



One Firm. One Focus.
Construction Law.

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August 18, 2016

VIA FEDERAL EXPRESS

Ms. Karen Murphy
City of Fort Pierce – Construction Board of Adjustments and Appeals
100 N. US Highway 1
Fort Pierce, Florida 34950

RECEIVED

AUG 19 2016

Building Department

RE: In re building permit fee dispute brought by Jacquin & Sons as agent for the Fee Simple Owner

Dear Ms. Murphy:

In connection with the August 25, 2016 Construction Board of Adjustments and Appeals Hearing, and in conjunction with the suggestion in the rules that some evidence be submitted before the hearing for disbursement to the Board, enclosed please find our preliminary submissions. Of course, we may have additional evidence to be admitted at the hearing.

Should you have any questions, please do not hesitate to contact me.

Sincerely Yours,

Douglas W. Ackerman

DWA/dmr
Enclosure

IN THE CITY OF FT. PIERCE
CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

IN RE: JACQUIN & SONS AS AGENT OF FEE SIMPLE OWNER
BUILDING PERMIT FEE APPEAL

PETITIONER'S INDEX OF DOCUMENTS

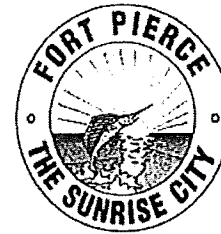
1. City of Fort Pierce Building Department Permit Fees Effective Date March 6, 2012 with receipts
2. International Code Council Building Valuation Data – June 2016
3. Standard Form of Agreement between Owner (Rocla Concrete Tie, Inc.) and Construction Manager (Paul Jacquin & Sons, Inc.) dated 2/7/15
4. Amendment No. 1 to Agreement dated 5/1/2015
5. Amendment No. 2 to Agreement dated 6/24/15
6. Amendment No. 3 to Agreement dated 8/7/15
7. Contract dated November 5, 2013 between St. Lucie County and Paul Jacquin & Sons, Inc
8. Photo of St. Lucie County Recyclables Processing Facility dated 9/22/14
9. Photo PA240066 of inside of Processing Facility (pile of recyclables)
10. Photo PA240070 of inside of Processing Facility (conveyor)
11. City of Fort Pierce Building Department Building Permit No. 1400000025 for \$32,964.00
12. City of Fort Pierce Building Department Building Permit No. 1400000025 for \$3,033.00
13. Memo from Marc Meyers to Michael Jacquin dated August 26, 2015 with March 6, 2012 Permit Fees attached
14. Jacquin & Sons Subcontract Agreement between Paul Jacquin & Sons, Inc. and Tommy Hawkins & Sons, Inc. dated September 11, 2015 in the amount of \$572,555.00
15. Jacquin & Sons Subcontract Agreement between Paul Jacquin & Sons, Inc. and Gary Roberts Nursery & Landscape, Inc. dated January 28, 2016 in the amount of \$71,511.00

City of Fort Pierce
Building Department

Permit Fees

Effective Date: March 6, 2012

**** Plan Review Fee Will be Due at Submittal****



(1)	New buildings and additions	Fee is based on multiplying the value of the building or addition by .010. Such value shall be determined by using the most recent Building Valuation Data for Florida as compiled by the International Code Council (ICC) using the Marshall Valuation Service, as published by the Marshall and Swift Publication Company, Los Angeles, California or on the contract price given by the applicant for the project, whichever is higher. (The data is only intended to be used for determining permit fees and is not intended to be used as an estimating guide.)																
(2)	All other construction except as noted below:	Fee is based on multiplying the value of the work authorized by the permit by .010. The value is determined by the building official. The minimum fee is \$75.00																
(3)	Demolitions:	Base fee plus .010 of the value of the work authorized by the permit. Base Fees:																
		\$275.00 Residential																
		\$150.00 other Residential																
		\$500.00 Commercial																
		\$250.00 other Commercial																
(4)	Special inspections after working hours:	Fee is \$100.00 per/hour minimum two (2) hours																
(5)	Re-inspections: First	Fee is Residential \$50.00 Commercial \$100.00																
	Re-inspections: Second	Fee is Residential \$75.00 Commercial \$150.00																
	Re-inspections: Third	Fee is Residential \$100.00 Commercial \$200.00																
	Re-inspections: Fourth and thereafter	Fee is \$250.00 for each inspection																
(6)	Manufactured mobile homes:	Fee: New buildings and additions																
(7)	Certificate of occupancy or certificate of completion	\$50																
(8)	Miscellaneous trade and construction permits including, but not limited to: **plumbing, **mechanical, **electrical, gas, remodeling, addition, fences, pools, sheds, signs, docks, etc, shall be on a valuation basis according to the following schedule: ** Also See item # 9 for flat fee permits.	Fee is based on multiplying the value of the work authorized by the permit by .010. The value is determined by the Building Official. The minimum fee is \$75.00																
(9)	Flat Rated Permit Fees	<table border="0"> <tr> <td>Moving of structure</td> <td>\$300.00</td> </tr> <tr> <td>Temporary permit without inspection</td> <td>\$20.00</td> </tr> <tr> <td>Temporary permit with an inspection</td> <td>\$75.00</td> </tr> <tr> <td>Electrical Residential</td> <td>\$100.00</td> </tr> <tr> <td>Mechanical Residential - per unit</td> <td>\$150.00</td> </tr> <tr> <td>*Plumbing Residential</td> <td>\$75.00</td> </tr> <tr> <td colspan="2">*water heater replacements & re-pipes only</td> </tr> <tr> <td colspan="2">* this does not include "Insta Hots"</td> </tr> </table>	Moving of structure	\$300.00	Temporary permit without inspection	\$20.00	Temporary permit with an inspection	\$75.00	Electrical Residential	\$100.00	Mechanical Residential - per unit	\$150.00	*Plumbing Residential	\$75.00	*water heater replacements & re-pipes only		* this does not include "Insta Hots"	
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*water heater replacements & re-pipes only																		
* this does not include "Insta Hots"																		
(10)	Generator Installation	Fee is based on multiplying the value of the work authorized by the permit by .010. The value is determined by the building official. The minimum fee is \$75.00.** A separate permit shall be required for L.P/Gas connection																

PREPARED 8/25/15, 14:02:46
CITY OF FT PIERCE BLDG & CODE DIVISION

PAYMENT DUE
PROGRAM BP820L

APPLICATION NUMBER: 15-00001673 600 S 3RD ST
FEE DESCRIPTION AMOUNT DUE

CO FEE	50.00
CITY STORMWATER	4696.04
FIRE/EMS - ALL OTHER	901.80
ROAD IMPACT FEES	13783.30
CNTY LAW ENF - ALL OTHER	869.40
CITY TRN MANUFACTURING	4007.27
CNTY PUBLIC BLDG - ALL	1162.65
BUILDING PERMIT	79000.00
*PLAN CHECK FEE	19500.00
CITY GB MANUFACTURING	2241.55
SURCHARGE OTHER THAN	3081.00
CITY SW MANUFACTURING	2676.29
TOTAL DUE	131969.30

Please present this receipt to the cashier with full payment.

PREPARED 8/25/15, 14:03:02
CITY OF FT PIERCE BLDG & CODE DIVISION

PAYMENT DUE
PROGRAM BP820L

APPLICATION NUMBER: 15-00001674 600 S 3RD ST
FEE DESCRIPTION AMOUNT DUE

CO FEE	50.00
CITY TRN OFFICE	2695.76
CITY STORMWATER	108.00
FIRE/EMS - ALL OTHER	901.80
ROAD IMPACT FEES	7438.50
CITY GB OFFICE	1020.06
CITY SW OFFICE	235.04
CNTY LAW ENF - ALL OTHER	869.40
CNTY PUBLIC BLDG - ALL	815.40
BUILDING PERMIT	4000.00
*PLAN CHECK FEE	150.00
SURCHARGE OTHER THAN	156.00
TOTAL DUE	18439.96

Please present this receipt to the cashier with full payment.

Building Valuation Data – June 2016

The International Code Council is pleased to provide the following Building Valuation Data (BVD) for its members. Please be advised that the BVD is normally updated at six-month intervals, but the BVD normally provided in February was delayed. The next BVD will be issued in August, per our normal schedule. ICC strongly recommends that all jurisdictions and other interested parties actively evaluate and assess the impact of this BVD table before utilizing it in their current code enforcement related activities.

The BVD table provides the "average" construction costs per square foot, which can be used in determining permit fees for a jurisdiction. Permit fee schedules are addressed in Section 109.2 of the 2015 *International Building Code* (IBC) whereas Section 109.3 addresses building permit valuations. The permit fees can be established by using the BVD table and a Permit Fee Multiplier, which is based on the total construction value within the jurisdiction for the past year. The Square Foot Construction Cost table presents factors that reflect relative value of one construction classification/occupancy group to another so that more expensive construction is assessed greater permit fees than less expensive construction.

ICC has developed this data to aid jurisdictions in determining permit fees. It is important to note that while this BVD table does determine an estimated value of a building (i.e., Gross Area x Square Foot Construction Cost), this data is only intended to assist jurisdictions in determining their permit fees. This data table is not intended to be used as an estimating guide because the data only reflects average costs and is not representative of specific construction.

This degree of precision is sufficient for the intended purpose, which is to help establish permit fees so as to fund code compliance activities. This BVD table provides jurisdictions with a simplified way to determine the estimated value of a building that does not rely on the permit applicant to determine the cost of construction. Therefore, the bidding process for a particular job and other associated factors do not affect the value of a building for determining the permit fee. Whether a specific project is bid at a cost above or below the computed value of construction does not affect the permit fee because the cost of related code enforcement activities is not directly affected by the bid process and results.

Building Valuation

The following building valuation data represents average valuations for most buildings. In conjunction with IBC Section 109.3, this data is offered as an aid for the building official to determine if the permit valuation is underestimated. Again it should be noted that, when using this data, these are "average" costs based on typical construction methods for

each occupancy group and type of construction. The average costs include foundation work, structural and nonstructural building components, electrical, plumbing, mechanical and interior finish material. The data is a national average and does not take into account any regional cost differences. As such, the use of Regional Cost Modifiers is subject to the authority having jurisdiction.

Permit Fee Multiplier

Determine the Permit Fee Multiplier:

1. Based on historical records, determine the total annual construction value which has occurred within the jurisdiction for the past year.
2. Determine the percentage (%) of the building department budget expected to be provided by building permit revenue.
- 3.

$$\text{Permit Fee Multiplier} = \frac{\text{Bldg. Dept. Budget} \times (\%)}{\text{Total Annual Construction Value}}$$

Example

The building department operates on a \$300,000 budget, and it expects to cover 75 percent of that from building permit fees. The total annual construction value which occurred within the jurisdiction in the previous year is \$30,000,000.

$$\text{Permit Fee Multiplier} = \frac{\$300,000 \times 75\%}{\$30,000,000} = 0.0075$$

Permit Fee

The permit fee is determined using the building gross area, the Square Foot Construction Cost and the Permit Fee Multiplier.

$$\text{Permit Fee} = \text{Gross Area} \times \text{Square Foot Construction Cost} \times \text{Permit Fee Multiplier}$$

Example

Type of Construction: IIB

Area: 1st story = 8,000 sq. ft.
2nd story = 8,000 sq. ft.

Height: 2 stories

Permit Fee Multiplier = 0.0075

Use Group: B

1. Gross area:
Business = 2 stories x 8,000 sq. ft. = 16,000 sq. ft.
2. Square Foot Construction Cost:
B/IIB = \$160.26/sq. ft. Permit Fee:
Business = 16,000 sq. ft. x \$160.26/sq. ft x 0.0075
= \$19,231

Important Points

- The BVD is not intended to apply to alterations or repairs to existing buildings. Because the scope of alterations or repairs to an existing building varies so greatly, the Square Foot Construction Costs table does not reflect accurate values for that purpose. However, the Square Foot Construction Costs table can be used to determine the cost of an addition that is basically a stand-alone building which happens to be attached to an existing building. In the case of such additions, the only alterations to the existing building would involve the attachment of the addition to the existing building and the openings between the addition and the existing building.
- For purposes of establishing the Permit Fee Multiplier, the estimated total annual construction value for a given time period (1 year) is the sum of each building's value (Gross Area x Square Foot Construction Cost) for that time period (e.g., 1 year).
- The Square Foot Construction Cost does not include the price of the land on which the building is built. The Square Foot Construction Cost takes into account everything from foundation work to the roof structure and coverings but does not include the price of the land. The cost of the land does not affect the cost of related code enforcement activities and is not included in the Square Foot Construction Cost.

Square Foot Construction Costs ^{a, b, c, d}

Group (2016 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	226.92	219.10	213.80	205.04	192.95	187.36	198.56	176.18	169.73
A-1 Assembly, theaters, without stage	207.97	200.15	194.85	186.09	174.15	168.55	179.61	157.38	150.92
A-2 Assembly, nightclubs	177.89	172.85	168.07	161.49	151.98	147.78	155.80	137.68	132.99
A-2 Assembly, restaurants, bars, banquet halls	176.89	171.85	166.07	160.49	149.98	146.78	154.80	135.68	131.99
A-3 Assembly, churches	209.94	202.13	198.83	188.07	176.32	170.72	181.59	159.54	153.09
A-3 Assembly, general, community halls, libraries, museums	175.12	167.31	161.01	153.25	140.50	135.90	146.77	123.72	118.27
A-4 Assembly, arenas	206.97	199.15	192.85	185.09	172.15	167.55	178.61	155.38	149.92
B Business	181.12	174.43	168.67	160.26	146.18	140.70	153.97	128.34	122.72
E Educational	192.29	185.47	180.15	172.12	160.72	152.55	166.18	140.46	136.18
F-1 Factory and industrial, moderate hazard	108.98	103.99	97.83	94.17	84.37	80.56	90.16	69.50	65.44
F-2 Factory and industrial, low hazard	107.98	102.99	97.83	93.17	84.37	79.56	89.16	69.50	64.44
H-1 High Hazard, explosives	102.01	97.02	91.86	87.20	78.60	73.79	83.19	63.73	N.P.
H234 High Hazard	102.01	97.02	91.86	87.20	78.60	73.79	83.19	63.73	58.67
H-5 HPM	181.12	174.43	168.67	160.26	146.18	140.70	153.97	128.34	122.72
I-1 Institutional, supervised environment	180.72	174.14	169.28	161.12	149.06	145.04	161.12	133.69	129.43
I-2 Institutional, hospitals	304.80	298.11	292.36	283.95	268.92	N.P.	277.65	251.09	N.P.
I-2 Institutional, nursing homes	211.20	204.51	198.75	190.34	177.26	N.P.	184.05	159.42	N.P.
I-3 Institutional, restrained	206.08	199.38	193.63	185.22	172.62	166.14	178.93	154.78	147.16
I-4 Institutional, day care facilities	180.72	174.14	169.28	161.12	149.06	145.04	161.12	133.69	129.43
M Mercantile	132.61	127.57	121.79	116.21	106.35	103.15	110.52	92.05	88.36
R-1 Residential, hotels	182.28	175.70	170.83	162.68	150.87	146.84	162.68	135.49	131.23
R-2 Residential, multiple family	152.86	146.27	141.41	133.25	122.04	118.01	133.25	106.66	102.41
R-3 Residential, one- and two-family	143.93	139.97	136.51	132.83	127.95	124.61	130.57	119.73	112.65
R-4 Residential, care/assisted living facilities	180.72	174.14	169.28	161.12	149.06	145.04	161.12	133.69	129.43
S-1 Storage, moderate hazard	101.01	96.02	89.86	86.20	76.60	72.79	82.19	61.73	57.67
S-2 Storage, low hazard	100.01	95.02	89.86	85.20	76.60	71.79	81.19	61.73	56.67
U Utility, miscellaneous	77.82	73.48	69.04	65.52	59.23	55.31	62.58	46.83	44.63

- Private Garages use Utility, miscellaneous
- Unfinished basements (all use group) = \$15.00 per sq. ft.
- For shell only buildings deduct 20 percent
- N.P. = not permitted

Rocla Permit

Admin Offices

2625 SF

Occupancy Group - B Business
Construction Type V-B unprotected

Manufacturing Building

16,100 SF

Occupancy Group: Factory Industrial F-2
Construction type: II-B low hazard

Admin Permit

ICC

$$\begin{array}{r} \text{Permit fee} \quad 2625 \quad \text{SF} \\ \$ 122.72 \quad \text{Cost Per SF} \\ = 322,140.00 \\ \times \quad .010 \quad \text{Permit fee} \\ \hline \$ 3,221.40 \end{array}$$

Manufacturing

$$\begin{array}{r} \text{Permit fee} \quad 16,100 \quad \text{SF} \\ \$ 93.17 \quad \text{Cost Per SF} \\ = 1,500,037.00 \\ \times \quad .010 \quad \text{Permit fee} \\ \hline \$ 15,000.37 \end{array}$$

AS MODIFIED HEREIN

AIA Document A121/CMc and AGC Document 565

Standard Form of Agreement Between Owner and Construction Manager

where the Construction Manager is also
THE CONSTRUCTOR

1991 EDITION

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY
IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

The 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, is referred to herein.
This Agreement requires modification if other general conditions are utilized.

AGREEMENT

made as of the Twelfth day of November in the year of Two Thousand Fourteen
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name and address)

Rocla Concrete Tie, Inc.
1819 Denver West Drive Suite 450
Lakewood, CO 80401

and the Construction Manager:
Name and address)

Paul Jacquin & Sons, Inc.
P.O. Box 4343
Fort Pierce, FL 34948

The Project is:
(Name, address and brief description)

Rocla Ft Pierce Crosstie Factory
3rd Street, Ft Pierce, FL.

The Architect is:
(Name and Address)

TBD

The Owner and Construction Manager agree as set forth below.

Portions of this document are derived from AIA Document A111, Standard Form of Agreement Between the Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee, copyright 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, ©1987 by The American Institute of Architects; other portions are derived from AGC Document 500, ©1980 by The Associated General Contractors of America. Material in this document differing from that found in AIA Document A111 and AGC Document 500 is copyrighted ©1991 by The American Institute of Architects and The Associated General Contractors of America. Reproduction of the material herein or substantial quotation of its provisions without written permission of AIA and AGC violates the copyright laws of the United States and will subject the violator to legal prosecution.



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A121/CMc

AGC 565-1991

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STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONSTRUCTION
MANAGER WHERE THE CONSTRUCTION MANAGER IS ALSO THE CONSTRUCTOR

ARTICLE 1

GENERAL PROVISIONS

RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the Contract shall be the 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, AIA Document A201 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in AIA Document A201 shall mean the Construction Manager.

ARTICLE 2

**CONSTRUCTION MANAGER'S
RESPONSIBILITIES**

The Construction Manager shall perform the services described in this Article. The services to be provided under Paragraphs 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently.

2.1 PRECONSTRUCTION PHASE

2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equip-

ment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Subparagraph 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economics, time of performance, availability of labor and **materials, and provisions for temporary facilities.**

2.1.5 PRELIMINARY COST ESTIMATES

2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject

2.1.7 LONG-LEAD TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead time items.

2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manger shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Subparagraph 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

- .1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
- .2 A list of allowances and a statement of their basis.
- .3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
- .4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the Guaranteed Maximum Price.
- .5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis or both.

2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance

of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed upon assumptions and clarifications.

2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

2.3.1.1 The Construction Phase shall commence on the earlier of:

- (1) The Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
- (2) the Owner's first authorization to the Construction Manager to:
 - (a) award a subcontract, or
 - (b) undertake construction Work with the Construction Manager's own forces, or
 - (c) issue a purchase order for materials or equipment required for the Work.

2.3.2 ADMINISTRATION

2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner shall then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are

delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Subparagraph 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Paragraph 3.10 of AIA Document A201, including the Owner's occupancy requirements.

2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

2.4 PROFESSIONAL SERVICES

The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager has specifically agreed in writing to provide such services. In such event, the Construction Manager shall cause such services to be performed by appropriately licensed professionals.

2.5 UNSAFE MATERIALS

In addition to the provisions of Paragraph 10.1 in AIA Document A201, if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Construction

Manager and Architect shall then proceed in the same manner described in Subparagraph 10.1.2 of AIA Document A201. The Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Construction Manager and Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Construction Manager and Architect have no reasonable objection.

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES

3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 The Owner, upon written request from the Construction Manager, shall furnish evidence of Project financing prior to the start of the Construction Phase and from time to time thereafter as the Construction Manager may request. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work.

3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Clauses 3.1.4.1 through 3.1.4.4, except to the extent that the Construction Manager knows of any inaccuracy.

3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of

streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

3.1.4.3 The services of geotechnical engineers when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluation of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager.

3.3 ARCHITECT

The Owner shall retain an Architect to provide the Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the edition of AIA Document B141 current as of the date of this Agreement. The Owner shall authorize and cause the Architect to provide those Additional Services described in AIA Document B141 requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

3.4 LEGAL REQUIREMENTS

The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Paragraph 3.1.

ARTICLE 4

COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

4.1 COMPENSATION

4.1.1 For the services described in Paragraphs 2.1 and 2.2 the Construction Manager's compensation shall be calculated as follows:
(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

Pre-construction is at the interpretation of Paul Jacquin & Sons, Inc. Cost of services is as follows: 1/2% of project cost plus reimbursement of reproduction of plans, specifications, etc.

4.1.2 Compensation for Preconstruction Phase services shall be equitably adjusted if such services extend beyond 90 days from the date of this Agreement or if the originally contemplated scope of services is significantly modified.

4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

4.2 PAYMENTS

4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

4.2.2 Payments are due and payable Twenty (20) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Construction Manager's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 5

COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

5.1 COMPENSATION

5.1.1 For the Construction Manager's performance of the Work as described in Paragraph 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determined as follows:
(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

Cost of work (including General Conditions, direct expenses, subcontractor costs, bond cost -if required and all material costs) plus 10% Construction Manager Fee.

5.2 **GUARANTEED MAXIMUM PRICE**

5.3.2 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

5.3 **CHANGES IN THE WORK**

5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Subparagraph 7.3.3 of AIA Document A201.

5.3.2 In calculating adjustments to subcontractors (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3 of AIA Document A201 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of AIA Document A201 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201 shall mean the Cost of the Work as defined in Article 6 of this Agreement and the terms "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Subparagraph 5.1.1 of this Agreement.

5.3.4 If no specific provision is made in Subparagraph 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Subparagraph 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the fee established for the original Work.

ARTICLE 6

COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

6.1.2 LABOR COSTS

- .1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.
- .2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement.
(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)
- .3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- .4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Clauses 6.1.2.1 through 6.1.2.3.

6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

- .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- .2 Costs of materials described in the preceding Clause 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

- .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.
- .2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.
- .3 Costs of removal of debris from the site.
- .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
- .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

6.1.6 MISCELLANEOUS COSTS

- .1 That portion directly attributable to this Contract of premiums for insurance and bonds.
(If charges for self insurance are to be included, specify the basis of reimbursement.)
- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
- .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.
- .4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Clause 6.1.8.2.
- .5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Subparagraph 3.17.1 of AIA Document A201 or other provisions of the Contract Documents.
- .6 Data processing costs related to the Work.
- .7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.
- .9 Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

6.1.7 OTHER COSTS

- .1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Subparagraph 6.1.1 which are incurred by the Construction Manager:

- .1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.3 of AIA Document A201.

.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

6.1.9 The costs described in Subparagraphs 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA Document A201 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Paragraph 6.2.

6.2 COSTS NOT TO BE REIMBURSED

6.2.1 The Cost of the Work shall not include:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Clauses 6.1.2.2 and 6.1.2.3.
- .2 Expenses of the Construction Manager's principal office and offices other than the site office except as specifically provided in Paragraph 6.1.
- .3 Overhead and general expenses, except as may be expressly included in Paragraph 6.1.
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- .5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 6.1.5.2.
- .6 Except as provided in Clause 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .7 Costs incurred in the performance of Preconstruction Phase services.
- .8 Except as provided in Clause 6.1.7.1, any cost not specifically and expressly described in Paragraph 6.1.
- .9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

6.3 DISCOUNTS, REBATES AND REFUNDS

6.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Subparagraph 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 7

CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

7.1.3 Provided an Application for Payment is received by the Architect not later than the twenty-fifth (25th) day of a month, the Owner shall make payment to the Construction Manager not later than the tenth (10th) day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment 1 shall be made by the Owner not later than fourteen (14) days after the Architect receives the Application for Payment.

7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of AIA Document A201, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
- .3 Add the Construction Manager's Fee, less retainage of Ten percent (10%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Subparagraph 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Subparagraph, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .4 Subtract the aggregate of previous payments made by the Owner.
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Subparagraph 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201.

7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than Ten percent (10%). The Owner and the Construction Manager shall agree upon a mutually 1 acceptable procedure for review and approval of payments and retention for subcontracts.

7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

7.2 FINAL PAYMENT

7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Subparagraph 12.2.2 of AIA Document A201, and to satisfy other requirements, if any, which necessarily survive filial payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction

Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

7.2.2 The amount of the final payment shall be calculated as follows:

- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee; but not more than the Guaranteed Maximum Price.
- .2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 9.5.1 of AIA Document A201 or other provisions of the Contract Documents.
- .3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

ARTICLE 8

INSURANCE AND BONDS

8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Paragraph 11.1 of AIA Document A201. Such insurance shall be written for not less than the following limits, or greater if required by law:

8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by State and Federal laws. If (1) limits in excess of those required by statute are to be provided or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

8.1.2 Commercial General Liability including coverage for Premises-Operations, Independent Contractors' Protective, Products Completed Operations, Contractual Liability, Personal Injury, and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):

General Liability each occurrences \$1,000,000
General aggregate \$2,000,000
Products-comp/of aggregate \$1,000,000
Automobile Liability Combined single limit \$1,000,000
Garage Liability Auto only-ea accident \$1,000,000
Other than auto only: ea acc. \$1,000,000
Other than auto only: \$1,000,000

- .1 The policy shall be endorsed to have the General Aggregate apply to this Project only.
- .2 Products and Completed Operations insurance shall be maintained for a minimum period of at least One (1) year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier.
- .3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in AIA Document A201 under Paragraph 3.18.

8.1.3 Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage:

\$ N/A Each Accident

8.1.4 Other coverage:

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess liability policies.)

8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Paragraphs 11.2 and 11.3 of AIA Document A201. Such insurance shall be written for not less than the following limits, or greater if required by law:

8.2.1 Property insurance: **By Owner**

\$ _____ Deductible Per Occurrence

\$ _____ Aggregate Deductible

8.2.2 Boiler and Machinery insurance with a limit of

\$ _____

(If not a blanket policy, list the objects to be insured.) **By Owner**

8.3 PERFORMANCE BOND AND PAYMENT BOND

8.3.1 The Construction Manager shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to One hundred percent (100 %) of the Contract Sum.

8.3.2 The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION FOR THE PRECONSTRUCTION PHASE

9.1.1 Claims, disputes or other matters in question between the parties to this Agreement which arise prior to the commencement of the Construction Phase or which relate solely to the Preconstruction Phase services of the Construction Manager or to the Owner's obligations to the Construction Manager during the Preconstruction Phase, shall be resolved by mediation or by arbitration.

9.1.2 Any mediation conducted pursuant to this Paragraph 9.1 shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Any demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal

or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

9.1.3 Any claim, dispute or other matter in question not resolved by mediation shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

9.1.4 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration may be made concurrently with a demand for mediation and shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

9.1.5 No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific refer-

ence to the Agreement and signed by the Architect, Owner, Construction Manager and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Construction Manager, a separate contractor as described in Article 6 of AIA Document A201 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner or Construction Manager or a separate contractor as described in Article 6 of AIA Document A201 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute agreement to arbitration of a dispute not described in such consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

9.1.6 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

9.2 DISPUTE RESOLUTION FOR THE CONSTRUCTION PHASE

9.2.1 Any other claim, dispute or other matter in question arising out of or related to this Agreement or breach thereof shall be settled in accordance with Article 4 of AIA Document A201, except that in addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. Any mediation arising under this Paragraph shall be conducted in accordance with the provisions of Subparagraphs 9.1.2 and 9.1.3.

