

CONTRACT FOR COLD PLANT MIX

THIS CONTRACT entered into this 13th day of September, 2010, by and between the **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **DUVAL ASPHALT PRODUCTS**, 7544 Philips Highway, Jacksonville, Florida 32256, hereinafter referred to as "Vendor".

WHEREAS, the Board of County Commissioners of Nassau County, Florida received sealed bids for Cold Plant Mix, Bid No. NC10-022, on June 29, 2010 at 2:00 p.m.; and

WHEREAS, the Road and Bridge Department determined that **DUVAL ASPHALT PRODUCTS** was the lowest, most responsive and responsible bidder for the bid items as set forth in Exhibit "A"; and

NOW, THEREFORE, in consideration of the terms and conditions herein set forth, the County and the Vendor agree as follows:

SECTION 1. Description of Services to be Provided

The County does hereby retain the Vendor to furnish materials or services as further described in the Scope of Services attached hereto as Exhibit "B" and made a part hereof. Required materials and service shall be specifically enumerated, described and depicted in the Purchase orders authorizing performance of the specific task. This Contract standing alone does not authorize the performance of any work or require the County to place any orders for work.

SECTION 2. Receiving/Payment/Invoicing

No payment will be made for materials ordered without proper purchase order authorization. The County shall pay the vendor within forty-five (45) calendar days of receipt of invoice, pursuant to and in accordance with the promulgations set forth by the State of Florida's Prompt Payment Act. (Florida Statutes Section 218.70). Payment shall not be made until materials, goods or services have been received, inspected and accepted by the County in the quality and quantity ordered. Payment will be accomplished by submission of an invoice, in duplicate, with the Purchase Order number referenced thereon and mailed to the address set forth in the Purchase Order. Payment in advance of receipt of goods or services by Nassau County cannot be made.

The invoice submitted shall be in sufficient detail as to item, quantity and price in order for the County to verify compliance with the awarded bid.

SECTION 3. Acceptance of Goods/Services

Receipt of goods/services shall not constitute acceptance. Final acceptance and authorization of payment shall be given only after a thorough inspection indicates that the product/performance meets bid specifications and conditions. Should the products/services differ in any respect from specifications,

payment will be withheld until such time as the supplier takes necessary corrective action. If the proposed corrective action is not acceptable to the County, the County Coordinator's Office may authorize the recipient to refuse final acceptance of the goods/services. Should a representative of the County agree to accept the goods/services on condition that the Vendor will correct his performance within a stipulated time period, then payment will be withheld until the services are performed as specified.

SECTION 4. Inspection/Acceptance Title

Inspection and acceptance will be at destination unless otherwise stipulated. Title and risk of loss or damage to all items shall be the responsibility of the Vendor until accepted by the using department of Nassau County, unless loss or damage results from negligence by Nassau County or its using Department.

SECTION 5. Firm Prices

Prices for goods and services covered in the specifications shall be firm; net delivered to the ordering agency, **F.O.B. DESTINATION**, vendor paying all delivery costs and shall remain firm for the period of this Contract. No additional fees or charges shall be accepted.

SECTION 6. Fund Availability

This Contract is deemed effective only to the extent that appropriations are available. Pursuant to Florida Statutes all appropriations lapse at the end of the Fiscal Year. Multi-year awards shall be adequately funded but the County reserves the right not to appropriate for an ongoing procurement if it is deemed in its best interest.

SECTION 7. Permits/Licenses/Fees

Any permits, licenses or fees required for this service will be the responsibility of the Vendor unless otherwise stated.

SECTION 8. Taxes

The County is tax exempt. As such, the County will not pay any Federal Excise or State of Florida Sales Tax. The Vendor will refrain from including taxes in any billing.

SECTION 9. Laws Governing this Contract

This Contract shall be consistent with, and be governed by, the Ordinances of Nassau County, the whole law of the State of Florida, both procedural and substantive, and applicable federal statutes, rules and regulations. Any and all litigation arising under this Contract shall be brought in Nassau County, Florida.

SECTION 10. Changes

The County reserves the right to order, in writing, changes in the work within the scope of the contract, such as change in quantity or delivery schedule. The Vendor has the right to request an equitable price adjustment in cases where changes to the contract under the authority of this clause result in increased costs to the Vendor.

