

RESOLUTION NO. 9

SERIES 2016

RESOLUTIONS OF THE CRESTED BUTTE TOWN
COUNCIL APPROVING THE AWARD OF THE 2016
TENNIS COURTS PARKING AREA PAVING PROJECT
CONTRACT TO OLDCASTLE SW GROUP, INC., DBA
UNITED COMPANIES IN AN AMOUNT NOT TO EXCEED
\$40,000.00

WHEREAS, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, the Town staff recommends, after conducting a competitive bid process, to award a construction services contract for the Town's 2016 tennis courts parking area paving project (the "**Project**") to Oldcastle SW Group, Inc., dba United Companies (the "**Contractor**");

WHEREAS, following the Town staff recommendation, the Town Council desires to award the construction services contract for the Project to Contractor pursuant to the terms and conditions for the performance of the Project set forth in the contract attached to these Resolutions; and

WHEREAS, the Town Council finds that it is in the best interests of the health, safety and general welfare of the citizens and visitors of the Crested Butte to award the construction services contract for the Project to Contractor, and in connection therewith, adopt and execute the contract referenced herein.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT:

1. **Findings.** The Town Council hereby finds that entering into a contract for the construction of the Project with Contractor in an amount not to exceed \$40,000.00 is in the best interest of the Town.
2. **Approval; Authorization.** Based on the foregoing, the Town Council hereby approves the construction services contract with Contractor in substantially the same form as attached hereto as **Exhibit "A."** Any changes thereto shall be made only following approval by the Town Attorney. The Mayor and Town Manager are hereby authorized to execute said Contract and any associated documentation in connection therewith.
3. **Funding.** Funding for the Project has been provided for by way of the Street and Alley Fund.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS 2nd
DAY OF May, 2016.

TOWN OF CRESTED BUTTE, COLORADO

By: *Glenn Michel*
Glenn Michel, Mayor

ATTEST

Lynelle Stanford
Lynelle Stanford, Town Clerk

(SEAL)



EXHIBIT "A"

Construction Services Documents

[attach here]

CONTRACT
(Construction Services)

This CONTRACT is made and entered into this 3rd day of May, 2016, by and between the Town of Crested Butte, Colorado, a Colorado home rule municipality in the County of Gunnison, State of Colorado, hereinafter in the Contract Documents (as defined below) referred to as the "Town" or Owner" and United Companies, hereinafter in the Contract Documents referred to as the "Contractor".

WITNESSETH:

WHEREAS, the Town advertised that sealed Bids (as defined in the Contract Documents) would be received for furnishing all labor, tools, supplies, equipment, materials, and everything necessary and required for the Project (as described by the Contract Documents) and known as the **TENNIS COURTS PARKING AREA PAVING PROJECT 2016**; and

WHEREAS, the Contract has been awarded to the above named Contractor by the Town, and said Contractor is now ready, willing and able to perform the Work (as specified in the Notice of Award (as defined in the Contract Documents), in accordance with the Contract Documents.

NOW, THEREFORE, in consideration of the compensation to be paid the Contractor, the mutual covenants hereinafter set forth and subject to the terms hereinafter stated, it is mutually covenanted and agreed as follows:

ARTICLE 1
CONTRACT DOCUMENTS

It is agreed by the parties hereto that the following list of instruments, drawings and documents which are attached, bound and incorporated herein and therein constitute and shall be referred to either as the "Contract Documents" or the "Contract," the same being mutually synonymous as the circumstances may provide, and all of said instruments, drawings and documents taken together as a whole constitute a complete contract between the parties hereto.

- Notice of Award
- Contract
- Notice to Proceed
- Project General Requirements
- Instruction to Bidders
- Performance Bond
- Payment Bond
- Other bid documentation

Notwithstanding anything contained in any of the Contract Documents to the contrary, in the event of any conflict or inconsistency among any of the foregoing Contract Documents, such conflict shall be resolved in the following order of precedence: (i) Contract; (ii) General Requirements; (iii) Instruction to Bidders; (iv) Notice of Award; and (v) any other Bid (as defined in the Contract Documents) documentation.