9.3 OTHER PROVISIONS

9.3.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction.

9.3.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.3.3 OWNERSHIP AND USE OF DOCUMENTS

The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner

and Architect. The Construction Manager, Subcontractors, Subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

9.3.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

9.3.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10

TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Subparagraph 14.1.1 of AIA Document A201.

10.1.2 If the Owner terminates this Contract pursuant to Paragraph 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Construction Phase services in the amount of 50% of the compensation set forth in Subparagraph 5.1.1.

10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Paragraph 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Subparagraph 10.1.2, be paid an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager.
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Paragraph 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Clause 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of AIA Document A201. If the Owner terminates this Agreement after commencement of the Construction Phase, the Contractor shall be paid the balance of the Contractor's Construction Manager compensation as set forth in Subparagraph 5.1.1.

10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Subparagraph 14.1.2 of AIA Document A201 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Subparagraphs 10.1.2 and 10.1.3 of this Agreement.

10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Subparagraph 14.1.2 of AIA Document A201 shall not exceed the amount the Construction Manager would be entitled to receive under Subparagraphs 10.1.2 or 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201 except that the term "cost of performance of the Contract" in that Subparagraph shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Subparagraphs 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11

OTHER CONDITIONS AND SERVICES

This Agreement entered into as of the day and year first written above.

OWNER:

By: _____

Date: 2/4/15

ATTEST: _____

CONSTRUCTION MANAGER:

By: _____

Date: 2/4/15

ATTEST: _____

**AMENDMENT NO. 1 TO AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

Pursuant to Paragraph 2.2 of the Agreement, dated _____ between Roela Concrete Tie (Owner) and Paul Jacquin & Sons, Inc. (Construction Manager), for Roela Ft. Pierce Crosstie Factory (the Project), the Owner and Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

ARTICLE 1

GUARANTEED MAXIMUM PRICE

The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of Work as defined in Article 6 and the Construction Manager's Fee as defined in Article 5, is Fifty-eight thousand five hundred fifty six Dollars (\$ 58,556.00). This price is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A through F, as follows:

- Exhibit A Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Contract on which the Guaranteed Maximum Price is based, pages 1 through 1, dated 5-1-15
- Exhibit B Allowance items, pages 1 through 1, dated 5-1-15
- Exhibit C Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages 1 through 2, dated 5-1-15
- Exhibit D Completion schedule, pages _____ through _____, dated _____
- Exhibit E Alternate prices, pages _____ through _____, dated _____
- Exhibit F Unit prices, pages _____ Through _____, dated _____

ARTICLE 11

CONTRACT TIME

The date of Substantial Completion established by this Amendment is:

OWNER:
By: Rusty Croley
Date: 5/1/15
ATTEST: [Signature]

CONSTRUCTION MANAGER:
By: Michael Jacquin
Date: 5-1-15
ATTEST: [Signature]

**AMENDMENT NO. 2 TO AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

Pursuant to Paragraph 2.2 of the Agreement, dated 6-24-15 between Rocla Concrete Tie (Owner) and Paul Jacquin & Sons, Inc. (Construction Manager), for Rocla Ft. Pierce Crosstie Factory Project, the Owner and Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below

ARTICLE 1

GUARANTEED MAXIMUM PRICE

The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of Work as defined in Article 6 and the Construction Manager's Fee as defined in Article 5, is six thousand six hundred twenty eight Dollars (\$ 6,628 00). This price is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A through F, as follows:

- Exhibit A Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Contract on which the Guaranteed Maximum Price is based, pages 1 through 1, dated _____
- Exhibit B Allowance items, pages 1 through 1, dated 6-24-15
- Exhibit C Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages 1 through 2, dated _____
- Exhibit D Completion schedule, pages _____ through _____, dated _____
- Exhibit E Alternate prices, pages _____ through _____, dated _____
- Exhibit F Unit prices, pages _____ Through _____, dated _____

ARTICLE 11

CONTRACT TIME

The date of Substantial Completion established by this Amendment is _____

OWNER
By: Rusty Croley _____
Date: _____
ATTEST: _____

CONSTRUCTION MANAGER
By: Michael Jacquin _____
Date: 6/24/15
ATTEST: _____

AMENDMENT NO. 3 TO AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

Pursuant to Paragraph 2.2 of the Agreement, dated 8-6-2015 between Rocla Concrete Tie (Owner) and Paul Jacquin & Sons, Inc. (Construction Manager), for Rocla Ft. Pierce Crosstie Factory (the Project), the Owner and Construction Manager 1 establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

ARTICLE 1

GUARANTEED MAXIMUM PRICE

The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of Work as defined in Article 6 and the Construction Manager's Fee as defined in Article 5, is three million one hundred forty one thousand one hundred seventy four dollars and one cent Dollars and one cent (\$ 3,141,174.01). This price is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A through F, as follows:

Exhibit A Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Contract on which the

Guaranteed Maximum Price is based, pages 1 through 3, dated 7-24-15.

Exhibit B - GMP Breakdown, pages 1 through 5, dated 8-6-15.

Exhibit C Assumptions and clarifications made in preparing the

Guaranteed Maximum Price, pages 1 through 3, dated 8-6-15.

Exhibit D - General Conditions & Staffing, pages 1 through 3, dated 8-6-15.

Exhibit E Alternate prices, pages _____ through _____, dated _____.

Exhibit F Unit prices, pages _____ Through _____, dated _____.

ARTICLE 11

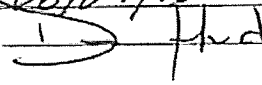
CONTRACT TIME

The date of Substantial Completion established by this Amendment is:

OWNER:

By: Rusty Croley 

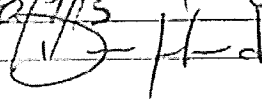
Date: 08/07/15

ATTEST: 

CONSTRUCTION MANAGER:

By: Michael Jacquin 

Date: 8/7/15

ATTEST: 

CONTRACT

THIS CONTRACT, made this 5th day of November, 2013, between ST. LUCIE COUNTY, a political subdivision of the State of Florida, hereinafter called the "COUNTY", and PAUL JACQUIN & SONS, INC., their successors, executors, administrators, and assigns hereinafter called the "CONTRACTOR".

WITNESSETH:

1. PURPOSE

That Contractor agrees with County, for the consideration herein mentioned, at his, its or their own proper cost and expense to do all the Work and furnish all the materials, equipment, supplies, and labor necessary to carry out this Contract in the manner and to the full extent as set forth in the Contract Documents, and to the satisfaction of the duly authorized representatives of St. Lucie County, who shall have at all times full opportunity to inspect the materials to be furnished and the Work to be done under this Contract.

2. GENERAL DESCRIPTION OF WORK

It is agreed that the Work to be done under this Contract is: Recyclables Processing Facility as further described in St. Lucie County Bid No. 13-067, made a part hereof by this reference.

3. PROJECT MANAGER

The Project Manager for the County is Ron Roberts at (772) 462-6406. The Project Manager for the Contractor is Jared Modine at (772) 465-2475.

The parties shall direct all matters arising in connection with the performance of this Contract, other than invoices and notices, to the attention of the Project Managers for attempted resolution or action. Except as otherwise provided for in this Contract, the Project Managers shall be responsible for overall resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this Contract. The Project Manager, however, has no authority to approve or execute Change Order Work except as set forth in the County Purchasing Manual.

The Contractor shall keep during the term of this Contract a competent Project Manager, any necessary assistants, all satisfactory to the County's Project Manager. The Contractor, as soon as possible after the award of the contract, but prior to the Notice-to-Proceed, shall furnish in writing to the County's Project manager the name and qualifications of the Project Manager who will be in charge of the project, along with the Project Manager's cell phone/direct connect number. The County's Project Manager may reply within fourteen (14) days to the contractor in writing stating whether he/she has an objection to the proposed Project Manager or requires additional time for review. The failure of the County's Project Manager to make objection to the Contractor's Project Manager within the fourteen (14) days of receipt shall constitute an acceptance of such Project Manager.

The Contractor shall not use a Project Manager to whom the County has made reasonable and timely objection. The Contractor shall not change their Project Manager without the County's consent.

The County's Project Manager shall be able to reach the Contractor's Project Manager at their cell/direction connect number at all hours. The Contractor shall give sufficient superintendence to the work using his best skill and attention.

At any time the County's Project Manager, with or without cause, may request that the Contractor replace any individual with an individual acceptable to the County.

4. **CONTRACT DOCUMENTS**

The Contract Documents which comprise the Contract between the County and the Contractor are attached hereto and made part hereof and consist of the following:

- A. This Contract, consisting of pages 01 through 17 inclusive.
- B. Contractor's Bid and Bid Bonds, consisting of 23 pages.
- C. Bid Documents dated September, 2013, as prepared by CDM Smith, Inc. and listed on the Table of Contents
- D. Plans No. G-1 through E-7, inclusive, dated September, 2013 as prepared by CDM Smith, Inc. and listed on the Exhibit "A"
- E. Addenda No. 01 to 03, inclusive.
- F. Recorded Public Construction Bond in a form acceptable to the County, which shall be provided to the County by the Contractor, along with the return of an executed copy of this Contract. The Contractor shall be responsible for recording the Public Construction Bond.
- G. Insurance Certificates which shall be provided by the Contractor, along with the return of an executed copy of this Contract.
- H. Any Modifications, including change orders, duly delivered after execution of this Contract.

Except for duly authorized and executed Modifications including but not limited to change orders and contract amendments, any conflict between the terms and conditions of this Contract and the terms and conditions of any of the other contract documents shall be interpreted in favor of this Contract.

5. **PERFORMANCE GUARANTY**

That Contractor guarantees to repair, replace or otherwise make good to the satisfaction of the County any defect in workmanship or material appearing in the Work; and further guarantees the successful performance of the Work for the service intended. Neither inspection nor payment, including

final payment, by the County shall relieve the Contractor or its Surety from his or its obligations to do and complete the Work in accordance with this Contract. If the County deems it inexpedient to require the Contractor to correct deficient or defective Work, an equitable deduction from the contract price shall be made therefore or in the alternative, if the expense incurred by the County to correct deficient or defective Work exceeds the unpaid balance on this Contract, the Contractor shall pay the difference to the County. The liability of the Contractor and its surety or sureties for such payment is joint and several.

6. TIME OF PERFORMANCE/DELAYS AND EXTENSIONS OF TIME

The Contractor shall begin work within 10 (ten) calendar days after the signing, execution and delivery of written notice to proceed after all building permits are issued so long as the Contractor's acts or actions do not contribute in whole or in part as to any delay in the issuance of the permits, otherwise, the notice to proceed will be the Date of Commencement, and shall guarantee partial utilization on or before 150 (one hundred fifty) calendar days from the date of notice to proceed, substantial completion of the Contract on or before 180 (one hundred eighty) calendar days from the date of notice to proceed and total completion of the Contract on or before 245 (two hundred forty-five) calendar days from the date of the notice to proceed. Commencement of the Work by the Contractor shall be deemed a waiver of this notice. The Work shall be conducted in such a manner and with sufficient labor, materials, tools, and equipment necessary to complete the Work within the time limit set forth in the Contract. In the event the construction schedule as set forth in the Contract documents is changed, the Contractor shall notify the County, in writing, of the change in schedule. Such schedule change shall not, however, extend the time for completion unless approved by the County in writing.

In the sole opinion of the County, should the organization of the Contractor, or its management, or the manner of carrying on the Work be manifestly incompetent, or inadequate to do the Work specified within the stated time, then the County shall have the right to take charge of the Work and finish it and provide the labor, materials and equipment necessary to complete the Work as planned within the required time and to charge the cost of all such Work against the Contractor and his, or its Surety shall be held responsible therefore. The Contractor fully understands and agrees that the County shall not pay for any obligation incurred or expenditure made by the Contractor prior to the effective date of the notice to proceed described above, unless the County authorizes such payment in writing.

As the Contractor's sole and exclusive remedy for delay, the County may grant an extension of the contract time, when a critical item of Work is delayed by any factors contemplated or not contemplated at the time of the bid. Such extension of time may be allowed for delays occurring during the contract time period or authorized extension of the contract time. All claims for extension of time shall be made in writing to the County. Claims for delay due to inclement weather (i.e., beyond the 10 year mean average) shall be made by the 10th day of the month following the month of the delay. All other claims shall be made no more than twenty (20) days after the commencement of the delay. Claims made beyond these time limits shall be null and void. Requests for extension of time shall be fully documented and shall include copies of daily logs, letters, shipping orders, delivery tickets, and other supporting information. In case of a continuing cause of delay only one (1) claim is necessary. Normal working weeks are based on a five (5) day week. All authorized extensions of time shall only be done by Change Order.

7. DELAY DAMAGES

It is mutually agreed between the parties hereto that time is of the essence in the performance of this Contract. In the event the construction of the Work is not completed within the time herein specified the County will suffer damages, the amount of which is difficult if not impossible to ascertain. It is agreed, therefore, that from the compensation otherwise to be paid to the Contractor, the County may retain the sum of \$800.00 (eight hundred and 00/100 dollars) per calendar day for each day thereafter, Sundays and holidays included, that the Work remains uncompleted. This sum shall represent liquidated damages which the County will have sustained per calendar day from the inconvenience and expense caused to the County by the delay in the completion of the Work. This sum is not a penalty, being the liquidated damages the County will have sustained in event of such default by the Contractor. The County reserves the right to additionally recover direct job site expenses incurred during the period of any delay. The Contractor shall be liable for liquidated damages even if the Contract is terminated by the County for cause or if the Contractor abandons the Work. The liability of the Contractor and its surety or sureties for damages provided by this Article is joint and several.

8. CONTRACT PAYMENT

The County shall pay the Contractor for the performance of this Contract and completion of the project in accordance with the Contract Documents, subject to adjustment by change order, the total amount in current funds being: NOT TO EXCEED \$2,399,500.00 (two million three hundred ninety-nine thousand five hundred and 00/100 dollars) as follows:

Base Bid Item No. 1	\$ 50,000.00
Base Bid Item No. 2	\$ 400,000.00
Base Bid Item No. 3	\$1,924,500.00
Base Bid Item No. 4	\$ 25,000.00 (Not to exceed Contingency Allowance)
<u>Base Bid Item No. 5</u>	<u>\$ 0.00</u>
Total Contract	\$2,399,500.00 Not to Exceed

Contingency Definition - Contingency shall only be paid in the event change orders are needed and approved by St. Lucie County for unforeseen work in conformance with this contract. There is no guarantee, if any, of the total amount to be spent from the Contingency.

In accordance with Section 218.72(1), Florida Statutes, the Agent, being the Project Architect, Project Engineer or other agency, employee, or person acting on behalf of the County who is required to review invoices or payment requests submitted on this Project, and to which the Contractor shall submit its payment requests or invoices, shall be as follows:

Mr. Kevin N. Vann, P.E.
CDM Smith, Inc.
1701 Highway A-1-A, Suite 301
Vero Beach, Florida 32963

9. PAYMENT SCHEDULE

The County shall make payments on account of the Contract as follows:

Once each month progress payments shall be made during the process of construction in amounts not to exceed ninety percent (90%) of the amount due on the Contract on the basis of Work completed as certified by the Contractor and approved by the County's designated employee or Agent, as set forth above, Pursuant to Sections 218.72 (7) and (8), Florida Statutes, payment application or payment requests must be made in the form provided for in the Bid Documents and shall be fully executed and notarized. Contractor shall submit a proper payment application to the County's Project Manager by the 25th day of each month. The application shall be for the dollar amount of the Work complete on the last day preceding the submission of the application. If an Agent must approve the payment request or invoice prior to submission to the County, then Payment to the Contractor shall be due within 25 business days after the date on which the payment request or invoice is stamped as received as provided in Section 218.74(1), Florida Statutes. The Contractor may send the County an overdue notice and if the payment request or invoice is not rejected within four (4) business days after delivery of the overdue notice, the payment or invoice is deemed accepted, except for any portion deemed fraudulent or misleading. If no Agent is required to approve the payment request or invoice prior to submission to the County, then payment is due within 20 business days after the date on which payment request or invoice is stamped as received in accordance with Section 218.74(1), Florida Statutes.

The County may reject the payment request or invoice in writing within 20 business days after the date on which the payment request or invoice is stamped as received as provided in Section 218.74(1), Florida Statutes, which shall specify the deficiency and the action necessary to correct the deficiency and to make the payment request or invoice proper. Payment of a corrected payment request or invoice, or rejection thereof, shall be made 10 business days after the date the corrected payment request or invoice is stamped as received as provided in Section 218.74(1), Florida Statutes. All applications for payment submitted by the Contractor shall reference the County's Contract number. The parties agree that any payments withheld as liquidated damages or for any other reason allowed by this Contract, shall not be governed by the Florida Prompt Payment Act, Sections 217.70-80, Florida Statutes.

If a dispute between the County and the Contractor cannot be resolved by the procedure in this subsection, then the dispute must be resolved in accordance with the dispute resolution procedure set forth in Subsection 32 of this Contract. If the County disputes a portion of the payment request or invoice, then the undisputed portion shall be paid timely in accordance with this subsection.

As a part of this Contract, if the Contractor receives payment then the Contractor must remit undisputed payment due to subcontractors and suppliers within 10 days after contractor's receipt of payment. A subcontractor who receives payment must remit undisputed payment due to those subcontractors and suppliers within 7 days after subcontractor's receipt of payment.

Prior to final payment, a consultant evaluation form must be completed by the County's Project Manager. Additionally, all Releases of Liens must be submitted and, if applicable, a written certification of the project engineer that the project has been completed per plans and specs must be presented to the Board of County Commissioners for final acceptance. Prior to final payment or any progress payment, the County may require that a Consent of Surety be provided.

10. PUNCHLIST PROCEDURES

Further to Section 218.735(7), Florida Statutes, Punchlist procedures to render the Work complete, satisfactory and acceptable are established as follows:

1. There shall be the development of a single checklist of items required to render complete, satisfactory, and acceptable, the construction services purchased by the County. Within five (5) days of Substantial Completion of the construction services purchased as defined in the Contract, Contractor shall schedule a walkthrough with St. Lucie County ("Initial Walkthrough" a/k/a "IW"). The purpose of the IW is to develop a preliminary checklist ("Checklist") of items to be performed by the Contractor, based upon observations made jointly between the Contractor and St. Lucie County during the IW. The IW is to occur within ten (10) days of Substantial Completion of the Work as defined by the Contract, again predicated upon the Contractor's timely initiation of a request for the IW. At its option, St. Lucie County may conduct the IW with its Field Inspector.
2. Contractor shall endeavor to address and complete as many items as possible noted on the Checklist either during the IW itself, or thereafter for a period of fifteen (15) days from the date of the IW.
3. No later than fifteen (15) days following the scheduled IW, Contractor shall again initiate and request a second walkthrough of the Project with St. Lucie County. The purpose of this second walkthrough is to identify which items remain to be performed from the IW Checklist and to supplement that list as necessary (based, for example, upon work which may have been damaged as a result of the Contractor's performance of completion of items contained on the IW Checklist) and for the purpose of developing a joint single Final Punchlist.
4. The intent of this section is for St. Lucie County and the Contractor to cooperate to develop a single Final Punchlist to be completed no later than thirty (30) days from the date of reaching Substantial Completion of the construction services purchase as defined in the Contract. The Final Punchlist shall be delivered to the Contractor within five (5) days of its development.
5. In no event may the Contractor request payment of final retainage under Section 218.735(7)(d), Florida Statutes, until the Contractor considers the Final Punchlist to be 100% complete.
6. Contractor agrees to complete the single Final Punchlist items within thirty (30) days of the date of its issuance by St. Lucie County.
7. Contractor acknowledges and agrees that no item contained on the Final Punchlist shall be considered a warranty item until such time as (a) the Final Punchlist is 100% complete, and (b) St. Lucie County has been able to operate or utilize the affected punchlist item for an additional period of fifteen (15) days.

8. Contractor acknowledges and agrees that St. Lucie County may, at its option, during performance of the Work and prior to Substantial Completion, issue lists of identified non-conforming or corrective work for the Contractor to address. The intent of any such St. Lucie County generated lists prior to Substantial Completion is to attempt to streamline the punchlist process upon achieving Substantial Completion, and to allow for the Contractor to address needed areas of corrective work as they may be observed by St. Lucie County during performance of the Work.
9. Contractor acknowledges and agrees that St. Lucie County shall determine whether an item on the Final Punchlist is completed and shall calculate 150% of the value of the completion of the item to withhold if an item is incomplete. Contractor acknowledges and agrees that in calculating 150% of the amount which may be withheld by St. Lucie County as to any Final Punchlist item for which a good faith basis exists as to it being complete, as provided for by Section 218.735(7)(d), Florida Statutes, St. Lucie County may include within such percentage calculation its total costs for completing such item of work, including its administrative costs as well as costs to address other services needed or areas of work which may be affected in order to achieve full completion of the Final Punchlist item. Such percentage shall in no event relate to the schedule of value associated with such Work activity, but rather total costs are based upon the value (i.e. cost) of completing such Work activity based upon market conditions at the time of Final Punchlist completion.

11. **REDUCTION OF RETAINAGE PROCEDURES**

Contractor may request a reduction of retainage as provided for by Florida Statute §218.735(7)(8). The term "Fifty Percent Completion" as contained in Florida Statute §218.735(7)(8)(b) shall be defined as follows, in lieu of any other definition:

"Fifty Percent Completion" of the Work is defined as that point in time where 50% of the overall value of Work items incorporated and which will remain in place subsequent to final completion of the Work have been completed, based upon the schedule of values contained in the Contract. As such, and by way of example, the value of Contractors mobilization, general conditions, supervision or like items which do not involve permanent incorporation of Work do not apply to the determination of "Fifty Percent Completion" of the Work for purposes of establishing entitlement to a reduction of retainage.

12. **DEFINITION OF SUBSTANTIAL COMPLETION**

For purposes of this Contract, and for compliance of those procedures, duties and obligations as set forth in Florida Statutes §218.70 and §218.735, the term Substantial Completion shall be as follows, in lieu of any other definition:

"Substantial Completion" is defined as that point where St. Lucie County is able to enjoy beneficial occupancy of the Work and where the Work has achieved that level of completion such that St. Lucie County is able to utilize the entire Project for its intended purposes, including but not

limited to the completion of all specified systems and items relating to life safety and regulatory use, with the exception of incidental or incomplete items except where a lack of completion of such incidental or incomplete items of Work will adversely affect the complete operation of other areas of the Work. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific are as set forth in attached Exhibit "___".

13. **SUBCONTRACTORS**

In the event Contractor requires the services of any contractor or professional associate in connection with the Work to be performed under this Contract, the Contractor shall secure the written approval of the County Project Manager before engaging such contractor or professional associate. A subcontractor who receives payment must remit undisputed payment due to those subcontractors and suppliers within 7 days after subcontractor's receipt of payment. See Section 218.735(6), Florida Statutes.

14. **APPRENTICESHIP REQUIREMENTS**

Twenty percent (20%) of laborers on this project working in specialties for which there are apprentice programs registered with the County shall be apprentices. Such apprentices shall be students in certified State of Florida Pre-Apprenticeship/Apprenticeship Programs which are located in St. Lucie, Martin, Indian River or Okeechobee Counties and which are registered with the County. A County-registered apprenticeship program is one which has registered with the County and provided the required documentation, including but not limited to, proof of certification as an apprenticeship program with the State of Florida and proof of having educational facilities physically located in St. Lucie, Martin, Indian River or Okeechobee Counties. Failure to meet the terms of the apprenticeship requirements may result in the Contractor being found in breach of this Contract and subject to possible monetary sanctions.

15. **AUDIT**

The Contractor agrees that the County or any of its duly authorized representatives shall, until the expiration of three years after expenditure of funds under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Contract. The Contractor agrees that payment(s) made under this Contract shall be subject to reduction for amounts charged thereto which are found on the basis of audit examination not to constitute allowable costs under this Contract. The Contractor shall refund by check payable to the County the amount of such reduction of payments. All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three years after completion of the project and issuance of the final certificate, whichever is sooner.

16. **PUBLIC RECORDS**

The Contractor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with this Contract. Specifically, the Contractor shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in state law or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the County all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

17. GUARANTEE

The Contractor guarantees to repair, replace or otherwise make good to the satisfaction of the County any defects in workmanship or material appearing in the work within one year after the day of the certificate for final performance of the work for the service intended. Contractor further guarantees the successful performance of the work for the service intended. Neither inspection nor payment, including final payment by the County shall relieve the Contractor from his or its obligations to do and complete the work in accordance with this contract. If the County deems it inexpedient to require the Contractor to correct deficient or defective materials or labor, an equitable deduction from the contract price shall be made therefore or in the alternative, the County may sue for damages. This guarantee is in addition to any other warranty available to the County for the Work including but not limited to manufacturers warranties.

18. CONTRACTOR RESPONSIBILITY

The Contractor is an independent contractor and is not an employee or agent of the County. Nothing in this Contract shall be interpreted to establish any relationship other than that of an independent contractor, between the County and the Contractor, its employees, agents, subcontractors, or assigns, during or after the performance of this Contract. The Contractor shall take the whole responsibility for the means, methods, techniques, sequences, and production of the Work.

The Contractor shall bear all losses resulting to him, or its, on account of the amount or character of the Work, or because of the nature of the ground beneath, in or on which the Work is done is different from what was assumed or expected, or because of bad weather, or because of errors or omissions in his or its bid on the Contract price, or except as otherwise provided in the Contract Documents because of any other causes whatsoever. Execution of this Contract by the Contractor is a representation that the Contractor has visited the site, has conducted a sufficient investigation of the surface and sub-surface conditions in order to submit its bid, has become familiar with the local conditions under which the Work is to be performed, and correlated personal observations with the requirements of the Contract Documents.

The Contractor shall protect the entire Work, all materials under the Contract and the County's

property (including machinery and equipment) in, or on, or adjacent to the site of the Work until final completion and Work, from the action of the elements, acts of other contractors, or except as otherwise provided in the Contract Documents, and from any other causes whatsoever; should any damage occur by reason of any of the foregoing, the Contractor shall repair at his, or its, own expenses to the satisfaction of the County or its Project Manager. Neither the County nor its officers, employees or agents assume any responsibility for collection of indemnities or damages from any person or persons causing injury to the Work of the Contractor.

At his, or its expense, the Contractor shall take all necessary precautions (including without limitation) the furnishing of guards, fences, warnings signs, walks, flags, cables and lights for the safety of and the prevention of injury, loss and damage to persons and property (including without limitation) in the term persons, members of the public, the County and its employees and agents, the Project Manager and his employees, Contractor's employees, his or its subcontractors and their respective employees, other contractors, their subcontractors and respective employees, on, about or adjacent to the premises where said Work is being performed, and shall comply with all applicable provisions of safety laws, rules, ordinances, regulations and orders of duly constituted public authorities and building codes.

The Contractor assumes all risk of loss, damage and destruction to all of his or its materials, tools appliances and property of every description and that of his or its subcontractors and of their respective employees or agents, and injury to or death of the Contractor, his or its employees, subcontractors or their respective employees or agents, including legal fees, court costs or other legal expenses, arising out of or in connection with the performance of this Contract.

19. INDEMNITY

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Agreement by the Contractor or its employees, agents, servants, partners, principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

20. INSPECTION

The project will be inspected by the Project Manager and will be rejected if it is not in conformity with the Contract provisions. Rejected Work will be immediately corrected by the Contractor. When the Work is substantially completed, the Contractor shall notify the County in writing that the Work shall be ready for final inspection on a definite date, at least three (3) calendar days thereafter, which shall be stated in such notice.

