

SEP. 9. 2011 2:22PM

WRIGHT ASPHALT

NO. 4599

P. 1/3



11931 Wickchester, Suite 101  
Houston, Texas 77043-4501  
Phone: (281) 452-9084 • Fax: (281) 452-2562

September 15, 2011

**Bill McElhaney**  
**County Judge**  
**County of Wise, TX**  
**P.O. Box 952**  
**Decatur, TX 76234**

**RE: Wright Sales Agreement No: 59103**

**Project: Bid No. 12-600-014**

Dear Mr. McElhaney,

Enclosed is our Sales Agreement covering your AC 10-2TR Asphalt Cement requirements. When placing an order for this particular project, please use the corresponding loading number(s).

If the agreement is acceptable, please sign and return all copies so we may validate the contract. A copy of the agreement will be returned to you for your files. If the contract is not returned within thirty days it will be voided and pricing will be at the current market price.

We also request that you include a copy of your payment bond for our files when returning your agreement.

We appreciate your business and if you have any questions, please let us hear from you!

**WRIGHT ASPHALT PRODUCTS CO.**

**Kelly Goodson**  
**General Manager**

**KG / sm**  
**Enclosure**

### SALES AGREEMENT



11931 Wickchester, Suite 101 - Houston, Texas 77043-4501 - Phone: (281) 452-9084 - Fax: (281) 452-2562

DATE: 8/15/2011 Customer P.O. #: \_\_\_\_\_ WRIGHT NO. 59103-CPU/DEL

Wright Asphalt Products Co., 11931 Wickchester, Suite 101, Houston, Texas, hereinafter called Seller, agrees to sell and deliver to:

County of Wise, TX  
County of Wise, TX  
P.O. Box 952  
Decatur, TX 76234  
Bill McElhanev  
County Judge

(940) 627-3312 Office  
(840) 627-4717 Fax

hereinafter called Buyer, and Buyer agrees to buy and accept from Seller the following products to be shipped as ordered, unless otherwise specified.

From 10/1/2011 To 09/30/2012

QUANTITY	PRODUCT	Price F.O.B.
Open Gallons	AC 10-2TR Loading No: 958333-236	\$3.3700 / Gallon Effective Date: 8/15/2011
Refinery: Alon, Big Spring, TX Escalator: \$3.37/GALLON DELIVERED - BASED ON FULL TRANSPORT TRUCK LOADS - \$3.00/GALLON CUSTOMER PICK UP THRU 09/2012 THEN RACK Sold FOB: CPU/Delivered		
Estimated Start Date: _____ Estimated End Date: _____		

NOTE: PRICE IS BASED ON FULL TRANSPORT TRUCKLOADS.  
PRICE SUBJECT TO CHANGE WITH MARKET CONDITIONS UNLESS OTHERWISE SPECIFIED.  
3-4 DAYS MINIMUM NOTICE IS REQUIRED BEFORE START OF JOB.  
CONTRACT PRICE WILL BE VOID IF THE CONTRACT IS NOT RETURNED -SIGNED- ON OR BEFORE 9/30/2011.

Salesman: Kenneth Campbell Cell Phone: (281) 253-3711 Terms: Net 10th Proc.

Project Fort Worth, Wise, TX, Bid No. 12-600-014 - Purchase of Road Oils with, Tire Rubber, (10/01/2011 TO 09/30/2012), Lat Date: 8/11/2011

This sales agreement must be executed by Buyer and returned to Seller's possession on or before September 30, 2011

The parties agree that this instrument, as executed, contains the entire and complete agreement between them, and acknowledges that neither party hereto has made any oral promise, representation or warranty containing the subject matter of this agreement.

This instrument, together with the provisions and conditions noted, which are by reference made a part hereof, constitutes the agreement between us.

IN WITNESS WHEREOF, said parties have caused this agreement to be executed by their proper representatives thereunto duly authorized the day and year first above mentioned.

2084

*For: Wise County, Texas*

WRIGHT Asphalt Products Co.