SECTION 11. Modifications

In addition to modifications made under the changes clause, this Contract may be modified within the scope of the contract upon the written and mutual consent of both parties, and approval by appropriate legal bodies in the County.

SECTION 12. Assignment & Subcontracting

The Vendor will not be permitted to assign its contract with the County, or to subcontract any of the work requirements to be performed without obtaining prior written approval by the County.

SECTION 13. Severability

If any section, subsection, sentence, clause, phrase, or portion of this Contract is, for any reason, held invalid, unconstitutional, or unenforceable by any Court of Competent Jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 14. Termination for Default

The performance of the Contract may be terminated by the County in accordance with this clause, in whole or in part, in writing, whenever the County shall determine that the Vendor has failed to meet performance requirement(s) of the Contract.

SECTION 15. Termination for Convenience

The County reserves the right to terminate the Contract in whole or part by giving the vendor written notice at least thirty (30) days prior to the effective date of the termination. Upon receipt of termination from the County, the Vendor shall only provide those services specifically approved or directed by the County. All other rights and duties of the parties under the Contract shall continue during such notice period, and the County shall continue to be responsible to the vendor for the payment of any obligations to the extent such responsibility has not been excused by breach of default of the Vendor.

SECTION 16. Force Majeure

Neither party of this Contract shall be liable to the other for any cost or damages if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the parties. Such causes may include, but are not restricted to, acts of nature, fires, quarantine restriction,

strikes and freight embargoes. In all cases, the failure to perform must be totally beyond the control and without any fault or negligence of the party.

SECTION 17. Access and Audits

The Vendor shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the Work for at least three (3) years after completion of this Contract. The County and the Clerk of Courts shall have access to such books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours, at the County's or the clerk's cost, upon five (5) days' written notice.

SECTION 18. Vendor Responsibilities

The Vendor will provide the services agreed upon in a timely and professional manner in accordance with specifications.

SECTION 19. Public Emergencies

The Vendor shall agree before, during, and after a public emergency, disaster, hurricane, tornado, flood, or other acts of nature that the County shall require a "First Priority" for goods and services. It is vital and imperative that the majority of citizens are protected from any emergency situation that threatens public health and safety, as determined by the County. The Vendor agrees to rent/sell/lease all goods and services to the county or governmental entities on a "first priority" basis. The County expects to pay a fair and reasonable price for all products and services rendered or contracted in the event of a disaster, emergency, hurricane, tornado or other acts of nature.

SECTION 20. Period of Contract/Option to Extend or Renew

This Contract shall begin on October 1, 2010 and terminate September 30, 2013. The performance period of this Contract may be extended upon mutual Contract between the vendor and the County with no change in terms or conditions. Two extensions of performance period shall be allowed under this provision and shall be in one (1) year increments. Total contract length and individual one (1) year extensions shall not exceed five years in total. Any Contract or amendment to the Contract shall be subject to fund availability and mutual written agreement between the County and the Vendor.

SECTION 21. Exercise of Option

Exercise of option to extend term of contract: If the County wishes to enter into an option period, the County shall request from the Vendor their written statement of desire to enter into an extension of the performance period.

SECTION 22. Probationary Period

The first ninety (90) days of this Contract are to be considered a "probationary" period. At the County's election, this Contract may be terminated, based on the performance of the Vendor, and a new award be granted without another formal bid.

SECTION 23. Escalation Clause

Ninety (90) days prior to the end of the contract term, the Vendor may request in writing an increase in an individual item unit cost. Consideration of price increases at each renewal period will be given provided such escalations are reasonable and acceptable to the County. It is also expected that de-escalation of prices will be extended to the County if market so reflects. The County will consider a price adjustment based on the latest Consumer Price Index and/or proof of a manufacturer's price increase. Any and all proposed increases are subject to approval by the County.

SECTION 24. Supervision

The Vendor shall act as an independent contractor and not as an employee of the County. The County shall not exercise any supervision or control over the Vendor's employees performing services under this Contract. Such employees shall be accountable not to the County, but solely to the Vendor, who in turn is responsible to the County.