ARTICLE 2
DEFINITIONS

The definitions provided in the "General Requirements" apply to the terms used in the Contract and all the Contract Documents.

ARTICLE 3
WORK

The Contractor agrees to furnish all labor, tools, supplies, equipment, materials, and all that is necessary and required to complete the tasks associated with the Work (as described, set forth, shown and included in the Contract Documents and as indicated in the Notice of Award).

ARTICLE 4
TERMINATION; SUSPENSION

(A) The Town may terminate this Contract, with or without cause, for any reason or no reason, upon advance written notice to Contractor. Contractor shall immediately cease performance of the Work upon receipt of written notice of termination from the Town. Contractor may terminate this Contract if and only upon the occurrence of a Town Default (as defined herein below). Upon termination of this Contract, Contractor shall promptly deliver to the Town any completed or partially completed Work and associated work product, and any copies thereof. In no event shall Contractor be entitled to damages for lost profits, lost opportunity, lost income or consequential damages caused by termination of this Contract.

(B) The Town shall have the right to suspend the Work, in whole or in part, at any time upon delivery of written notice to Contractor. In such a case, Contractor shall be entitled to compensation for Work actually performed in an acceptable form as set forth in this Contract prior to receipt of notice of such suspension.

ARTICLE 5
DEFAULT

Each of the following events shall constitute a material breach and a default ("Default") under this Contract and shall allow a party, as applicable, to seek the remedies under this Contract: (a) the Town's failure to timely pay any undisputed amount due to Contractor in accordance with this Contract which is not cured within thirty (30) days following notice of said failure; (b) a material breach of any representation or warranty under this Contract by either party, provided that such failure is not cured within the time frames, if any, set forth in this Contract or within thirty (30) days of receipt of notice of said breach if no specific time to cure is specified; and (c) failure of a party to timely observe or perform any other material covenant, agreement, obligation, term or condition required to be observed or performed under this Contract which is not cured within thirty (30) days following receipt of written notice of such failure.

ARTICLE 6
REMEDIES

Upon the occurrence of a Default by Town, Contractor may, at its option, elect to recover actual amounts owed by the Town to Contractor accruing on or before the date of termination, or terminate this Agreement and recover actual damages due to the Default of Town. Upon the occurrence of a Default of Contractor, the Town shall have one or more of the following remedies (a) recover damages due to the Default of Contractor including expenses, attorneys' fees and costs; (b) terminate this Agreement; and/or (c) if the Default relates to faulty performance, receive a refund of amounts paid for such faulty performance. The foregoing remedies shall, as applicable, survive the termination of this Contract.

ARTICLE 7
INDEMNIFICATION

(A) Contractor shall defend, indemnify and hold harmless Town from and against any and all claims, suits, liabilities, costs, expenses, attorneys' fees or damages (collectively "Claims") respecting property, including loss of use thereof, injuries to persons, including death, and from any other Claims on account of the acts or omissions of Contractor, or any of its subcontractors, suppliers, material men, officers, agents, employees or servants. Contractor's obligation hereunder shall not be limited by the provisions of any workers' compensation act or similar statute.

(B) Contractor shall defend, indemnify and hold harmless the Town from and against any and all Claims suffered or incurred on account of any breach by Contractor of any other covenant or agreement set forth in this Contract.

(C) The foregoing obligations shall survive the termination of this Contract.

ARTICLE 8
GENERAL WARRANTIES

(A) Contractor represents and warrants that it is duly qualified to do business and is in good standing in the locations in which the Work will be performed.

(B) Each party has full power and authority to execute, deliver and perform its obligations under this Contract.

(C) Each party represents and warrants that it will comply with all applicable laws, ordinances, rules, regulations or orders issued by any public or governmental agency, body or authority, whether Federal, state, local or otherwise, and has obtained all applicable permits and licenses required of such party in connection with its obligations under this Contract.