By

*Bill McElhanev*

By

*Kelly Goodson*

Bill McElhanev / County Judge

Date

Kelly Goodson

General Manager

Date

Buyer / Title

SIGN AND RETURN ALL COPIES AT ONCE

Seller / Title

## TERMS AND CONDITIONS

1. Seller agrees to furnish the Products named, on the terms herein stated, guaranteeing said Products to be reasonably uniform in quality and at all times up to its standards.
2. Where freight is prepaid by the Seller, all additional charges by the carrier at the jobsite for waiting time, pump off, diversion, etc., will be assessed to Buyer according to the regulatory tariff governing the carrier. If the carrier is unable to make delivery of a shipment for reasons which are the responsibility of Buyer, the carrier will immediately notify Seller and Buyer and request disposition of the shipment. If disposition is not furnished the carrier within the free unloading time period allowed by the carrier's regulatory tariff, the detention charges provided above shall be assessed to Buyer.
3. The Seller shall not be obligated to make any shipment of less than a full tank car and/or full minimum carload, or full transport load notwithstanding any provisions hereof with respect to the total quantity of merchandise to be delivered, unless specifically provided otherwise herein.
4. If a delivered or freight price is named and not a price F.O.B. the refinery, plant or warehouse from which shipment is made, it is mutually agreed that the prices stipulated on the Sales Agreement to be paid by the Buyer are based upon freight rates in force at date hereof between said point of shipment and the point of delivery; and if during the remainder of this contract, such freight rates increase or decrease, then in such event there shall be added to or deducted from the delivered prices stipulated on all deliveries made thereafter, a sum equal to any such increase or decrease in freight rates, computed to the nearest tenth of a cent per gallon or one cent per ton, as the case may be.
5. It is agreed that neither Seller nor Buyer shall be liable for failure or delays in making or accepting shipments when such delays are caused by partial or total interruption of transportation, fires, strikes, action of the elements, differences with workmen, interference of civil or military authorities, or any other cause beyond the reasonable control of either Seller or Buyer.
6. Seller has no control over changes in its purchase prices, the availability of Products named herein, or the availability of transport trucks. Accordingly, Seller's price on each shipment of said Products shall be the Seller's price as determined on the date delivery is made. Seller's duty to deliver is subject to availability of such Products and transport trucks at the refinery, plant or warehouse shown on the date and time on which each order for delivery is placed by Buyer.
7. It is mutually agreed that the price named by Seller is made with the understanding that any internal revenue tax, war tax, excise tax, sales tax, import, export, impact, tonnage, shipping or other charge or tax of any kind, effective at the present time, or hereafter made effective and levied by any governmental authority on the Product, on the raw material from which the Product is manufactured, on the Product container, on the manufacture, transportation and/or sale of the Product, or on the contract or Agreement, price, profits or any mazer associated therewith, shall be added to the price furnished, and paid by the Buyer; unless Seller, in its discretion, elects to pay the same. If for any reason of war conditions Seller cannot deliver said Products under normal freight, insurance and other costs, Seller will not be obligated to make delivery of said Product.
8. Seller shall have no liability to Buyer under this contract for failure of the refinery, plant or warehouse to deliver the material covered by this contract for any reason including, but not limited to, unavailability of crude oil or other supplies, mechanical failures and strikes.
9. If the financial responsibility of Buyer shall become impaired or unsatisfactory to Seller, cash payments or security satisfactory to Seller may be demanded by Seller, and failure forthwith to comply with such demand will authorize Seller to terminate all further obligations of Seller hereunder, as will also failure of Buyer to make any payment when due in accordance with the terms hereof; but failure of Seller to exercise its rights of termination by reason thereof will not thereafter waive or impair the rights of Seller to sue or refuse to make deliveries hereunder or to terminate all further obligations of Seller hereunder.
10. Buyer agrees that no credit will be allowed for material returned to the shipper except in case of rejection of entire carload or transport load shipment for cause mutually agreed upon between Buyer and Seller.
11. It is mutually agreed that Seller has the right to designate routing of shipments under this contract unless otherwise stated herein.
12. The rights and obligations of Buyer under this Agreement are not transferable or assignable without the consent of Seller in writing thereto being first obtained.
13. Interest at the maximum rate permitted by law shall be charged on overdue accounts. Payments shall be made at Seller's office, Houston, Harris County, Texas. If default is made in payment of any amounts due hereunder, then same shall be collectible together with reasonable attorney's fees and cost of collections, which shall be paid hereon if incurred.
14. Seller shall not be responsible to Buyer for any of the following (collectively "force majeure"): loss, cost, claim or expense suffered by, or any damage to, Buyer in the event that Seller is unable to fulfill all or any part of its obligations hereunder, or is prevented or delayed from fulfilling the same, due to supply or financial changes resulting from acts of war or hostilities (whether war be declared or not), invasion, terrorist act, act of foreign enemies, rebellion, revolution, civil insurrection, military usurpation of power, civil war or riot, strikes, lockout, civil disorder, flood, tornado, earthquake, storm, fire, loss of electricity, embargo, acts of civil or military authority whether legitimate or not, or other causes beyond the control of Seller. In the event of force majeure, Seller shall notify Buyer as promptly as possible. The rights and obligations of Seller under this Agreement affected by any such event of force majeure shall be suspended only for the duration and to the extent of such event of force majeure. A force majeure event does not relieve Buyer from any obligation to make payment for Product already delivered. Should any force majeure period exceed six (6) months either party shall have the right to cancel this contract. Buyer and Seller further agree that at the conclusion of any force majeure event neither Buyer nor Seller shall have any obligation to each other with respect to any quantities of Product not delivered as a consequence of such force majeure event.
15. This Agreement shall be construed according to the laws of the State of Texas, and Buyer irrevocably consents that any legal action or proceeding against it with respect to this Agreement may be brought and enforced in Harris County, Texas. By execution and delivery of this Agreement, Buyer hereby submits to and accepts generally and unconditionally the jurisdiction of the foregoing courts.
16. **Limitation of Liability and Indemnity.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. Seller's liability with respect to the Agreement or any action in connection herewith whether in Agreement, tort or otherwise shall not exceed the price of the Product sold hereunder or the price of that portion of such Product on which liability is asserted. All claims for Product quality or quantity hereunder must be delivered in writing to Seller no later than thirty (30) days after the time of delivery of the Product to Buyer or thirty (30) days after initial notification from the specifying agency, provided that such agency takes a sample of the applicable Product at the time of delivery. Each Party agrees to immediately contact the other if Product quality is in question. Further, any actions to enforce any rights or obligations under this Agreement must be filed in court against the other party no later than one (1) year after the date on which the alleged breach of this Agreement occurred.
17. **Warranties:** the Seller warrants:
  - a. That the Product will meet the specifications of the Product named in this Agreement
  - b. That the Seller has free and clear title to the Product delivered under this Agreement; and
  - c. That such Product shall be delivered free from security interest created by Seller, liens for taxes and similar encumbrances resulting from an act of Seller.

THE DELIVERING PARTY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT, REGARDLESS OF NEGLIGENCE, SHALL EITHER PARTY BE LIABLE FOR PUNITIVE DAMAGES.

*[Handwritten signature]*