SECTION 25. Indemnification and Insurance

The Vendor shall indemnify and hold harmless the County and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of this contract, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to loss to or destruction of tangible property, including loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the Vendor and/or Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

In any and all claims against the County or any of its agents or employees, by any employee of the Vendor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Vendor or any Subcontractor under Workers' Compensation acts, disability benefit acts, or other employee benefits act.

The vendor shall, on a primary basis, and at its sole expense, agree to maintain in full force and effect at all times during the life of this contract, insurance coverage's, limits, including endorsements, as described herein. The requirements contained herein, as well as the County's review or acceptance of

insurance maintained by the Vendor is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Vendor under the Contract.

Workers' Compensation: The Vendor shall agree to maintain Workers' Compensation Insurance and Employers Liability in accordance with Florida Statute Chapter 440. Coverage must include Employers Liability with a minimum limit of \$100,000 each.

Business Auto Policy: The Vendor shall agree to maintain Business Automobile Liability at a limit of liability not less than \$500,000 each occurrence for all owned, non-owned and hired automobiles. In the event the Vendor does not own any automobiles, the Business Auto Liability requirement shall be amended allowing the Vendor to agree to maintain only Hired and Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate business auto coverage form.

Commercial General Liability: Commercial General Liability for public liability during the lifetime of this Contract shall have minimum limits of \$1,000,000 per claim, \$2,000,000 per occurrence for Personal Injury, Bodily Injury, and Property Damage Liability. Coverage shall include Premises and/or Operations, Independent Contractors, Products and/or Complete Operations, Contractual Liability and Broad Form Property Damage Endorsements. Coverage shall not contain an exclusion or limitation endorsement for Contractual Liability or Cross Liability. Coverage for the hazards of explosion, collapse and underground property damage (XCU) must also be included when applicable to the work to be performed. All insurance policies shall be issued from a company or companies duly licensed by the State of Florida. All policies shall be on an occurrence-made basis; the County shall not accept claims-made policies. Specific endorsements will be requested depending upon the type and scope of work to be performed.

Additional Insured Requirements: Certificates showing proof of the above required insurance shall be provided to the County prior to start of this contract and shall be attached hereto as Exhibit "C". Except as to Workers' Compensation and Employers' Liability, said Certificate(s) shall clearly state that coverage required by the Contract has been endorsed to include Nassau County, a political subdivision of the State of Florida, its officers, agents and employees as Additional Insured with a CG 2026-Designated Person or Organization endorsement, or similar endorsement, to its Commercial General Liability. The name for the Additional Insured endorsement issued by the insurer shall read "Nassau County, a political subdivision of the State of Florida, its officers, employees and agents". The Certificate of Insurance shall unequivocally provide thirty (30) days written notice to the County prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Said liability insurance must be acceptable by and

approved by the County as to form and types of coverage. In the event that the statutory liability of the County is amended during the term of this Contract to exceed the above limits, the contractor shall be required, upon thirty (30) days written notice by the County, to provide coverage at least equal to the amended statutory limit of liability of the County.

SECTION 26. Disputes

Any dispute arising under this Contract shall be addressed by the representatives of the County and the Consultant as set forth herein. Disputes shall be set forth in writing to the County Coordinator with a copy to the Department Head or Consultant, depending on which party initiates the dispute, and provided by overnight mail, UPS, FedEx, or certified mail. A response shall be provided in the same manner prior to the initial meeting with the County Coordinator, the Department Head (or their designee), and a representative of the Consultant. This initial meeting shall take place no more than thirty (30) days from the written notification of the dispute addressed to the County Coordinator.

If the dispute is not settled at the initial meeting, the County Coordinator shall immediately notify the County Attorney. The Department Head (or his/her designee), the County Attorney, the County Coordinator, and the Department Head (or their designee(s)) shall meet with the Consultant's representative(s) within thirty (30) days of the County Coordinator's notification to the County Attorney of the continued dispute.

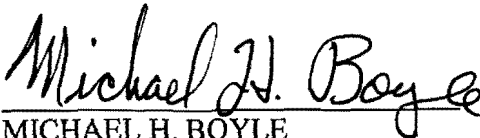
If there is no satisfactory resolution, the claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, shall be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen by the County and the cost of mediation shall be borne by the Consultant. If either party initiates a Court proceeding, and the Court orders, or the parties agree to, mediation, the cost of mediation shall be borne by the Consultant. Consultant shall not stop work during the pendency of mediation or dispute resolution. No litigation shall be initiated unless and until the procedures set forth herein are followed.