21. PUBLIC CONSTRUCTION BOND

The Contractor shall, upon execution and return of this Contract to the County, furnish to the County a public construction bond using the attached for or incorporating all of the terms and conditions set forth in the form and covering the faithful performance of this Contract and the payment of all obligations arising hereunder in the amount of one hundred percent (100%) of the Contract amount. The liability of the Contractor and its surety or sureties for the faithful performance of this Contract and the payment of all obligations arising hereunder is joint and several. The Contractor shall record the public construction in the Official Records for St. Lucie County and provide the County with a copy of the recorded bond.

The public construction required hereunder shall meet the following minimum standards:

- A. The surety issuing the bond must be licensed to do business in the State of Florida, hold a certificate of authorization to write surety s in the State, hold a currently valid certificate of authority issued by the United States Department of the Treasury, and otherwise be in compliance with the provisions of the Florida Insurance Code.
- B. The attorney-in-fact must provide a certified copy of his or her power of attorney to sign the bond.
- C. The name, address and telephone number of the surety and its agent must be listed on the bond.
- D. For contracts up to \$499,999.99 the surety shall have twice the minimum surplus and capital required by the Florida Insurance Code at the time the bid is issued for the Work, otherwise the surety shall have the following minimum ratings:

<u>Contract Amount</u>	<u>Best Key Rating</u>
\$500,000 to \$2,499,999.99	Class XII A or better
Over \$2,500,000	Class XIV or better
- E. The Bond shall specifically incorporate and acknowledge the Surety's responsibility for liquidated damages.

22. INSURANCE

Each such General Liability Certificate shall include the following wording: "St. Lucie County BOCC, its officers, agents and employees are named as additional insured's with respect to the work performed under this contract for the Recyclables Processing Facility, Bid No. 13-067".

Commercial General Liability:

The Contractor shall maintain and, prior to commencement of this contract, provide the County with evidence of commercial general liability insurance to include: 1) limits of not less than \$1,000,000 per occurrence; and 2) a general, per contract/project, aggregate limit of not less than \$2,000,000. The policy shall also provide the County will be given a thirty (30) day written notice of cancellation or non-renewal and include County as an additional insured.

Business Automobile Liability:

The Contractor shall maintain and, prior to commencement of this contract, provide the County with evidence of business automobile liability insurance to include: 1) coverage for any automobile for

limits of not less than \$1,000,000 combined single limit (bodily injury & property damage) per accident and 2) Personal Injury Protection (Florida no-fault) with full statutory limits. The policy shall also provide the County will be given a thirty (30) day written notice of cancellation or non-renewal and include County as an additional insured.

Workers' Compensation and Employers Liability:

The Contractor shall maintain and, prior to commence of this contract, provide the County with evidence of workers' compensation insurance providing Florida statutory (F.S. 440) limits to cover all employees and include Employers Liability coverage with limits of not less than \$500,000 for accidents or disease. The policy shall also provide the County will be given a thirty (30) day written notice of cancellation or non-renewal.

23. DEFAULT; TERMINATION

A. FOR CAUSE

If the Contractor fails to fulfill its obligations under this Contract in a timely and proper manner, the County shall have the right, but not the obligation, to terminate this Contract by giving written notice of any deficiency and by allowing the party in default seven (7) calendar days to correct the deficiency. If the Contractor fails to correct the deficiency within the seven calendar day period, this Contract shall terminate at the expiration of that time period.

With regard to the Contractor, the following items shall be considered a default under this Contract:

(1) If the Contractor should be adjudged bankrupt, or if he, or it, should make a general assignment for the benefit of his, or its, creditors, or if a receiver should be appointed on account of his, or its, insolvency.

(2) If the Contractor should refuse or fail, except in cases for which an extension of time is provided, to supply enough properly skilled workmen or proper material to meet the project schedule or if the Contractor should fail to make prompt payment for materials, or labor or other services entering into the Work.

(3) If the Contractor disregards laws, ordinances, or the instructions of the Project Manager or otherwise be guilty of a substantial violation of the provisions of the Contract.

(4) Fails to perform any of the terms of this Contract or performs work which fails to conform to the requirements of this Contract.

In the event of termination, the County may take possession of the premises and all materials, tools, and appliances, thereon and finish the Work by whatever method it may deem expedient. In such cases, the Contractor shall only be entitled to receive payment for Work satisfactorily completed prior to the termination date, subject to any setoffs due the County in completing the Project and for reimbursement of damages incurred. The County may take possession of and use any materials, plant, tools, equipment, and property of any kind furnished by Contractor to complete the Work. If the expense incurred by the County to finish the Work exceeds the unpaid balance on this Contract, the

Contractor shall pay the difference to the County. The expense incurred by the County as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Project Manager. The Contractor shall be responsible for both liquidated damages attributable to delay and for excess completion costs. The liability of the Contractor and its surety or sureties for such damages and costs is joint and several. The obligations of the Contractor and his surety with respect to the warranty and maintenance shall remain in full force and effect for the portion of the Work completed by the Contractor and shall not expire until the expiration of the prescribed time period measured from the final acceptance of the project in its entirety. These clauses shall survive the termination of this Contract. If the County makes a determination pursuant to this Contract to hold the Contractor in default and terminate the Contract for cause and it is subsequently determined that any such determination was improper, unwarranted, or wrongful, then any such termination shall be deemed for all purposes as a termination without cause as described below. The Contractor agrees that it shall be entitled to no damages, allowances or expenses of any kind other than as provided in this Agreement in connection with such termination, and does expressly waive, in the event of termination, any and all claims for consequential damages, loss of bonding capacity, destruction of business, unabsorbed home office overhead, lost profit and the like.

B. WITHOUT CAUSE

The County may terminate the Contract without cause at any time upon thirty 30 calendar days prior written notice to the Contractor. Upon such termination, the Contractor waives any claims for damages from the termination without cause including, without limitation, any and all consequential claims as set forth above and as the sole right and remedy of the Contractor, the County shall compensate the Contractor for all authorized Work satisfactorily and responsibly completed as determined by the Engineer of Record and the County through the termination date. In the event of termination by the Contractor, without cause, the following shall apply: (1) all bonds shall remain fully in force and effect as to all labor materials and services provided through the date of termination without cause; and (2) the County shall have the right to, at its option, solicit bids for the completion of the unfinished portion of the Work, or to negotiate with the number two bidder under the original bid. In the event of termination without cause by either party, the obligations of the Contractor and his surety with respect to the warranty and maintenance, shall remain in full force and effect for the portion of the Work completed by the Contractor through the date of termination without cause and shall not expire until the expiration of the prescribed time period measured from the final acceptance of the project in its entirety. These clauses shall survive the termination of this Contract.

24. NON DISCRIMINATION

Contractor covenants and agrees that Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of the Contract with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicaps (except where based on a bonafide occupational qualification); or because of marital status, race, color, religion, national origin or ancestry.

25. VERIFICATION OF EMPLOYMENT STATUS

The County will not intentionally award contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions of the Immigration and Nationality Act ("INA"). The County shall consider the employment by the Contractor of

unauthorized aliens a violation of 8 U.S.C. Section 1324a(e) [Section 274A(e) of the INA]. The Contractor agrees that such violation by the Contractor shall be grounds for the unilateral cancellation of this Contract by the County.

26. PRODUCTS OR MATERIALS WITH RECYCLED CONTENT

Contractor is required to procure products or materials with recycled content with respect to Work performed or products supplied under the contract when those products or materials are available at reasonable prices. A decision to not procure such items must be based on a determination that such procurement:

- a) Is not available within a reasonable period of time; or
- b) Fails to meet the performance standards set forth in the applicable specifications or fails to meet the reasonable performance standards of the agency.

Contractor shall provide the County with a written statement indicating what recycled products were used or supplied. If a decision was made not to use recycled products, Contractor shall provide County with a written statement indicating the basis for the decision using the above criteria.

27. FLORIDA PRODUCED LUMBER

Where applicable Contractor agrees to comply with the provisions of Section 255.20, Florida Statutes, as may be amended from time to time.

28. ASBESTOS-FREE MATERIALS

Contractor shall not use any asbestos or asbestos-based fiber materials in the Work performed under this Contract.

29. ASSIGNMENT

The County reserves the right to freely assign this Contract. The Contractor, however, shall not assign this Contract to any other persons or firm without first obtaining County's written approval. In addition, the Contractor shall not have the right to assign any or all of its rights and interests under this agreement to any subsidiary or parent company, or any successor to its business through merger, consolidation, voluntary sale, or transfer of substantially all of its assets without the express written consent of the County. For purposes of this paragraph, a transfer of substantially all of its assets shall be deemed to occur when the owner(s) of more than 50% of the proprietary interest in the business entity transfer, other than between themselves, their immediate families or their heirs, such proprietary interest to another person, firm, partnership, corporation or business entity. Any attempt to effect an assignment without County's prior written consent shall be deemed a default subject to the remedies provided herein.

30. NOTICES

All notices, requests, consents, and other communications required or permitted under this Contract shall be in writing and shall be (as elected by the person giving such notice) hand delivered by

messenger or courier service, telecommunicated, or mailed by registered or certified mail (postage prepaid) return receipt requested, addressed to:

As to County:

St. Lucie County Administrator
Administration Annex
2300 Virginia Avenue
Ft. Pierce, FL 34982

With a Copy To:

St. Lucie County Attorney
Administration Annex
2300 Virginia Avenue
Ft. Pierce, FL 34982

As to Contractor:

Paul Jacquin & Sons, Inc.
7348 Commercial Circle
Ft. Pierce, Florida 34951
Phone: (772) 465-2475
Fax: (772) 466-2806

or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery, (b) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

31. **NON-WAIVER**

The rights of the parties under this Contract shall be cumulative and the failure of either party to exercise properly any rights given hereunder shall not operate to forfeit any of the said rights.

32. **CONFLICT OF INTEREST**

The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes (2013) and as may be amended from time to time. The Contractor further represents that no person having any interest shall be employed for said performance.

The Contractor shall promptly notify the County in writing by certified mail of all potential conflicts of interest prohibited by existing state law for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of Work that the Contractor may undertake and request an opinion of the County as to whether the association, interest or circumstance would, in the opinion of the County, constitute a conflict of interest if entered into by the Contractor. The County agrees to notify the Contractor of its opinion by certified mail within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the County shall so state in the notification and the Contractor shall, at his/her option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the County by the Contractor under the terms of this Contract.

33. DISPUTE RESOLUTION

Any disputes relating to interpretation of the terms of this Contract or a question of fact or arising under this Contract shall be resolved through good faith efforts upon the part of the Contractor and the County or its Project Manager. At all times, the Contractor shall carry on the work and maintain its progress schedule in accordance with the requirements of the Contract and the determination of the County or its representatives, pending a final resolution of the dispute, including, if necessary, any determination by a Court of competent jurisdiction. Any dispute which is not resolved by mutual agreement shall be decided by the County Administrator who shall reduce the decision to writing. The decision of the County shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not be supported by substantial evidence.

34. MEDIATION

Prior to initiating any litigation concerning this Contract, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for St. Lucie County. The fee of the mediator shall be shared equally by the parties. To the extent allowed by law, the mediation process shall be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall not be admissible as evidence in any subsequent proceeding concerning the disputed issue.

35. INTERPRETATION; VENUE

This Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior verbal or written agreements between the parties with respect thereto. This Contract may only be amended by written document, properly authorized, executed and delivered by both parties hereto. This Contract shall be interpreted as a whole unit and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida. In the event it is necessary for either party to initiate legal action regarding this Contract, venue shall be exclusively in the Nineteenth Judicial Circuit for St. Lucie County, Florida, for claims under state law and the Southern District of Florida for any claims which are justiciable in federal court.

36. ANTITRUST ASSIGNMENT

The Contractor and the County and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida and local governments. Therefore, the Contractor assigns to the State of Florida and the County any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement in counterparts each of which shall be treated as an original upon the terms and conditions above stated.

ATTEST:

Key Perea
DEPUTY CLERK



BOARD OF COUNTY COMMISSIONERS
ST. LUCIE COUNTY, FLORIDA

BY: Tom Mowery
CHAIRMAN

APPROVED AS TO FORM AND CORRECTNESS:

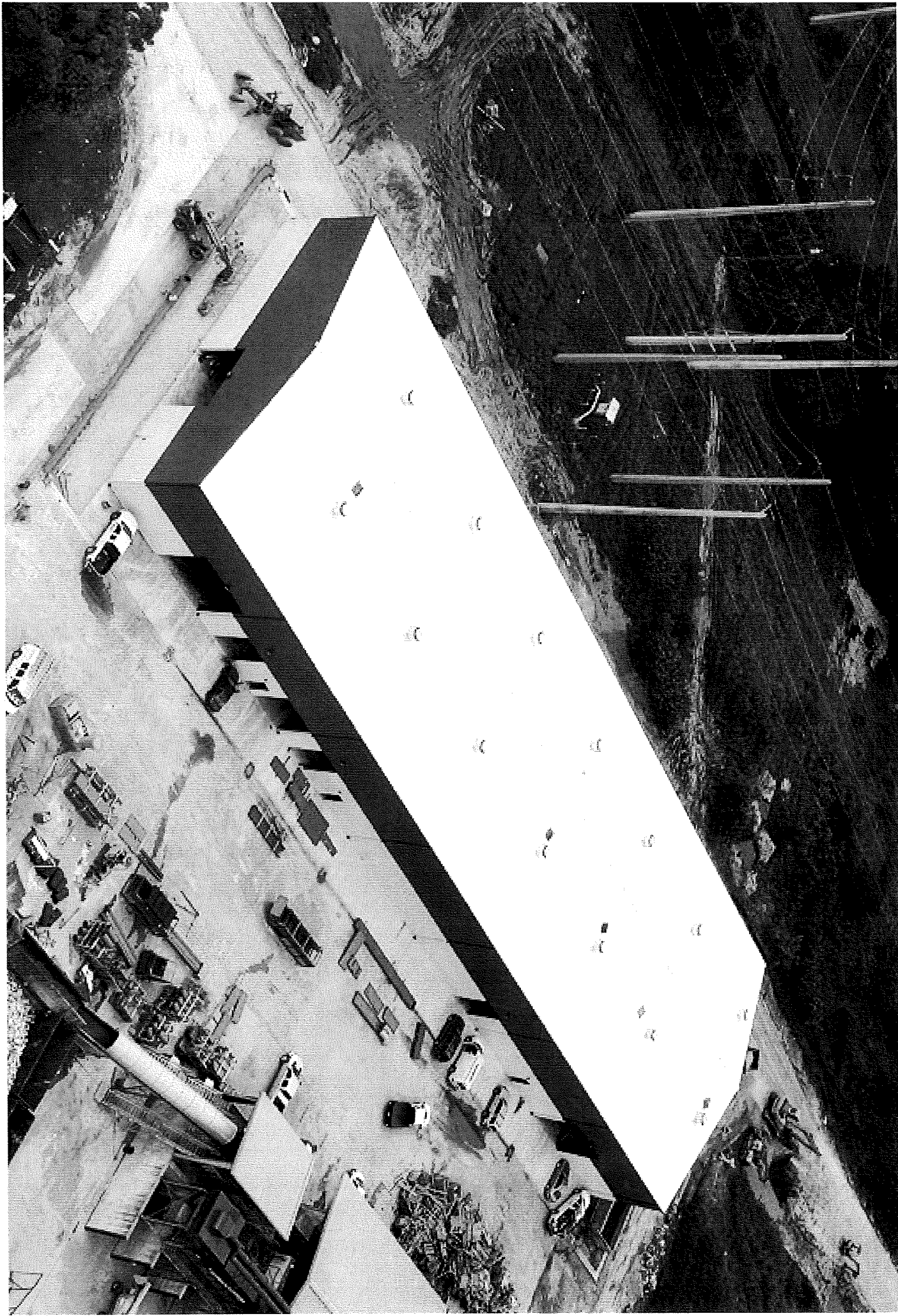
[Signature]
COUNTY ATTORNEY

WITNESSES:

- (1) [Signature]
- (2) Alyson Medina

PAUL JACQUIN & SONS, INC.

BY: [Signature]
PRINT NAME: MICHAEL JACQUEN
TITLE: PRESIDENT



Jacquin & Sons

(Proud)

CONSTRUCTION

Inc.

771-846-0175 • C.G.C. 0044173

**St Lucie County Recyclables
Processing Facility**

Print #140922288

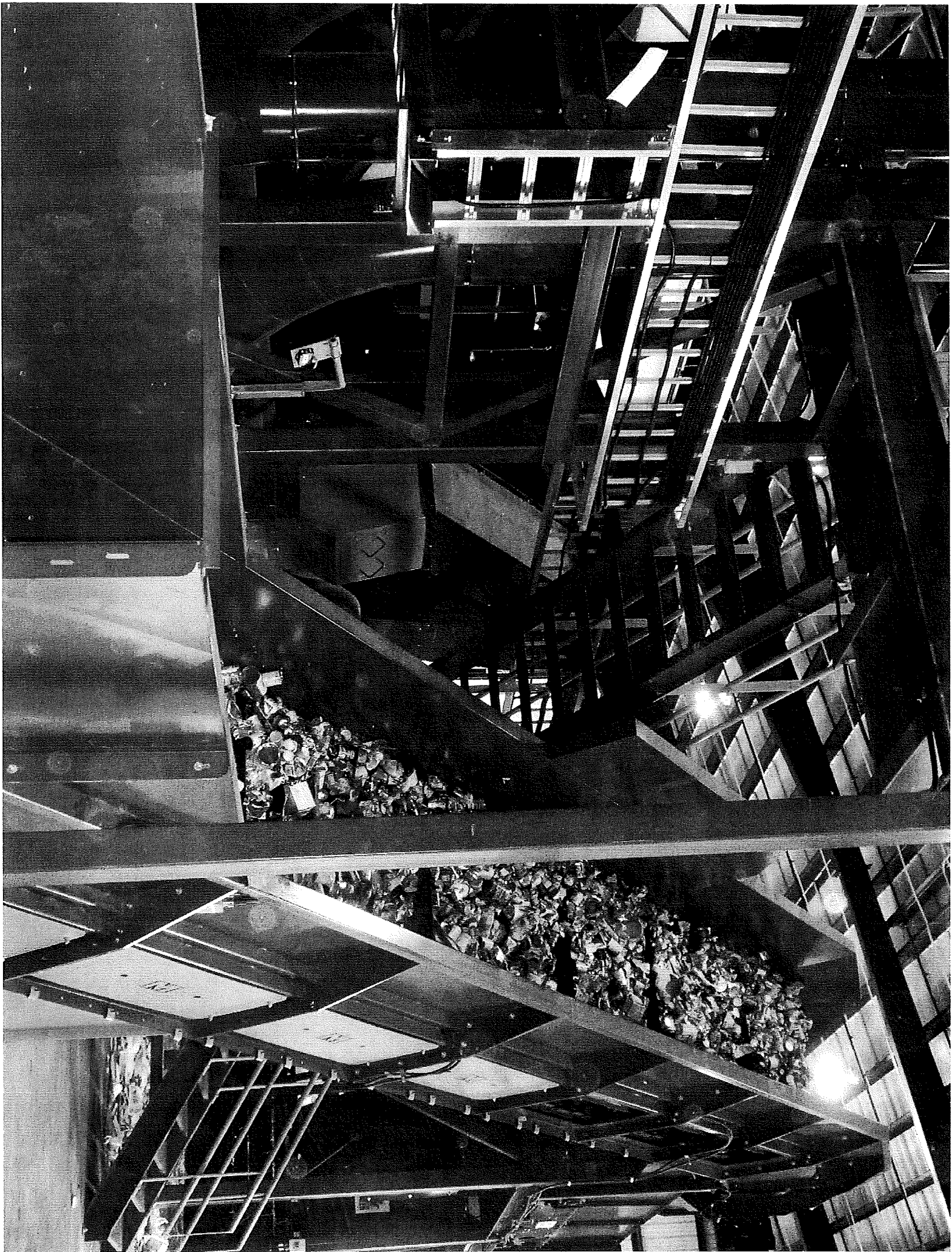
Date: 09/22/14

Lab/Lem: 27.382615 - 80.391670

Order No. 575554

Aerial Photographs Inc. 051-558-1151





"FAILURE TO COMPLY WITH THE MECHANICS' LIEN LAW CAN RESULT IN THE PROPERTY OWNER PAYING TWICE FOR BUILDING IMPROVEMENTS"

CITY OF FORT PIERCE BUILDING DEPARTMENT

100 North US 1
Post Office Box 1480
Fort Pierce, FL. 34954
Phone: (772) 467-3000



Date Applied: 1/02/14

Prepared by: KIM

Date issued: 4/02/14

Permit No. 1400000025

2

Permit Type: BUILDING PERMIT

Township	Range	Section	Subdivision	Lot			Structure #/Sequence	
2	3	35	441	0001	00	0 7	000 000	
Property Address							Zoning	Reviewed by
6120 GLADES CUT-OFF RD							U	MM
Subdivision Name						Legal Address		
						35/36 35 39 FROM SE COR SEC 35		
Owner's Name/Address/Telephone				Contractor's Name/Address/License/Telephone				
ST LUCIE COUNTY 2300 VIRGINIA AVE 34982				PAUL JACQUIN & SONS, INC 7348 COMMERCIAL CIRCLE 34951 772 465-2475				
Additional Description				Sub Contractor				
Construction	BFE	FFE	FLZ					
Occupancy	Sq. Ft.	Valuation	Improvements					
		3,296,310	COMMERCIAL					

Schedule of Fees

PERMIT FEE

32,964.00

\$38,157.59

OTHER FEES:

TYPE- CO FEE	50	50.00	PAID	.00
TYPE- EMERGENCY PLAN PER HOUR	300	300.00	PAID	150.00
TYPE- EMERGENCY PLAN 1ST HOUR	250	250.00	PAID	250.00
TYPE- PLAN REVISION 2ND & 3RD T	1,200	1,200.00	PAID	1,200.00
TYPE- *PLAN CHECK FEE	5,889	5,889.00	PAID	6,289.00
TYPE- PLAN REVISION 1ST TIME	100	100.00	PAID	100.00
TYPE- ROUTING FEE	40	40.00	PAID	40.00
TYPE- SURCHARGE OTHER THAN		1,393.59	PAID	.00

OFF
50014

THIS PERMIT SHALL BECOME NULL AND VOID UNLESS THE WORK AUTHORIZED IS COMMENCED WITHIN ONE HUNDRED AND EIGHTY (180) DAYS AFTER ITS ISSUANCE, OR IF THE WORK AUTHORIZED IS NOT INSPECTED FOR A PERIOD OF ONE HUNDRED AND EIGHTY (180) DAYS FROM TIME WORK IS COMPLETED. THE FLORIDA ENERGY CODE SUBMITTED BECOMES AN INTEGRAL PART OF THIS PLAN AND MUST PASS FINAL INSPECTION.

Any change in building plans or specifications must be recorded with this office. Any work not covered above, must have a valid permit prior to starting. In consideration of the granting of this permit, the owner and builder agree to erect this structure in full compliance with the Building and Zoning Codes of the City of Fort Pierce, Florida. This permit fee is not refundable.

"FAILURE TO COMPLY WITH THE MECHANICS' LIEN LAW CAN RESULT IN THE PROPERTY OWNER PAYING TWICE FOR BUILDING IMPROVEMENTS"

CITY OF FORT PIERCE BUILDING DEPARTMENT

100 North US 1
Post Office Box 1480
Fort Pierce, FL 34954
Phone: (772) 467-3000



Date Applied: 1/02/14

Prepared by: KIM

Date issued: 4/01/14

Permit No. 1400000024

Permit Type: SITE WORK

Township	Range	Section	Subdivision	Lot			Structure #/Sequence	
2	3	35	441	0001	00	0 7	000 000	
Property Address							Zoning	Reviewed by
6120 GLADES CUT-OFF RD							U	MM
Subdivision Name						Legal Address		
						35/36 35 39 FROM SE COR SEC 35		
Owner's Name/Address/Telephone				Contractor's Name/Address/License/Telephone				
ST LUCIE COUNTY 1300 VIRGINIA AVE 34982				PAUL JACQUIN & SONS, INC 7348 COMMERCIAL CIRCLE 772 465-2475 34951				
Additional Description				Sub Contractor				
Construction	BFE	FFE	FLZ					
Occupancy	Sq. Ft.	Valuation	Improvements					
		303,206	SITE WORK					

Schedule of Fees

PERMIT FEE

3,033.00

\$ 3,151.29

OTHER FEES:

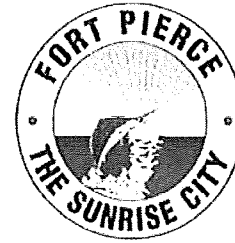
TYPE- *PLAN CHECK FEE	310.00	PAID	310.00
TYPE- PLAN REVISION 1ST TIME	100.00	PAID	100.00
TYPE- ROUTING FEE	40.00	PAID	40.00
TYPE- SURCHARGE OTHER TRAN	118.29	PAID	.00

CH 50015

THIS PERMIT SHALL BECOME NULL AND VOID UNLESS THE WORK AUTHORIZED IS COMMENCED WITHIN ONE HUNDRED AND EIGHTY (180) DAYS AFTER ITS ISSUANCE, OR IF THE WORK AUTHORIZED IS NOT INSPECTED FOR A PERIOD OF ONE HUNDRED AND EIGHTY (180) DAYS FROM TIME WORK IS COMPLETED. THE FLORIDA ENERGY CODE SUBMITTED BECOMES AN INTEGRAL PART OF THIS PLAN AND MUST PASS FINAL INSPECTION.

Any change in building plans or specifications must be recorded with this office. Any work not covered above, must have a valid permit prior to starting. In consideration of the granting of this permit, the owner and builder agree to erect this structure in full compliance with the Building and Zoning Codes of the City of Fort Pierce, Florida. This

From the Desk of
Marc Meyers, C.B.O.
Building Official
City of Fort Pierce
100 North U.S. 1
Post Office Box 1480
Fort Pierce, Florida 34954
T: 772-467-3188
F: 772-467-3849
mmeyers@city-ftpierce.com



TO: Michael Jacquin, President - Jacquin & Sons Construction
DATE: August 26, 2015
RE: Rocla Building Valuation

Mr. Jacquin,

Thank you for bringing our attention to the St. Lucie County Recycling Facility.

With regard to your email concerning the Rocla building valuation and how it was assessed, please find attached a copy of our fee schedule.

I have highlighted the section which clearly states, "*The ICC value...or on the contract price given by the applicant, whichever is higher.*"

On several occasions and including on public record, your team has stated this is a \$10.2 million construction project. To that end, please find the following calculation:

1. Site Work	\$ 1,900,000.00
2. Office Building	\$ 400,000.00
3. Main Building	\$ <u>7,900,000.00</u>
Total Value	\$ 10,200,000.00

We hope this clarifies any confusion as to the construction valuation of this project.

Respectfully,

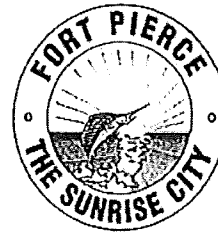
A handwritten signature in black ink, appearing to read "Marc Meyers".