The warranties and representations set forth in this Section shall survive the termination of this Contract.

ARTICLE 9
PERFORMANCE WARRANTIES

Contractor represents and warrants that the Work will be performed: (a) in a diligent, professional and workmanlike manner in accordance with the highest applicable industry standards; (b) in accordance with this Contract; (c) where all Work and materials provided in connection therewith shall be new, of good quality and workmanship, without defects, patent or latent, and will conform to the requirements of the Contract and applicable industry standards; and (d) by highly experienced and qualified personnel. The warranties and representations set forth in this Section shall survive the termination of this Contract.

ARTICLE 10
CONTRACT PRICE; PAYMENT

(A) The Contractor shall accept as full and complete compensation for the performance and completion of all of the Work specified in this Contract and the Contract Documents, the sum of **Twenty Nine Thousand Eight hundred Ninety Dollars and Seventy Five Cents (\$29,890.75)**. If this Contract contains unit price pay items, the Contract Price shall be adjusted in accordance with the actual quantities of items completed and accepted by the Town at the unit prices quoted in the Bid Form (as defined in the Contract Documents).

(B) The amount of the Contract Price is and has heretofore been appropriated by the Town Council of the Town for the use and benefit of this Project. The Contract Price shall not be modified except by Change Order (as defined in the Contract Documents) or other written directive of the Town. The Town shall not issue a Change Order or other written directive which requires additional work to be performed, which work causes the aggregate amount payable under this Contract to exceed the amount appropriated for this Project, unless and until the Town provides Contractor written assurance that lawful appropriations to cover the costs of the additional work have been made. Written assurance shall be provided in the form of a letter executed by the Project Manager and certified by the Director of Finance.

(C) Unless otherwise provided in any Special Conditions (as defined in the Contract Documents), monthly partial payments shall be made as the Work progresses. Applications for partial and Final Payment (as defined in the Contract Documents) shall be prepared by the Contractor and approved by the Town in accordance with the General Requirements.

(D) The Town may delay payment of an invoice until it can verify the accuracy of the same, obtain releases or waivers with respect to work covered in said invoice (and with respect to Colo. Rev. Stat. Article 26 of Title 38, if applicable), or resolve a dispute with Contractor regarding an invoice.

(E) Contractor shall at all times maintain an appropriate system of accounting records, together with supporting documentation for all Work, purchases, materials and billings in connection with the Work performed under the Contract. Contractor shall make available for audit and reproduction by the Town all records, in whatever form, related to the Work. Contractor shall provide such availability at all reasonable times and for five (5) years after final payment. Contractor shall refund to the Town any charges inconsistent with this Contract.

ARTICLE 11
INSURANCE

Contractor shall, at its expense, procure and maintain during the performance of the Work hereunder, the following insurance: (a) worker's compensation as required by applicable worker's compensation laws; (b) employer's liability insurance with a limit of not less than \$100,000 for each accident and \$100,000 per employee for bodily injury by disease, with an aggregate limit of \$500,000 per disease; (c) commercial general liability insurance covering all operations of Contractor. Coverage shall include automobile liability (owned, hired and non-owned) operations, property damage, and personal injury with a single limit of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate; and (d) builder's risk and installation floater coverage in amounts no less than the insurable value of the Work to be performed as apportioned appropriately between said coverages. All insurance shall be provided by financially responsible insurance carriers authorized to do business in the State of Colorado. The Town, its employees, officers, elected, attorneys, insurers and insurance pools shall be listed as additional insureds under Contractor's commercial general liability policy, and Contractor shall require its insurance carrier to waive all rights of subrogation against the Town. The general liability insurance shall include coverage for contractual liability, products and completed operations, and the coverage afforded the Town, its employees, officers, elected, attorneys, insurers and insurance pools shall also include coverage for contractual liability, products and completed operations. All required insurance policies, except workers' compensation and employer's liability, shall be endorsed to be primary and non-contributory to any insurance otherwise carried by Contractor and the Town with respect to the Work. Such insurance shall not be modified, permitted to lapse or canceled without written notice to the Town from such insurer, via certified mail thirty (30) days in advance of such modification, expiration or cancellation. In the event of such cancellation notice, Contractor, at its sole costs and expense, shall obtain replacement insurance coverage from other insurance companies prior to the cancellation of the original insurance coverage. Contractor shall require all authorized subcontractors, agents or otherwise involved in the Work to carry insurance coverage equal to that described above.

