for any charge, imposition, fine, fee, levy, or assessment upon the Property during the term of this Agreement, including any renewal, arising from H & J's activities, and any and all such costs and expenses shall be the sole responsibility and obligation of H & J. H & J agrees that this Agreement shall be a completely net agreement for the School Board; that the School Board shall not be responsible during the term of this Agreement, including any renewal, for any cost, damage, expense, or outlay of any nature whatsoever arising from or relating to H & J's activities on the Property; and that H & J shall pay all charges, impositions, fines, fees, levies, assessments, costs, and expenses of every nature and kind relating to the Property and H & J's activities on the Property.

ARTICLE 3

OPERATIONS

3.1. Permits. H & J shall obtain from all governmental authorities exercising jurisdiction over H & J's use of the Property all applicable permits, approvals, consents, licenses, authorizations, permit modifications, and notices required for the lawful conduct of H & J's operations on the Property at H & J's sole expense.

3.2 Liens. H & J will not suffer or permit any construction lien or other lien for work, labor, services, or materials to be attached to any portion of the Property.

3.3 Restoration of Property and Protection of Conservation Areas. At the conclusion of H & J's operations, H & J shall restore the Property site to the extent H & J's operations cause damage to the Property. H & J shall protect all conservation areas and buffer easements within the Property, including the Easement, in full compliance with all terms and conditions of the Permit and governing rules and regulations of the SFWMD.

3.4 Insurance. H & J shall procure and maintain during the term of this Agreement, including any renewal, insurance of the types and subject to the limits set forth below.

(a) Proof of insurance will be furnished by certificate of insurance naming The School Board of St. Lucie County, its officers, board members, employees, and agents as additional insured on general liability and automobile liability insurance policies. Such certificate must contain a provision for notification to the School Board 30 days in advance of any material change or cancellation. All policies must be specifically endorsed to grant the School Board the same notification rights as provided to the first named insured with respect to cancellation and nonrenewal. The School Board reserves the right to review, modify, reject, or accept any required policy of insurance, including limits, coverages, or endorsements.

(b) All insurance carriers providing insurance under this Agreement shall be licensed and authorized to do business in the State of Florida. All insurance carriers must have an A.M. Best Rating of at least A:VII or better.

(c) H & J shall comply with the following insurance requirements:

(1) Commercial General Liability Insurance, including contractual liability, to cover the indemnification and hold harmless provisions set forth in paragraph 3.5 of this Agreement, with limits of not less than:

Each Occurrence	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Products/Completed Operations Aggregate	\$2,000,000
General Aggregate	\$2,000,000
Fire Damage	\$100,000 Any 1 Fire
Medical Expense	\$10,000 Any 1 Person

An additional insured endorsement must be attached to the certificate of insurance and must include coverage for completed operations (ISO CG20101185 or CG20371001 and CG20100704) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary. A per project aggregate limit endorsement should be attached. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the School Board. Coverage for the hazards of explosion, collapse, and underground property damage (XCU) must also be included. Coverage shall extend to independent contractors and fellow employees. Contractual liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insureds clause. There shall not be a "damage to your work" exclusion in the policy. The policy is to include coverage for pollution release at the project location in which the insured is performing non-environmental operations. A "limited pollution liability extension endorsement" may be attached. There shall be no exclusion for mold, silica, or respirable dust or bodily injury or property damage arising out of heat, smoke, fumes, or ash from a hostile fire.

(2) Professional Liability. H & J must maintain professional liability

or equivalent errors and omissions liability insurance with limit of not less than \$1,000,000 per occurrence. For policies written on a claims made basis, H & J shall maintain a retroactive date prior to or equal to the effective date of this Agreement. In the event the policy is canceled, non-renewed, switched to an occurrence form, or there is a change in retroactive date, H & J must purchase an extended reporting period rider during the term of this Agreement, including any renewal, of not less than 3 years. Coverage is to apply on a primary basis.