Marc Meyers, CBO CFM
City of Fort Pierce Building Official

MM/km
Attachment

cc: Robert Bradshaw, City Manager
Nick Mimms, Deputy City Manager

City of Fort Pierce
Building Department



Permit Fees

Effective Date: March 6, 2012

**** Plan Review Fee Will be Due at Submittal****

(1)	New buildings and additions	Fee is based on multiplying the value of the building or addition by .010. Such value shall be determined by using the most recent Building Valuation Data for Florida as compiled by the International Code Council (ICC) using the Marshall Valuation Service, as published by the Marshall and Swift Publication Company, Los Angeles, California or on the contract price given by the applicant for the project, whichever is higher. (The data is only intended to be used for determining permit fees and is not intended to be used as an estimating guide.)
(2)	All other construction except as noted below:	Fee is based on multiplying the value of the work authorized by the permit by .010. The value is determined by the building official. The minimum fee is \$75.00
(3)	Demolitions:	Base fee plus .010 of the value of the work authorized by the permit.
		Base Fees:
		\$275.00 Residential
		\$150.00 other Residential
		\$500.00 Commercial
		\$250.00 other Commercial
(4)	Special inspections after working hours:	Fee is \$100.00 per/hour minimum two (2) hours
(5)	Re-inspections: First	Fee is Residential \$500.00 Commercial \$100.00
	Re-inspections: Second	Fee is Residential \$75.00 Commercial \$150.00
	Re-inspections: Third	Fee is Residential \$100.00 Commercial \$200.00
	Re-inspections: Fourth and thereafter	Fee is \$250.00 for each inspection
(6)	Manufactured mobile homes:	Fee: New buildings and additions
(7)	Certificate of occupancy or certificate of completion	\$50
(8)	Miscellaneous trade and construction permits including, but not limited to: *plumbing, **mechanical, **electrical, gas, remodeling, addition, fences, pools, sheds, signs, docks, etc, shall be on a valuation basis according to the following schedule: ** Also See item # 9 for flat fee permits.	
		Fee is based on multiplying the value of the work authorized by the permit by .010. The value is determined by the Building Official. The minimum fee is \$75.00
(9)	Flat Rated Permit Fees	Moving of structure \$300.00
		Temporary permit without inspection \$20.00
		Temporary permit with an inspection \$75.00
		Electrical Residential \$100.00
		Mechanical Residential - per unit \$150.00
		*Plumbing Residential \$75.00
		*water heater replacements & re-pipes only * this does not include "Insta Hots"
(10)	Generator Installation	Fee is based on multiplying the value of the work authorized by the permit by .010. The value is determined by the building official. The minimum fee is \$75.00.** A separate permit shall be required for LP/Gas connection

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General Contractor
Construction Manager
Design - Builder

Inc.

Commercial
Industrial
Residential

PAUL JACQUIN & SONS, INC.
Date: September 11, 2015
SUBCONTRACT AGREEMENT

Owner: **Rocla Concrete Tie, Inc**
1819 Denver West Drive, Suite 450
Lakewood, CO 80401

Architect: **Edlund, Dritenbas & Binkley**
65 Royal Palm Pointe, Suite D
Vero Beach, FL 32960

Project: **Rocla Concrete Tie Factory Fort Pierce**
600 S 3rd Street
Fort Pierce, FL

Contractor: Paul Jacquin & Sons, Inc.
P.O. Bo 4343
Ft. Pierce, FL 34948-4343

Subcontractor: **Tommy Hawkins & Sons, Inc** Cost Code #
Paving Contractors **2001-S**
909 Barrel Ave
Fort Pierce, FL 34982

Telephone: (772) 464-7587
Facsimile: (772) 464-0594

Subcontract Price: **\$572,555.00**

Retainage Percentage: 10%

The foregoing terms are incorporated into and more fully explained in the provisions that follow:

THIS AGREEMENT, made as of the 11th day of September 2015 by and between Paul Jacquin & Sons, Inc. (hereinafter-called Contractor), and Tommy Hawkins & Sons, Inc hereinafter-called Subcontractor).

WITNESSETH, that Subcontractor and Contractor agree as follows:

1. **INCORPORATION OF CONTRACT DOCUMENTS.** Subcontractor shall perform and furnish all the work, labor, supervision, services, plant, equipment, tools, scaffolds, appliances, materials and all other things necessary for the incorporation into the Project of the work described in Exhibit B & C hereto (hereinafter called The Work). Subcontractor shall be bound to Contractor by the terms and conditions of all Contract documents for the

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Rocla Hawkins

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Project, and the addendums, exhibits, additional provisions, and all modifications thereto, including without limitation the Contractor-Owner Contract and the exhibits thereto general conditions, drawings, plans and specifications, (the above-listed documents are hereafter referred to collectively as the "Contract Documents"), which are expressly incorporated herein, and all warranties, and shall assume toward Contractor all the obligations and responsibilities that Contractor, by these documents, assumes towards the Owner. If any provision of this Subcontract Agreement conflicts with any provisions of any other Contract Document, the provision in this agreement shall control. The payment provisions of the Contractor-Owner Contract are expressly excluded.

2. **SUBCONTRACTOR'S EXAMINATION OF CONTRACT DOCUMENTS AND SITE CONDITIONS.** The Work hereunder is a portion of the work to be provided to Owner and is to be performed and furnished to the satisfaction of Contractor. Subcontractor certifies that he has examined all the plans, drawings and specifications prepared by said Architect for the entire work, of which the work covered by the Subcontract is a part. The Subcontractor and his Subcontractors will be bound by all parts of said plans and specifications insofar as they relate in any way to the Work undertaken herein.

It is understood and agreed that the Subcontractor has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work under this Subcontract. No verbal agreement or conversation with any officer, agent, or employee of Contractor, either before or after execution of this Subcontract, shall affect or modify any of the terms or obligations herein contained.

3. **SUBCONTRACTOR IS AN INDEPENDENT CONTRACTOR.** Subcontractor is an independent contractor and shall, at its sole cost and expense and without increase in the Subcontract Price, comply with all laws, rules, ordinances, codes, and regulations of all governing bodies having jurisdiction over the Work. Subcontractor shall have sole responsibility for the means and methods of performing the Work required under this Subcontract. Subcontractor shall be primarily responsible to assure the safety of its own equipment, appliances, material and working conditions, techniques and procedures.

Subcontractor must obtain and pay for all necessary permits and licenses, including business licenses, Jessica Lunsford Act Certification and Davis Bacon Act. Subcontractor must pay all fees, manufacturer's taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for Social Security, worker's compensation, and unemployment or disability insurance which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules, or regulations.

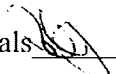
Subcontractor shall comply with all federal, state, municipal and local laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements including, among others, those relating to safety, discrimination in employment, fair employment practices, or equal opportunity, and with the requirements of the American Insurance Association, whether or not provided for by the plans, specifications, general conditions or other Contract Documents, without additional charge or expense to the Contractor and shall also be responsible for and correct, at its own expense and cost, any violations resulting from or in connection with the performance of its Work. Subcontractor shall at any time upon demand furnish such proof as Contractor may require showing such compliance and the correction of such violations.

Nothing herein limits the Contractor's right to approve Subcontractor's proposed subsubcontractors and suppliers of materials as may be required and employed to complete the Work. Subcontractor shall remove from the Project any employee Contractor determines to be detrimental to the Project.

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4. **PRICE.** It is understood that the Subcontract is a lump sum cost agreement (including applicable taxes) for the Price set forth on page 1 of this Subcontract (the "Price"). All work and costs to complete the Work as shown on the plans and specifications and described in the Scope of Work are solely the Subcontractor's responsibility. The Subcontractor acknowledges the present volatility of the availability and cost of certain construction labor, supplies, and materials. The Subcontractor agrees that all risk of price escalation and/or labor or material shortage shall be expressly and solely born by the Subcontractor. Additionally, Subcontractor will be solely responsible for the unavailability of sufficient materials, equipment, and labor necessary to fully complete its scope of work and shall be liable to Contractor for non-delivery or untimely delivery for any reason.

5. **PAYMENT.**

Conditions Precedent to Subcontractor's Entitlement to Progress and Final Payment. Subcontractor agrees that it will not be entitled to payment under the Subcontract until all of the following express conditions precedent to Subcontractor's entitlement to payment have been satisfied:

Contractor's receipt in current funds from the Owner for the progress payments due the Subcontractor. If the Owner has not paid the Contractor for any reason whatsoever, the Subcontractor agrees that the Contractor shall not be liable for payment nor be indebted to the Subcontractor. Contractor's receipt of payment from Owner for Subcontractor's work is an absolute condition precedent to Subcontractor's entitlement to payment from Contractor.

Contractor's receipt of Subcontractor's completed waivers on the form attached hereto as Exhibit D (for progress payments) and receipt of completed waivers on the form attached hereto as Exhibit D and E (for final payment) for all persons or entities providing labor, services, or materials on its behalf at the time of receipt of payment. If Subcontractor cannot supply waivers for all persons or entities providing labor, services, or materials on its behalf at the time of payment, it agrees that Contractor shall be allowed to pay any such persons or entities directly, without prior notice to Subcontractor, or to issue checks made jointly payable to Subcontractor and its laborers, subcontractors, or materialmen. Any such payment directly or through joint checks will be credited as a payment to Subcontractor for purposes of determining the Subcontractor's outstanding contract balance.

Contractor's receipt of the executed Subcontract.

Contractor's receipt of the Certificates of Insurance and endorsements reflecting the types and minimum limits of insurance as required and set forth in Exhibit G and naming Contractor as an additional insured.

Contractor's receipt and approval of the Subcontractor's Schedule of Values on AIA G703.

Contractor's receipt of a completed payment application on the form on Exhibit J & K (Pay app and cont sheet), with any supporting documentation or other substantiating information requested by Contractor. Subcontractor expressly acknowledges that Contractor may reduce and/or modify Subcontractor's payment application if, in Contractor's sole discretion, the actual percentage of completed work is less than what Subcontractor represents or if, in Contractor's sole discretion, the work represented to be complete is of poor quality and/or does not conform with the drawings, specifications, and other Contract Documents.

Contractor's satisfaction of any and all backcharges, debts, or other monies owed from this Project or other construction projects upon which Contractor and Subcontractor contracted.

Contractor's satisfaction that the Owner is not assessing liquidated damages or other delay damages against Contractor, some or all of which are attributable to Subcontractor.

Contractor's receipt of any and all submittals which, in Contractor's sole discretion, are necessary for maintenance of the job schedule.

Contractor's receipt of Subcontractor's state license, if applicable, and local licenses

If bonded, Contractor's receipt of Subcontractor's performance and payment bonds and Contractor's receipt of Subcontractor's surety's consent to progress and/or final payment

As-built and or Record drawings as deemed necessary by the Contractor

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An express condition precedent to final payment only is Contractor's receipt of Subcontractor's fully executed Warranty on the form attached hereto as Exhibit H, and all other warranty documents required under the Contract Documents. Number of closeout packages depends on the job, there will be a minimum of 4 sets required for each set.

5.2 *Progress Payments.*

5.2.1 Subcontractor shall submit a Schedule of Values of the various portions of the Work on Exhibit K (cont sheet) for approval by the Contractor no later than 30 days from the execution of this Subcontract. Subcontractor shall submit a completed Application for Payment and Schedule of Values on Exhibits J & K, on or before the 23rd of the month, showing the proportionate value of the Work installed to date, from which shall be deducted the current retainage, all previous payments, and all charges for services, materials, equipment and other items furnished by Contractor to or chargeable to Subcontractor. Subcontractor agrees to provide Contractor all information, evidence or substantiation as Contractor may require with respect to the nature and extent of all obligations incurred by Subcontractor for or in connection with the Work.

5.2.2 Unless payment to Subcontractor is withheld in accordance with 5.5, Contractor shall pay to Subcontractor an amount equal to the value of Subcontractor's completed work, as determined by Contractor, less the current retainage, all previous payments, and all charges for services, materials, equipment and other items furnished by Contractor to or chargeable to Subcontractor. Previous payments shall include all amounts theretofore paid on account of the work, all charges for materials or services furnished by Contractor and properly chargeable to Subcontractor and all costs incurred by Contractor properly chargeable to Subcontractor as obligations of Subcontractor. "Current Retainage" shall be calculated in accordance with the retainage percentage set forth on page 1 of this Subcontract.

5.3 *Final Payment.* All the conditions precedent to Subcontractor's entitlement to payment articulated in 5.1 apply to Subcontractor's entitlement to final payment. If the conditions precedent have been satisfied, and payment to Subcontractor is not withheld in accordance with 5.5, final payment, including the unpaid balance of the Price and retention on account of Subcontractor's Work, shall be made within thirty (30) days after the last of the following to occur: (a) full completion of the Work by the Subcontractor, (b) Contractor's receipt of all documents or information requested by Contractor evidencing that Subcontractor has paid in full all persons furnishing labor or materials in connection with the Work, including any taxes or governmental charges with respect thereto or with respect to the Work, and that neither Subcontractor nor any person claiming under or through Subcontractor has filed or has the right to maintain a lien or other claim against the Owner or Contractor on the Project premises, and (c) the delivery of all guarantees, warranties, bonds, instruction manuals, performance charts, diagrams, as-built drawings and similar items, including but not limited to the Subcontractor's Warranty on the form attached hereto as Exhibit H, required of Subcontractor or its suppliers with respect to the Work. (d) Upon receipt of final payment from owner. Unconditional final releases for Notice to Owners are due when subcontractor is paid 100% minus retainage.

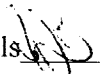
5.4 *Final Payment if Subcontractor is terminated under Article 12.*

5.4.1. If Contractor exercises its right to terminate the Subcontractor under Article 12, the Subcontractor shall be entitled to payment for the value of the work actually performed. The Contractor shall not be liable to the Subcontractor for any other costs, charges, damages, or expenses, including but not limited to consequential damages; rental expenses; losses of use, income, and financing; loss of profit, anticipated profit, and overhead arising directly from the Work or the Work not performed; loss of business and reputation; principal office expenses including the compensation of personnel stationed there; or any commitments to suppliers, subcontractors or laborers. Payment after termination shall become due and payable 30 days after the occurrence of the last of the following express conditions precedent: (1) the Contractor corrects and / or completes the Subcontractor's performance in accordance with Article 11 and determines the amount of costs and expenses attributable to such, (2) the Contractor's receipt of full payment from Owner for Subcontractor's scope of work, including payment from Owner for work Contractor corrected or completed subsequent to Subcontractor's default, and (3) the occurrence of all express conditions precedent to Contractor's final payment to Subcontractor.

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5.4.2 If Subcontractor is terminated under paragraph 12.2, Subcontractor shall be entitled to payment for the value of the work actually performed. The Contractor shall not be liable to the Subcontractor for any other costs, charges, damages, or expenses, including but not limited to consequential damages; rental expenses; losses of use, income, and financing; loss of profit, anticipated profit, and overhead arising directly from the Work or the Work not performed; loss of business and reputation; principal office expenses including the compensation of personnel stationed there; or any commitments to suppliers, subcontractors or laborers. In such event, Subcontractor shall be entitled to payment within 30 days of the last of the following conditions precedent: (1) the Contractor's receipt of full payment from Owner for Subcontractor's scope of work, and (2) the occurrence of all express conditions precedent to Contractor's final payment to Subcontractor.

5.5 *Contractor's Additional Rights to Withhold Payment.* Contractor may withhold payment if any of the requirements of section 5.1 are not met. Additionally, if any claim is made or lien filed against Contractor, the Owner, the Project, or the premises upon which the Project is located, by any person claiming that Subcontractor or other person under Subcontractor has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work; or if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Contractor or Owner might become liable and which is chargeable to Subcontractor; or if Subcontractor or other person under Subcontractor causes damage to the Work or to any other work on the Project; or if the Subcontractor fails to perform or is otherwise in default under any terms or provisions of the Agreement; Contractor shall have the right to retain from any payment then due or thereafter to become due an amount which it deems sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default, and (3) compensate the Contractor and Owner for and indemnify them against any and all losses, liability, damages costs and expenses, including legal fees and disbursements, which may be sustained or incurred by either or both of them in connection therewith. Contractor shall have the right to apply and charge against Subcontractor so much of the amount retained as may be required for the foregoing purposes. If the amount retained is insufficient therefore, Subcontractor shall be liable for the difference and pay the same to Contractor or Owner.

5.6 *Liquidated Damages pass through to Subcontractor.* Subcontractor specifically acknowledges that to the extent that Contractor's Agreement with the Owner contains a liquidated damages clause, Subcontractor shall be liable to Contractor in an amount not less than the amount for which the Contractor may be liable to the Owner for delays incurred by the Owner which are attributable in whole or in part to the performance of the Subcontractor or its sub-subcontractors or suppliers in the amount required of Contractor by its Contract with the Owner per day for each day such delay continues, which sum the Subcontractor hereby agrees to pay.

6. **CHANGE ORDERS.** Subcontractor shall not make any changes, additions or deletions on the Work except upon written order of Contractor. Subcontractor makes changes, additions, or deletions on the Work without written order of Contractor at its own risk. Contractor shall have the right, from time to time, whether the Work or any part hereof shall or shall not have been completed, to order changes, additions and/or deletions in the Work as either may deem necessary or appropriate, upon issuance of a written Change Order to Subcontractor. Subcontractor shall expeditiously perform the Work even if there is a dispute as the value of the Work.

7. CLEAN-UP.


7.1 Subcontractor shall at its own cost and expense (1) keep the premises free at all times from all waste materials, packaging materials and other rubbish accumulated in connection with the execution of its Work by collecting and depositing said materials and rubbish in on-site locations or containers designated by Contractor and removing said materials and rubbish from the premises, (2) clean and remove from its own Work and from all contiguous work of others, any soiling, staining, mortar, plaster, concrete or dirt resulting from the execution of its Work and make good all

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defects resulting therefrom, (3) at the completion of its Work in each area or as otherwise directed by Contractor, perform such cleaning as may be required to leave the area "broom clean", and (4) at the entire completion of its Work, remove all of its tools, equipment, scaffolds, shanties and surplus materials and perform final clean-up as required for Owner's acceptance.

8. SCHEDULING AND TIME OF COMPLETION.

8.1 *Schedule.* TIME IS OF THE ESSENCE OF THIS SUBCONTRACT. Subcontractor agrees (a) to provide, when requested, a schedule and, upon request, revised schedules of the Work for use by Contractor in scheduling the Project, (b) to provide at the Project site, the materials, equipment, laborers and supervision necessary to begin the Work upon the Contractor's order to do so, and (c) to perform the Work and all parts thereof promptly, diligently and in such order and sequence as Contractor may direct to assure the efficient, expeditious and timely prosecution of the Project, including furnishing sufficient forces, supervision, equipment and materials, at such times and for such periods, as Contractor may direct. Subcontractor acknowledges that the construction schedule will be revised by the Contractor as required during the course of the Project and that Subcontractor shall abide by all revisions to the construction schedule written or verbal.

8.2 *Contractors Right to Modify Project Schedule/No Damages for Delay.* Contractor may require Subcontractor to prosecute its Work in such sequence as the progress of other subcontractors and the Project schedule reasonably dictates and Contractor may order Subcontractor to accelerate or decelerate, to work overtime, to work weekends or nights, to increase or reduce manpower, materials or equipment or to take such other measures as Contractor deems necessary to timely complete the project-- ALL AT NO ADDITIONAL COST TO CONTRACTOR. It is expressly understood and agreed that the scheduling and sequencing of the Work is an exclusive right of Contractor and that Contractor reserves such right to reschedule and resequence Subcontractor's Work from time to time as the demands of the Project require without any additional cost or expense to be paid to Subcontractor. Should Subcontractor be delayed in the commencement, prosecution or completion of the Work by the act, omission, neglect, or default of Contractor, Owner and/or anyone employed by Contractor, Owner, or any other contractor or subcontractor on the Project, or by damage caused by fire or other casualty or by the combined action of workmen in no way within Subcontractor's control and not due to any fault, neglect, act or omission on its part, then Subcontractor shall be entitled to an extension of time in which to complete the Work, such extension to be for a period determined by Contractor to be equivalent to the time lost by reason of any and all of aforesaid causes. Subcontractor shall not be entitled to any such time extension, however, unless a claim therefore is presented in writing to Contractor within forty-eight (48) hours of the commencement of such claimed delay. Failure to present a written claim to Contractor within 48 hours of the commencement of the delay waives any claims Subcontractor may have to an extension of time for that reason. Such extension or extensions of time, as determined by Contractor or the decision of Contractor that no such extension of time shall be allowed, shall release and discharge Contractor of and from any and all claims of whatever character, including claims for damages, by the Subcontractor on account of the aforesaid or any other causes of delay. In no event shall Subcontractor be entitled to any damage or other pecuniary compensation for delay resulting from the aforesaid causes, unless and only to the extent that Contractor receives additional compensation from the Owner for such delay.

9. **WARRANTY.** Subcontractor guarantees that the Work, including any materials or equipment furnished in connection therewith, shall be free from defects in design, materials, and workmanship and shall conform to and meet the requirements of the Contract Documents. Subcontractor shall provide the Contractor and Owner with a written warranty at the completion of the Work on the form attached hereto as Exhibit H. Subcontractor shall furnish any separate guarantee for the Work, or portions thereof, required under the Contract or Contract Documents.

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10. INDEMNIFICATION. To the fullest extent permitted by law, the Subcontractor shall indemnify, defend, and hold harmless the Contractor and its agents and employees from and against all claims, damages, losses, and expenses, arising out of or resulting from the work and/or goods, including but not limited to attorney's fees, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the Subcontractor, any Subsubcontractor, materials supplier, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The Subcontractor's indemnification obligation to Contractor for occurrences caused by the sole, contributory, or concurrent negligence of Contractor shall be limited, on a per occurrence basis, to the greater of \$1,000,000.00 (as prescribed by Florida Statute § 725.06), the price of this Subcontract, or the limits of liability of the insurance policies provided pursuant to Article 13, which Subcontractor acknowledges and agrees bears a reasonable commercial relationship to this Subcontract and which are deemed incorporated into the project specifications and bid documents.

10.1 Subcontractor and/or its insurer hereby agree to defend, indemnify, and hold harmless Contractor, its agents, employees, elected officers and representatives from any loss or damage and to reimburse Contractor, its agents, employees, elected officers and representatives for any and all expenses, including but not limited to attorneys' fees, legal fees, expert witness fees, and court costs that Contractor may incur because of:

10.1.1 Claims and liens for labor performed or materials used or furnished through or under Subcontractor for the Project;

10.1.2 any personal injury, loss, damage or death to any person or persons and any property damage arising out of the performance or nonperformance of Work required in this Subcontract, including, without limitation, any personal injury or loss, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder; provided, however, Subcontractor's indemnity hereunder shall not arise if such injury, loss, damage or death results from the willful, wanton or intentional misconduct of a party indemnified hereunder;

10.1.3 Subcontractor's failure or the failure of any of its employees to comply with any law, ordinance, rule, regulation or requirement, including, but not limited to, any Occupational Safety and Health Administration violations and any penalties, including enhancements, resulting in whole or in part by Subcontractor's acts or omissions.

10.2 Contractor, in its sole discretion, may defend any or all of the indemnified claims or tender to Subcontractor the defense of any or all of the indemnified claims. Upon such tender by Contractor to Subcontractor, Subcontractor shall be obligated to assume the defense of Contractor in the indemnified claims, including the settlement negotiations, and shall pay and satisfy any and all settlements, judgments, sanctions, awards, or expenses, including attorneys' fees, resulting from or arising out of the indemnified claims without reimbursement from Contractor.

10.3 If Contractor tenders the defense of an indemnified claim to Subcontractor and Subcontractor fails or neglects to assume that defense, Contractor may compromise or settle or defend any such action, and Subcontractor shall be bound and obligated to reimburse Contractor for the amount expended by it in settling, compromising, or defending any such claim, or in the amount expended by Contractor in paying any settlement or judgment rendered therein, together with all reasonable attorneys' fees and expenses of litigation incurred by Contractor by reason of its defense, settlement, or compromise of such indemnified claims.


10.4 Neither final payment by Contractor nor acceptance of the Work performed by Subcontractor shall constitute a waiver of the foregoing indemnities, and notwithstanding any other provision contained in this Subcontract, the provisions of this article shall survive the termination of this Subcontract.

10.5 In any claims by any employee of the Subcontractor, the Subcontractor's subsubcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, against any persons or entities indemnified hereunder the indemnification obligation shall not be limited as to the amount or type of damages, compensation, or

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benefits payable by or for the Subcontractor or the Subcontractor's sub-contractors under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

11. DEFAULT.

11.1 *Acts or Events of Default.* Any of the following acts or events will render the Subcontractor in default of this Subcontract:

11.1.1 refusing or neglecting to supply sufficient skilled workmen or materials of the proper quality and quantity,

11.1.2 failing in any respect to prosecute the Work with promptness and diligence,

11.1.3 causing the stoppage or delay of or interference with or damage to the work of Contractor and Owner or of any other contractors or subcontractors on the Project by any act or omission,

11.1.4 failing to perform any of the terms and provisions of this Agreement or of the other Contract Documents, as determined in the Contractor's sole discretion,

11.1.5 failing to perform the Work or any portion thereof in accordance with the Contract Documents, as determined in the Contractor's sole discretion,

11.1.6 filing a certificate of dissolution by election or receiving a certificate of dissolution by an order of court or by operation of law,

11.1.7 filing a petition in bankruptcy or taking advantage of any bankruptcy, reorganization, moratorium or similar protection from creditors; becoming insolvent or be adjudged as bankrupt or go into liquidation or dissolution, either voluntarily or involuntarily or under a court order; or making a general assignment for the benefit of creditors, or

11.1.8 committing or omitting any other act or event which puts the Subcontractor in default, as determined by the Contractor.

11.2 *Notification of Default and Contractual Remedies for Default.* If Subcontractor fails to cure such default within 48 hours of Contractor providing written notice, then Contractor shall have the right (a) to perform and furnish through itself or through others any and all such labor or materials to correct, replace or otherwise remedy any such defects, deficiencies, or delayed performance by any reasonable and expedient means and to deduct the costs thereof from any monies due or to become due to Subcontractor under this Agreement or any other Project, and/or (b) to terminate the employment of Subcontractor, and for all or any portion of the Work, enter upon the premises and take possession of all materials, equipment, scaffolds, tools, appliances and other items thereon for the purpose of completing the Work, all of which Subcontractor hereby transfers, assigns and sets over to Contractor for such purpose, and to employ any person or persons to complete the Work and provide all labor, services, materials, equipment and other items required therefore.

11.3 *Subcontractor's Responsibility for Remedy of Default and Effect on Subcontractor's Entitlement to Payment.* In the case of such action under 11.2(a) or 11.2(b) above, Subcontractor shall not be entitled to receive any further payment under this Agreement until the Work shall be wholly completed to the satisfaction of Contractor; at which time, if the unpaid balance of the amount to be paid under this Agreement exceeds the costs and expenses incurred by Contractor in completing the Work, such excess shall be used first to pay the Subcontractor for its material and equipment so used and any amount thereafter remaining shall be apportioned between the Contractor and Subcontractor in ratio to the percentage of work completed by each party; but if such cost and expense shall exceed such unpaid balance, then the Subcontractor shall pay the difference to Contractor. Such cost and expense shall include, not only the cost of completing the Work to the satisfaction of the Contractor and of performing and furnishing labor, services, materials, equipment and other items required therefor, but also losses, damages, costs and expenses, including legal fees and disbursements sustained, incurred or suffered by reason of or resulting from Subcontractor's default. The expense incurred by Contractor, for furnishing labor or materials or for finishing the Work, together with any damages incurred by default, shall be charged to and paid by Subcontractor, and Contractor shall have a lien upon all materials, tools, and appliances, taken possession as aforesaid to secure the payment thereof. Damages shall include reasonable overhead and profit and attorneys' fees incurred by Contractor by reason of any default by Subcontractor, including the prosecution or defense of any arbitration, court action, or mechanics lien.

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11.4 *Remedies are Cumulative.* No right or remedy in this Subcontract is intended to be exclusive of any other right or remedy, but every such right or remedy shall be cumulative and shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

12. TERMINATION.

12.1 Contractor shall have the right at any time after Subcontractor has been declared in default to terminate this Agreement and require Subcontractor to cease work by written notice to Subcontractor. In lieu of termination of Subcontractor's suppliers and subcontractors, Subcontractor shall, at Contractor's election, assign same to Contractor within five (5) days of notice to do so.

