AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Ratification of County Manager Signature; Contract

Action Requested:

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Please see attached document for ratification.

Fiscal Impact:

Submitted by: Josh Ost **Submitter's Email Address:** jost@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ○ Required ◉ Not Required

Comments:

Reveiwed by: Discharge Date: Certificate of Insurance Required

Yes ○ No ○

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 11/18/2016

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted: 0

Agenda Date: 11/22/2016

Revised April 2015

CONTRACT AGREEMENT

Gunnison - Crested Butte Regional Airport
Gunnison, Colorado
AIP PROJECT NO. 3-08-0030-051
CDOT PROJECT NO. 16-GUC-01

THIS AGREEMENT, made and entered into this 4th day of October, 2016, 2016, by and between **Gunnison County**, Party of the First Part, hereinafter referred to as the "Owner", and **Oldcastle SW Group, Inc., dba United Companies**, Party of the Second Part, hereinafter referred to as the "Contractor," for the construction of airport improvement including: **Schedule I – Runway 6/24 and Taxiway A (A1-A2) Rehabilitation, Schedule II – Runway 6 Extended Safety Area Grading Improvements, Schedule III – Remove and Replace Wind Cones and Segemented Circle, and Schedule IV – Taxiway Safet Area Grading Improvements** at the Gunnison-Crested Butte Regional Airport.

WITNESSETH:

ARTICLE 1. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Owner, the said Contractor shall furnish all labor, equipment, and material and shall perform all work necessary to complete the improvements in a good and substantial manner, ready for use, and in strict accordance with this Contract, a copy of which is filed pursuant to law in the office of the legal representative of the Owner.

ARTICLE 2. It is hereby further agreed that in consideration of the faithful performance of the work by the Contractor, the Owner shall pay the Contractor the compensation due him/her by reason of said faithful performance of the work, at stated intervals and in the amount certified by the Engineer, in accordance with the provisions of this Contract.

ARTICLE 3. It is hereby further agreed that, at the completion of the work and its acceptance by the Owner, all sums due the Contractor by reason of his faithful performance of the work, taking into consideration additions to or deductions from the Contract price by reason of alterations or modifications of the original Contract or by reason of "Extra Work" authorized under this Contract, will be paid the Contractor by the Owner after said completion and acceptance.

ARTICLE 4. It is hereby further agreed that any references herein to the "Contract" shall include "Contract Documents" as the same as defined in Paragraph 10-13, Section 10 of the General Provisions and consisting of the Invitation for Bid, Instruction to Bidders, all issued Addenda, Proposal, Statement of Qualifications, Anticipated Sub-Contracts, Form of Proposal Guaranty, Notice of Award, Contract Agreement, Performance & Payment bonds, Notice to Proceed, Notice of Contractor's Settlement, Wage Rates, General Provisions, Special Provisions, Plans, Technical Specifications, Construction Safety and Phasing Plan, attached appendices and all documents incorporated by reference. Said "Contract Documents" are made a part of the Contract as if set out at length herein. Said Contract Agreement is limited to the items in the proposal as signed by the "Contractor" and included in the "Contract Documents."

ARTICLE 5. The Contractor agrees to perform all the work describe in the Contract Documents for the unit prices and lump sums as submitted in the Bid, taking into consideration additions to or deductions from the Total Bid by reason of alterations or modifications of the original quantities or by reason of "Extra Work" authorized under this Agreement in accordance with the provisions of the Contract Documents.

ARTICLE 6. The Contractor agrees to commence work within ten (10) calendar days after the receipt of a notice to proceed and the Contractor further agrees to complete said work within 185 calendar day(s). Extensions of the Contract time may only be permitted execution of a formal modification to Contract Agreement as approved by the Owner. Liquidated damages will be paid to the ~~Airport~~ OWNER up to the amount of $710/calendar day(s) for non-use of Runway 6/24 for that time which exceeds the combined total of Phase 3 & Phase 4 or 72 calendar day(s). Liquidated damages will be paid to the Engineer up to the amount of $3,590 for that time which exceeds 185 calendar day(s). The Engineer staff costs include wages plus any incurred expenses (per diem, lodging, etc.) that will be charged to the Contractor for that time which exceeds 185 calendar day(s). Refer to Section 80-08 FAILURE TO COMPLETE ON TIME. KA MB

The total estimated cost for AIP project #3-08-0030-051 thereof to be Six Million Four Hundred Seventy-Seven Thousand Three Hundred Thirty-Five Dollars and Ninety Cents ($6,477,335.90)

IN WITNESS WHEREOF, the Party of the First Part and the Party of the Second Part, respectively, have caused this Agreement to be duly executed in day and year first herein written in five (5) copies, all of which to all intents and purposed shall be considered as the original.

CONTRACTOR, Party of the Second Part

Oldcastle SW Group, Inc., dba Untied Companies

By: Kyle Alpha

General Manager
(Office or Position of Signer)

(SEAL)

ATTEST: Dorothy Feil

Assistant Secretary
(Office or Position of Signer)

OLDCASTLE SW GROUP, INC. CORPORATE SEAL COLORADO

OWNER, Party of the First Part

Gunnison County

By: Matthew Birnie

County Manager
(Office or Position of Signer)

(SEAL)

ATTEST: Joshua Ost

Deputy County Clerk
(Office or Position of Signer)

GUNNISON COUNTY SEAL COLORADO

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That Oldcastle SW Group, Inc., dba United Companies as Principal, hereinafter called Contractor, and Fidelity and Deposit Company of Maryland as Surety, licensed to do business as such in the State of Colorado, hereby bind themselves and their respective heirs, executors, administrators, successors, and assigns, unto Gunnison County, Gunnison, Colorado, as Obligee, hereinafter called Owner, in the penal sum of **Six Million Four Hundred Seventy Seven Thousand Three Hundred Thirty Five Dollars and Ninety Cents ($6,477,335.90)** for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

WHEREAS,

Contractor has by written agreement, entered into a contract with Gunnison County for Schedule I – Runway 6/24 and Taxiway A (A1-A2) Rehabilitation, Schedule II – Runway 6 Extended Safety Area Grading Improvements, Schedule III – Remove and Replace Wind Cones and Segemented Circle, and Schedule IV – Taxiway Safet Area Grading Improvements, which contract, including any present or future amendment thereto, is incorporated herein by reference and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Contractor shall promptly and faithfully perform said Contract including all duly authorized changes thereto, according to all the terms thereof, including those under which Contractor agrees to pay legally required wage rates including the prevailing hourly rate of wages in the locality, as determined by the Department of Labor and Industrial Relations or by final judicial determination, for each craft or type of workman required to execute the contract, and, further, shall defend, indemnify and hold the Owner harmless from all damages, loss and expense occasioned by any failure whatsoever of said Contractor and Surety to fully comply with and carry out each and every requirement of the contract, then this obligation shall be void; otherwise it shall remain in full force and effect.

In the event that Contractor shall be and is declared by the Owner to be in default under the Contract, the Owner having performed its obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1) Complete the contract in accordance with its terms and conditions, or

2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Owner , and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable here under, the penal sum of the bond. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by the Owner to Contractor under the Contract and any amendments thereto, disbursed at the rate provided in the original contract, less the amount properly paid by the Owner to the Contractor. If the completion contract provides for more rapid payment than the Contract, then Surety

shall advance such sums as are needed to make payment as provided in the completion contract and shall recover it from the Owner when payment from the Owner is due.
No suit shall be commenced or pursued hereunder other than in a state court of competent jurisdiction in Gunnison, Colorado, or in the United States District Court for the 11th District of Colorado.

WAIVER. The said surety, for value received, hereby expressly agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, shall in any wise affect the obligations of this bond; and it does hereby waive notice of any such change, extension of time, or alteration or addition to the terms of the contract or the work to be performed thereunder.

IN WITNESS WHEREOF, the above parties have executed this instrument the 4th day of October, 20 16.

OLDCASTLE SW GROUP, INC. CORPORATE SEAL COLORADO

SIGNATURE OF PRINCIPAL (as applicable)

A. Individual, partnership or joint venture _____
(Signature of sole proprietor or general partner)

B. Corporation

Oldcastle SW Group, Inc. dba United Companies
Name of Corporate Principal

Attest: _____
Assistant Secretary (affix seal)
Dorothy Feil

By _____
Kyle Alpha, General Manager

SIGNATURE OF SURETY

Name and address of Corporate Surety

Fidelity and Deposit Company of Maryland

1400 American Lane, Tower One, 18th Fl Schaumburg, IL 60196

By _____ (seal)
Attorney-in-Fact (attach power of attorney)
Linda Nipper

ACCEPTANCE BY

The foregoing bond is approved.

Date _____ By _____

The foregoing bond is in due form according to law and is approved.

