

CITY OF ZEPHYRHILLS  
Zephyrhills Itinerant Parking Apron

**THIS CONSTRUCTION AGREEMENT** (“Agreement”) is made and entered into this 13<sup>th</sup> day of September, 2022 by and between the **CITY OF ZEPHYRHILLS**, a Florida municipal corporation, having its principal office at 5335 8<sup>th</sup> Street, Zephyrhills, FL 33542 (“City”) and **C.W. ROBERTS CONTRACTING, INC.**, a corporation organized and authorized to do business in the State of Florida, having its principal office at 2102 Jim Johnson Road, Plant City, Florida 33566 (“Contractor”). The City and Contractor shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

**ARTICLE 1 – RECITALS**

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

**ARTICLE 2 – CONTRACT DOCUMENTS**

2.1 The following documents, collectively referred to as the “Contract Documents”, are incorporated into and made part of this Agreement:

- 2.1.1 Bid 11-22-03, Airport Itinerant Parking Apron, attached hereto as “**Exhibit A**”.
- 2.1.2 Firm’s response to Item 2.1.1, attached hereto as “**Exhibit B**”.
- 2.1.3 Bid 11-22-03 Addenda, attached hereto as “**Exhibit C**”.

**ARTICLE 3 – TERM OF AGREEMENT**

3.1 Subject to authorized adjustments, the Term of this Agreement shall be up to a maximum of **One Hundred Seventy-Five Days (175)** calendar days from Notice to Proceed Subject to authorized adjustments, the Term of this Agreement shall be based on the Project Completion **on or before June 30, 2026**. Must receive final invoices before 120 day time period after the completion. During the pre-project meeting the awardee will provide the Owner the number of weeks which will take for the equipment to be delivered. Once delivered a Notice to Proceed will be issued.

3.3 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor’s ability to perform Services or any portion thereof, the City may request that the Contractor, within a reasonable time frame set forth in the City’s request, provide adequate assurances to the City in writing, of Contractor’s ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of the Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

#### **ARTICLE 4 – COMPENSATION**

4.1 Contract is awarded to a maximum of **\$1,948,557.00**. Compensation for services shall be as per outlined in Contractors response, attached as Exhibit B. The City will be processing payments via ACH/EFT. (See Forms)

4.3 The City shall pay Contractor within forty-five (45) days of receipt of invoice the total shown to be due on such invoice, provided the City has accepted the Services.

#### **ARTICLE 5 – SCOPE OF SERVICES**

5.1 Contractor shall provide all labor, supervision, materials, equipment, tools, services, monitoring and expertise necessary for the completion of Services, in accordance with the specifications, terms and conditions contained in the Contract Documents. Contractor shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

5.2 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required for the provision of Services, with personnel fully licensed by the State of Florida; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) All personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner and at such times and locations as described by the City for the budgeted amount; and (v) The person executing this Agreement on behalf of the Contractor is duly authorized to execute same and fully bind Contractor as a party to this Agreement.

5.3 Contractor agrees and understands that: (i) any and all subcontractors used by Contractor shall be paid by Contractor and not paid directly by the City; (ii) that Contractor shall notify City of any and all subcontractors and suppliers and shall provide release of liens from each when submitting invoice for payments to the City; and (iii) any and all liabilities regarding payment to, or use of subcontractors for any of the work related to this Agreement, shall be borne solely by Contractor.

5.4 Contractor warrants that any and all work, materials, services or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result, will be supplied by the Contractor at its own cost, whether or not specifically called for.

5.5 The Services shall be completed by the Contractor to the satisfaction of the City. The City shall make decisions on all claims regarding interpretation of the Agreement and on all other matters relating to the execution, progress and quality of the Services.

#### **ARTICIAL 6 – CITY’S TERMINATION RIGHTS**

6.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon fifteen (15) days written notice to Contractor. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

## **ARTICLE 7 – INDEPENDENT CONTRACTOR**

7.1 Contractor has been procured and is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Contractor shall not attain, not be entitled to, any rights or benefits under the Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City.

Contractor further understands that Florida workers' compensation benefits available to employees of the City, are not available to Contractor. Therefore, Contractor agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering services to the City under this Agreement.

## **ARTICLE 8 – CONFLICTS OF INTEREST**

8.1 The Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

8.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly with Contractor. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

## **ARTICLE 9 – DEFAULT**

9.1 If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligation hereunder, then Contractor shall be in default. The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within ten (10) business days after receiving Notice of Default. Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

## **ARTICLE 10 – NOTICES**

10.1 All notices, demands, correspondence and communication between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when delivered by personal service, faxed, or dispatched by mail or certified mail, addressed as follows:

To CONTRACTOR:

Mr. R. Straily  
C.W. Roberts Contracting, Inc.  
2102 Jim Johnson Road  
Plant City, Florida 33566

To CITY:

City of Zephyrhills  
ATTN: City Manager  
5335 8<sup>th</sup> Street  
Zephyrhills, Florida 33542

And,

City of Zephyrhills  
ATTN: City Attorney  
5335 8<sup>th</sup> Street  
Zephyrhills, Florida 33542

10.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

10.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

#### **ARTICLE 11 – PUBLIC RECORDS**

**11.1 IF THE CONSULTANT/CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 813-780-0000, EXT. 3543 OR CITYCLERK@CI.ZEPHYRHILLS.FL.US OR CITY CLERK, CITY OF ZEPHYRHILLS, 5335 EIGHTH STREET, ZEPHYRHILLS, FLORIDA 33542.**