12.2 If the Owner terminates the Contractor's Contract with the Owner or if the Contractor elects to terminate this Subcontract for convenience and this Subcontract is not assigned to the Owner, the Contractor shall deliver written notice of termination to the Subcontractor. Upon receipt of written notice of termination, the Subcontractor shall: (1) cease operations as directed by the Contractor in the notice; (2) take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and (3) except for Work directed to be performed prior to the effective date of the termination date stated in the notice, terminate all existing subsubcontracts and purchase orders and enter into no further subsubcontracts and purchase orders.

12.3 Upon Subcontractor's receipt of payment after termination, the parties shall have no further obligations to each other except for Subcontractor's obligations to perform corrective Work and Warranty Work relating to Work actually performed by Subcontractor or any of its sub-subcontractors prior to the termination, and to defend, indemnify, and hold harmless Contractor as provided for in this Subcontract.

13. **INSURANCE.** Before commencing the Work and as a condition precedent to payment of any kind, Subcontractor shall procure and shall thereafter maintain, at its own expense, until completion and final acceptance of the Work, the types and minimum limits of insurance as required and set forth in Exhibit G, attached hereto and made a part hereof. Subcontractor expressly agrees that it will ensure that all persons performing Subcontractor's scope of Work, whether employed by Subcontractor or not, will be covered by Subcontractor's workers' compensation insurance or such other workers' compensation insurance so as to ensure that the Contractor remains immune from suit. Should Contractor be forced to pay workers' compensation claims or benefits of any kind to any person performing Subcontractor's scope of Work, Contractor may recover same from Subcontractor.

14. PROHIBITION ON SUBCONTRACTOR ASSIGNMENT.

14.1 This Subcontract or any money due or to become due hereunder may not be assigned by Subcontractor to any other party or other Subcontractors without written approval of Contractor of such proposed assignment. Subcontractor specifically agrees not to assign, sell, or transfer any accounts receivables under this subcontract to any third party factoring company or related business. NEITHER THE OWNER OR CONTRACTOR SHALL BE LIABLE TO ANY THIRD PARTIES FOR PAYMENT OF ANY ASSIGNED ACCOUNTS RECEIVABLES.

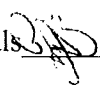
14.2 If for any reason the Owner has cause to terminate its agreement with the Contractor for the construction of the project, the Contractor may assign this Subcontract to the Owner. The Subcontractor hereby agrees in the event of such assignment to perform its responsibilities and to fully complete the work required by this Subcontract directly for the Owner provided that all payments then due the Subcontractor for Work completed have been made to the Subcontractor.

15. **VENUE AND CHOICE OF LAW AND JOINDER.** All disputes initiated by Subcontractor arising under this Subcontract shall be resolved solely and exclusively in the Nineteenth Judicial Circuit Court of Florida, in and for St. Lucie

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County, Florida, or at Contractor's sole discretion, by arbitration in St. Lucie County, Florida. The Subcontractor hereby waives for itself or those with whom he deals on behalf of this agreement whatever rights it may have in the selection of venue. This contract shall be interpreted in accordance with the law of the State of Florida. Subcontractor realizes that Contractor may become involved in disputes with the Owner, other subcontractors or others, which disputes may involve Subcontractor. Subcontractor for itself and its surety hereby consents to be joined and/or transferred to any other dispute, whether in litigation or arbitration, which may involve Subcontractor, all at the discretion of the Contractor.

16. **ARBITRATION AND JOINDER.** At the sole discretion of the Contractor, all claims, counterclaims, disputes, and other matters in question between the Contractor and the Subcontractor or arising out of this Agreement or the breach thereof shall be decided by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then obtaining. Contractor expressly reserves its right to have any dispute resolved by binding arbitration. The award rendered by the arbitrator shall be final, and judgment shall be entered upon it in accordance with applicable Florida law. Subcontractor realizes that Contractor may become involved in disputes with the Owner, other subcontractors or others, which disputes may involve Subcontractor. Subcontractor for itself and its surety hereby consents to be joined and/or transferred to any other dispute, whether in litigation or arbitration, which may involve Subcontractor, all at the discretion of the Contractor.

17. **MISCELLANEOUS.** This Agreement constitutes the entire agreement between the parties hereto. No oral representations or any other agreements have been made by Contractor or Owner except as stated in this Agreement. This Agreement may not be changed in any way except as herein provided, and no term or provision hereof may be waived by Contractor except in writing signed by its duly authorized officer or agent. The titles or headings of any term or provision of this Agreement are for convenience only and shall not be deemed to limit, restrict or alter the content, meaning or effect thereof.

17.1 Interpretation of the plans, specifications, scope of work and all contract documents at the sole discretion of Paul Jacquin & Son's, Inc.

18. **SUBCONTRACTOR'S WAIVER OF JURY TRIAL.** In the event that Contractor does not exercise its exclusive right to compel arbitration, the Subcontractor expressly and voluntarily waive all rights to a jury trial in any claim or dispute arising from the Subcontract.

19. **TESTING & INSPECTIONS:** Subcontractor agrees that the cost of all testing and retesting as necessary of every kind and nature required by the Contract Documents or as may be required by the Owner, Contractor, or authority having jurisdiction shall be paid by Subcontractor. Subcontractor agrees that the cost of all inspections and reinspections as necessary of every kind and nature required by the Contract Documents or as may be required by the Owner, Contractor, or authority having jurisdiction shall be paid by Subcontractor.

20. **DAMAGE TO OTHER TRADES WORK:** All damages to the Work of other trades by this Subcontractor will be Subcontractor's financial responsibility.

21. **DIMENSIONS/COORDINATION WITH OTHER TRADES:** Subcontractor agrees to coordinate its Work with that of other subcontractors, including but not limited to Subcontractor's agreement to check all dimensions for all Work done by other trades that directly or indirectly affect the proper installation of Subcontractor's Work. Subcontractor shall immediately report in writing any conflicts, deficiencies or other problems with the coordination of Subcontractor's work with that of other subcontractors, and the failure to so report will waive any and all subsequent claims for extra compensation or time which may be required to remedy the conflict, deficiency or other coordination problem.

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22. **QUALITY OF WORK:** The Contractor shall be the sole judge as to the acceptability of the quality and completeness of the work. Work deemed unacceptable will be removed and replaced at the expense of the Subcontractor as directed by the Contractor to the satisfaction of the Contractor. Notwithstanding the foregoing, Contractor also has the right to accept defective work and issue an appropriate deductive change order to Subcontractor.

23. **PUNCH OUT:** Subcontractor shall perform all punch-out work as directed by the Contractor within twenty-four (24) hours of notification or within a timely manner acceptable to the Contractor.

24. **BACKCHARGES:** In the event that the Subcontractor does not fulfill the Subcontract requirements to the full expectations of the Contractor, the Contractor may, at its sole discretion, supplement the Subcontractor's Work with whatever means the Contractor deems necessary. Subcontractor agrees to be backcharged for the cost incurred plus Contractor's reasonable overhead, profit and attorneys' fees.

25. **ON-SITE STORAGE OF MATERIALS:** Storage of materials on-site shall be coordinated with Contractor. Storage space shall be assigned on as needed basis as determined by Contractor. Subcontractor shall assume all risks for all materials and equipment stored on-site. No payment shall be made for materials stored on-site unless specific provisions for such payment are included in the Subcontract.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands as of the day and year first above written.

CONTRACTOR: PAUL JACQUIN & SONS, INC.

Name: Michael Jacquin - President

Date: 10/9/15

**SUBCONTRACTOR: Tommy Hawkins & Sons,
Inc Paving Contractors**

By: [Signature]
(Officer of the Corporation)

List of attached documents:

Attachments: A, B, C, D, E, F, G, H,
I, J, K, L, M, N, O
Safety Affidavit
Jacquin Safety Manual

Print Name: Ronald Buckner

Title: Site Superintendent

Date: 10-31-15

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SUBCONTRACT LIST OF EXHIBITS AND ATTACHMENTS

Exhibit

- A. Supplemental Conditions
- B. Scope of Work
- C. List of Documents
- D. Release – Progress
- E. Release – Final
- F. Requirements for Payment
- G. Insurance Requirements
- H. Sub Warranty and Guarantee
- I. Change Order
- J. Application for Payment
- K. Continuation Sheet
- L. Tax Equity Form
- M. Tobacco Free Environment
- N. Vendor Delivery Route Map
- O. Instruction to Bidders (all attachments are on the disk)

Safety Affidavit

Jacquin Safety Manual

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EXHIBIT "A"

SUPPLEMENTAL CONDITIONS OF THE SUBCONTRACT

The Supplemental Conditions are an integral part of this Subcontract and shall govern the responsibilities and actions of Contractor and Subcontractor during the performance of the Work. If there is any conflict between these Supplemental Conditions and Subcontract, these Supplemental Conditions shall control.

1. To the extent of any conflict between the indemnity obligations of the Owner-Contractor Contract and this Subcontract, the indemnity obligations of the Owner-Contractor Contract control, and Subcontractor shall indemnify Contractor to the extent Contractor shall indemnify Owner. Additionally, any indemnity provision in this Subcontract repugnant to section 725.06, Florida Statutes shall be deemed deleted, it being the intent of the parties that the Subcontractor provide the maximum indemnity to the Contractor allowed by law.

2. To the extent the Owner shall require Contractor to participate in mediation, the Subcontractor agrees to participate in the mediation if requested by Contractor as a condition precedent to Subcontractor commencing litigation against Contractor.

3. This Subcontract is for use on a private construction project with Rocla Concrete Tie, Inc or one of its affiliates. If Contractor does not sign a contract with the appropriate public entity, this Subcontract is void ab initio and Subcontractor shall not be entitled to compensation under any circumstances. Additionally, if Subcontractor is required to be accepted by the public entity but is not, this Subcontract is void ab initio and Subcontractor shall not be entitled to compensation under any circumstances.

4. Subcontractor acknowledges the dispute resolution procedure in the Owner-Contractor Contract. To the extent the dispute resolution procedure is enforceable, Subcontractor agrees to provide whatever documentation Contractor requests and to allow Contractor to present Subcontractor's claim as a pass-through claim to the Owner. In such circumstances, the Subcontractor agrees to be bound to the decision of the County Administrator to the extent the Contractor is bound to the decision of the County Administrator, and the Subcontractor shall have no claim whatsoever against Contractor or its surety for any money sought by Contractor on Subcontractor's behalf, but not actually received by Contractor.

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Tommy Hawkins & Sons, Inc. Paving Contractors

EXHIBIT "B"

Scope of Work

The work includes, but is not limited to, the following:

- a) Subcontractor is aware that the Project contains provision for the assessment of liquidated damages as outlined in the Contract Documents. In the event the time of completion is not met, Subcontractor may become liable for such liquidated damages in addition to other delay costs incurred as a result of any delay to the Project Completion caused by Subcontractor. Furthermore, in the event of a default and/or bankruptcy on the part of Subcontractor, Jacquin will be paid by Subcontractor an administrative cost of ten percent of the Contract Amount remaining at the time of default and/or bankruptcy plus all attorney fees incurred by Jacquin
- b) Subcontractor acknowledges it has read all portions of the Specifications. Furthermore, any part of the Specifications which requires the General Contractor to include specific provisions in Subcontracts or Purchase Orders is hereby acknowledged to be included in this Agreement even though the specific text is not rewritten in this document.
- c) To help ensure a safe, healthy and productive work environment for the employees of Jacquin and others, to protect Jacquin's property, and to assure efficient operations, Jacquin has developed and adopted a Company-wide policy establishing a drug and alcohol free workplace. Jacquin reserves the right to test upon reasonable suspicion employees of subcontractors for the presence of drugs and alcohol or to remove the employee from the premises for the remaining construction period.
- d) Subcontractor's attendance at Jacquins' Weekly Subcontractor Progress Meetings is mandatory beginning two weeks prior to starting Subcontractor's Work or as otherwise requested by Jacquin and while Subcontractor has men working on the Project. Subcontractor's

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Superintendent and Subcontractor's Project Manager shall attend the weekly meetings. Failure to attend is a violation of this Agreement and will be treated accordingly.

- e) Description of Work: Subcontractor shall be responsible for layout and completion of all work included in this Agreement, including but not limited to providing all labor, materials, scaffolds, tools, hoisting facilities, cranes and equipment required to perform and complete the work included in this Agreement, for all required Sitework in accordance with the Contract Documents **Including Division 1 General Requirements**, and prepared by the Architect; work to meet all local codes, ordinances and OSHA requirements. This work to include but not be limited to; the following:
- f) Subcontractor agrees that included in this Agreement are all costs for complete systems and all project requirements in accordance with Jacquin's contract with the Owner. Subcontractor shall review all drawings and specifications prepared by the Architect to insure those construction documents are complete and comply fully with the project's requirements. Failure to include all the project's requirements contained in the construction documents shall not be cause for additional compensation to Subcontractor. No changes shall be made to this agreement for Changes in the Work unless such Work is outside the contract obligation Jacquin has with the Owner and Jacquin receives a change order from the Owner for that change.
1. All shop drawings and submittals.
 2. All materials, products, goods, services, installation, etc will be installed per plans, specifications and manufacturer's warranties.
 3. All clearing/grubbing of site. Take care during the clearing process not to damage any trees or vegetation to remain.
 4. Protect existing silt fence, silt fence damaged by Tommy Hawkins to be repaired at your cost.

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5. Construction driveway to include any required maintenance.
6. All excavation, cuts, and fills to grade.
7. All imported fill to achieve proposed elevations.
8. Any dewatering required for work by Subcontractor.
9. All grading and compaction for the building pads, sidewalks and final grade.
10. All water and sewer improvements.
11. All storm drain improvements.
12. All sub grades, bases and asphalt for parking and drives.
13. All concrete curbs and curb replacement.
14. Spread and compact granite in storage yard to be provided and delivered by owner.
15. Demo includes but not limited to, concrete driveway, existing building pad, existing dock ramp and all known Rail Road tracks located on site.
16. Removal of all excess fill from site.'
17. All signage, striping and carstops for the project.
18. Survey and layout will be provided one time by PJSI. Any re-staking to be done at cost by Hawkins.

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**Construction Manager
 Rocla Concrete Tie
 600 S. 3rd St. Ft. Pierce, FL
 9/8/2015 For Construction
 Exhibit "C" - List of Documents**

Sheet #	Drawing Title	Dwg. Date	Rev. Date
Office Building			
<u>Architectural</u>			
Cover	Cover	06/10/15	
ABB	Abbreviations / General Notes	05/07/15	
ACC	Accessibilty Details	05/07/15	
A-2	Floor Plan Office Bldg. / Schedules	06/10/15	
A-3	Elevations Manufacturing Bldg.	06/10/15	
A-6	Building Section Office Bldg.	06/10/15	
A-7	Reflected Ceiling Plan-Office	05/07/15	
A-8	Details, Interior Elevations	06/10/15	
A-9	Details	06/10/15	
LS-1	Life Safety Plan	06/10/15	
<u>Structural</u>			
S-0.1	Design Criteria & General Notes	06/10/15	
S-0.2	Wind Pressure Diagram / General Notes	06/10/15	
S-2	Foundation & Slab Plan - Office	06/10/15	
S-4	Foundation Sections & Details	06/10/15	
S-5	Foundation Sections & Details	06/10/15	
S-6	Foundation Sections & Details	06/10/15	
<u>Mechanical</u>			
M-0.1	Mechanical Notes	05/28/15	
M-2.1	Mechaical Plan - Office	05/28/15	
M-6.1	Schedules & Details	05/28/15	
<u>Electrical</u>			
E-0.1	Electrical Notes	05/28/15	
E-2.1	Lighting Plan - Office	05/28/15	
E-3.1	Power Plan - Office	05/28/15	7/21/2015
E-5.1	Riser Diagram - Schedules	05/28/15	7/21/2015
		05/28/15	
<u>Plumbing</u>			
P0.1	Plumbing Notes	05/28/15	7/21/2015

**Construction Manager
Rocla Concrete Tie
600 S. 3rd St. Ft. Pierce, FL
9/8/2015 For Construction
Exhibit "C" - List of Documents**

Sheet #	Drawing Title	Dwg. Date	Rev. Date
P2.1	Sanitary Plan -Office	05/28/15	7/21/2015
P3.1	Domestic Water Plan - Office	05/28/15	
P5.1	Sanitary Isometric	05/28/15	
Plant Building			
<u>Architectural</u>			
Cover	Cover	06/10/15	
ABB	Abbreviations / General Notes	05/07/15	
ACC	Accessibilty Details	05/07/15	
A-1	Floor Plan Manufacturing Plant	06/10/15	
A-3	Elevations	06/10/15	
A-4	Elevations	06/10/15	
A-5	Building Section Manufacturing Plant	06/10/15	
A-5.1	Building Section Manufacturing Plant	06/10/15	
A-8	Details	06/10/15	
A-9	Details	06/10/15	
LS-1	Life Safety Plan	06/10/15	
<u>Structural</u>			
S-0.1	Desighn Criteria & General Notes	06/10/15	
S-0.2	Wind Pressure Diagram / General Notes	06/10/15	
S-1	Foundation & Slab Plan- Plant	06/10/15	8/5/2015
S-3	Foundation & Slab Plan - Batch Plant	06/10/15	8/5/2015
S-4	Foundation Section & Details	06/10/15	
S-5	Foundation Section & Details	06/10/15	8/5/2015
S-6	Foundation Section & Details	06/10/15	8/5/2015
S-7	Foundation Section & Details	06/10/15	8/5/2015
<u>Mechanical</u>			
M0.1	Mechanical Notes	05/28/15	
M2.1	Mecahnical Plan - Plant	05/28/15	
M6.1	Schedules & Details	05/28/15	
<u>Electrical</u>			
E0.1	Elecrical Notes	05/28/15	
E1.1	Site Lighting Plan	05/28/15	
E1.2	Site Power Plan	05/28/15	
E2.1	Lighting Plan - Plant	05/28/15	
E3.1	Power Plan - Plant	05/28/15	
E5.1	Riser Diagram - Schedules	05/28/15	
<u>Plumbing</u>			
P0.1	Plumbing Notes		
P2.1	Plumbing Plan- Plant		

Construction Manager
Rocla Concrete Tie
600 S. 3rd St. Ft. Pierce, FL
9/8/2015 For Construction
Exhibit "C" - List of Documents

Sheet #	Drawing Title	Dwg. Date	Rev. Date
<u>Civils</u>			
Cover	Cover Sheet	07/01/15	
2 of 13	Horizontal Control & Striping Plan	07/01/15	
3 of 13	Paving & Drainage	07/01/15	
4 of 13	Grading Plan	07/01/15	
5 of 13	Utility Plan	07/01/15	
6 of 13	Paving Grading & Draining Details	07/01/15	
7 of 13	Paving Grading & Draining Details	07/01/15	
8 of 13	Utility Plan Details	07/01/15	
9 of 13	Utility Plan Details	07/01/15	
10 of 13	Water & Wastewater Details	07/01/15	
11 of 13	SWPP Plan	07/01/15	
12 of 13	SWPP Specifications	07/01/15	
13 of 13	Specifications	07/01/15	
1 of 1	Boundary , TOPO & Tree Survey	12/10/14	5/28/2015
1 of 1	Site Plan	06/02/15	6/2/2015
1of 2	Final Landscape	05/05/14	5/25/2015
2 of 2	Final Landscape Notes & Details	05/05/14	5/25/2015
	Kirby Plans Pages 1 to 32 Manufacturing		7/31/2015
	Kriby Plans pages 1 to 13 Office		6/16/2015

Jacquin & Sons

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Paul

General Contractor
Construction Manager
Design - Builder

Inc.

Commercial
Industrial
Residential

EXHIBIT D

PARTIAL RELEASE

The undersigned, for and in consideration of the sum of \$ _____ and other good and valuable considerations to the undersigned having been paid for work performed through _____ (Date), with an order given by _____, on the job of **Rocla Concrete Tie Factory Fort Pierce** the receipt and sufficiency of such being hereby acknowledged, does hereby waive, release, remise and relinquish in favor of the Contractor any and all rights, claims, demands, liens, claims for relief, causes of action and the like, whether arising at law, under contract, in tort, in equity or otherwise, whether known or unknown, which the undersigned has now or may have had arising out of the performance of work or the furnishing of labor or materials by the undersigned through the above-specified date as to or on the real property at **600 South 3rd Street, Fort Pierce, FL**. This Receipt and Partial Release shall not operate to waive, release, remise or relinquish any lien or claim of the undersigned for sums in excess of said amount or for labor, services and materials to be furnished after this date.

This Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants and represents that it has fully reviewed the terms and conditions of this Waiver and Release, that it is fully informed with respect to the legal effect of this Waiver and Release and that it has voluntarily chosen to accept the terms and conditions of this Waiver and Release in return for the payment recited above. The undersigned further agrees that making and receipt of payment and execution of the Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to _____.

In WITNESS whereof, the undersigned has caused this Receipt and Partial Release of Lien to be executed this day of _____, 20 _____.

COMPANY: _____

Signature: _____

Print Name: _____

Title: _____

Must be a corporate officer, President, vice President, Secretary, Treasure or a letter of authorization must be attached that is signed by a corporate officer listing the authorized signers.

Subscribed, sworn to and acknowledged before me the day and year written above.

NOTARY PUBLIC, State of Florida at Large
(Notary Seal)

P.O. Box 4343 · Fort Pierce, FL 34948 · Phone (772) 465-2475 · Fax (772) 466-2806
CGC 022708 CGC 056649 CGC 060473 CGC 1507936 CCC 056636

Initials: JS

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Paul

General Contractor
Construction Manager
Design - Builder

Inc.

Commercial
Industrial
Residential

EXHIBIT E

FINAL RELEASE

The undersigned for and in consideration of the final payment of _____ and other good and valuable consideration to the undersigned having been paid for work performed under an order given by _____, on the job of **Rocla Concrete Tie Factory Fort Pierce** the receipt and sufficiency of such being hereby acknowledged, does hereby waive, release, remise and relinquish in favor of the Owner any and all rights, claims, demands, liens, claims for relief, causes of action and the like, whether arising at law, under contract, in tort, in equity or otherwise, whether known or unknown which the undersigned has now or may have had arising out of the performance of work or the furnishing of labor or materials by the undersigned at any and all times as to or on the real property at **600 South 3rd Street, Fort Pierce, FL** known as **Rocla** _____.

This Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants and represents that it has fully reviewed the terms and conditions of this Waiver and Release, that it is fully informed with respect to the legal effect of this Waiver and Release and that it has voluntarily chosen to accept the terms and conditions of this Waiver and Release in return for the payment recited above. The undersigned further agrees that making and receipt of payment and execution of the Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to _____.

IN WITNESS WHEREOF, the undersigned has caused this Final Release to be executed, this _____ day of _____, 20 ____.

COMPANY: _____

Signature: _____

Name: _____

Title: _____

Must be a corporate officer, President, vice President, Secretary, Treasure or a letter of authorization must be attached that is signed by a corporate officer listing the authorized signers.

Subscribed, sworn to and acknowledged before me the day and year written above.

NOTARY PUBLIC, State of Florida at Large

(Notary Seal)

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EXHIBIT "F"

REQUIREMENTS FOR PAYMENT

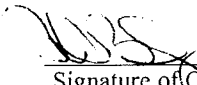
The following items need to be supplied to us in fulfillment of your subcontract on the
Rocla Concrete Tie Factory Fort Pierce)

1. A certificate of Insurance for General Liability and Worker's Compensation with current dates and all required endorsements needs to be on file in this office before any work is done on the jobsite. If your insurance expires during the course of the project, a renewal notice must reach us prior to the expiration date; failure to do so could result in delayed payment to you.
2. A complete listing of all officers of the Corporation or any individual designated in corporate minutes that is a representative of the corporation and duly authorized to sign a Release of Lien.

Please note that all payments to subcontractors must be collected in Contractor's Office and a Release of Lien signed at that time. All subcontractors are responsible for their materialmen and subs who furnish "Notice to Owners". Releases from these suppliers must be given to the General Contractor at the time payment is received. No subcontractor will receive payment unless all Releases pertaining to his company in file are current. Partial Release of Liens must be through the 25th of the month preceding payment. Example: If a check is received on February 10th, all releases must be through January 25th. Final releases from suppliers are to be submitted prior to the 100% minus retainage payment. This includes, but is not limited to, anyone who submitted a Notice to Owner on your company. All release of liens MUST be unconditional, no conditional release of liens will be accepted. If subcontractor can not make payment to their materialmen and subs, and PJSI has to pay them, there will be a fee assessed for each one PJSI has to pay. The fee for the first check written will be \$250, for each check after that the fee will be \$500.

3. A Tax Equity form must be completed and on file in order to process your payment request.
4. All payment requests must be completed on our designated form with information completed. ANY authorized Change Orders are to be included in the "Contract to Date" total with an attached copy of the signed Change Order.
5. All Warranty and Closeout Documents must be turned in prior to payment of 100% minus retainage.

Above information is required but not limited to.



Signature of Owner / Officer of Corporation

Ronald Buchmeyer

Printed Name & Title

9-21-15

Date

P.O. Box 4343 · Fort Pierce, FL 34948 · Phone (772) 465-2475 · Fax (772) 466-2806
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Rocla Concrete Tie Factory Fort Pierce

Exhibit "G"

INSURANCE REQUIRED OF SUBCONTRACTORS

Prior to commencement of work, Subcontractor shall provide Contractor with proof of the following insurance on the specified forms and endorsements:

Commercial General Liability coverage in the minimum amount of \$1,000,000/2,000,000;

Workers' Compensation coverage in the minimum amount as required by Florida law.

If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project. CGL coverage shall be written on ISO Occurrence form CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising. Contractor and all other parties, if required, of the Agreement. Contractor at a minimum, and Owner if required by Contract, shall be included as insured on the CGL using ISO Additional Insured Endorsement CG 20 10 11 85 or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured subcontractor and shall apply as primary insurance before any other insurance or self-insurance, including any deductible maintained by, or provided to the additional insured.

A waiver of subrogation shall apply to workers compensation and general liability. The endorsement must accompany the certificates.

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Rocla Concrete Tie Factory Fort Pierce
EXHIBIT "H"

SUBCONTRACTOR'S WARRANTY AND GUARANTEE

LOCATION: 600 S 3rd Street, Fort Pierce, FL
OWNER: Rocla Concrete Tie, Inc.
GENERAL CONTRACTOR: Paul Jacquin & Sons, Inc.

We _____, Subcontractor for PAUL JACQUIN & SONS, INC., for (Trade), described in Contract Documents including the Plans, Drawings, Specifications and Scope of Work as stated in our Subcontract Agreement, hereby warrant to the Contractor that all labor and materials furnished and work performed in conjunction with the above referenced project are in accordance with the Contract Documents and authorized modifications thereto will be free from defects due to defective design, materials or workmanship. Specifically, the goods and/or work will be new and (1) in full conformity with all specifications, drawings, and samples, if any, submitted by Subcontractor; (2) in full conformity with all of Subcontractor's specifications and representations with respect thereto, however made; (3) in full conformity with the plans and specifications. If, within a period of _____ year(s) from the date of acceptance of the Work by the Contractor, or such longer period of time as may be prescribed by law or otherwise specified in the Contract Documents, the Work or any portion thereof shall fail to meet the requirements of this warranty agreement, then the undersigned shall repair and/or, at the option of the Contractor, replace at its own cost and expense all such defective or non-complying work, together with any adjacent structures or facilities which have been displaced or damaged by so doing or which may have been damaged as a result of any defect in workmanship, material and/or equipment or the failure of the Work to comply with the Contract Documents. Subcontractor shall be liable to the Contractor for latent defects for as long as the Contractor may be liable to the Owner for such defects. Subcontractor is responsible for the cost of repair and/or replacement of other work damaged due to the defect or failure of Subcontractor's work, including but not limited to the cost of all materials, parts, transportation, supervision, labor, equipment, special tools, and supplies required for replacement or repair of parts and for correction of defects. Such repairs and/or replacements shall be performed in accordance with all agreements, terms, conditions, covenants and provisions of the Contract Documents pursuant to which the work was performed in the first instance.

This warranty covers all repairs and replacements furnished under the warranty. The warranty period for each repair or replacement is one year after installation or completion, except as otherwise prescribed by the terms of any special warranties required by the contract documents or applicable statutes.

The Contractor will give Subcontractor written notice of defective work. The Subcontractor agrees to respond to any warranty work request by the Contractor or Owner within 24 hours of notification, including weekends and holidays. Notices before 10 a.m. shall be handled by Subcontractor on the same day. Should Subcontractor fail to correct work within the time frame specified for the type, non-critical items (48) forty-eight hours and critical items (24) hours (electrical, plumbing, HVAC and roofing), the Contractor may proceed to correct the Subcontractor's defective work. Subcontractor agrees to pay such charges upon demand. The Contractor may perform such corrective work or cause it to be performed by others and charge the undersigned with the cost thereof. If the Contractor performs the work it may retain sums due to Subcontractor under a separate Agreement should sums due under this Subcontract have been fully paid or are otherwise insufficient to cover the costs incurred by the Contractor in making the repairs, adjustments, or replacements required.

SUBCONTRACTOR

Company: _____

Name: _____

After Hours Contact:

Address: _____

Name: _____

Phone: _____

Phone: _____

Fax: _____

By: _____

(Title)

P.O. Box 4343 · Fort Pierce, FL 34948 · Phone (772) 465-2475 · Fax (772) 466-2806
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Initials JS

CHANGE ORDER

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR
 FIELD
 OTHER

EXHIBIT "I"



PROJECT: Rocla Concrete Tie Factory 15002
 600 S 3rd Street
 Fort Pierce, FL

CHANGE ORDER NUMBER:

TO Subcontractor:

Tommy Hawkins & Sons 15002-011
 909 Barrel Ave
 Fort Pierce, FL 34982

INITIATION DATE:

ARCHITECT'S PROJECT NO:

CONTRACT FOR:

Vendor # 3045

CONTRACT DATE: 9/11/15

NOT VALID UNLESS SIGNED BY CONTRACTOR AND SUBCONTRACTOR.

Signature of the Contractor, indicates his agreement herewith, including any adjustment in the Contract Sum or Contract Time.

The original (Contract Sum) (Guaranteed Maximum Cost) was \$ 572,555.00

Net change by previously authorized Change Orders \$

The (Contract Sum) (Guaranteed Maximum Cost) prior to this Change Order was \$

The (Contract Sum) (Guaranteed Maximum Cost) will be (increased) (decreased) (unchanged) by this Change Order \$

The new (Contract Sum) (Guaranteed Maximum Cost) including this Change Order will be \$

The Contract Time will be (increased) (decreased) (unchanged) by () Days.

The Date of Substantial Completion as of the date of this Change Order therefore is

Authorized:

Paul Jacquin & Sons, Inc.
 CONTRACTOR

Tommy Hawkins
 SUBCONTRACTOR

P.O. Box 4343

909 Barrel Ave

Fort Pierce, FL 34948

Fort Pierce, FL 34982

By _____

By _____

Date _____

Date _____



PAUL JACQUIN & SONS, INC.
 General Contractors
 P.O. Box 4343
 Fort Pierce, FL 34948

EXHIBIT "J"

SUBCONTRACTORS APPLICATION FOR PAYMENT
 (must be received in our office on or before the 23rd of the month)

FROM: Tommy Hawkins 15002-011 APPLICATION # _____
 909 Barrel Ave DATE _____
 Fort Pierce, FL JOB # 15002 – Rocla Concrete Tie
 _____ VENDOR # 3045
 Name of Person Preparing Application DATE OF SUBCONTRACT 9/11/15

STATEMENT OF CONTRACT

CONTRACT AMOUNT\$ 572,555.00
 APPROVED CHANGE ORDERS THRU 20\$ _____
 ADJUSTED CONTRACT TO DATE\$ _____

CURRENT MONTHS BILLING

OUR BILLING FOR THE MONTH OF 20\$ _____
 CHANGE ORDERS FOR THE MONTH OF 20\$ _____
 SUBTOTAL\$ _____
 LESS % RETAINAGE\$ _____
 NET BILLING FOR 20\$ _____

JOB TO DATE APPLICATION CALCULATIONS

% WORK COMPLETED TO DATE\$ _____
 MATERIAL STORED ON JOBSITE\$ _____
 TOTAL WORK COMPLETED AND MATERIAL STORED ON JOBSITE\$ _____
 LESS TOTAL RETAINAGE.....\$ _____
 SUBTOTAL\$ _____
 LESS PREVIOUS PAYMENTS.....\$ _____
 AMOUNT OF THIS APPLICATION\$ _____

*** NOTE: NET BILLING FOR MONTH AND AMOUNT OF APPLICATION SHOULD BE EQUAL!!!

EXHIBIT "K"

CONTINUATION SHEET

AIA DOCUMENT G703 (Instructions on reverse side)

PAGE _____ OF PAGES _____

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar.



Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO.: _____
 APPLICATION DATE: _____
 PERIOD TO: _____
 ARCHITECT'S PROJECT NO.: _____

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D FROM PREVIOUS APPLICATION (D + E)	E WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
				THIS PERIOD	% (G + C)				

AIA DOCUMENT G703 • CONTINUATION SHEET FOR G702 • 1992 EDITION • AIA • ©1992 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5292 • **WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.**

G703-1992

CAUTION: You should use an original AIA document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

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General Contractor
Construction Manager
Design - Builder

Inc.

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EXHIBIT "L"

Rocla Concrete Tie Factory Fort Pierce Tax Equity Form

Name _____

Address _____

Phone _____

Gentlemen;

The Tax Equity and Fiscal Responsibility Act of 1982 established reporting requirements for all payments of \$600.00 or more made to individuals and partnerships in the course of conducting a trade or business. Form 1099 will be issued annually to report these payments. In order for us to fulfill these requirements, please return this letter after checking the appropriate box and writing in your Tax Identification or Social Security Number. Please make sure the name noted above is exactly how your Tax ID is issued.

1. () Corporation (I.D. Number) _____ () Please check if a 1099 is required
2. () Partnership (I.D. Number) _____
3. () Individual (Social Security #) _____
4. () Other (explain) (I.D. Number) _____

Signature

Date

After December 31, 1992, the law requires 31% withholding on amounts paid to persons who have not submitted correct taxpayer identification numbers for purposes of fulfilling this reporting requirement. We know that certain businesses are exempt from the above, however, we would appreciate your immediate response to this letter in order that our records will be complete.

Please mail your reply to: Paul Jacquin & Sons, Inc.
P.O. Box 4343
Fort Pierce, FL 34948-4343

P.O. Box 4343 · Fort Pierce, FL 34948 · Phone (772) 465-2475 · Fax (772) 466-2806
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Rocla Concrete Tie Factory Fort Pierce

Exhibit M

TOBACCO FREE ENVIRONMENT

No student, employee, volunteer, contractor or school visitor is permitted to use tobacco products of any kind or e-cigarettes:

- A. In any building, facility, or vehicle that is owned, leased, or rented by the District.
- B. On any district-owned, leased, rented, or chartered grounds and property – including all schools, district offices, athletic fields, practice fields, playgrounds, parking lots, administrative offices, maintenance, transportation areas, etc.
- C. At any off-campus, school-sponsored event.

Per School Board policy 2.90 and Jacquin & Sons.

Subcontractor Name

Address

City, State, Zip

Signature of Owner / Officer of Corporation

Printed Name & Title

Date

Rocla Concrete Tie Factory Fort Pierce

Exhibit N

Vendor Delivery Route Map



Initials *[Signature]*

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Instructions to Bidders

PLEASE READ THIS REQUEST COMPLETELY TO INSURE COMPLIANCE WITH ALL BID REQUIREMENTS

PROJECT: Rocla Tie Plant

PROJECT LOCATION: 600 South 3rd Street, Fort Pierce, FL. 34950

OWNER: Rocla Concrete Tie, Inc.

PROJECT DESIGN TEAM: EDB Architects, Culpepper & Terpening Civil Engineers

CONSTRUCTION MANAGER:

Paul Jacquin & Sons, Inc.
7348 Commercial Circle, Fort Pierce, FL 34951
Phone (772) 465-2475 Fax (772) 466-2806
Jared Modine, Project Manager

PRE BID MEETING: N/A

BID DATE and BID REQUIREMENTS:

Sealed bids will be received until **July 9th 2015 at 10:00 am est.**, at the office of the Construction Manager, Paul Jacquin & Sons, Inc. 7348 Commercial Circle, Fort Pierce, FL 34951. Indicate the project name on the outside of the bid package. Verbal or faxed bids may not be accepted. Bids must be on the Bid Proposal Form **(See Exhibit A)**. Please note we would like the Plant, Office Building and Site to bid separately **SUB-CONTRACTOR QUALIFICATION FORM (See Exhibit B)**. These forms are available at the Construction Manager's office and at www.pjsi.com.

All bidders are responsible for the review of the project site and understanding the existing conditions.

P.O. Box 4343 · Fort Pierce, FL 34948 · Phone (772) 465-2475 · Fax (772) 466-2806
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GUARANTEED MAXIMUM PRICE/SCOPE OF WORK:

The bidding subcontractor shall submit a Guaranteed Maximum Price for the subcontractor's specified scope of work. The subcontractor's bid-GMP shall represent the full and complete amount for which the subcontractor agrees to complete the project.

BOND REQUIREMENTS:

All Subcontractors submitting bids exceeding one hundred thousand dollars (\$100,000) are required to include a performance and payment bond as part of their pricing. Requirements for including a bond on all bids that do not exceed one hundred thousand dollars (\$100,000) will be reviewed on a case by case basis. Surety Requirements: PJSI requires a 100% Performance and Payment Bond on the Exhibited Format from a surety and attorney in fact licensed to do business in the State of Florida, surety having an A.M. Best Rating of "A, V" or better and a U.S. Treasury Listing for at least the bond amount. Please see [REDACTED].

SUBCONTRACTOR AGREEMENT – PJSI SUBCONTRACT:

A copy of the Paul Jacquin & Sons standard Subcontract Agreement is attached or available from our office upon request. This agreement will be the contract executed between each successful subcontractor and Paul Jacquin & Sons, Inc ([REDACTED]).

INSURANCE REQUIREMENTS:

Please see [REDACTED] and Subcontract Agreement for insurance requirements whichever document is greater takes precedence.

CONTRACT DOCUMENTS:

Plans and Specifications will be available at the Construction Manager's office for review from 8:00 AM to 4:00 PM Monday through Friday, or a CD will be available from the office of Jacquin and Son's. The construction documents are also available on line at www.pjsi.com, contact Robert Jacquin or Scott Kraum for a username and password. List of Construction Documents ([REDACTED]).

QUESTIONS REGARDING PROJECT:

Please review the plans and specifications and note any items requiring clarification. Questions or request to use alternate products should be directed, **IN WRITING**, to Paul Jacquin & Sons Inc. attention robert.jacquin@pjsi.com or fax to Robert Jacquin at 772-466-2806. Please note we need all questions in no later than July 1, 2015 at 10:00am est.

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PROJECT SCHEDULE AND WORK DAYS / HOURS:

Please see [REDACTED] Project Schedule. The start date for the project is July 27, 2015 and Project end date is December 23, 2015 (please note this includes Equipment installation and start up). The work days and hours are as follows Monday and Saturday 7:30 am to 4:00pm. Please make sure to include all manpower needs to achieve the target end date in your bid submission.

PROJECT SAFETY:

Please note the property is owned by Florida East Coast Railway which will require us to wear all Personal Protective Equipment including but not limited to hard hat, vests, safety glasses, steel toed boots, etc. per OSHA and FEC standards. This should be consider and included during your proposal submission. At the Cities request we would like all deliveries from US1 to come down Georgia Ave to South 3rd Street

AWARD OF SUB CONTRACTS:

Rocla Concrete Tie, Inc. and Paul Jacquín & Sons, Inc. reserves the right to reject any and all bids and to waive any informality. All proposals shall remain in force for 60 days after the date of the bid opening. Rocla Concrete Tie, Inc. and Paul Jacquín & Sons, Inc. may waive minor technicalities and chose sub-contractors based on the best interest of Rocla Concrete Tie Inc.

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Rocla Concrete Tie Factory Fort Pierce

SUBCONTRACTOR SAFETY AFFIDAVIT

Subcontractor shall comply with all federal, state, municipal and local laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements including those relating to safety. Interpretation of the laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements are at the sole discretion of Paul Jacquin & Son's, Inc.

Subcontractor will be required to follow all safety and housekeeping guidelines as provided by Jacquin, written and/or verbal. Attached to this affidavit is a copy of Jacquin's Safety Manual.

Subcontractor will be provided reasonable opportunity to comply with safety guidelines if or when subcontractor is found to be in violation of said guidelines, written or verbal. Multiple and/or serious violations may result in a fine to subcontractor.

All subcontractor's workers will be required to show up with, and wear, all necessary Personal Protective Equipment (PPE). If PPE is supplied to subcontractor by Jacquin, a fee will accompany the violation. If PPE is not available, subcontractor may be asked to leave the jobsite.

Signing this affidavit is also acknowledging receipt of Jacquin's Safety Manual.

Tommy Hancock Sons, Inc.
Subcontractor Name

909 Barron Ave
Address

St. Pierre, LA 70754
City, State, Zip

[Signature]
Signature of Owner / Officer of Corporation

Ronnie Buchanan V.P.
Printed Name & Title

9-21-15
Date

Jacquin Copy

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Paul

General Contractor
Construction Manager
Design - Builder

Inc.

Commercial
Industrial
Residential

PAUL JACQUIN & SONS, INC.
Date: January 28, 2016
SUBCONTRACT AGREEMENT

Owner: Rocla Concrete Tie, Inc
1819 Denver West Drive, Suite 450
Lakewood, CO 80401

Architect: Edlund, Dritenbas & Binkley
65 Royal Palm Pointe, Suite D
Vero Beach, FL 32960

Project: Rocla Concrete Tie Factory Fort Pierce
600 S 3rd Street
Fort Pierce, FL

Contractor: Paul Jacquin & Sons, Inc.
P.O. Bo 4343
Ft. Pierce, FL 34948-4343

Subcontractor: Gary Roberts Nursery & Landscape, Inc. Cost Code #
4200 Johnston Road 2140-S
Fort Pierce, FL 34951

MAILING ADDRESS:
437 Rouse Road
Fort Pierce, FL 34946

Telephone: (772) 460-1539
Facsimile: (772) 464-2696

Subcontract Price: \$71,511.00

Retainage Percentage: 10%

The foregoing terms are incorporated into and more fully explained in the provisions that follow:

THIS AGREEMENT, made as of the 28th day of January, 2016 by and between Paul Jacquin & Sons, Inc. (hereinafter-called Contractor), and Gary Roberts Nursery & Landscape, Inc. hereinafter-called Subcontractor).

WITNESSETH, that Subcontractor and Contractor agree as follows:

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1. **INCORPORATION OF CONTRACT DOCUMENTS.** Subcontractor shall perform and furnish all the work, labor, supervision, services, plant, equipment, tools, scaffolds, appliances, materials and all other things necessary for the incorporation into the Project of the work described in Exhibit B & C hereto (hereinafter called The Work). Subcontractor shall be bound to Contractor by the terms and conditions of all Contract documents for the Project, and the addendums, exhibits, additional provisions, and all modifications thereto, including without limitation the Contractor-Owner Contract and the exhibits thereto general conditions, drawings, plans and specifications, (the above-listed documents are hereafter referred to collectively as the "Contract Documents"), which are expressly incorporated herein, and all warranties, and shall assume toward Contractor all the obligations and responsibilities that Contractor, by these documents, assumes towards the Owner. If any provision of this Subcontract Agreement conflicts with any provisions of any other Contract Document, the provision in this agreement shall control. The payment provisions of the Contractor-Owner Contract are expressly excluded.

2. **SUBCONTRACTOR'S EXAMINATION OF CONTRACT DOCUMENTS AND SITE CONDITIONS.** The Work hereunder is a portion of the work to be provided to Owner and is to be performed and furnished to the satisfaction of Contractor. Subcontractor certifies that he has examined all the plans, drawings and specifications prepared by said Architect for the entire work, of which the work covered by the Subcontract is a part. The Subcontractor and his Subcontractors will be bound by all parts of said plans and specifications insofar as they relate in any way to the Work undertaken herein.

It is understood and agreed that the Subcontractor has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work under this Subcontract. No verbal agreement or conversation with any officer, agent, or employee of Contractor, either before or after execution of this Subcontract, shall affect or modify any of the terms or obligations herein contained.

3. **SUBCONTRACTOR IS AN INDEPENDENT CONTRACTOR.** Subcontractor is an independent contractor and shall, at its sole cost and expense and without increase in the Subcontract Price, comply with all laws, rules, ordinances, codes, and regulations of all governing bodies having jurisdiction over the Work. Subcontractor shall have sole responsibility for the means and methods of performing the Work required under this Subcontract. Subcontractor shall be primarily responsible to assure the safety of its own equipment, appliances, material and working conditions, techniques and procedures.

Subcontractor must obtain and pay for all necessary permits and licenses, including business licenses, Jessica Lunsford Act Certification and Davis Bacon Act. Subcontractor must pay all fees, manufacturer's taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for Social Security, worker's compensation, and unemployment or disability insurance which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules, or regulations.

Subcontractor shall comply with all federal, state, municipal and local laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements including, among others, those relating to safety, discrimination in employment, fair employment practices, or equal opportunity, and with the requirements of the American Insurance Association, whether or not provided for by the plans, specifications, general conditions or other Contract Documents, without additional charge or expense to the Contractor and shall also be responsible for and correct, at its own expense and cost, any violations resulting from or in connection with the performance of its Work. Subcontractor shall at any time upon demand furnish such proof as Contractor may require showing such compliance and the correction of such violations.

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Nothing herein limits the Contractor's right to approve Subcontractor's proposed subsubcontractors and suppliers of materials as may be required and employed to complete the Work. Subcontractor shall remove from the Project any employee Contractor determines to be detrimental to the Project.

4. **PRICE.** It is understood that the Subcontract is a lump sum cost agreement (including applicable taxes) for the Price set forth on page 1 of this Subcontract (the "Price"). All work and costs to complete the Work as shown on the plans and specifications and described in the Scope of Work are solely the Subcontractor's responsibility. The Subcontractor acknowledges the present volatility of the availability and cost of certain construction labor, supplies, and materials. The Subcontractor agrees that all risk of price escalation and/or labor or material shortage shall be expressly and solely born by the Subcontractor. Additionally, Subcontractor will be solely responsible for the unavailability of sufficient materials, equipment, and labor necessary to fully complete its scope of work and shall be liable to Contractor for non-delivery or untimely delivery for any reason.

5. **PAYMENT.**

Conditions Precedent to Subcontractor's Entitlement to Progress and Final Payment. Subcontractor agrees that it will not be entitled to payment under the Subcontract until all of the following express conditions precedent to Subcontractor's entitlement to payment have been satisfied:

Contractor's receipt in current funds from the Owner for the progress payments due the Subcontractor. If the Owner has not paid the Contractor for any reason whatsoever, the Subcontractor agrees that the Contractor shall not be liable for payment nor be indebted to the Subcontractor. Contractor's receipt of payment from Owner for Subcontractor's work is an absolute condition precedent to Subcontractor's entitlement to payment from Contractor.

Contractor's receipt of Subcontractor's completed waivers on the form attached hereto as Exhibit D (for progress payments) and receipt of completed waivers on the form attached hereto as Exhibit D and E (for final payment) for all persons or entities providing labor, services, or materials on its behalf at the time of receipt of payment. If Subcontractor cannot supply waivers for all persons or entities providing labor, services, or materials on its behalf at the time of payment, it agrees that Contractor shall be allowed to pay any such persons or entities directly, without prior notice to Subcontractor, or to issue checks made jointly payable to Subcontractor and its laborers, subcontractors, or materialmen. Any such payment directly or through joint checks will be credited as a payment to Subcontractor for purposes of determining the Subcontractor's outstanding contract balance.

Contractor's receipt of the executed Subcontract.

Contractor's receipt of the Certificates of Insurance and endorsements reflecting the types and minimum limits of insurance as required and set forth in Exhibit G and naming Contractor as an additional insured.

Contractor's receipt and approval of the Subcontractor's Schedule of Values on AIA G703.

Contractor's receipt of a completed payment application on the form on Exhibit J & K (Pay app and cont sheet), with any supporting documentation or other substantiating information requested by Contractor. Subcontractor expressly acknowledges that Contractor may reduce and/or modify Subcontractor's payment application if, in Contractor's sole discretion, the actual percentage of completed work is less than what Subcontractor represents or if, in Contractor's sole discretion, the work represented to be complete is of poor quality and/or does not conform with the drawings, specifications, and other Contract Documents.

Contractor's satisfaction of any and all backcharges, debts, or other monies owed from this Project or other construction projects upon which Contractor and Subcontractor contracted.

Contractor's satisfaction that the Owner is not assessing liquidated damages or other delay damages against Contractor, some or all of which are attributable to Subcontractor.

Contractor's receipt of any and all submittals which, in Contractor's sole discretion, are necessary for maintenance of the job schedule.

Contractor's receipt of Subcontractor's state license, if applicable, and local licenses

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If bonded, Contractor's receipt of Subcontractor's performance and payment bonds and Contractor's receipt of Subcontractor's surety's consent to progress and/or final payment

As-built and or Record drawings as deemed necessary by the Contractor

An express condition precedent to final payment only is Contractor's receipt of Subcontractor's fully executed Warranty on the form attached hereto as Exhibit H, and all other warranty documents required under the Contract Documents.

Number of closeout packages depends on the job, there will be a minimum of 4 sets required for each set.

5.2 Progress Payments.

5.2.1 Subcontractor shall submit a Schedule of Values of the various portions of the Work on Exhibit K (cont sheet) for approval by the Contractor no later than 30 days from the execution of this Subcontract. Subcontractor shall submit a completed Application for Payment and Schedule of Values on Exhibits J & K, on or before the 23rd of the month, showing the proportionate value of the Work installed to date, from which shall be deducted the current retainage, all previous payments, and all charges for services, materials, equipment and other items furnished by Contractor to or chargeable to Subcontractor. Subcontractor agrees to provide Contractor all information, evidence or substantiation as Contractor may require with respect to the nature and extent of all obligations incurred by Subcontractor for or in connection with the Work.

5.2.2 Unless payment to Subcontractor is withheld in accordance with 5.5, Contractor shall pay to Subcontractor an amount equal to the value of Subcontractor's completed work, as determined by Contractor, less the current retainage, all previous payments, and all charges for services, materials, equipment and other items furnished by Contractor to or chargeable to Subcontractor. Previous payments shall include all amounts theretofore paid on account of the work, all charges for materials or services furnished by Contractor and properly chargeable to Subcontractor and all costs incurred by Contractor properly chargeable to Subcontractor as obligations of Subcontractor. "Current Retainage" shall be calculated in accordance with the retainage percentage set forth on page 1 of this Subcontract.

5.3 *Final Payment.* All the conditions precedent to Subcontractor's entitlement to payment articulated in 5.1 apply to Subcontractor's entitlement to final payment. If the conditions precedent have been satisfied, and payment to Subcontractor is not withheld in accordance with 5.5, final payment, including the unpaid balance of the Price and retention on account of Subcontractor's Work, shall be made within thirty (30) days after the last of the following to occur: (a) full completion of the Work by the Subcontractor, (b) Contractor's receipt of all documents or information requested by Contractor evidencing that Subcontractor has paid in full all persons furnishing labor or materials in connection with the Work, including any taxes or governmental charges with respect thereto or with respect to the Work, and that neither Subcontractor nor any person claiming under or through Subcontractor has filed or has the right to maintain a lien or other claim against the Owner or Contractor on the Project premises, and (c) the delivery of all guarantees, warranties, bonds, instruction manuals, performance charts, diagrams, as-built drawings and similar items, including but not limited to the Subcontractor's Warranty on the form attached hereto as Exhibit H, required of Subcontractor or its suppliers with respect to the Work. (d) Upon receipt of final payment from owner. Unconditional final releases for Notice to Owners are due when subcontractor is paid 100% minus retainage.

5.4 *Final Payment if Subcontractor is terminated under Article 12.*

5.4.1. If Contractor exercises its right to terminate the Subcontractor under Article 12, the Subcontractor shall be entitled to payment for the value of the work actually performed. The Contractor shall not be liable to the Subcontractor for any other costs, charges, damages, or expenses, including but not limited to consequential damages; rental expenses; losses of use, income, and financing; loss of profit, anticipated profit, and overhead arising directly from the Work or the Work not performed; loss of business and reputation; principal office expenses including the compensation of personnel stationed there; or any commitments to suppliers, subcontractors or laborers. Payment after termination shall become due and payable 30 days after the occurrence of the last of the following express conditions precedent: (1) the Contractor corrects and / or completes the Subcontractor's performance in accordance with Article 11 and determines the amount of costs and expenses attributable to such, (2) the Contractor's receipt of full payment from Owner for Subcontractor's scope of work, including payment from Owner for

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work Contractor corrected or completed subsequent to Subcontractor's default, and (3) the occurrence of all express conditions precedent to Contractor's final payment to Subcontractor.

5.4.2 If Subcontractor is terminated under paragraph 12.2, Subcontractor shall be entitled to payment for the value of the work actually performed. The Contractor shall not be liable to the Subcontractor for any other costs, charges, damages, or expenses, including but not limited to consequential damages; rental expenses; losses of use, income, and financing; loss of profit, anticipated profit, and overhead arising directly from the Work or the Work not performed; loss of business and reputation; principal office expenses including the compensation of personnel stationed there; or any commitments to suppliers, subcontractors or laborers. In such event, Subcontractor shall be entitled to payment within 30 days of the last of the following conditions precedent: (1) the Contractor's receipt of full payment from Owner for Subcontractor's scope of work, and (2) the occurrence of all express conditions precedent to Contractor's final payment to Subcontractor.

5.5 *Contractor's Additional Rights to Withhold Payment.* Contractor may withhold payment if any of the requirements of section 5.1 are not met. Additionally, if any claim is made or lien filed against Contractor, the Owner, the Project, or the premises upon which the Project is located, by any person claiming that Subcontractor or other person under Subcontractor has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work; or if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Contractor or Owner might become liable and which is chargeable to Subcontractor; or if Subcontractor or other person under Subcontractor causes damage to the Work or to any other work on the Project; or if the Subcontractor fails to perform or is otherwise in default under any terms or provisions of the Agreement; Contractor shall have the right to retain from any payment then due or thereafter to become due an amount which it deems sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default, and (3) compensate the Contractor and Owner for and indemnify them against any and all losses, liability, damages costs and expenses, including legal fees and disbursements, which may be sustained or incurred by either or both of them in connection therewith. Contractor shall have the right to apply and charge against Subcontractor so much of the amount retained as may be required for the foregoing purposes. If the amount retained is insufficient therefore, Subcontractor shall be liable for the difference and pay the same to Contractor or Owner.

5.6 *Liquidated Damages pass through to Subcontractor.* Subcontractor specifically acknowledges that to the extent that Contractors Agreement with the Owner contains a liquidated damages clause, Subcontractor shall be liable to Contractor in an amount not less than the amount for which the Contractor may be liable to the Owner for delays incurred by the Owner which are attributable in whole or in part to the performance of the Subcontractor or its sub-subcontractors or suppliers in the amount required of Contractor by its Contract with the Owner per day for each day such delay continues, which sum the Subcontractor hereby agrees to pay.

6. **CHANGE ORDERS.** Subcontractor shall not make any changes, additions or deletions on the Work except upon written order of Contractor. Subcontractor makes changes, additions, or deletions on the Work without written order of Contractor at its own risk. Contractor shall have the right, from time to time, whether the Work or any part hereof shall or shall not have been completed, to order changes, additions and/or deletions in the Work as either may deem necessary or appropriate, upon issuance of a written Change Order to Subcontractor. Subcontractor shall expeditiously perform the Work even if there is a dispute as the value of the Work.

7. CLEAN-UP.

7.1 Subcontractor shall at its own cost and expense (1) keep the premises free at all times from all waste materials, packaging materials and other rubbish accumulated in connection with the execution of its Work by collecting and depositing said materials and rubbish in on-site locations or containers designated by Contractor and removing said

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materials and rubbish from the premises, (2) clean and remove from its own Work and from all contiguous work of others, any soiling, staining, mortar, plaster, concrete or dirt resulting from the execution of its Work and make good all defects resulting therefrom, (3) at the completion of its Work in each area or as otherwise directed by Contractor, perform such cleaning as may be required to leave the area "broom clean", and (4) at the entire completion of its Work, remove all of its tools, equipment, scaffolds, shanties and surplus materials and perform final clean-up as required for Owner's acceptance.

8. SCHEDULING AND TIME OF COMPLETION.

8.1 *Schedule.* TIME IS OF THE ESSENCE OF THIS SUBCONTRACT. Subcontractor agrees (a) to provide, when requested, a schedule and, upon request, revised schedules of the Work for use by Contractor in scheduling the Project, (b) to provide at the Project site, the materials, equipment, laborers and supervision necessary to begin the Work upon the Contractor's order to do so, and (c) to perform the Work and all parts thereof promptly, diligently and in such order and sequence as Contractor may direct to assure the efficient, expeditious and timely prosecution of the Project, including furnishing sufficient forces, supervision, equipment and materials, at such times and for such periods, as Contractor may direct. Subcontractor acknowledges that the construction schedule will be revised by the Contractor as required during the course of the Project and that Subcontractor shall abide by all revisions to the construction schedule written or verbal.

8.2 *Contractors Right to Modify Project Schedule/No Damages for Delay.* Contractor may require Subcontractor to prosecute its Work in such sequence as the progress of other subcontractors and the Project schedule reasonably dictates and Contractor may order Subcontractor to accelerate or decelerate, to work overtime, to work weekends or nights, to increase or reduce manpower, materials or equipment or to take such other measures as Contractor deems necessary to timely complete the project-- ALL AT NO ADDITIONAL COST TO CONTRACTOR. It is expressly understood and agreed that the scheduling and sequencing of the Work is an exclusive right of Contractor and that Contractor reserves such right to reschedule and resequence Subcontractor's Work from time to time as the demands of the Project require without any additional cost or expense to be paid to Subcontractor. Should Subcontractor be delayed in the commencement, prosecution or completion of the Work by the act, omission, neglect, or default of Contractor, Owner and/or anyone employed by Contractor, Owner, or any other contractor or subcontractor on the Project, or by damage caused by fire or other casualty or by the combined action of workmen in no way within Subcontractor's control and not due to any fault, neglect, act or omission on its part, then Subcontractor shall be entitled to an extension of time in which to complete the Work, such extension to be for a period determined by Contractor to be equivalent to the time lost by reason of any and all of aforesaid causes. Subcontractor shall not be entitled to any such time extension, however, unless a claim therefore is presented in writing to Contractor within forty-eight (48) hours of the commencement of such claimed delay. Failure to present a written claim to Contractor within 48 hours of the commencement of the delay waives any claims Subcontractor may have to an extension of time for that reason. Such extension or extensions of time, as determined by Contractor or the decision of Contractor that no such extension of time shall be allowed, shall release and discharge Contractor of and from any and all claims of whatever character, including claims for damages, by the Subcontractor on account of the aforesaid or any other causes of delay. In no event shall Subcontractor be entitled to any damage or other pecuniary compensation for delay resulting from the aforesaid causes, unless and only to the extent that Contractor receives additional compensation from the Owner for such delay.

9. **WARRANTY.** Subcontractor guarantees that the Work, including any materials or equipment furnished in connection therewith, shall be free from defects in design, materials, and workmanship and shall conform to and meet the requirements of the Contract Documents. Subcontractor shall provide the Contractor and Owner with a written warranty at the completion of the Work on the form attached hereto as Exhibit H. Subcontractor shall furnish any separate guarantee for the Work, or portions thereof, required under the Contract or Contract Documents.

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10.1 Subcontractor and/or its insurer hereby agree to defend, indemnify, and hold Contractor harmless from and against the claims, damages, losses, expenses, attorneys' fees, and court costs of Contractor, its agents, employees, elected officers and representatives for any loss or damage and to reimburse Contractor, its agents, employees, elected officers and representatives for any and all expenses, including but not limited to attorneys' fees, legal fees, expert witness fees, and court costs that Contractor may incur because of:

10.1.1 Claims and liens for labor performed or materials used or furnished through or under Subcontractor for the Project;

10.1.2 any personal injury, loss, damage or death to any person or persons and any property damage arising out of the performance or nonperformance of Work required in this Subcontract, including, without limitation, any personal injury or loss, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder; provided, however, Subcontractor's indemnity hereunder shall not arise if such injury, loss, damage or death results from the willful, wanton or intentional misconduct of a party indemnified hereunder;

10.1.3 Subcontractor's failure or the failure of any of its employees to comply with any law, ordinance, rule, regulation or requirement, including, but not limited to, any Occupational Safety and Health Administration violations and any penalties, including enhancements, resulting in whole or in part by Subcontractor's acts or omissions.

10.2 Contractor, in its sole discretion, may defend any or all of the indemnified claims or tender to Subcontractor the defense of any or all of the indemnified claims. Upon such tender by Contractor to Subcontractor, Subcontractor shall be obligated to assume the defense of Contractor in the indemnified claims, including the settlement negotiations, and shall pay and satisfy any and all settlements, judgments, sanctions, awards, or expenses, including attorneys' fees, resulting from or arising out of the indemnified claims without reimbursement from Contractor.

10.3 If Contractor tenders the defense of an indemnified claim to Subcontractor and Subcontractor fails or neglects to assume that defense, Contractor may compromise or settle or defend any such action, and Subcontractor shall be bound and obligated to reimburse Contractor for the amount expended by it in settling, compromising, or defending any such claim, or in the amount expended by Contractor in paying any settlement or judgment rendered therein, together with all reasonable attorneys' fees and expenses of litigation incurred by Contractor by reason of its defense, settlement, or compromise of such indemnified claims.

10.4 Neither final payment by Contractor nor acceptance of the Work performed by Subcontractor shall constitute a waiver of the foregoing indemnities, and notwithstanding any other provision contained in this Subcontract, the provisions of this article shall survive the termination of this Subcontract.

10.5 In any claims by any employee of the Subcontractor, the Subcontractor's subsubcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, against any persons or entities indemnified

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10. **INDEMNIFICATION.** To the fullest extent permitted by law, the Subcontractor shall indemnify, defend, and hold harmless the Contractor and its agents and employees from and against all claims, damages, losses, and expenses, arising out of or resulting from the work and/or goods, including but not limited to attorney's fees, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the Subcontractor, any Subsubcontractor, materials supplier, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The Subcontractor's indemnification obligation to Contractor for occurrences caused by the sole, contributory, or concurrent negligence of Contractor shall be limited, on a per occurrence basis, to the greater of \$1,000,000.00 (as prescribed by Florida Statute § 725.06), the price of this Subcontract, or the limits of liability of the insurance policies provided pursuant to Article 13, which Subcontractor acknowledges and agrees bears a reasonable commercial relationship to this Subcontract and which are deemed incorporated into the project specifications and bid documents.

10.1 Subcontractor and/or its insurer hereby agree to defend, indemnify, and hold harmless Contractor, its agents,

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10. **INDEMNIFICATION.** To the fullest extent permitted by law, the Subcontractor shall indemnify, defend, and hold harmless the Contractor and its agents and employees from and against all claims, damages, losses, and expenses, arising out of or resulting from the work and/or goods, including but not limited to attorney's fees, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the Subcontractor, any Subsubcontractor, materials supplier, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The Subcontractor's indemnification obligation to Contractor for occurrences caused by the sole, contributory, or concurrent negligence of Contractor shall be limited, on a per occurrence basis, to the greater of \$1,000,000.00 (as prescribed by Florida Statute § 725.06), the price of this Subcontract, or the limits of liability of the insurance policies provided pursuant to Article 13, which Subcontractor acknowledges and agrees bears a reasonable commercial relationship to this Subcontract and which are deemed incorporated into the project specifications and bid documents.

10.1 Subcontractor and/or its insurer hereby agree to defend, indemnify, and hold harmless Contractor, its agents, employees, elected officers and representatives from any loss or damage and to reimburse Contractor, its agents, employees, elected officers and representatives for any and all expenses, including but not limited to attorneys' fees, legal fees, expert witness fees, and court costs that Contractor may incur because of:

10.1.1 Claims and liens for labor performed or materials used or furnished through or under Subcontractor for the Project;

10.1.2 any personal injury, loss, damage or death to any person or persons and any property damage arising out of the performance or nonperformance of Work required in this Subcontract, including, without limitation, any personal injury or loss, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder; provided, however, Subcontractor's indemnity hereunder shall not arise if such injury, loss, damage or death results from the willful, wanton or intentional misconduct of a party indemnified hereunder;

10.1.3 Subcontractor's failure or the failure of any of its employees to comply with any law, ordinance, rule, regulation or requirement, including, but not limited to, any Occupational Safety and Health Administration violations and any penalties, including enhancements, resulting in whole or in part by Subcontractor's acts or omissions.

10.2 Contractor, in its sole discretion, may defend any or all of the indemnified claims or tender to Subcontractor the defense of any or all of the indemnified claims. Upon such tender by Contractor to Subcontractor, Subcontractor shall be obligated to assume the defense of Contractor in the indemnified claims, including the settlement negotiations, and shall pay and satisfy any and all settlements, judgments, sanctions, awards, or expenses, including attorneys' fees, resulting from or arising out of the indemnified claims without reimbursement from Contractor.

10.3 If Contractor tenders the defense of an indemnified claim to Subcontractor and Subcontractor fails or neglects to assume that defense, Contractor may compromise or settle or defend any such action, and Subcontractor shall be bound and obligated to reimburse Contractor for the amount expended by it in settling, compromising, or defending any such claim, or in the amount expended by Contractor in paying any settlement or judgment rendered therein, together with all reasonable attorneys' fees and expenses of litigation incurred by Contractor by reason of its defense, settlement, or compromise of such indemnified claims.

10.4 Neither final payment by Contractor nor acceptance of the Work performed by Subcontractor shall constitute a waiver of the foregoing indemnities, and notwithstanding any other provision contained in this Subcontract, the provisions of this article shall survive the termination of this Subcontract.

10.5 In any claims by any employee of the Subcontractor, the Subcontractor's subsubcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, against any persons or entities indemnified

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hereunder the indemnification obligation shall not be limited as to the amount or type of damages, compensation, or benefits payable by or for the Subcontractor or the Subcontractor's sub-contractors under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

11. DEFAULT.

11.1 *Acts or Events of Default.* Any of the following acts or events will render the Subcontractor in default of this Subcontract:

- 11.1.1 refusing or neglecting to supply sufficient skilled workmen or materials of the proper quality and quantity,
- 11.1.2 failing in any respect to prosecute the Work with promptness and diligence,
- 11.1.3 causing the stoppage or delay of or interference with or damage to the work of Contractor and Owner or of any other contractors or subcontractors on the Project by any act or omission,
- 11.1.4 failing to perform any of the terms and provisions of this Agreement or of the other Contract Documents, as determined in the Contractor's sole discretion,
- 11.1.5 failing to perform the Work or any portion thereof in accordance with the Contract Documents, as determined in the Contractor's sole discretion,
- 11.1.6 filing a certificate of dissolution by election or receiving a certificate of dissolution by an order of court or by operation of law,
- 11.1.7 filing a petition in bankruptcy or taking advantage of any bankruptcy, reorganization, moratorium or similar protection from creditors; becoming insolvent or be adjudged as bankrupt or go into liquidation or dissolution, either voluntarily or involuntarily or under a court order; or making a general assignment for the benefit of creditors, or
- 11.1.8 committing or omitting any other act or event which puts the Subcontractor in default, as determined by the Contractor.

11.2 *Notification of Default and Contractual Remedies for Default.* If Subcontractor fails to cure such default within 48 hours of Contractor providing written notice, then Contractor shall have the right (a) to perform and furnish through itself or through others any and all such labor or materials to correct, replace or otherwise remedy any such defects, deficiencies, or delayed performance by any reasonable and expedient means and to deduct the costs thereof from any monies due or to become due to Subcontractor under this Agreement or any other Project, and/or (b) to terminate the employment of Subcontractor, and for all or any portion of the Work, enter upon the premises and take possession of all materials, equipment, scaffolds, tools, appliances and other items thereon for the purpose of completing the Work, all of which Subcontractor hereby transfers, assigns and sets over to Contractor for such purpose, and to employ any person or persons to complete the Work and provide all labor, services, materials, equipment and other items required therefore.

11.3 *Subcontractor's Responsibility for Remedy of Default and Effect on Subcontractor's Entitlement to Payment.* In the case of such action under 11.2(a) or 11.2(b) above, Subcontractor shall not be entitled to receive any further payment under this Agreement until the Work shall be wholly completed to the satisfaction of Contractor; at which time, if the unpaid balance of the amount to be paid under this Agreement exceeds the costs and expenses incurred by Contractor in completing the Work, such excess shall be used first to pay the Subcontractor for its material and equipment so used and any amount thereafter remaining shall be apportioned between the Contractor and Subcontractor in ratio to the percentage of work completed by each party; but if such cost and expense shall exceed such unpaid balance, then the Subcontractor shall pay the difference to Contractor. Such cost and expense shall include, not only the cost of completing the Work to the satisfaction of the Contractor and of performing and furnishing labor, services, materials, equipment and other items required therefor, but also losses, damages, costs and expenses, including legal fees and disbursements sustained, incurred or suffered by reason of or resulting from Subcontractor's default. The expense incurred by Contractor, for furnishing labor or materials or for finishing the Work, together with any damages incurred by default, shall be charged to and paid by Subcontractor, and Contractor shall have a lien upon all materials, tools, and appliances, taken possession as aforesaid to secure the payment thereof. Damages shall include reasonable overhead and profit and attorneys' fees incurred by Contractor by reason of any default by Subcontractor, including the prosecution or defense of any arbitration, court action, or mechanics lien.

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11.4 *Remedies are Cumulative.* No right or remedy in this Subcontract is intended to be exclusive of any other right or remedy, but every such right or remedy shall be cumulative and shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

12. TERMINATION.

12.1 Contractor shall have the right at any time after Subcontractor has been declared in default to terminate this Agreement and require Subcontractor to cease work by written notice to Subcontractor. In lieu of termination of Subcontractor's suppliers and subcontractors, Subcontractor shall, at Contractor's election, assign same to Contractor within five (5) days of notice to do so.

12.2 If the Owner terminates the Contractor's Contract with the Owner or if the Contractor elects to terminate this Subcontract for convenience and this Subcontract is not assigned to the Owner, the Contractor shall deliver written notice of termination to the Subcontractor. Upon receipt of written notice of termination, the Subcontractor shall: (1) cease operations as directed by the Contractor in the notice; (2) take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and (3) except for Work directed to be performed prior to the effective date of the termination date stated in the notice, terminate all existing subsubcontracts and purchase orders and enter into no further subsubcontracts and purchase orders.

12.3 Upon Subcontractor's receipt of payment after termination, the parties shall have no further obligations to each other except for Subcontractor's obligations to perform corrective Work and Warranty Work relating to Work actually performed by Subcontractor or any of its sub-subcontractors prior to the termination, and to defend, indemnify, and hold harmless Contractor as provided for in this Subcontract.

13. **INSURANCE.** Before commencing the Work and as a condition precedent to payment of any kind, Subcontractor shall procure and shall thereafter maintain, at its own expense, until completion and final acceptance of the Work, the types and minimum limits of insurance as required and set forth in Exhibit G, attached hereto and made a part hereof. Subcontractor expressly agrees that it will ensure that all persons performing Subcontractor's scope of Work, whether employed by Subcontractor or not, will be covered by Subcontractor's workers' compensation insurance or such other workers' compensation insurance so as to ensure that the Contractor remains immune from suit. Should Contractor be forced to pay workers' compensation claims or benefits of any kind to any person performing Subcontractor's scope of Work, Contractor may recover same from Subcontractor.

14. PROHIBITION ON SUBCONTRACTOR ASSIGNMENT.

14.1 This Subcontract or any money due or to become due hereunder may not be assigned by Subcontractor to any other party or other Subcontractors without written approval of Contractor of such proposed assignment. Subcontractor specifically agrees not to assign, sell, or transfer any accounts receivables under this subcontract to any third party factoring company or related business. NEITHER THE OWNER OR CONTRACTOR SHALL BE LIABLE TO ANY THIRD PARTIES FOR PAYMENT OF ANY ASSIGNED ACCOUNTS RECEIVABLES.

14.2 If for any reason the Owner has cause to terminate its agreement with the Contractor for the construction of the project, the Contractor may assign this Subcontract to the Owner. The Subcontractor hereby agrees in the event of such assignment to perform its responsibilities and to fully complete the work required by this Subcontract directly for the Owner provided that all payments then due the Subcontractor for Work completed have been made to the Subcontractor.

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15. **VENUE AND CHOICE OF LAW AND JOINDER.** All disputes initiated by Subcontractor arising under this Subcontract shall be resolved solely and exclusively in the Nineteenth Judicial Circuit Court of Florida, in and for St. Lucie County, Florida, or at Contractor's sole discretion, by arbitration in St. Lucie County, Florida. The Subcontractor hereby waives for itself or those with whom he deals on behalf of this agreement whatever rights it may have in the selection of venue. This contract shall be interpreted in accordance with the law of the State of Florida. Subcontractor realizes that Contractor may become involved in disputes with the Owner, other subcontractors or others, which disputes may involve Subcontractor. Subcontractor for itself and its surety hereby consents to be joined and/or transferred to any other dispute, whether in litigation or arbitration, which may involve Subcontractor, all at the discretion of the Contractor.

16. **ARBITRATION AND JOINDER.** At the sole discretion of the Contractor, all claims, counterclaims, disputes, and other matters in question between the Contractor and the Subcontractor or arising out of this Agreement or the breach thereof shall be decided by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then obtaining. Contractor expressly reserves its right to have any dispute resolved by binding arbitration. The award rendered by the arbitrator shall be final, and judgment shall be entered upon it in accordance with applicable Florida law. Subcontractor realizes that Contractor may become involved in disputes with the Owner, other subcontractors or others, which disputes may involve Subcontractor. Subcontractor for itself and its surety hereby consents to be joined and/or transferred to any other dispute, whether in litigation or arbitration, which may involve Subcontractor, all at the discretion of the Contractor.

17. **MISCELLANEOUS.** This Agreement constitutes the entire agreement between the parties hereto. No oral representations or any other agreements have been made by Contractor or Owner except as stated in this Agreement. This Agreement may not be changed in any way except as herein provided, and no term or provision hereof may be waived by Contractor except in writing signed by its duly authorized officer or agent. The titles or headings of any term or provision of this Agreement are for convenience only and shall not be deemed to limit, restrict or alter the content, meaning or effect thereof.

17.1 Interpretation of the plans, specifications, scope of work and all contract documents at the sole discretion of Paul Jacquin & Son's, Inc.

18. **SUBCONTRACTOR'S WAIVER OF JURY TRIAL.** In the event that Contractor does not exercise its exclusive right to compel arbitration, the Subcontractor expressly and voluntarily waive all rights to a jury trial in any claim or dispute arising from the Subcontract.

19. **TESTING & INSPECTIONS:** Subcontractor agrees that the cost of all testing and retesting as necessary of every kind and nature required by the Contract Documents or as may be required by the Owner, Contractor, or authority having jurisdiction shall be paid by Subcontractor. Subcontractor agrees that the cost of all inspections and reinspections as necessary of every kind and nature required by the Contract Documents or as may be required by the Owner, Contractor, or authority having jurisdiction shall be paid by Subcontractor.

20. **DAMAGE TO OTHER TRADES WORK:** All damages to the Work of other trades by this Subcontractor will be Subcontractor's financial responsibility.

21. **DIMENSIONS/COORDINATION WITH OTHER TRADES:** Subcontractor agrees to coordinate its Work with that of other subcontractors, including but not limited to Subcontractor's agreement to check all dimensions for all Work done by other trades that directly or indirectly affect the proper installation of Subcontractor's Work. Subcontractor shall immediately report in writing any conflicts, deficiencies or other problems with the coordination of Subcontractor's work

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with that of other subcontractors, and the failure to so report will waive any and all subsequent claims for extra compensation or time which may be required to remedy the conflict, deficiency or other coordination problem.

22. **QUALITY OF WORK:** The Contract shall be the sole judge as to the acceptability of the quality and completeness of the work. Work deemed unacceptable will be removed and replaced at the expense of the Subcontractor as directed by the Contractor to the satisfaction of the Contractor. Notwithstanding the foregoing, Contractor also has the right to accept defective work and issue an appropriate deductive change order to Subcontractor.

23. **PUNCH OUT:** Subcontractor shall perform all punch-out work as directed by the Contractor within twenty-four (24) hours of notification or within a timely manner acceptable to the Contractor.

24. **BACKCHARGES:** In the event that the Subcontractor does not fulfill the Subcontract requirements to the full expectations of the Contractor, the Contractor may, at its sole discretion, supplement the Subcontractor's Work with whatever means the Contractor deems necessary. Subcontractor agrees to be backcharged for the cost incurred plus Contractor's reasonable overhead, profit and attorneys' fees.

25. **ON-SITE STORAGE OF MATERIALS:** Storage of materials on-site shall be coordinated with Contractor. Storage space shall be assigned on as needed basis as determined by Contractor. Subcontractor shall assume all risks for all materials and equipment stored on-site. No payment shall be made for materials stored on-site unless specific provisions for such payment are included in the Subcontract.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands as of the day and year first above written.

CONTRACTOR: PAUL JACQUIN & SONS, INC.

Name: _____
Michael Jacquin – President

Date: _____

SUBCONTRACTOR: Gary Roberts Nursery & Landscape, Inc.

By: *Gary M. Roberts*
(Officer of the Corporation)

Print Name: *Susan M. Roberts*

Title: *Sec/Treas.*

Date: *3/10/16*

List of attached documents:

Attachments: A, B, C, D, E, F, G, H,
I, J, K, L, M, N, O
Safety Affidavit
Jacquin Safety Manual

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SUBCONTRACT LIST OF EXHIBITS AND ATTACHMENTS

Exhibit

- A. Supplemental Conditions
 - B. Scope of Work
 - C. List of Documents
 - D. Release – Progress
 - E. Release – Final
 - F. Requirements for Payment
 - G. Insurance Requirements
 - H. Sub Warranty and Guarantee
 - I. Change Order
 - J. Application for Payment
 - K. Continuation Sheet
 - L. Tax Equity Form
 - M. Tobacco Free Environment
 - N. Vendor Delivery Route Map
 - O. Instruction to Bidders (all attachments are on the disk)
- Safety Affidavit
- Jacquin Safety Manual

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EXHIBIT "A"

SUPPLEMENTAL CONDITIONS OF THE SUBCONTRACT

The Supplemental Conditions are an integral part of this Subcontract and shall govern the responsibilities and actions of Contractor and Subcontractor during the performance of the Work. If there is any conflict between these Supplemental Conditions and Subcontract, these Supplemental Conditions shall control.

1. To the extent of any conflict between the indemnity obligations of the Owner-Contractor Contract and this Subcontract, the indemnity obligations of the Owner-Contractor Contract control, and Subcontractor shall indemnify Contractor to the extent Contractor shall indemnify Owner. Additionally, any indemnity provision in this Subcontract repugnant to section 725.06, Florida Statutes shall be deemed deleted, it being the intent of the parties that the Subcontractor provide the maximum indemnity to the Contractor allowed by law.
2. To the extent the Owner shall require Contractor to participate in mediation, the Subcontractor agrees to participate in the mediation if requested by Contractor as a condition precedent to Subcontractor commencing litigation against Contractor.
3. This Subcontract is for use on a private construction project with Rocla Concrete Tie, Inc or one of its affiliates. If Contractor does not sign a contract with the appropriate public entity, this Subcontract is void ab initio and Subcontractor shall not be entitled to compensation under any circumstances. Additionally, if Subcontractor is required to be accepted by the public entity but is not, this Subcontract is void ab initio and Subcontractor shall not be entitled to compensation under any circumstances.
4. Subcontractor acknowledges the dispute resolution procedure in the Owner-Contractor Contract. To the extent the dispute resolution procedure is enforceable, Subcontractor agrees to provide whatever documentation Contractor requests and to allow Contractor to present Subcontractor's claim as a pass-through claim to the Owner. In such circumstances, the Subcontractor agrees to be bound to the decision of the County Administrator to the extent the Contractor is bound to the decision of the County Administrator, and the Subcontractor shall have no claim whatsoever against Contractor or its surety for any money sought by Contractor on Subcontractor's behalf, but not actually received by Contractor.

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Gary Roberts Nursery & Landscape, Inc.

EXHIBIT "B"

Landscape and Irrigation

The work includes, but is not limited to, the following:

- a) Subcontractor is aware that the Project contains provision for the assessment of liquidated damages as outlined in the Contract Documents. In the event the time of completion is not met, Subcontractor may become liable for such liquidated damages in addition to other delay costs incurred as a result of any delay to the Project Completion caused by Subcontractor. Furthermore, in the event of a default and/or bankruptcy on the part of Subcontractor, Jacquin will be paid by Subcontractor an administrative cost of ten percent of the Contract Amount remaining at the time of default and/or bankruptcy plus all attorney fees incurred by Jacquin
- b) Subcontractor acknowledges it has read all portions of the Specifications. Furthermore, any part of the Specifications which requires the General Contractor to include specific provisions in Subcontracts or Purchase Orders is hereby acknowledged to be included in this Agreement even though the specific text is not rewritten in this document.
- c) To help ensure a safe, healthy and productive work environment for the employees of Jacquin and others, to protect Jacquin's property, and to assure efficient operations, Jacquin has developed and adopted a Company-wide policy establishing a drug and alcohol free workplace. Jacquin reserves the right to test upon reasonable suspicion employees of subcontractors for the presence of drugs and alcohol or to remove the employee from the premises for the remaining construction period.
- d) Subcontractor's attendance at Jacquins' Weekly Subcontractor Progress Meetings is mandatory beginning two weeks prior to starting Subcontractor's Work or as otherwise requested by Jacquin and while Subcontractor has men working on the Project. Subcontractor's

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Superintendent and Subcontractor's Project Manager shall attend the weekly meetings. Failure to attend is a violation of this Agreement and will be treated accordingly.

e) Description of Work: Subcontractor shall be responsible for layout and completion of all work included in this Agreement, including but not limited to providing all labor, materials, scaffolds, tools, hoisting facilities, cranes and equipment required to perform and complete the work included in this Agreement, for all required Landscape & Irrigation in accordance with the Contract Documents Including Division 1 General Requirements, and Addenda O thru O as prepared by the Architect; work to meet all local codes, ordinances and OSHA requirements. This work to include but not be limited to; the following:

f) Subcontractor agrees that included in this Agreement are all costs for complete systems and all project requirements in accordance with Jacquin's contract with the Owner. Subcontractor shall review all drawings and specifications prepared by the Architect to insure those construction documents are complete and comply fully with the project's requirements. Failure to include all the project's requirements contained in the construction documents shall not be cause for additional compensation to Subcontractor. No changes shall be made to this agreement for Changes in the Work unless such Work is outside the contract obligation Jacquin has with the Owner and Jacquin receives a change order from the Owner for that change.

This work to include but not be limited to the following:

- g) All required shop drawings and submittals.
- h) All required layout and record drawings for work in this Agreement.
- i) All required excavation and backfill for work in this agreement.
- j) Furnish and install all trees, shrubs, ground cover, mulch and sod as per contract documents.

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- k) All required Bahia Sod per contract documents.

- l) Sprinkler System per Irrigation plan.

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**Construction Manager
 Rocla Concrete Tie
 600 S. 3rd St. Ft. Pierce, FL
 9/8/2015 For Construction
 Exhibit "C" - List of Documents**

Sheet #	Drawing Title	Dwg. Date	Rev. Date
Office Building			
<u>Architectural</u>			
Cover	Cover	06/10/15	
ABB	Abbreviations / General Notes	05/07/15	
ACC	Accessibilty Details	05/07/15	
A-2	Floor Plan Office Bldg. / Schedules	06/10/15	
A-3	Elevations Manufacturing Bldg.	06/10/15	
A-6	Building Section Office Bldg.	06/10/15	
A-7	Reflected Ceiling Plan-Office	05/07/15	
A-8	Details, Interior Elevations	06/10/15	
A-9	Details	06/10/15	
LS-1	Life Safety Plan	06/10/15	
<u>Structural</u>			
S-0.1	Design Criteria & General Notes	06/10/15	
S-0.2	Wind Pressure Diagram / General Notes	06/10/15	
S-2	Foundation & Slab Plan - Office	06/10/15	
S-4	Foundation Sections & Details	06/10/15	
S-5	Foundation Sections & Details	06/10/15	
S-6	Foundation Sections & Details	06/10/15	
<u>Mechanical</u>			
M-0.1	Mechanical Notes	05/28/15	
M-2.1	Mechaical Plan - Office	05/28/15	
M-6.1	Schedules & Details	05/28/15	
<u>Electrical</u>			
E-0.1	Electrical Notes	05/28/15	
E-2.1	Lighting Plan - Office	05/28/15	
E-3.1	Power Plan - Office	05/28/15	7/21/2015
E-5.1	Riser Diagram - Schedules	05/28/15	7/21/2015
		05/28/15	
<u>Plumbing</u>			
P0.1	Plumbing Notes	05/28/15	7/21/2015

**Construction Manager
Rocla Concrete Tie
600 S. 3rd St. Ft. Pierce, FL
9/8/2015 For Construction
Exhibit "C" - List of Documents**

Sheet #	Drawing Title	Dwg. Date	Rev. Date
P2.1	Sanitary Plan -Office	05/28/15	7/21/2015
P3.1	Domestic Water Plan - Office	05/28/15	
P5.1	Sanitary Isometric	05/28/15	
Plant Building			
<u>Architectural</u>			
Cover	Cover	06/10/15	
ABB	Abbreviations / General Notes	05/07/15	
ACC	Accessibilty Details	05/07/15	
A-1	Floor Plan Manufacturing Plant	06/10/15	
A-3	Elevations	06/10/15	
A-4	Elevations	06/10/15	
A-5	Building Section Manufacturing Plant	06/10/15	
A-5.1	Building Section Manufacturing Plant	06/10/15	
A-8	Details	06/10/15	
A-9	Details	06/10/15	
LS-1	Life Safety Plan	06/10/15	
<u>Structural</u>			
S-0.1	Desighn Criteria & General Notes	06/10/15	
S-0.2	Wind Pressure Diagram / General Notes	06/10/15	
S-1	Foundation & Slab Plan- Plant	06/10/15	8/5/2015
S-3	Foundation & Slab Plan - Batch Plant	06/10/15	8/5/2015
S-4	Foundation Section & Details	06/10/15	
S-5	Foundation Section & Details	06/10/15	8/5/2015
S-6	Foundation Section & Details	06/10/15	8/5/2015
S-7	Foundation Section & Details	06/10/15	8/5/2015
<u>Mechanical</u>			
M0.1	Mechanical Notes	05/28/15	
M2.1	Mecahnical Plan - Plant	05/28/15	
M6.1	Schedules & Details	05/28/15	
<u>Electrical</u>			
E0.1	Elecrical Notes	05/28/15	
E1.1	Site Lighting Plan	05/28/15	
E1.2	Site Power Plan	05/28/15	
E2.1	Lighting Plan - Plant	05/28/15	
E3.1	Power Plan - Plant	05/28/15	
E5.1	Riser Diagram - Schedules	05/28/15	
<u>Plumbing</u>			
P0.1	Plumbing Notes		
P2.1	Plumbing Plan- Plant		

**Construction Manager
Rocla Concrete Tie
600 S. 3rd St. Ft. Pierce, FL
9/8/2015 For Construction
Exhibit "C" - List of Documents**

Sheet #	Drawing Title	Dwg. Date	Rev. Date
<u>Civils</u>			
Cover	Cover Sheet	07/01/15	
2 of 13	Horizontal Control & Striping Plan	07/01/15	
3 of 13	Paving & Drainage	07/01/15	
4 of 13	Grading Plan	07/01/15	
5 of 13	Utility Plan	07/01/15	
6 of 13	Paving Grading & Draining Details	07/01/15	
7 of 13	Paving Grading & Draining Details	07/01/15	
8 of 13	Utility Plan Details	07/01/15	
9 of 13	Utility Plan Details	07/01/15	
10 of 13	Water & Wastewater Details	07/01/15	
11 of 13	SWPP Plan	07/01/15	
12 of 13	SWPP Specifications	07/01/15	
13 of 13	Specifications	07/01/15	
1 of 1	Boundary , TOPO & Tree Survey	12/10/14	5/28/2015
1 of 1	Site Plan	06/02/15	6/2/2015
1of 2	Final Landscape	05/05/14	5/25/2015
2 of 2	Final Landscape Notes & Details	05/05/14	5/25/2015
	Kirby Plans Pages 1 to 32 Manufacturing		7/31/2015
	Kriby Plans pages 1 to 13 Office		6/16/2015

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EXHIBIT D

PARTIAL RELEASE

The undersigned, for and in consideration of the sum of \$ _____ and other good and valuable considerations to the undersigned having been paid for work performed through _____ (Date), with an order given by _____, on the job of **Rocla Concrete Tie Factory Fort Pierce** the receipt and sufficiency of such being hereby acknowledged, does hereby waive, release, remise and relinquish in favor of the Contractor any and all rights, claims, demands, liens, claims for relief, causes of action and the like, whether arising at law, under contract, in tort, in equity or otherwise, whether known or unknown, which the undersigned has now or may have had arising out of the performance of work or the furnishing of labor or materials by the undersigned through the above-specified date as to or on the real property at **600 South 3rd Street, Fort Pierce, FL**. This Receipt and Partial Release shall not operate to waive, release, remise or relinquish any lien or claim of the undersigned for sums in excess of said amount or for labor, services and materials to be furnished after this date.

This Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants and represents that it has fully reviewed the terms and conditions of this Waiver and Release, that it is fully informed with respect to the legal effect of this Waiver and Release and that it has voluntarily chosen to accept the terms and conditions of this Waiver and Release in return for the payment recited above. The undersigned further agrees that making and receipt of payment and execution of the Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to _____.

In WITNESS whereof, the undersigned has caused this Receipt and Partial Release of Lien to be executed this day of _____, 20 ____.

COMPANY: _____

Signature: _____

Print Name: _____

Title: _____

Must be a corporate officer, President, vice President, Secretary, Treasure or a letter of authorization must be attached that is signed by a corporate officer listing the authorized signers.

Subscribed, sworn to and acknowledged before me the day and year written above.

NOTARY PUBLIC, State of Florida at Large
(Notary Seal)

P.O. Box 4343 · Fort Pierce, FL 34948 · Phone (772) 465-2475 · Fax (772) 466-2806
CGC 022708 CGC 056649 CGC 060473 CGC 1507936 CCC 056636

Initials AM

Jacquin & Sons

Established
1940

Paul

General Contractor
Construction Manager
Design - Builder

Inc.

Commercial
Industrial
Residential

EXHIBIT E

FINAL RELEASE

The undersigned for and in consideration of the final payment of _____ and other good and valuable consideration to the undersigned having been paid for work performed under an order given by _____, on the job of **Rocla Concrete Tie Factory Fort Pierce** the receipt and sufficiency of such being hereby acknowledged, does hereby waive, release, remise and relinquish in favor of the Owner any and all rights, claims, demands, liens, claims for relief, causes of action and the like, whether arising at law, under contract, in tort, in equity or otherwise, whether known or unknown which the undersigned has now or may have had arising out of the performance of work or the furnishing of labor or materials by the undersigned at any and all times as to or on the real property at **600 South 3rd Street, Fort Pierce, FL** known as **Rocla** _____.

This Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants and represents that it has fully reviewed the terms and conditions of this Waiver and Release, that it is fully informed with respect to the legal effect of this Waiver and Release and that it has voluntarily chosen to accept the terms and conditions of this Waiver and Release in return for the payment recited above. The undersigned further agrees that making and receipt of payment and execution of the Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to _____.

IN WITNESS WHEREOF, the undersigned has caused this Final Release to be executed, this _____ day of _____, 20 ____.

COMPANY: _____

Signature: _____

Name: _____

Title: _____

Must be a corporate officer, President, vice President, Secretary, Treasure or a letter of authorization must be attached that is signed by a corporate officer listing the authorized signers.

Subscribed, sworn to and acknowledged before me the day and year written above.

NOTARY PUBLIC, State of Florida at Large

(Notary Seal)

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Paul

General Contractor
Construction Manager
Design - Builder

Inc.

Commercial
Industrial
Residential

EXHIBIT "F"

REQUIREMENTS FOR PAYMENT

The following items need to be supplied to us in fulfillment of your subcontract on the
Rocla Concrete Tie Factory Fort Pierce

1. A certificate of Insurance for General Liability and Worker's Compensation with current dates and all required endorsements needs to be on file in this office before any work is done on the jobsite. If your insurance expires during the course of the project, a renewal notice must reach us prior to the expiration date; failure to do so could result in delayed payment to you.
2. A complete listing of all officers of the Corporation or any individual designated in corporate minutes that is a representative of the corporation and duly authorized to sign a Release of Lien.

Please note that all payments to subcontractors must be collected in Contractor's Office and a Release of Lien signed at that time. All subcontractors are responsible for their materialmen and subs who furnish "Notice to Owners". Releases from these suppliers must be given to the General Contractor at the time payment is received. No subcontractor will receive payment unless all Releases pertaining to his company in file are current. Partial Release of Liens must be through the 25th of the month preceding payment. Example: If a check is received on February 10th, all releases must be through January 25th. Final releases from suppliers are to be submitted prior to the 100% minus retainage payment. This includes, but is not limited to, anyone who submitted a Notice to Owner on your company. All release of liens MUST be unconditional, no conditional release of liens will be accepted. If subcontractor can not make payment to their materialmen and subs, and PJSI has to pay them, there will be a fee assessed for each one PJSI has to pay. The fee for the first check written will be \$250, for each check after that the fee will be \$500.

3. A Tax Equity form must be completed and on file in order to process your payment request.
4. All payment requests must be completed on our designated form with information completed. ANY authorized Change Orders are to be included in the "Contract to Date" total with an attached copy of the signed Change Order.
5. All Warranty and Closeout Documents must be turned in prior to payment of 100% minus retainage.

Above information is required but not limited to.

Susan M. Roberts

Signature of Owner / Officer of Corporation

Susan M. Roberts Secretary

Printed Name & Title

Date

3/10/16

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Rocla Concrete Tie Factory Fort Pierce

Exhibit "G"

INSURANCE REQUIRED OF SUBCONTRACTORS

Prior to commencement of work, Subcontractor shall provide Contractor with proof of the following insurance on the specified forms and endorsements:

Commercial General Liability coverage in the minimum amount of \$1,000,000/2,000,000;

Workers' Compensation coverage in the minimum amount as required by Florida law.

If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project. CGL coverage shall be written on ISO Occurrence form CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising. Contractor and all other parties, if required, of the Agreement. Contractor at a minimum, and Owner if required by Contract, shall be included as insured on the CGL using ISO Additional Insured Endorsement CG 20 10 11 85 or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured subcontractor and shall apply as primary insurance before any other insurance or self-insurance, including any deductible maintained by, or provided to the additional insured.

A waiver of subrogation shall apply to workers compensation and general liability. The endorsement must accompany the certificates.

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Paul **General Contractor
Construction Manager
Design - Builder** Inc.

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Rocla Concrete Tie Factory Fort Pierce
EXHIBIT "H"

SUBCONTRACTOR'S WARRANTY AND GUARANTEE

LOCATION: 600 S 3rd Street, Fort Pierce, FL
OWNER: Rocla Concrete Tie, Inc.
GENERAL CONTRACTOR: Paul Jacquin & Sons, Inc.

We _____, Subcontractor for PAUL JACQUIN & SONS, INC., for (Trade), described in Contract Documents including the Plans, Drawings, Specifications and Scope of Work as stated in our Subcontract Agreement, hereby warrant to the Contractor that all labor and materials furnished and work performed in conjunction with the above referenced project are in accordance with the Contract Documents and authorized modifications thereto will be free from defects due to defective design, materials or workmanship. Specifically, the goods and/or work will be new and (1) in full conformity with all specifications, drawings, and samples, if any, submitted by Subcontractor; (2) in full conformity with all of Subcontractor's specifications and representations with respect thereto, however made; (3) in full conformity with the plans and specifications. If, within a period of _____ year(s) from the date of acceptance of the Work by the Contractor, or such longer period of time as may be prescribed by law or otherwise specified in the Contract Documents, the Work or any portion thereof shall fail to meet the requirements of this warranty agreement, then the undersigned shall repair and/or, at the option of the Contractor, replace at its own cost and expense all such defective or non-complying work, together with any adjacent structures or facilities which have been displaced or damaged by so doing or which may have been damaged as a result of any defect in workmanship, material and/or equipment or the failure of the Work to comply with the Contract Documents. Subcontractor shall be liable to the Contractor for latent defects for as long as the Contractor may be liable to the Owner for such defects. Subcontractor is responsible for the cost of repair and/or replacement of other work damaged due to the defect or failure of Subcontractor's work, including but not limited to the cost of all materials, parts, transportation, supervision, labor, equipment, special tools, and supplies required for replacement or repair of parts and for correction of defects. Such repairs and/or replacements shall be performed in accordance with all agreements, terms, conditions, covenants and provisions of the Contract Documents pursuant to which the work was performed in the first instance.

This warranty covers all repairs and replacements furnished under the warranty. The warranty period for each repair or replacement is one year after installation or completion, except as otherwise prescribed by the terms of any special warranties required by the contract documents or applicable statutes.

The Contractor will give Subcontractor written notice of defective work. The Subcontractor agrees to respond to any warranty work request by the Contractor or Owner within 24 hours of notification, including weekends and holidays. Notices before 10 a.m. shall be handled by Subcontractor on the same day. Should Subcontractor fail to correct work within the time frame s specified for the type, non-critical items (48) forty-eight hours and critical items (24) hours (electrical, plumbing, HVAC and roofing), the Contractor may proceed to correct the Subcontractor's defective work. Subcontractor agrees to pay such charges upon demand. The Contractor may perform such corrective work or cause it to be performed by others and charge the undersigned with the cost thereof. If the Contractor performs the work it may retain sums due to Subcontractor under a separate Agreement should sums due under this Subcontract have been fully paid or are otherwise insufficient to cover the costs incurred by the Contractor in making the repairs, adjustments, or replacements required.

SUBCONTRACTOR

Company: _____

Name: _____

After Hours Contact:

Address: _____

Name: _____

Phone: _____

Phone: _____

Fax: _____

By: _____

(Title)

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CHANGE ORDER

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR
 FIELD
 OTHER

EXHIBIT "I"



PROJECT: Rocla Concrete Tie Factory 15002 CHANGE ORDER NUMBER:
 600 S 3rd Street
 Fort Pierce, FL
 TO Subcontractor: Gary Roberts Nursery 15002-017 INITIATION DATE:
 437 Rouse Road ARCHITECT'S PROJECT NO:
 Fort Pierce, FL 34946 CONTRACT FOR:
 Vendor #790 CONTRACT DATE: 1/28/16

NOT VALID UNLESS SIGNED BY CONTRACTOR AND SUBCONTRACTOR.

Signature of the Contractor, indicates his agreement herewith, including any adjustment in the Contract Sum or Contract Time.

The original (Contract Sum) (Guaranteed Maximum Cost) was \$ 71,511.00
 Net change by previously authorized Change Orders \$
 The (Contract Sum) (Guaranteed Maximum Cost) prior to this Change Order was \$
 The (Contract Sum) (Guaranteed Maximum Cost) will be (increased) (decreased) (unchanged)
 by this Change Order \$
 The new (Contract Sum) (Guaranteed Maximum Cost) including this Change Order will be \$
 The Contract Time will be (increased) (decreased) (unchanged) by () Days.
 The Date of Substantial Completion as of the date of this Change Order therefore is

Authorized:

Paul Jacquin & Sons, Inc.
 CONTRACTOR
P.O. Box 4343
Fort Pierce, FL 34948

Gary Roberts Nursery
 SUBCONTRACTOR
437 Rouse Road
Fort Pierce, FL 34946

By _____
 Date _____

By _____
 Date _____



PAUL JACQUIN & SONS, INC.
 General Contractors
 P.O. Box 4343
 Fort Pierce, FL 34948

EXHIBIT "J"

SUBCONTRACTORS APPLICATION FOR PAYMENT
 (must be received in our office on or before the **23rd** of the month)

FROM: Gary Roberts 15002-017 APPLICATION # _____
 437 Rouse Road DATE _____
 Fort Pierce, FL 34946 JOB # 15002 - Rocla Concrete Tie
 Name of Person Preparing Application VENDOR # 790
 DATE OF SUBCONTRACT _____

STATEMENT OF CONTRACT

CONTRACT AMOUNT\$ 71,511.00
 APPROVED CHANGE ORDERS THRU 20\$ _____
 ADJUSTED CONTRACT TO DATE\$ _____

CURRENT MONTHS BILLING

OUR BILLING FOR THE MONTH OF 20\$ _____
 CHANGE ORDERS FOR THE MONTH OF 20\$ _____
 SUBTOTAL\$ _____
 LESS _____ % RETAINAGE\$ _____
 NET BILLING FOR 20\$ _____

JOB TO DATE APPLICATION CALCULATIONS

_____ % WORK COMPLETED TO DATE\$ _____
 MATERIAL STORED ON JOBSITE\$ _____
 TOTAL WORK COMPLETED AND MATERIAL STORED ON JOBSITE\$ _____
 LESS TOTAL RETAINAGE.....\$ _____
 SUBTOTAL\$ _____
 LESS PREVIOUS PAYMENTS.....\$ _____
 AMOUNT OF THIS APPLICATION\$ _____

*** NOTE: NET BILLING FOR MONTH AND AMOUNT OF APPLICATION SHOULD BE EQUAL!!!

CONTINUATION SHEET

EXHIBIT "K"

AIA DOCUMENT G703 (Instructions on reverse side)

PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.



APPLICATION NO.:
APPLICATION DATE:
PERIOD TO:
ARCHITECT'S PROJECT NO.:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D FROM PREVIOUS APPLICATION (D + E)		E WORK COMPLETED THIS PERIOD		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)		H BALANCE FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
								% (G + C)			

AIA DOCUMENT G703 • CONTINUATION SHEET FOR G702 • 1992 EDITION • AIA • ©1992 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5292 • WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

G703-1992

CAUTION: You should use an original AIA document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

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EXHIBIT "L"

Rocla Concrete Tie Factory Fort Pierce Tax Equity Form

Name _____

Address _____

Phone _____

Gentlemen;

The Tax Equity and Fiscal Responsibility Act of 1982 established reporting requirements for all payments of \$600.00 or more made to individuals and partnerships in the course of conducting a trade or business. Form 1099 will be issued annually to report these payments. In order for us to fulfill these requirements, please return this letter after checking the appropriate box and writing in your Tax Identification or Social Security Number. Please make sure the name noted above is exactly how your Tax ID is issued.

1. () Corporation (I.D. Number) _____ () Please check if a 1099 is required
2. () Partnership (I.D. Number) _____
3. () Individual (Social Security #) _____
4. () Other (explain) (I.D. Number) _____

Signature

Date

After December 31, 1992, the law requires 31% withholding on amounts paid to persons who have not submitted correct taxpayer identification numbers for purposes of fulfilling this reporting requirement. We know that certain businesses are exempt from the above, however, we would appreciate your immediate response to this letter in order that our records will be complete.

Please mail your reply to: Paul Jacquin & Sons, Inc.
P.O. Box 4343
Fort Pierce, FL 34948-4343

P.O. Box 4343 · Fort Pierce, FL 34948 · Phone (772) 465-2475 · Fax (772) 466-2806
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Paul

General Contractor
Construction Manager
Design - Builder

Inc.

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Rocla Concrete Tie Factory Fort Pierce

Exhibit M

TOBACCO FREE ENVIRONMENT

No student, employee, volunteer, contractor or school visitor is permitted to use tobacco products of any kind or e-cigarettes:

- A. In any building, facility, or vehicle that is owned, leased, or rented by the District.
- B. On any district-owned, leased, rented, or chartered grounds and property – including all schools, district offices, athletic fields, practice fields, playgrounds, parking lots, administrative offices, maintenance, transportation areas, etc.
- C. At any off-campus, school-sponsored event.

Per School Board policy 2.90 and Jacquin & Sons.

Gary Roberts Nursery & Ldsp., Inc.
Subcontractor Name

437 Kouse Road
Address

Fort Pierce, FL. 34946
City, State, Zip

Susan M. Roberts
Signature of Owner / Officer of Corporation

Susan M. Roberts Sec/Treas.
Printed Name & Title

3/10/14
Date

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Instructions to Bidders

PLEASE READ THIS REQUEST COMPLETELY TO INSURE COMPLIANCE WITH ALL BID REQUIREMENTS

PROJECT: Rocla Tie Plant

PROJECT LOCATION: 600 South 3rd Street, Fort Pierce, FL. 34950

OWNER: Rocla Concrete Tie, Inc.

PROJECT DESIGN TEAM: EDB Architects, Culpepper & Terpening Civil Engineers

CONSTRUCTION MANAGER:

Paul Jacquin & Sons, Inc.
7348 Commercial Circle, Fort Pierce, FL 34951
Phone (772) 465-2475 Fax (772) 466-2806
Jared Modine, Project Manager

PRE BID MEETING: N/A

BID DATE and BID REQUIREMENTS:

Sealed bids will be received until **July 9th 2015 at 10:00 am est.**, at the office of the Construction Manager, Paul Jacquin & Sons, Inc. 7348 Commercial Circle, Fort Pierce, FL 34951. Indicate the project name on the outside of the bid package. Verbal or faxed bids may not be accepted. Bids must be on the Bid Proposal Form **(See Exhibit A)**. Please note we would like the Plant, Office Building and Site to bid separately **SUB-CONTRACTOR QUALIFICATION FORM (See Exhibit B)**. These forms are available at the Construction Manager's office and at www.pjsi.com.

All bidders are responsible for the review of the project site and understanding the existing conditions.

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GUARANTEED MAXIMUM PRICE/SCOPE OF WORK:

The bidding subcontractor shall submit a Guaranteed Maximum Price for the subcontractor's specified scope of work. The subcontractor's bid-GMP shall represent the full and complete amount for which the subcontractor agrees to complete the project.

BOND REQUIREMENTS:

All Subcontractors submitting bids exceeding one hundred thousand dollars (\$100,000) are required to include a performance and payment bond as part of their pricing. Requirements for including a bond on all bids that do not exceed one hundred thousand dollars (\$100,000) will be reviewed on a case by case basis. Surety Requirements: PJSI requires a 100% Performance and Payment Bond on the Exhibited Format from a surety and attorney in fact licensed to do business in the State of Florida, surety having an A.M. Best Rating of "A, V" or better and a U.S. Treasury Listing for at least the bond amount. Please see **Exhibit C**.

SUBCONTRACTOR AGREEMENT – PJSI SUBCONTRACT:

A copy of the Paul Jacquin & Sons standard Subcontract Agreement is attached or available from our office upon request. This agreement will be the contract executed between each successful subcontractor and Paul Jacquin & Sons, Inc (**See Exhibit E**).

INSURANCE REQUIREMENTS:

Please see **Exhibit D** and Subcontract Agreement for insurance requirements whichever document is greater takes precedence.

CONTRACT DOCUMENTS:

Plans and Specifications will be available at the Construction Manager's office for review from 8:00 AM to 4:00 PM Monday through Friday, or a CD will be available from the office of Jacquin and Son's. The construction documents are also available on line at www.pjsi.com, contact Robert Jacquin or Scott Kraum for a username and password. List of Construction Documents (**See Exhibit F**).

QUESTIONS REGARDING PROJECT:

Please review the plans and specifications and note any items requiring clarification. Questions or request to use alternate products should be directed, **IN WRITING**, to Paul Jacquin & Sons Inc. attention robert.jacquin@pjsi.com or fax to Robert Jacquin at 772-466-2806. Please note we need all questions in no later than July 1, 2015 at 10:00am est.

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PROJECT SCHEDULE AND WORK DAYS / HOURS:

Please see **Exhibit G** Project Schedule. The start date for the project is July 27, 2015 and Project end date is December 23, 2015 (please note this includes Equipment installation and start up). The work days and hours are as follows Monday and Saturday 7:30 am to 4:00pm. Please make sure to include all manpower needs to achieve the target end date in your bid submission.

PROJECT SAFETY:

Please note the property is owned by Florida East Coast Railway which will require us to wear all Personal Protective Equipment including but not limited to hard hat, vests, safety glasses, steel toed boots, etc. per OSHA and FEC standards. This should be consider and included during your proposal submission. At the Cities request we would like all deliveries from US1 to come down Georgia Ave to South 3rd Street

AWARD OF SUB CONTRACTS:

Rocla Concrete Tie, Inc. and Paul Jacquin & Sons, Inc. reserves the right to reject any and all bids and to waive any informality. All proposals shall remain in force for 60 days after the date of the bid opening. Rocla Concrete Tie, Inc. and Paul Jacquin & Sons, Inc. may waive minor technicalities and chose sub-contractors based on the best interest of Rocla Concrete Tie Inc.

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Paul

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Design - Builder

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Industrial
Residential

Rocla Concrete Tie Factory Fort Pierce

SUBCONTRACTOR SAFETY AFFIDAVIT

Subcontractor shall comply with all federal, state, municipal and local laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements including those relating to safety. Interpretation of the laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements are at the sole discretion of Paul Jacquin & Son's, Inc.

Subcontractor will be required to follow all safety and housekeeping guidelines as provided by Jacquin, written and/or verbal. Attached to this affidavit is a copy of Jacquin's Safety Manual.

Subcontractor will be provided reasonable opportunity to comply with safety guidelines if or when subcontractor is found to be in violation of said guidelines, written or verbal. Multiple and/or serious violations may result in a fine to subcontractor.

All subcontractor's workers will be required to show up with, and wear, all necessary Personal Protective Equipment (PPE). If PPE is supplied to subcontractor by Jacquin, a fee will accompany the violation. If PPE is not available, subcontractor may be asked to leave the jobsite.

Signing this affidavit is also acknowledging receipt of Jacquin's Safety Manual.

Gary Roberts Nursery & Landscape Inc
Subcontractor Name

437 Rowe Rd
Address

Ft. Pierce, FL 34946
City, State, Zip

Susan M. Roberts
Signature of Owner / Officer of Corporation

Susan M. Roberts Sec/Treas
Printed Name & Title

3/10/16
Date