ARTICLE 12
INDEPENDANT CONTRACTOR

Contractor shall be an independent contractor, and not an employee of Town, within the meaning of all federal, State and local laws and regulations governing employment insurance, workers' compensation, industrial accident, labor and taxes. The Town shall not be liable for employment or withholding taxes respecting Contractor or any employee of Contractor. **CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE OR WORKERS' COMPENSATION BENEFITS AS A RESULT OF PERFORMANCE OF THE WORK FOR THE TOWN. CONTRACTOR IS REQUIRED TO PROVIDE WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE BENEFITS FOR ITS EMPLOYEES AND/OR SUBCONTRACTORS. CONTRACTOR IS SOLELY LIABLE FOR ANY FEDERAL AND STATE INCOME AND WITHHOLDING TAXES, UNEMPLOYMENT TAXES, FICA TAXES AND WORKERS' COMPENSATION PAYMENTS AND PREMIUMS APPLICABLE TO THIS CONTRACTOR OR ANY WORK PROVIDED. CONTRACTOR SHALL INDEMNIFY THE TOWN FOR ANY LIABILITY RESULTING FROM NONPAYMENT OF SUCH TAXES AND SUMS.**

ARTICLE 13
NO LIENS

Contractor shall keep the property that is the subject of the Work free from any liens and claims arising out of the Work. Contractor shall be responsible for the satisfaction or payment of any liens filed or placed of record against Town's property that arise from the performance of the Work by any contractor, subcontractor, supplier or material man. Should any such lien or claim of lien be filed against the Town's property, Contractor shall cause the same to canceled and discharged of record by bond or otherwise within ten (10) days after notice of the filing thereof. Should Contractor fail to discharge such lien within such ten (10)-day period, then the Town may discharge the same, in which event Contractor shall reimburse the Town, on demand, for the amount of the lien or the amount of the bond, if greater, plus all costs and expenses incurred by the Town in connection therewith, inclusive of reasonable attorneys' fees and costs.

ARTICLE 14
BONDS

The Contractor shall furnish currently herewith the Bonds required by the Contract Documents. The Performance Bond shall be in an amount not less than one hundred percent (100%) of the Contract Price set forth in Article 9. The Payment Bond shall be in an amount not less than one hundred (100%) of the Contract Price set forth in Article 9. Bonds shall be made in multiples of \$1,000.00. Such Bonds shall remain in effect, and shall be renewed by Contractor as necessary, until released by the Town, but in any case within two (2) years of the final completion of the Work. The Town may use the Bonds, or any funds realized therefrom, for their stated purposes, including, without limitation, for the purposes of causing the Work to be completed, causing corrections to any defects therein or associated therewith and/or curing any Contractor breach under this Contract Documents, including, without limitation, the payment of any costs and expenses incurred in connection therewith (inclusive of attorneys' fees and costs).

ARTICLE 15
NO ASSIGNMENT

Contractor may not, without the Town's prior written approval, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber all or any portion of its right or interests in this Contract. Any such unpermitted assignment shall be void ab initio.

ARTICLE 16
BINDING EFFECT

This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.

ARTICLE 17
NO WAIVER

No waiver by any party of any right or remedy under this Contract shall be deemed to be a waiver of any other or subsequent right or remedy under this Contract. No waiver of any term, covenant or condition of this Contract shall be valid unless affirmed in writing.

ARTICLE 18
GOVERNING LAW

This Contract shall be governed and construed in accordance with the laws of the State of Colorado without regard to choice of law rules. Litigation respecting the terms or enforcement of this Contract shall only be brought in District Court for Gunnison County, State of Colorado.

ARTICLE 19
SEVERABILITY

If any term or provision of this Contract, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby and each other term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 20
NO WAIVER

This Contract, including all of the Contract Documents, constitutes the entire and exclusive agreement between the parties relating to the specific matters covered in this Contract. This Contract may be altered, amended or revoked only by an instrument in writing signed by each party hereto and specifically referring to this section.

ARTICLE 21
SURVIVAL

Any rights or remedies, and all covenants, conditions, representations, warranties and agreements contained in this Contract of an ongoing nature shall survive the expiration or earlier termination of this Contract. Any provisions that are expressly stated to survive the expiration or termination of this Contract shall be enforced accordingly.

ARTICLE 22
PREVAILING PARTY

In the event of any litigation arising from or related to the Work provided under this Contract, the prevailing party will be entitled to recovery of all reasonable costs incurred, including, without limitation, staff time, court costs, attorneys' fees and other related expenses.

ARTICLE 23
IMMIGRATION COMPLIANCE

Contractor certifies that it has complied, and during the term of this Contract will continue to comply, with the Immigration Reform and Control Act of 1986. The signature of Contractor on this Contract: (1) certifies that Contractor is not a natural person unlawfully present in the United States; and (2) also certifies the statements below if this is a public contract for services as defined in Colo. Rev. Stat. § 8-17.5-101, et seq., and Contractor utilizes subcontractors or employees in Contractor's business. Contractor shall not: (a) knowingly employ or contract with an illegal alien to perform work under this Contract; or (b) enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor has confirmed

the employment eligibility of all employees and subcontractors who are newly hired for employment to perform work under this Contract through participation in either the e-verify program or the department program (as defined in Colo. Rev. Stat. § 8-17.5-101, et seq.). Contractor may not use either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed. If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Contractor shall: (i) notify the subcontractor and the Town within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (ii) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (a) of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to state law. Contractor acknowledges that in the event Contractor violates any of the provisions of the foregoing the Town may terminate this Contract for breach of contract. No notice need be given of said termination. If this Contract is so terminated, Contractor shall be liable for actual and consequential damages to the Town.

ARTICLE 24 OSHA COMPLIANCE

Contractor shall follow reasonable safety and occupational health measures in performance of this Contract. Contractor shall comply with all federal, state and local laws applicable to safety and occupational health. Further, Contractor must comply with safety and occupational health standards, specifications, reporting and any other relevant requirements. Contractor will follow all of the Town's security procedures. Contractor is required to check in with the Town's security personnel at each location, where applicable. Contractor is required to display appropriate identification at all times while on the Town's premises. Contractor will notify the Town's security personnel in advance of any anticipated third-party deliveries and will provide the name of the delivery person and the approximate time of arrival.

ARTICLE 25 NONDISCRIMINATION

Contractor expressly agrees not to discriminate against any employee, applicant for employment, or potential subcontractor or supplier because of race, color, religion, age, national origin, gender, sexual orientation, military status, marital status, or disability. Contractor shall comply with all applicable local, state and federal laws with regard to equal employment opportunity.

ARTICLE 26 GOVERNMENTAL IMMUNITY

The parties understand and agree that the Town is relying upon, and has not waived, the monetary limitations of \$150,000.00 per person, \$600,000.00 per occurrence, and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as it may be amended from time to time.

ARTICLE 27
COUNTERPARTS; TELECOPY

This Contract may be executed in multiple counterparts, each of which, when taken together, shall constitute a single agreement. Telecopies shall be deemed to be originals.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Contract to be properly executed by their duly authorized representatives effective as of the date first written above.

THE TOWN OF CRESTED BUTTE, COLORADO

By: *Glenn Michel*
Glenn Michel, Town Manager *Mayor*

ATTEST:

By: *Lynelle Stanford*
Lynelle Stanford, Town Clerk



CONTRACTOR

By: *Kyle Alpha*
Name: *Kyle Alpha*
Title: *General Manager*