

Board of County Commissioners Agenda Request

Date of Meeting: January 3, 2012

Date Submitted: December 21, 2011

To: Honorable Chairman and Members of the Board

From: Deborah S. Minnis, County Attorney

Subject: C.W. Roberts Agreement to Abate Recycled Asphalt Pavement
Crushing/Production Operation and Related Activities

Statement of Issue:

This item presents to the Board requested changes to the CW Roberts agreement for abatement of Recycled Asphalt Pavement Crushing/Production Operation and Related Activities

Background:

On October 7, 2010, the County, CW Roberts, and Roberts and Roberts entered into an Agreement to Abate Recycled Asphalt Pavement Crushing/Production Operation and Related Activities (the "Agreement") whereby CW Roberts and Roberts and Roberts agreed to abate the asphalt crushing operation on and remove all recycled asphalt pavement, crushed asphalt, and all other material or equipment inconsistent with the land uses described in the Agriculture 3 Land Use Category of the Gadsden County Comprehensive Plan and Future Land Use Element from certain property owned by Roberts and Roberts in Gadsden County, Florida and described in Exhibit "A" attached hereto to the agreement, unless the County alters the land use designation of the Property or issues any approvals allowing such operations on the Property. Nothing therein prohibits CW Roberts or Roberts and Roberts from seeking any land use approvals from the County relating to the Property. Based on information provided by Mr. Roberts at the Commission's July 5, 2011 meeting, the parties sought to amend the Agreement to extend the date for abatement to January 31, 2012. An agreement was sent to counsel for CW Roberts amending the date and providing for a fine for each day beyond January 31 on which the material is not removed. Counsel for CW Roberts rejected implementation of the fine. A copy of the agreement showing the requested change is attached hereto.

Analysis:

Fiscal Impact:

None

Options:

1. Approve the agreement with the requested change
2. Reject the suggested change
3. Guidance from the Board

County Attorney Recommendation

3. Guidance from the Board

Attachment:

This Instrument prepared by:
Deborah S. Minnis, Esq., County Attorney
Ausley & McMullen, P. A.
227 S. Calhoun Street
Tallahassee, Florida 32301

**FIRST AMENDMENT TO AGREEMENT TO ABATE RECYCLED ASPHALT
PAVEMENT CRUSHING/PRODUCTION OPERATION AND RELATED ACTIVITIES**

THIS AMENDMENT is entered into this ___ day of _____, 2012, between **GADSDEN COUNTY, FLORIDA**, a charter county and a political subdivision of the state of Florida, whose address is Gadsden County Public Works Department, 1284 Highbridge Road, Quincy, FL 32351 (“County”), and **C.W. ROBERTS CONTRACTING, INC.**, a Florida corporation whose address is 3372 Capital Circle NE, Tallahassee, FL 32308 (“CW Roberts”), and **ROBERTS AND ROBERTS, INC.**, a Florida corporation whose address is 3372 Capital Circle NE, Tallahassee, FL 32308 (“Roberts and Roberts”).

On October 7, 2010, the County, CW Roberts, and Roberts and Roberts entered into an Agreement to Abate Recycled Asphalt Pavement Crushing/Production Operation and Related Activities (the “Agreement”) whereby CW Roberts and Roberts and Roberts agreed to abate the asphalt crushing operation on and remove all recycled asphalt pavement, crushed asphalt, and all other material or equipment inconsistent with the land uses described in the Agriculture 3 Land Use Category of the Gadsden County Comprehensive Plan and Future Land Use Element from certain property owned by Roberts and Roberts in Gadsden County, Florida and described in Exhibit “A” attached hereto (the “Property”) by July 21, 2011, unless the County alters the land use designation of the Property or issues any approvals allowing such operations on the Property. Nothing therein prevents CW Roberts or Roberts and Roberts from seeking any land use approvals from the County relating to the Property. Based on information provided by Mr. Roberts at the Commission’s July 5, 2011 meeting, the parties wish to amend the Agreement as follows:

Paragraph 1 of the Agreement is amended to agree to a 6 month extension of the date by which CW Roberts and Roberts and Roberts agree to abate the aforementioned operation and remove the aforementioned materials and equipment from July 21, 2011 to January 31, 2012 unless the use of the property is changed as result of CW Roberts filing for and being granted a land use change for the property in question.

Paragraph 2 of the Agreement is amended to add the following provision:

- c. ~~In the event that CW Roberts and Roberts and Roberts fail to abate the asphalt crushing operation on or remove all recycled asphalt pavement, crushed asphalt, and all other material or equipment inconsistent with the land uses described in the Agriculture 3 Land Use Category of the Gadsden County Comprehensive Plan and Future Land Use Element from the Property by January 31, 2011, CW Roberts and Roberts and Roberts agree to pay a fine in the amount of FIVE THOUSAND DOLLARS (\$5,000.00) per day for each day after January 31, 2011 which the operation continues or the materials or equipment remain on the Property. Provided, however, that the County may, in its sole discretion, grant an additional extension and will not to enforce this provision until such~~

~~time that the additional extension expires or the permitted use of the land is changed as a result of CW Roberts filing for and being granted a land use change for the property in question.~~

Except for the foregoing amendments, all other terms, covenants, conditions and agreements contained in the Agreement shall remain in full force and effect.

An executed facsimile of this Amendment shall be treated as the original for all purposes.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first written above.

SIGNED, SEALED AND DELIVERED
IN OUR PRESENCE AS WITNESSES:

GADSDEN COUNTY, FLORIDA

1ST WITNESS – SIGNATURE

By: _____

1ST WITNESS – PRINTED NAME

As its: _____

2ND WITNESS – SIGNATURE

2ND WITNESS – PRINTED NAME

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of January, 2012, by _____ as the _____ of GADSDEN COUNTY, FLORIDA, a charter county and a political subdivision of the state of Florida.

(Notarial Seal)

NOTARY PUBLIC

(Printed Name of Notary)

Personally known _____
or Produced Identification _____
Type of Identification Produced _____

C.W. ROBERTS CONTRACTING, INC., a
Florida corporation

By: _____
CHARLES W. ROBERTS, III
As its: _____

1ST WITNESS – SIGNATURE

1ST WITNESS – PRINTED NAME

2ND WITNESS – SIGNATURE

2ND WITNESS – PRINTED NAME

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this _____ day of January, 2012, by
CHARLES W. ROBERTS, III as the _____ of C.W. ROBERTS
CONTRACTING, INC., a Florida corporation.

(Notarial Seal)

NOTARY PUBLIC

(Printed Name of Notary)

Personally known _____
or Produced Identification _____
Type of Identification Produced _____

ROBERTS AND ROBERTS, INC., a
Florida corporation

By: _____
CHARLES W. ROBERTS, III
As its: _____

1ST WITNESS – SIGNATURE

1ST WITNESS – PRINTED NAME

2ND WITNESS – SIGNATURE

2ND WITNESS – PRINTED NAME

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this _____ day of January 2012, by CHARLES W. ROBERTS, III as the _____ of ROBERTS AND ROBERTS, INC., a Florida corporation.

(Notarial Seal)

NOTARY PUBLIC

(Printed Name of Notary)

Personally known _____

or Produced Identification _____

Type of Identification Produced _____

Exhibit "A"

A tract of land described in the deeds recorded at Official Records Book 407, Page 941, and Official Records Book 395, Page 2131, public records of Gadsden County, Florida, and commonly referred to as County Parcel ID No. 4-28-1N-4W-0000-00200-0000.