SECTION 27. Entire Agreement

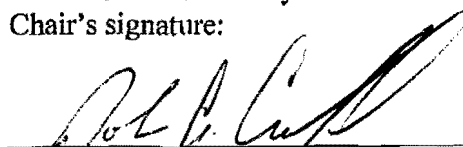
The written terms and provisions of this contract shall supersede all prior verbal statements of any official or other representative of the County. Such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any manner whatsoever, this Contract or contract documents.

IN WITNESS WHEREOF, the parties have executed this contract, in two (2) copies, each of which shall be deemed an original on this day and year first above written.

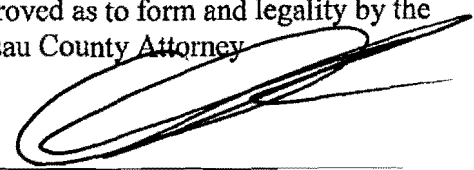
BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA


MICHAEL H. BOYLE
Its: Chair

Attest as to authenticity of
Chair's signature:


JOHN A. CRAWFORD
Its: Ex-Officio Clerk
*EOK
9/29/10*

Approved as to form and legality by the
Nassau County Attorney


DAVID A. HALLMAN

DUVAL ASPHALT PRODUCTS

Bill Conroy
By: Bill Conroy
Its: Sales Manager

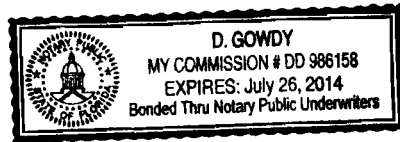
STATE OF Florida
COUNTY OF Duval

Before me personally appeared, Bill Conroy, who is personally known or produced _____ as identification, known to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that he/she executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 17th day of September, 2010.

D. Gowdy
Notary Signature

Notary-Public-State of Florida at large
My Commission expires: 7-26-2014



ATTACHMENT "B" - BID PRICE SHEET

COLD PLANT MIX
BID NUMBER NC10-022

COLD PLANT MIX	
Price per Ton at Plant Site	\$ <u>110.⁰⁰</u>
Price per Ton F.O. B. Hilliard Florida	\$ <u>117.²⁴</u>
Price per Ton F.O.B. Fernandina Beach Florida	\$ <u>117.²⁴</u>

OTHER CHARGES:

<u>Description</u>	<u>Charge</u>
<u>n/a</u>	<u>n/a</u>
_____	_____
_____	_____

Duval Asphalt Products, Inc.
Company Name

7544 Philips Hwy,
Address

Jacksonville, FL 32256
City, State, Zip

William Conroy
Signature

William Conroy
Printed Name

(904) 296-2020
Phone Number

bconroy@Duvalasphalt.com
Email

REMINDER: THIS FORM IS TO BE INCLUDED WITH BID. FAILURE TO SUBMIT ALONG WITH BID MAY BE CAUSE FOR DISQUALIFICATION.

EXHIBIT "B"

TECHNICAL SPECIFICATIONS/SCOPE OF WORK

1. The duration of this bid shall be from October 1, 2010 through September 30, 2013 with two (2) optional one year extensions.
2. The payment due date for a local government entity for the purchase of goods or services other than construction services is 45 days per Florida Statutes Section 218.74.
3. Price quotes are to be F.O.B. to destination.
4. All charges must be indicated on the Bid Sheet. If not, Nassau County will have the authority to reject those charges.
5. Complete description and specifications of product must accompany each and every bid.
6. In conformance with the ruling of the Attorney General, State of Florida, all prices shall be firm for the duration of the contract period.
7. All materials shall conform to Section 285 of the current FDOT Standard Specifications for Road and Bridge Construction and FDOT Roadway and Traffic Design Standards Index 400.
8. Nassau County is requiring all bidders to provide a copy of their insurance liability showing evidence of their coverage and the limits of their liability in case of accident or any mishap which may occur on Nassau County property.