(3) Business Automobile Liability for any auto (all owned, hired, and non-owned autos) with limits of not less than \$1,000,000 per accident. The certificate holder must be listed as an additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary basis.

(4) Worker's Compensation Insurance with Limits Equal to Florida Statutory Requirements. Employers liability must include limits of at least \$100,000 each accident, \$100,000 each disease/employee, and \$500,000 each disease/maximum. A waiver of subrogation must be provided. Coverage should apply on a primary basis.

3.5 Indemnification and Hold Harmless. To the fullest extent permitted by laws and regulations, and in consideration of the benefits accruing to H & J under this Agreement, H & J shall defend, indemnify, and hold harmless the School Board, its officers, directors, agents, guests, invitees, and employees from and against all liabilities, damages, losses, and costs, direct, indirect, or consequential (including but not limited to reasonable fees and charges of attorneys and other professionals and court and arbitration costs) arising out of or resulting from any act of negligence, recklessness, or intentional wrongful misconduct in the activities undertaken on the Property by H & J or any contractor, subcontractor, or other person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

(a) In any and all claims against the School Board, or any of its officers, directors, agents, or employees by any employee of H & J, any contractor, subcontractor, or other person or organization directly or indirectly employed by any of them to undertake activities on the Property or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for H & J, or any such contractor, subcontractor, or other person or organization under workers' or workmans' compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the School Board, H & J, or any of its contractors or subcontractors. To the extent this indemnification conflicts with any provision of Florida law or statute, this indemnification shall be deemed to be amended in such a manner as to be consistent with such law or statute.

(b) Occupation by H & J of the Property shall be a release to the School Board and every officer and agent thereof from all claims and liability under this Agreement for anything done or furnished by the School Board, and for any act or neglect of the School Board, or of any person relating to or affecting the Property.

ARTICLE 4

MISCELLANEOUS

4.1 Notices. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon transmission by telecopier, upon personal delivery, or on the third day after deposit in the United States Mail, first class postage prepaid, return receipt requested, addressed to the other party at the address shown below:

If to H & J: Tripp Long, Project Manager
3160 Fairlane Farms Road
Wellington, FL 33414

If to School Board: Marty Sanders, P.E., Executive Director
327 NW Commerce Park Drive
Port St. Lucie, FL 34986

With a copy to:
Daniel B. Harrell, Attorney
Gonano & Harrell
1600 South Federal Highway, Suite 200
Fort Pierce, FL 34950-5194

4.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, excluding choice of law provisions.

4.3 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

4.4 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only by the written consent of the parties.

4.5 Attorneys' Fees. In the event of litigation to interpret or enforce any rights under this Agreement, the prevailing party shall be entitled to recover all reasonable costs and expenses in connection with prosecuting or defending such action, including reasonable attorney's fees.

4.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4.7 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

4.8 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

4.9 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

4.10 Further Assurances. Each party shall do and perform or cause to be done and performed any and all further acts and things, and shall execute and deliver all such further agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and to accomplish the purposes of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

H & J Contracting, Inc.

By:_____

Its:_____

Dated:_____

School Board of St. Lucie County

By:_____

Its:_____

Dated:_____

Exhibit A
Property Description

That part of Lots 5 and 6, Block 4, lying South of Walton Road and Lot 11, Block 4, Plat No. 1 St. Lucie Gardens, in Section 31, Township 36 South, Range 41 East, according to the Plat thereof, as recorded in Plat Book 1, Page 35, Public Records of St. Lucie County, Florida, less the South 30 feet of said Lot 11.

Together with:

The South 880 Feet of Lots 12, 13 and 14, Block 4, Plat No. 1 St. Lucie Gardens, Section 31, Township 36 South, Range 41 East, according to the Plat thereof, recorded in Plat Book 1, Page 35, Public Records of St. Lucie County, Florida.

Less the South 30 Feet of said Lots 12, 13 and 14.

Exhibit B Conservation Easements