Date _____ By _____

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That Oldcastle SW Group, Inc., dba United Companies, as Principal, hereinafter called Contractor, and Fidelity and Deposit Company of Maryland as Surety, licensed to do business as such in the State of Colorado, hereby bind themselves and their respective heirs, executors, administrators, successors, and assigns, unto Gunnison County, Gunnison, Colorado, as Obligee, and hereinafter called Owner, in the penal sum of **Six Million Four Hundred Seventy Seven Thousand Three Hundred Thirty Five Dollars and Ninety Cents ($6,477,335.90)** for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement, entered into a contract with Gunnison County for Schedule I – Runway 6/24 and Taxiway A (A1-A2) Rehabilitation, Schedule II – Runway 6 Extended Safety Area Grading Improvements, Schedule III – Remove and Replace Wind Cones and Segemented Circle, and Schedule IV – Taxiway Safet Area Grading Improvements, which contract, including any present or future amendment thereto, is incorporated herein by reference and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if in connection with the Contract including all duly authorized modifications thereto, prompt payment shall be made to all laborers, subcontractors, teamsters, truck drivers, owners or other suppliers of equipment employed on the job, and other claimants, for all labor performed in such work whether done for the prime contractor, a subcontractor, the Surety, a completion contractor or otherwise (at the full wage rates required by any law of the United States or of the State of Colorado, where applicable), for services furnished and consumed, for repairs on machinery, for equipment, tools, materials, lubricants, oil, gasoline, water, gas, power, light, heat, oil, telephone service, grain, hay, feed, coal, coke, groceries and foodstuffs, either consumed, rented, used ore reasonably required for use in connection with the construction of the work or in the performance of the Contract and all insurance premiums, both for compensation and for all other kinds of insurance on the work, for sales taxes and for royalties in connection with, or incidental to, the completion of the Contract, in all instances whether the claim be directly against the Contractor, against the Surety or its completion contractor, through a subcontractor or otherwise, and, further, if the Contractor shall defend, indemnify and hold Gunnison County harmless from all such claims, demands or suits by any such person or entity, then this obligation shall be void; otherwise it shall remain in full force and effect.

Any conditions legally required to be included in a payment bond on this contract, including but not limited to those set out in the applicable Colorado state section of the Owner Charter, are included herein by reference.

The Surety agrees that, in the event that the Contractor fails to make payment of the obligations covered by this bond, it will do so and, further, that within forty-five (45) days of receiving, at the address given below, a claim here under stating the amount claimed and the basis for the claim in reasonable detail, it (a) will send an answer to the claimant, with a copy to the Owner, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed and (b) will pay any amounts that are

undisputed. The amount of this bond shall be reduced by and to the extent of any payment of payments made in good faith here under.

While this bond is in force, it may be sued on at the instance of any party to whom any such payment is due, in the name of the Owner, to the use of such party. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

No suit shall be commenced or pursued hereunder other than in a state court of competent jurisdiction in Gunnison, Colorado, or in the United States District Court for the 11th District of Colorado.

WAIVER. The said Surety, for value received, hereby expressly agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder, shall in any wise affect the obligations of this bond, and it does hereby waive notice of any such change, extension of time, or alteration or addition to the terms of the contract or the work to be performed thereunder.

IN WITNESS WHEREOF, the above parties have executed this instrument the 4th day of October, 20 16.

SIGNATURE OF PRINCIPAL (as applicable)

A. Individual, partnership or joint venture

(Signature of sole proprietor or general partner)

B. Corporation

Oldcastle SW Group, Inc. dba United Companies

Name of Corporate Principal

Attest: _____
Assistant Secretary (affix seal)
Dorothy Feil

By _____
Kyle Alpha, General Manager

OLDCASTLE SW GROUP, INC. CORPORATE SEAL COLORADO

SIGNATURE OF SURETY

Name and address of Corporate Surety

Fidelity and Deposit Company of Maryland

1400 American Lane, Tower One, 18th Fl Schaumburg, IL 60196

By _____ (seal)
Attorney in Fact (attach power of attorney)
Linda Nipper

ACCEPTANCE BY

The foregoing bond is approved.

Date _____ By _____

The foregoing bond is in due form according to law and is approved.

Date _____ By _____

SURETY ACKNOWLEDGMENT

STATE OF UTAH }

COUNTY OF SALT LAKE } SS

On this 4TH day of OCTOBER, 2016, before me personally came LINDA NIPPER to me known, who, being by me duly sworn, did depose and say that she is an Attorney-In-Fact of FIDELITY AND DEPOSIT COMPANY OF MARYLAND the corporation described in and which executed the within instrument; that she knows the corporate seal of said corporation, that the seal affixed to the within instrument is such corporate seal, and that she signed the said instrument and affixed the said seal as Attorney-In-Fact of the Board of Directors of said corporation and by authority of this office under the Standing Resolutions thereof.

Notary Public

LISA HALL
Notary Public
State of Utah
Comm. No. 681511
My Comm. Expires Mar 13, 2019

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **MICHAEL BOND, Vice President,** in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Tina DAVIS, Lisa HALL, Lindsey PLATTNER and Linda NIPPER, all of Salt Lake City, Utah, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 24th day of May, A.D. 2016.

ATTEST:

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By:

Secretary
Michael McKibben

Vice President
Michael Bond

State of Maryland
County of Baltimore

On this 24th day of May, A.D. 2016, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **MICHAEL BOND, Vice President, and MICHAEL MCKIBBEN, Secretary,** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Maria D. Adamski, Notary Public
My Commission Expires: July 8, 2019

POA-F 020-8022W

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify of revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 4TH day of OCTOBER, 20 16.

Gerald F. Haley

Gerald F. Haley, Vice President