TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 38, SERIES 2018

A RESOLUTION APPROVING THE AGREEMENT WITH CONNELL RESOURCES, INC. FOR THE TIMNATH RESERVOIR REPAIRS, DRAINAGE IMPROVEMENTS AND IMPORT TO THE TOWN CENTER SITE

WHEREAS, the Town Council of the Town of Timnath ("Town") pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, attached hereto as Exhibit A is the Agreement between the Town of Timnath and Connell Resources, Inc. (the "Agreement"); and

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO as follows:

Section 1. Approval
The Agreement is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants. Furthermore, the Town Council authorizes the Town Manager to execute said Agreement, provided all of the above terms are met.


TOWN OF TIMNATH, COLORADO

__________________________
Jill Grossman-Belisle, Mayor

ATTEST:

__________________________
Milissa Peters, CMC
Town Clerk

TOWN OF TIMNATH, COLORADO SEAL
EXHIBIT A

AGREEMENT
AGREEMENT

This agreement is dated as of the 24th day of April, 2018 by and between: the Town of Timnath, CO (hereinafter called Owner) and Connell Resources, Inc. (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

Contractor shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows: repair and drainage improvements to the Timnath Reservoir Site and transport of fill material to the Town Center site and the adjacent properties.

ARTICLE 2. ENGINEER

The project has been designed by TST, Inc. Consulting Engineers who is hereinafter called Engineer and who will assume all duties and responsibilities and will have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

3.1 The work will be substantially completed by August 31st, 2018 as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions by September 15, 2018.

3.2 Liquidated Damages: Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the work is not substantially complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner five hundred dollars ($500.00) for each calendar day that expires after the time specified in paragraph 3.1 for substantial completion until the work is substantially complete.

3.3 After Substantial Completion if Contractor shall neglect, refuse or fail to complete the remaining work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner five hundred dollars ($500.00) for each calendar day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.
ARTICLE 4.  CONTRACT PRICE

4.1 Owner shall pay Contractor for performance of the work in accordance with the Contract Documents in current funds as follows: ninety two thousand, six hundred and fifty five dollars and zero cents ($ 92,655.00).

ARTICLE 5.  PAYMENT PROCEDURES

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.1 **Progress Payments.** Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 10th day of each month following the month that the Engineer received and processed the application during construction as provided below. All progress payments will be on the basis of the progress of the work measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1 Prior to Substantial Completion progress payments will be in the amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with paragraph 14.02 of the General Conditions.

Ninety percent (90%) of work completed. If work has been 50% completed as determined by Engineer, and if the character and progress of the work have been satisfactory to Owner and Engineer, Owner on recommendation of Engineer, may determine that as long as the character and progress of the work remain satisfactory to them, there will be no additional retainage on account of work completed in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the work completed.

Ninety percent (90%) of materials and equipment not incorporated in the work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.02 of the General Conditions).

5.1.2 Upon Substantial Completion in an amount sufficient to increase total payments to Contractor to ninety-five percent (95%) of the Contract Price, less such amounts as Engineer shall determine or Owner may withhold in accordance with paragraph 14.02 of the General Conditions.

5.2 **Final Payment.** Upon final completion and acceptance of the work in accordance with paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 14.07.
ARTICLE 6.  INTEREST

All moneys not paid when due hereunder as provided in Article 14 of the General Conditions shall bear interest at a rate not exceeding 12.0 percent per annum.

ARTICLE 7.  CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this Agreement Contractor makes the following representations:

7.1 Contractor has familiarized himself with the nature and extent of the Contract Documents, work, site, locality, and with all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the work.

7.2 Contractor has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which Contractor is entitled to reply.

7.3 Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

7.4 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by Contractor in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.04 of the General Conditions.

7.5 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

7.6 Contractor has given Engineer written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
ARTICLE 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between Owner and Contractor concerning the work consist of the following:

8.1 This Agreement (pages 1 to 6, inclusive).
8.2 Performance and Labor and Material Payment Bond.
8.3 Notice of Award.
8.4 General Conditions (pages 1 to 62, inclusive).
8.5 Supplementary Conditions (pages 1 to 9, inclusive).
8.6 Drawings, with each sheet bearing the following general title: Timnath Reservoir Park.
8.7 Contractor's Bid (pages 1-7, inclusive).
8.8 The following which may be delivered or issued after the Effective the date of the Agreement and are attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 9. MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests 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 that assignor from any duty or responsibility under the Contract Documents.

9.3 Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
ARTICLE 10. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS

1. The Contractor shall not:
   
   (A) Knowingly employ or contract with an illegal alien who will perform work under the public contract for services; or
   
   (B) Enter into a contract with a Subcontractor that fails to certify to the Contactor that the Subcontractor shall not knowingly employ or contract with an illegal alien who is newly hired to perform work under the public contract for services.

2. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the employment verification program established pursuant to C.R.S. 8-17.5-102(5) ("the Department Program") or the electronic employment verification program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program ("the E-verify Program")

3. The Contractor shall use either the E-verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.

4. The Contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under the public contract, affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. 1324a, and not altered or falsified the identification documents for such employees. The contractor shall provide a written, notarized copy of the affirmation to the Owner.

5. If the Contractor obtains actual knowledge that a Subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall:
   
   (A) Notify the Subcontractor and the Owner within three days that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and
   
   (B) Terminate the subcontract with the Subcontractor if within three days of receiving the notice required pursuant to paragraph 4(A) the Subcontractor does not stop employing or contracting with the illegal alien; except that the 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.

6. The Contract shall comply with any reasonable request by the Colorado Department of Labor and Employment ("the Department") made in the course of an investigation that the Department is undertaking pursuant to C.R.S. 8-17.5-102(5)(a).

7. If a Contractor violates a provision of the public contract for services required pursuant to paragraphs 1-5, the Owner may terminate the contract for breach of the contract. If
the contract is so terminated, the Contractor shall be liable for actual and consequential
damages to the Owner.

ARTICLE 11. OTHER PROVISIONS

In witness whereof, the parties hereto have signed this Agreement in triplicate. One counter part
each has been delivered to Owner, Contractor and Engineer. All portions of the Contract
Documents have been signed or identified by Owner and Contractor or by Engineer on their
behalf.

This Agreement will be effective on April 24, 2018.

Owner: Town of Timnath
By: [Signature]

Contractor: Connell Resources, Inc.
By: [Signature]

Attest: [Signature]
Address for giving notices
4800 Goodman Street
Timnath CO 80547

Attest: [Signature]
Address for giving notices

License No. [Number]
## QUOTATION

Submitted To: Town Of Timnath  
Address: 4800 Goodman Street  
Timnath, CO 80547  
Contact: Brian Williamson, ASLA, LEEP AP  
Phone: 970-224-3211  
Fax: 970-224-3217  

Bid Title: 180417 Timnath Reservoir Park REV#1 - 2018  
Bid Number: #1  
Project Location: Timnath Reservoir Park  
Project City, State: Timnath, CO  
Engineer/Architect: TST, Inc.  
Date: 4/17/2018

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<th>Item #</th>
<th>Item Description</th>
<th>Estimated Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total Price</th>
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**Total Price for above Timnath Reservoir Park Ditch Grading Items:** $45,060.00

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<th>Unit Price</th>
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<td>203</td>
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**Total Price for above Borrow Import Operations Items:** $47,595.00

**Total Bid Price:** $92,655.00

**Notes:**
- Pricing is based upon plan sheet provided by TST - Timnath Reservoir Parkway - Ditch Grading dated March 2018.
- The following are excluded from this proposal: Drainage facility certification; Warrantee period in excess of one year; Street cleaning for work performed by others; Permits & Fees; Dewatering; Maintenance of erosion control devices for others; quality control or acceptance testing; prairie dog removal, relocation, or extermination; landscaping.
- Pavement drainage less than 1.5% designed or obtainable fall will not be guaranteed.
- Material prices for pipeline items are guaranteed for a period of 30 days from the date shown on the top of this quote. After 30 days the material prices may change the unit prices quoted.
- All work is contingent on the availability of construction water, access to the work, negotiation of acceptable contract terms, a mutually agreeable schedule, and verification of financing.
- Please provide a minimum of 4 weeks advanced notification of work requests to allow for scheduling the work. No work will be completed without a signed Contract Agreement. Work is anticipated ______.
- Frost removal or winter protection is not included. If requested, it will be billed either on a time and material basis or a lump sum amount that is mutually agreed upon.
- Environmental site assessment / mitigation of hazardous or contaminated materials is excluded. Treatment or testing for contaminated groundwater is specifically excluded.
- Add 1% to include performance and payment bond.
- Fence removal and replacement is excluded. Ditch excavated material will be hauled offsite. Final installation of the TRM will be to a width of 10' by 704' in length. Any additional TRM installed will be billed at the unit price provided.
• Timnath Reservoir Park Borrow Site Notes and Clarifications:
  1. Borrow material has been based on the preliminary grading plan provided by TST. All borrow material will be generated south east of the existing access road.
  2. No topsoil will be replaced once borrow grading activities are completed.
  3. Seeding will be placed once borrow grading activities are completed. Seeding will follow the 2017 "Low Intensity Seeding" previously completed.
  4. 6,500 CY has been included for import operations to the new administration building and 4,500 CY included for the Timnath Trails At Riverbend Apartments project.
  5. All site work required for the import operations at the Administration Building will be completed by The Town of Timnath’s contractor. This will include but not limited to erosion control, site access, placement of imported material, street cleaning has required, geotechnical testing and acceptance. CRI will not be providing any type of man power or equipment at the Timnath Administration site. The Town's contractor will be required to place and compact the imported fill material at a minimum rate of 2,167,67 CY per day.
  6. At the completion of the park site borrow grading activities, CRI will provide a smooth grade and seed the site (the grading plan provided by TST will be used as a template but CRI cannot guarantee the design grades will be achieved).
  7. CRI has based the import operations can haul through down town Timnath. Total days of import operations will last 5 to 6 working days with 7 to 9 belly dump trucks.

CONDITIONS AND AGREEMENTS

1.WITHDRAWAL OF QUOTATION : This quotation may be withdrawn or modified by Connell Resources, Inc. ("Connell") if not accepted by the named sponsor (the "Sponsor") within thirty (30) days from date of issue.
2.PERFORMANCE: Delivery of materials and performance of services herein quoted are subject to delays occasioned by circumstances beyond Connell’s control. Completion date is subject to weather conditions, mechanical failures, labor difficulties, fuel or material shortages, fire, government authority or regulation, acts of God, engineering changes, contractors not included in this Agreement or any cause beyond Connell’s control.
3.SPONSOR'S RESPONSIBILITIES : This quotation does not include any charges for felling trees unless noted. Sponsor to furnish all easements and adequate working right of ways. Sponsor will pay all costs of design engineering inspections and quality control testing.
4.SOIL MECHANICS AND UNDERGROUND CONDITIONS : During excavation, if material is encountered that a 1-1/4" backhoe cannot remove for utility installation or a D8 tractor cannot rip for grading work, a price adjustment may be necessary. If blasting (or other approved method) becomes necessary, this work will be done as an additional cost plus on a time and material basis or a negotiated lump sum basis. Also, if unstable subgrade conditions are encountered, these conditions shall be the criteria for change order negotiations between Sponsor and Connell.
5.DESIGN AND ENGINEERING SERVICES : Sponsor acknowledges that Connell is not providing professional design or engineering services. Sponsor is solely responsible for performing, or retaining qualified professionals to perform, all such services, at the cost of Sponsor. Connell shall not be liable for any damages resulting from design or engineering services performed by sponsor, sponsor's agent or third parties.
6.EXTRA WORK : Upon written notice from Connell to the sponsor, sponsor's agent or employee that extra work not specifically included in the quotation is necessary to complete the work described, the parties shall negotiate a written, signed agreement for the extra work within three (3) working days of the date of such notice. If such agreement is not reached within three (3) working days and Connell has not otherwise received from the sponsor any written authorization for the extra work, then Connell may in its sole absolute discretion proceed with extra work if Connell considers it necessary. As compensation for the extra work, the sponsor shall pay Connell on a time-and-material basis for all costs related to such work unless the parties agree in writing on another method of compensation.
7.QUANTITY DETERMINATION AND BILLINGS : For any unit price quotation, the quantities shall be verified by in-field measurement after construction, and the total price to be paid by sponsor shall be calculated by multiplying the verified quantities times the unit prices for such quantities. This quotation shall be considered a unit price quotation unless it is specifically designated as a lump-sum quotation.
8.PAYMENT TERMS : The sponsor agrees to pay Connell the full quoted price with any adjustments, provided for the work herein specified. Invoices or progress payments will be due on the 10th of each month following their issue. Payment shall be overdue and delinquent if not received by Connell by the due date. Time is of the essence to this Agreement. Connell will be entitled to a 1-1/2% per month LATE PAYMENT CHARGE, NOT A FINANCE CHARGE, which is an ANNUAL PERCENTAGE RATE OF 18%, on any past due balances. Acceptance by Connell of a partial payment shall not be construed as a waiver of Connell's right to full and immediate payment.
9.DEFAULT : If sponsor defaults in timely making any payment or performing any obligation under this Agreement, sponsor shall pay all costs and expenses (including reasonable attorney's fees) incurred by Connell as a result of the default.
10.WARRANTIES : All work shall be performed in a good and workmanlike manner in accordance with the applicable ordinances and regulations of the City, County or District in which it is performed. All warranties will be as per the City, County or District in which the work is performed, as stated by their ordinances or regulations. EXCEPT AS PROVIDED ABOVE, CONNELL MAKES NO WARRANTIES WITH RESPECT TO THE WORK PERFORMED UNDER THIS AGREEMENT AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED BY CONNELL AND WAIVED BY BUYER.
11.SOIL STERILIZATION : If a soil sterilizer is applied it is done as an effort to retard weed growth and no guarantee is expressed or implied that its use will be effective.
12.ASPHALT PRICE ADJUSTMENTS : In the event of national and regional shortages of crude oil or other factors beyond Connell’s control, Connell’s suppliers will no longer furnish a long-term price for asphalt cement. If paving work is not performed during Connell’s current paving season, the price may be increased by Connell to reflect price increases in the following paving season when the work is completed. The normal paving season extends from April to November 15, depending on weather conditions.
13.AUTHORITY TO PERFORM WORK : The sponsor accepting this quotation represents that it is the representative of the Owner of the premises on which the work is to be done, or that the signer is an authorized representative of the Owner, and that permission and authority are hereby granted to Connell to perform such work on the premises in accordance with the terms and conditions of this Agreement.
14.INDEMNIFICATION/LIABILITY LIMITATION : Connell shall not be responsible for sponsor’s acts or omissions, or those of any other person or entity. Sponsor shall indemnify and hold Connell harmless from and against all claims, demands, suits, liabilities, losses and expenses (including reasonable attorneys fees) arising from or relating to any act or omission of sponsor, sponsor’s agents, or any third party. In no event shall Connell be liable for any consequential, incidental, special, punitive or indirect losses or damages on which the Sponsor may incur or suffer in connection with this Agreement.
15.BINDING EFFECT : This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.
16.HAZARDOUS MATERIALS : In the event Connell encounters the job site hazardous chemicals, wastes, or material as defined by any federal, state, or local authority (referred to as "Hazardous Materials") which are not introduced to the job-site by Connell, Connell shall have no duty or responsibility for handling, storage, or disposal of such Hazardous Materials, or for complying with any federal, state, or local laws, regulations or ordinances pertaining to the handling, storage, or disposal of the Hazardous Materials. Connell shall not be required to perform further work in the vicinity of the Hazardous Materials to the extent such Materials may, in Connell's sole opinion, pose any threat to the health and safety of Connell personnel. Any delays in the performance of Connell’s work related to or caused by the presence of Hazardous Materials on the job-site will extend Connell’s time for performance under this Agreement a like amount of the time.
ACCEPTED:
The above prices, specifications and conditions are satisfactory and hereby accepted.

Buyer: Jill Grossman-Belisle
Signature: 
Date of Acceptance: 4/24/18

CONFIRMED:
Connell Resources, Inc.

Authorized Signature: 
Estimator: Shane Westlind