

RESOLUTION NO. 13-16

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES, COLORADO
AWARDING A BID FOR THE 2013 PAVEMENT REHABILITATION – STREET
IMPROVEMENT PROGRAM, PROJECT NO. 13-PW-001**

WHEREAS, the City of Castle Pines (“City”), by its invitation for bid posted and made available to bidders via the Rocky Mountain E-Purchasing System on May 3, 2013 (the “IFB”), solicited bids for Project No. 13-PW-001, the 2013 Pavement Rehabilitation – Street Improvement Program (the “Work”) in accordance with Colorado law; and

WHEREAS, the Work generally consists of reconstruction or mill & overlay of certain identified residential roadways located within the City including: asphalt, miscellaneous concrete work, asphalt patching, installation of pavement underdrains, subgrade stabilization, testing services, removal of excess materials, and final project clean-up, as necessary, and is more particularly described in the IFB; and

WHEREAS, bids for the Work were received by the City on May 22, 2013; and

WHEREAS, City Staff and the City’s consulting engineer, Merrick & Company (“Merrick”), have evaluated the unit price bids received from bidders to determine the lowest responsible and responsive bidder for the Work; and

WHEREAS, City Staff and Merrick have provided their written recommendations regarding the bid award to City Council; and

WHEREAS, it is the desire and intent of the City Council to award a contract to the lowest responsible and responsive bidder who submitted a bid in compliance with the reasonable and stated specifications contained within the IFB; and

WHEREAS, the City Council, after full consideration of the bids submitted and the recommendations of City Staff and Merrick, finds that Schmidt Construction Company (the successful bidder, hereinafter the “Contractor”) submitted the lowest responsible and responsive bid for the Work; and

WHEREAS, it is in the best interests of the City to award the bid for the Work to the Contractor in the not to exceed amount of Five Hundred Thousand Dollars (\$500,000.00), based on the unit price(s) set forth in the Contractor’s bid and the estimated work quantities associated with the Work; and

WHEREAS, the City desires to enter into a Construction Contract with the Contractor to have the Contractor complete the Work, which Construction Contract shall be substantially in the form attached as Exhibit A to the IFB (the City’s standard form of construction contract for the Work).

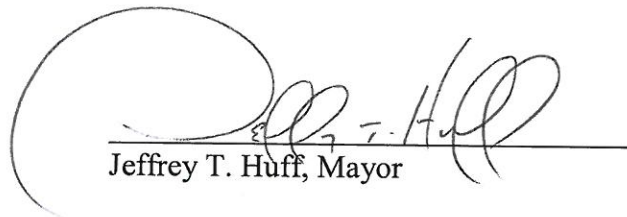
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, THAT:

Section 1. That upon consideration and approval of this Resolution by City Council: (a) a Construction Contract for the above-described Work shall be awarded to the Contractor; (b) Merrick and the City's Public Works / Parks & Open Space Program Manager (the "Project Manager") shall be authorized to negotiate the final scope of work associated with the Work with the Contractor; (c) the City Attorney shall be authorized to make such changes as may be needed to correct any nonmaterial errors or language or to negotiate such changes to the Construction Contract as may be appropriate that do not substantially increase the obligations of the City; (d) the Mayor shall be authorized to execute the Construction Contract on behalf of the City with the approval of the City Attorney when in final form; (e) the Project Manager shall be authorized to execute all documents necessary to give effect to the award of the bid referenced in this Resolution, including but not limited to the Notice of Award and the Notice to Proceed; and (f) the Project Manager shall be authorized to approve any change order(s) associated with the Work, provided that Merrick has reviewed and approved such change order(s), the form of the change order(s) has been reviewed and approved by the City Attorney, and the change order(s) will not cause the total amount to be paid to the Contractor under the Construction Contract to exceed the not to exceed amount of \$500,000.00. Any change order(s) which will have the effect of causing the cost of the Work to exceed \$500,000.00 shall be reviewed by City Council prior to authorization.

Section 2. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.

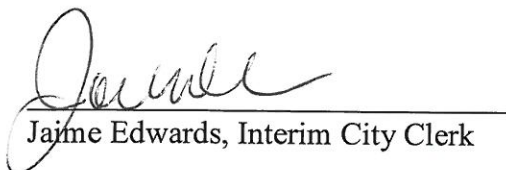
Section 3. Effective Date. This Resolution shall take effect upon its approval by the City Council.

INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES by a vote of 7 in favor, 0 against and 0 absent this 11th day of June, 2013.


Jeffrey T. Huff, Mayor

ATTEST:

Approved as to form:


Jaime Edwards, Interim City Clerk


Linda C. Michow, City Attorney



City of Castle Pines Project No. 2013-PW-001

**CONSTRUCTION CONTRACT
FOR THE FOLLOWING PROJECT:
2013 Pavement Rehabilitation – Street Improvement Program**

This Construction Contract (“Contract”), effective this 1st day of July, 2013, is made and entered into by and between EDW C. LEVY CO, a Michigan corporation dba **SCHMIDT CONSTRUCTION COMPANY** (hereinafter, “Contractor”), and having an office address of 1101 Topeka Way, Castle Rock, Colorado 80109, and the **CITY OF CASTLE PINES** (hereinafter, “City” or “Owner”), a municipal corporation of the State of Colorado, having an address of 7501 Village Square Drive, Suite 100, Castle Pines, Colorado 80108 (collectively, the City and Contractor are referred to herein as the “Parties”).

In consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

PART 1 – WORK; TIME

1.01 The Contractor agrees to furnish all of the technical, administrative, professional, and other labor, all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to perform in a workmanlike manner all Work required by the Contract Documents.

1.02 The Contractor agrees to undertake the performance of the Work within thirty (30) calendar days following the Notice of Award and agrees that the Work will be completed within Ninety (90) calendar days of the date of the Notice to Proceed unless the contract time is extended by the City as provided in the Contract Documents.

1.03 The Parties agree that, in any section in which the Contractor prepares any document for “the approval of the City,” such subsequent approval by the City does not mean that City is responsible for the accuracy, thoroughness, or judgment contained in the document. The City does not waive the right to hold the Contractor responsible for the accuracy, thoroughness, or judgment expressed in the document, as it is expressly agreed by the Parties that the City is relying on the expertise of the Contractor for the timely completion of the Work required by the Contract Documents.

PART 2 – CONTRACT PRICE AND PAYMENT

2.01 The City shall pay the Contractor for performance of the Work in accordance with the Contract Documents the amount(s) shown on Contractor's Form of Bid, not to exceed **Four Hundred Ninety Thousand Seven Hundred Twenty Four and 23/100 Dollars (\$490,724.23)**.

2.02 The City shall make payments as set forth in Article 9 of the General Conditions, subject to the City's obligation to retain a portion of the payments until final completion and acceptance by the City of all Work included in the Contract Documents.

2.03 Prior to final payment, all Work specified by the Contract Documents must be completed. Payment shall be made only after the procedure specified by the General Conditions is completed.

2.04 The City represents that either an appropriation for the price specified in this Construction Contract has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Construction Contract.

2.05 The Parties understand and acknowledge that the City of Castle Pines is subject to Article X § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Contract. It is understood and agreed that this Contract does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Contract to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of the funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City of Castle Pines and other applicable law. Upon the failure to appropriate such funds, this Contract shall be terminated.

PART 3 – CONTRACTOR'S REPRESENTATIONS

3.01 In order to induce the City to enter into this Construction Contract, the Contractor makes the following representations:

(a) The Contractor has familiarized itself with the nature and the extent of the Contract Documents, Work, the location and site of the Work and any and all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

(b) Contractor has carefully studied all physical conditions at the site and existing facilities affecting cost, progress or performance of the Work.

(c) Contractor has given the City written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and, if applicable, the written resolution(s) thereof by the City is/are acceptable to the Contractor.

(d) Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with any illegal aliens to perform work under this Contract. By entering into this Contract, Contractor certifies as of the date of this Contract that has confirmed the employment eligibility of all employees who are newly hired for employment and who will perform work under the public contract for services through participation in the e-verify program or department program. The Contractor is prohibited from using 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 the Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the City within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving

the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the City may terminate this Contract, and the Contractor may be liable for actual and/or consequential damages incurred by the City, notwithstanding any limitation on such damages otherwise provided by this Contract.

3.02 Contractor agrees to remedy all defects appearing in the Work or developing in the materials furnished and the workmanship performed under this Construction Contract for a period of one (1) year or such other time that is specified in the Contract Documents after the date of acceptance of the Work by the City, and further agrees to indemnify and save the City harmless from any costs encountered in remedying such defects. Contractor shall provide a performance, payment, maintenance and warranty bond that shall remain in effect until all defects are corrected as required by this paragraph.

3.03 Contractor is an independent contractor and nothing herein contained shall constitute or designate the Contractor or any of its employees or agents as agents or employees of the City.

PART 4 - CONTRACT DOCUMENTS

4.01 The Contract Documents, which comprise the entire Construction Contract between the City and the Contractor, are attached to this Construction Contract and made a part hereof, including:

Invitation for Bids	Other:
Instructions to Bidders	Project Maps, Street Listing and Quantities (Exhibit G)
Bid Bond	
Bid Form	<u>Incorporated in Contract Documents but not attached:</u>
Notice of Award	2011 CDOT Standard Specifications for Road and
Notice to Proceed	Bridge Construction
Construction Contract	
Construction Drawings	Technical Specifications (Exhibit F)
Specifications	
Performance, Payment, Maintenance and	Stormwater SOPs (Exhibits C-1 through C-4)
Warranty Bond	
General Conditions, including table of contents	
Special Provisions (Exhibit C)	
Addendum	
Change Orders	
Insurance Certificates	
Tax-Exempt Certificates	

In the event of an inconsistency between any provisions of the Contract Documents, the more specific provisions shall govern the less specific provisions, and written addenda, change orders, or other modifications approved in writing by both Parties subsequent to the date of this Contract as set forth on page 1 hereof shall govern the original Contract Documents.

4.02 There are no Contract Documents other than those listed above. The Contract Documents may only be altered, amended or repealed by a modification, in writing, executed by the City and the Contractor.

PART 5 - PROJECT MANAGER

5.01 The Project Manager, for the purposes of the Contract Documents, is the following, or such other person or firm as the City may designate in writing:

Name: Brad Meyering
Address: 7501 Village Square Drive, Suite 100, Castle Pines, Colorado 80112
Telephone: 303-705-0216
Email: brad.meyering@castlepinesgov.com

The Project Manager is authorized to represent and act as agent for the City with respect to City’s rights and duties under the Contract Documents, provided, however, the Project Manager shall not have any authority to approve any Change Order or approve any amendment to the Construction Contract or Contract Documents, except for those minor Change Orders defined in paragraph 7.4.1 of the General Conditions, such authority being specifically reserved to the duly authorized official of the City having such approval authority pursuant to the City’s Charter and ordinances. In the event of doubt as to such authority, the Contractor may request a written representation from the City Manager resolving such doubt and designating the person with authority under the circumstances, which written representation shall be conclusive and binding upon the City.

PART 6 - ASSIGNMENT

6.01 No assignment by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. This restriction on assignment includes, without limitation, assignment of the Contractor's right to payment to its surety or lender.

6.02 It is agreed that this Construction Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns and successors.

PART 7 - GOVERNING LAW AND VENUE

7.01 This Construction Contract shall be governed by the laws of the State of Colorado and the Charter and ordinances of the City of Castle Pines.

7.02 This Construction Contract shall be deemed entered into in Douglas County, State of Colorado, as the City is located in said county. The location for settlement of any and all claims, controversies and disputes arising out of or related to this Construction Contract or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in Douglas County.

PART 8 - LIQUIDATED DAMAGES

8.01 The City and the Contractor recognize that time is of the essence in this Construction Contract and that the City will suffer financial loss if the Work is not substantially completed within the time specified in paragraph 1.02 above, plus any extensions thereof allowed by the City by written Change Order. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work is not substantially complete on time. Accordingly, rather than requiring any such proof, the City and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the City the applicable amount set forth in the General Conditions for each

day that expires after the time specified in paragraph 1.02 until the Work is complete. It is agreed that this is a reasonable estimate of the damages likely to be suffered by the City for late completion of the Work. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on the Performance, Payment, Maintenance and Warranty Bond shall pay such damages. In addition, and at the City's option, the City may withhold all or any part of such liquidated damages from any payment due the Contractor.

PART 9 - MODIFICATIONS

This Construction Contract shall be modified only by written Change Orders or Addenda agreed upon by the Parties hereto, duly issued in form approved by the City Attorney and in conformance with the other Contract Documents.

PART 10 - CONTINGENCY

This Construction Contract is expressly contingent upon the approval of the City of all of the terms set forth herein. In the event this Construction Contract is not approved in its entirety by the City, neither Party shall be bound to the terms of this Construction Contract.

The person or persons signing and executing this Construction Contract on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Construction Contract and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

No officer or employee or agent of the City shall be personally responsible for any liability arising under or growing out of the Contract.

INSURANCE CERTIFICATES REQUIRED BY THE GENERAL CONDITIONS OF THIS CONTRACT SHALL BE SENT TO THE Public Works DEPARTMENT, CITY OF CASTLE PINES, ATTENTION: Brad Meyering, PROJECT MANAGER

IN WITNESS WHEREOF, the parties hereto have executed this Construction Contract in triplicate. Two counterparts have been delivered to the City and one counterpart has been delivered to the Contractor. All portions of the Contract Documents have been signed or identified by the City and the Contractor.

CITY OF CASTLE PINES, COLORADO

By: 

Mayor or Mayor Pro Tem

ATTEST:


City Clerk or Deputy City Clerk

APPROVED AS TO FORM:


For City Attorney's Office

6/12/13