#### **ARTICLE 12 – INDEMNIFICATION**

12.1 Contractor shall defend, indemnify and hold harmless the City of Zephyrhills and all of the City of Zephyrhills’s officers, agents, and employees from and against all claims, liability, loss and expense, including reasonable costs, collection expenses, attorneys’ fees, and court costs which may arise because of the negligence (whether active or passive), misconduct, or other fault, in whole or in part (whether joint, concurrent, or contributing), of Contractor, its officers, agents or employees in performance or non-performance of its obligations under the Agreement. Contractor recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the City of Zephyrhills when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by the City of Zephyrhills in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of this Agreement. Compliance with any insurance requirements required elsewhere within this Agreement shall not relieve Contractor of its liability and obligation to defend, hold harmless and indemnify the City of Zephyrhills as set forth in this article of the Agreement.

Nothing herein shall be construed to extend the City of Zephyrhills's liability beyond that provided in section 768.28, Florida Statutes.

### **ARTICLE 13 – INSURANCE**

13.1 Contractor shall, at its sole cost and expense, procure and maintain throughout the term of this contract, Comprehensive General Liability and Worker's Compensation insurance, including Employer Liability insurance, with minimum policy limits of \$ 1,000,000 (this could be \$2,000,000 depending on the amount of the contract) Combined Single Limits, or to the extent and in such amounts as required and authorized by Florida law, and will provide endorsed certificates of insurance generated and executed by a licensed insurance broker, brokerage or similar licensed insurance professional evidencing such coverage, and naming the City of Zephyrhills as a named, additional insured, as well as furnishing the City of Zephyrhills with a certified copy, or copies, of said insurance policies. Certificates of insurance and certified copies of these insurance policies must accompany this signed contract. Said insurance coverages procured by Contractor/Vendor as required herein shall be considered, and Contractor/Vendor agrees that said insurance coverages it procures as required herein shall be considered, as primary insurance over and above any other insurance, or self-insurance, available to the City of Zephyrhills, and that any other insurance, or self-insurance available to the City of Zephyrhills shall be considered secondary to, or in excess of, the insurance coverage(s) procured by Contractor/Vendor as required herein.

Nothing herein shall be construed to extend the City of Zephyrhills's liability beyond that provided in section 768.28, Florida Statutes.

13.2 If this Contract includes: (1) construction of a new above-ground structure or structures, or (2) any addition(s), improvement(s), alteration(s), or repair(s), to an existing above-ground structure or structures, or (3) the installation of machinery or equipment into an existing structure or structures, the Contractor shall provide, in a policy acceptable to the City, "all risk" (i.e. Special Form) property insurance on any such construction, additions, machinery or equipment. The amount of the insurance shall be no less than the estimated replacement value at the time of the City's final acceptance of such new structures, addition(s), improvement(s), alteration(s), repair(s), machinery or equipment. The coverage shall not be subject to any restriction with respect to occupancy or use by the City and, subject to thirty (30) days' prior written notice to the City shall remain in full effect until final acceptance by the City. In addition, the City, the Professional, and the Contractor's subcontractors of any tier, shall be additional insureds on this policy. The insurance shall include a deductible no greater than one percent (1%) of the Contract amount, or \$25,000, whichever is smaller, for which the Contractor shall be responsible. The risk of loss whether insured or not shall remain with the Contractor until final acceptance. Upon request, Contractor shall furnish to the City complete copies of the insurance policy.

### **ARTICLE 14 – FORCE MAJEURE**

14.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a

Force Majeure Even, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event.

The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

## **ARTICLE 15 – CHANGE ORDERS**

15.1 Without invalidating the Agreement, the City may, at any time or from time to time, order additions, deletions, or revisions in the work authorized by an executed, signed Change Order. Change Orders should be submitted on an **AIA Document G701**. Change Orders are a defined written instrument prepared by the Contractor and signed by both Contractor and authorized City representative.

Upon receipt of an executed authorized Change Order, the Contractor/Vendor shall proceed with the work involved. All such work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made.

The Airport Director may authorize changes or alterations in the work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. If the Contractor/Vendor believes that any minor change or alteration authorized by the Airport Director entitled him to an increase in the Contract Price, he may make a claim in writing.

The Contractor/Vendor shall not start work on any alteration requiring an increase or decrease in price or extension of time until a Change Order setting forth the adjustments is executed by the City.

It is the Contractor's or Vendor's responsibility to notify his Surety of any changes affecting the general scope of the work or change in the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly. The Contractor/Vendor shall furnish proof of such adjustment to the City.

## **ARTICLE 16 – MISCELLANEOUS PROVISIONS**

16.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

16.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

16.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to confirm with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

16.4 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

16.5 The City is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

16.6 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

16.7 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Pasco County, Florida.

16.8 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three (3) years after final payment is made under this Agreement.

16.9 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

16.10 The professional services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

16.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

16.12 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

16.13 All other terms and conditions set forth in the Contract Documents which have not been modified by this Agreement, shall remain in full force and effect.

16.14 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

16.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the parties have executed this agreement on the day written above.

**CITY OF ZEPHYRHILLS**

\_\_\_\_\_  
Jodi Wilkeson, Council President

Attest: \_\_\_\_\_  
Lori L. Hillman, City Clerk

Signed, Sealed and Delivered  
In the presence of:

**C.W. ROBERTS CONTRACTING INC**

By: \_\_\_\_\_  
Richard Straily – Area Manager

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness