



**CITY COUNCIL
ZEPHYRHILLS, FLORIDA**

**Monday, July 14, 2025
6:00 PM**

Please join the GoToMeeting
from your computer, tablet or smartphone:

<https://meet.goto.com/855960693>

or dial in using your phone:

+1 (646) 749-3122- Access Code: 855-960-693

(Please mute your phone unless you wish to speak on a specific item)

**Zephyrhills
City Hall**

**Council
Chambers**

Call to Order — Council President Charles E. Proctor

Roll Call — Assistant City Clerk Eileen Mercado

Invocation — Bishop Rich Jividen, Oasis Church of God

Pledge of Allegiance —

CITIZEN COMMENTS

MAYOR

- 1 Proclamation - Microtel Inn & Suites , “Best of” award winner
1. 2025 Microtel Best of
- 2 Proclamation - PHSC Bobcats Baseball National Champions.
1. 2025 PHSC Bobcats
- 3 Swearing in of Officer Gregory Varence, Jr.

1. CONSENT ITEMS

- 1.1 Approval of City Council Meeting Minutes - June 23, 2025
 1. M06.23.2025
- 1.2 Approval of Amendment 3 to DEO Grant Agreement HL135 **(24-21-07)**, SVB Tennis Center PH 2
 1. HL135 Amendment 3
- 1.3 Approval of Amendment 1 to FDEP Grant Agreement LPA0407 **(24-23-02)**, Kossik & Fort King Road Sewer Main/Water Main Extension
 1. LPA0407 Amendment 1
- 1.4 Approval of General Construction Agreement **41-25-14** to Razorback LLC.
 1. 36440813v1 - Razorback_Gen Con Continuing Services Agreement
 2. Wirtten Ranking
- 1.5 Approval of General Construction Agreement **41-25-15** to National Metering Services (NMS)
 1. 36440738v1 - National Metering_Gen Con Continuing Services Agreement
 2. Wirtten Ranking
- 1.6 Approval of General Construction Agreement **41-25-16** to Hometown Services of Florida
 1. 36440555v1 - Hometown Services_Gen Con Continuing Services Agreement
 2. Wirtten Ranking
- 1.7 Approval of Agreement **37-25-10** - Construction Manager at Risk (CMAR) - Wharton Smith
 1. 36441522v1 - Wharton Smith _CMAR_ Continuing Services Agreement
- 1.8 Approval of Agreement **37-25-11** - Construction Manager at Risk (CMAR) - Semco Construction
 1. 36441435v1 - Semco Construction_CMAR_ Continuing Services Agreement
 2. Wirtten Ranking
- 1.9 Approval of Agreement **37-25-12** - Construction Manager at Risk (CMAR) - Ryman Construction of Florida
 1. 36441250v1 - Ryman Construction _CMAR_ Continuing Services Agreement
 2. Wirtten Ranking
- 1.10 Approval of General Construction Agreement **41-25-13** to RCM Utilities
 1. 36440704v1 - RCM Utilities_Gen Con Continuing Services Agreement
 2. Written Ranking
- 1.11 Approval of Agreement **37-25-09** - Construction Manager at Risk (CMAR) - AD Morgan
 1. 36441496v1 - The AD Morgan Corp _CMAR_ Continuing Services Agreement
 2. Wirtten Ranking
- 1.12 Approval of ZPD Generator Purchase Change Order #1
 1. Zephyrhills PD Gen _ATS Replacement
- 1.13 Approval of Piggyback Agreement **41-25-17** with A.C. Schultes for As Needed Well Drilling Construction, Rehabilitation and Repair Services
 1. 36761397v2 - A.C. Shultes of Florida Inc. Piggyback Agreement 45-25-17 07142025
 2. 36761398v1 - Exhibit A - A.C. Schultes of Florida Piggyback

2. BUSINESS ITEMS/PUBLIC HEARING

- 2.1 Renewal of Residential Moratorium Twelve (12) Month Extension (July 14, 2025 - July 13, 2026)
Second Reading **ORDINANCE NO. 1501-25 "AN ORDINANCE OF THE CITY OF ZEPHYRHILLS, FLORIDA ESTABLISHING A NEW TEMPORARY MORATORIUM ON THE CONSIDERATION OF NEW RESIDENTIAL APPLICATIONS FOR ANNEXATIONS, LAND USE MODIFICATIONS, REZONING, MAJOR PLANNED UNIT DEVELOPMENT AMENDMENTS, CONDITIONAL USES, OR VARIANCES FOR PROPERTY OVER ONE ACRE, NOT TO EXCEED TWELVE (12) MONTHS, PROVIDING FOR CONFLICTS, EXEMPTIONS, SEVERABILITY, EXPIRATION AND AN EFFECTIVE DATE."**
- A. Council President opens Public Hearing.
 - B. Council President closes Public Hearing.
 - C. City Council considers Ordinance No. 1501-25 on the Second Reading.
1. Ordinance 1501-25 - Residential Moratorium 12 Month Extension
- 2.2 Renewal of MMTC Moratorium - (July 23, 2025 - July 22, 2026)
Second Reading **ORDINANCE NO. 1502-25 "AN ORDINANCE OF THE CITY OF ZEPHYRHILLS, FLORIDA RELATED TO MEDICAL MARIJUANA TREATMENT CENTERS; ADOPTING FINDINGS OF FACT; PROVIDING DEFINITIONS; IMPOSING A NEW TEMPORARY MORATORIUM ON THE OPENING OF ANY NEW MEDICAL MARIJUANA TREATMENT CENTERS NOT TO EXCEED TWELVE (12) MONTHS; PROVIDING FOR SEVERABILITY, REPEALER, AND AN EFFECTIVE DATE. "**
- A. Council President opens Public Hearing.
 - B. Council President closes Public Hearing.
 - C. City Council considers Ordinance No. 1502-25 on the Second Reading.
1. Ordinance 1502-25 Medical Marijuana Treatment Centers Moratorium Extension (36454429v2)
- 2.3 CCC - Annexation
First Reading **ORDINANCE NO. 1503-25 "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS, FLORIDA ANNEXING APPROXIMATELY 13.72 ACRES (MOL) INTO THE CORPORATE LIMITS OF THE CITY DESCRIBED AS PARCEL NUMBER 18-26-22-0010-09300-0000 ZEPHYRHILLS, FLORIDA, IN ACCORDANCE WITH SECTION 171.044, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE."**
- A. Council President opens Public Hearing.
 - B. Council President closes Public Hearing.
 - C. City Council considers Ordinance No. 1503-25 on the First Reading.
1. 36742571v1 - Ordinance 1503-25 CCC Property Holdings Chancey Annexation Ordinance - Draft
2. Chancey Annexation Aerial Map
- 2.4 CCC - Rezoning and FLU
First Reading **ORDINANCE NO. 1504-25 "AN ORDINANCE OF THE CITY OF ZEPHYRHILLS, FLORIDA PROPOSING AN AMENDMENT TO THE CITY'S COMPREHENSIVE PLAN, PROVIDING FOR A SMALL-SCALE COMPREHENSIVE PLAN AMENDMENT TO THE FUTURE LAND USE MAP CHANGING FROM COUNTY IL TO CITY IN (INDUSTRIAL) AND THE ZONING DESIGNATION FROM COUNTY AC TO CITY LI (LIGHT INDUSTRIAL) FOR APPROXIMATELY 13.72 ACRES OF REAL PROPERTY**

LOCATED WEST OF CHANCEY ROAD, AND EAST OF THE ZEPHYRHILLS AIRPORT AND ZEPHYRHILLS MUNICIPAL BOUNDARY AND HAVING PARCEL ID# 18-26-22-0010-09300-0000; PROVIDING FOR REPEALER, CONFLICT SEVERABILITY, AND AN EFFECTIVE DATE."

- A. Council President opens Public Hearing.
- B. Council President closes Public Hearing.
- C. City Council considers Ordinance No. 1504-25 on the First Reading.
- 1. 36742566v1 - ORDINANCE 1504-25 CCC Property Holdings Chancey Rezoning and FLU - Draft
- 2. Chancey Annexation Aerial Map
- 2.5 Chicken Ordinance
First Reading ORDINANCE NO. 1505-25 " **AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS, FLORIDA CREATING A NEW SECTION TO CHAPTER 93 OF THE CITY OF ZEPHYRHILLS CODE OF ORDINANCES, SECTION 93.03 ESTABLISHING REGULATIONS FOR THE KEEPING, HARBORING AND MAINTENANCE OF BACKYARD CHICKENS; PROVIDING FOR APPLICABILITY, REPEALER, SEVERABILITY, INCLUSION IN THE CODE, AND PROVIDING AN EFFECTIVE DATE. "**
 - A. City Council considers Ordinance No. 1505-25 on the First Reading.
 - 1. 36742574v1 - Chicken Ordinance No. 1505-25
 - 2. Backyard Chicken Application

3. CITY MANAGER'S REPORT

- 3.1 Amendment to Lease Agreement **29-21-03** with Tina and Joe's
 - 1. 36742597v1 - First Amendment to the Tina and Joe's Cafe Management Agreement
 - 2. 36742599v1 - Exhibit A - First Amendment T&J
- 3.2 CivicRec Implementation & Facility Reservation Online Impact
- 3.3 City Parks Addition of New Equipment to Gunner Paw, Veterans, Depot, Ellis Harrold and Shepherds Park.

MAYOR ANNOUNCEMENTS

CITY MANAGER ANNOUNCEMENTS

CITY ATTORNEY ANNOUNCEMENTS

CITY COUNCIL COMMENTS

4. NOTED ITEMS

ADJOURN

*** PLEASE NOTE: This is a Public Meeting. Should any interested party seek to appeal any decision made by the Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is to be based. F.S. 286.0105. If you are a person with a disability which requires reasonable accommodation in order to**

participate in this meeting, please contact the City Clerk at 813/780-0000 at least 48 hours prior to the public hearing. A.D.A. and F.S. 286.26.



PROCLAMATION

WHEREAS, Microtel Inn & Suites Zephyrhills by Wyndham, under the leadership of Owner Neil Patel, has demonstrated a commitment to excellence in hospitality and community service; and

WHEREAS, at the recent Wyndham Conference, Microtel Inn & Suites Zephyrhills was honored with two distinguished awards: the Wyndham “Best of” Award, one of only three presented in the state of Florida, and the *Hero Award*, recognizing outstanding compassion and service in the wake of recent hurricanes; and

WHEREAS, during a time of crisis, Neil Patel and his dedicated team opened their doors to FEMA evacuees from mid-October to mid-January, providing not only shelter but a sense of belonging—serving a catered Thanksgiving meal for over 110 guests and partnering with local churches to host a community Christmas celebration; and

WHEREAS, Microtel has also actively supported the local business and civic community through engagement with the East Pasco Chamber of Commerce and community initiatives including tennis center events; and

WHEREAS, special recognition is extended to Housekeeping team member Anira Guevara, who was named one of only three global finalists for Wyndham’s *Housekeeping Hero Award*, and to Front Desk Manager Katelyn Perez and the entire Microtel team for their dedication to service and hospitality; and

WHEREAS, the City of Zephyrhills is proud to be home to community-driven businesses like Microtel Inn & Suites Zephyrhills that exemplify the highest standards of care, professionalism, and civic partnership;

NOW, THEREFORE, I, Melonie Bahr Monson, by virtue of the authority vested in me as Mayor of the City of Zephyrhills, do hereby recognize:

Microtel Inn & Suites Zephyrhills by Wyndham

for their outstanding achievements and unwavering commitment to serving our residents, visitors, and community.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Zephyrhills to be affixed on this 14th day of July, 2025.

Melonie Bahr Monson, Mayor

Attest:

Ricardo Quiñones, City Clerk



PROCLAMATION

WHEREAS, Pasco-Hernando State College (PHSC), founded in 1967, has played a vital role in expanding higher education and athletic achievement in East Pasco County and beyond, fostering opportunities for student-athletes to excel both academically and on the field; and

WHEREAS, on May 31, 2025, the PHSC Bobcats Baseball Team captured the 2025 NJCAA Division II Baseball World Series Championship in Enid, Oklahoma, defeating the No. 2 seed, Pearl River Community College, by a score of 11–7; and

WHEREAS, this remarkable win marks the first national title in PHSC’s athletic history and was earned through determination, discipline, and unforgettable performances, including back-to-back grand slams in the seventh inning by Grant Jordan (Jesuit High School) and Brandon Durfee (Land O’ Lakes High School), shifting momentum and securing victory for the Bobcats; and

WHEREAS, the team’s success was further solidified by outstanding efforts from pitcher Michael Savarese of Hernando High School), who recorded eight strikeouts in 6.2 innings, and Holden Wade of Sickles High School, who closed the game with 2.1 hitless, scoreless innings; and

WHEREAS, Brandon Durfee was named Tournament MVP and Outstanding Offensive Player, and Head Coach and Athletic Director Lyndon Coleman was awarded Coach of the Tournament; and

WHEREAS, the NJCAA recognized four PHSC players—Grant Jordan, Fano Cruz of Viera High School, Bryce Habuda of Canterbury High School, and Gavin Zassenbraker of A3 Academy—as members of the All-Tournament Team; and

WHEREAS, this championship exemplifies the values of sportsmanship, excellence, and perseverance that define PHSC and inspire pride throughout the Zephyrhills community and beyond; and

NOW, THEREFORE, I, Melonie Bahr Monson, by virtue of the authority vested in me as Mayor of the City of Zephyrhills, do hereby extend our sincere congratulations and recognition to the **Pasco-Hernando State College Bobcats Baseball Team** for their extraordinary accomplishment as **2025 NJCAA Division II Baseball National Champions**.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Zephyrhills to be affixed on this 14th day of July, 2025.

Melonie Bahr Monson, Mayor

Attest: _____
Ricardo Quiñones, City Clerk

CONSENT ITEMS 1.1

Approval of City Council Meeting Minutes - June 23, 2025

Issue:

The City of Zephyrhills City Council held a regular meeting on June 23, 2025.

Background:

Minutes from that meeting were prepared and are presented for the Council's review and approval.

Attachment(s):

1. M06.23.2025

Fiscal Impact:

N/A

Staff Recommendation:

Staff Recommends approval.

REGULAR CITY COUNCIL MEETING

A Regular City Council Meeting was held on June 23, 2025 at 6:00 PM in the Council Chambers of City Hall and Via GoToMeeting (646) 749-3122 - Access Code: 855-960-693. Council President Charles E. Proctor called the meeting to order at 6:05 PM

Roll call was taken. Present were members Lance Smith, Kenneth Burgess, Charles Proctor, Jodi Wilkeson, Steven Spina and Mayor Melonie Bahr Monson. City Manager William Poe and City Attorney Matthew Maggard were also present.

Staff present: Chief of Police Derek Brewer, Public Works Director Shane LeBlanc, Planning Director Todd Vande Berg, Utilities Director John Bostic III, CRA Director Gail Hamilton, Human Resources & Risk Management Director Sandra Amerson, IT Director Mike Panak, Airport Manager Nathan Coleman, Building Official Calvin Switzer, Public Information Officer Kevin Weiss, Assistant Finance Director Jessica Carter, Principal Planner Rodney Corriveau, GIS/Community Planner Tommy-Lee Hunt, Community Planner William McCaw, Water Treatment Plant Operator A Eric Martin, Lt. Matthew Hillen, Assistant City Clerk Eileen Mercado and City Clerk Ricardo Quiñones.

The Invocation was led by Rodney Corriveau, Principal Planner.

The Pledge of Allegiance followed.

CITIZEN COMMENTS

1. Chad Pettinato- Cultivation Discussion - item 3.3

*****Chad Pettinato was asked to wait until item 3.3 was discussed.*****

Dr. Stovall - Representing East Pasco Chamber of Commerce - Dr. Stovall reported on the AMSkills Workshop held at the Genesis Center. The event focused on workforce training for manufacturing jobs. AMSkills, traditionally based on the west side, is now showing strong interest in East Pasco due to local industrial growth. Dr. Stovall praised the well-organized Main Street Zephyrhills KidsFest event, highlighting the participation of the Mayor's Youth Council and support from City Clerk Ricardo Quiñones and Chamber of Commerce colleague Sam Abrahani. Dr. Stovall announced a ribbon cutting for a new nonprofit, Our Hope Chest, which provides services to senior citizens. The event is scheduled for Thursday, June 26, 2025 at 12:00pm located at 5151 Gall Boulevard, Zephyrhills FL 33542.

MAYOR

- 1 Swearing in of Officers Adina Burke and Noah Yanzer

Chief of Police Derek Brewer introduced and swore in new officers, Noah Yanzer and Adina Burke. After their oaths, photos were taken and the officers were permitted to leave with their families and guests.

1. CONSENT ITEMS

- 1.1 Approval of City Council Meeting Minutes - June 09, 2025
- 1.2 ESRI Enterprise Agreement Amendment - **41-23-19**
- 1.3 Approval of Midsouth Inc Agreement **25-25-06** - Pasco County RCW Interconnect Project
- 1.4 Approval of agreement **37-25-08** with Odyssey Manufacturing to furnish and deliver liquid sodium hypochlorite
- 1.5 Approval of Utility Service Agreement **45-25-19** for 6720 20th Street Zephyrhills Fl 3354

Steven Spina motioned to approve the consent agenda items as presented. Seconded by Kenneth Burgess. Motion Passed, 5-0.

2. BUSINESS ITEMS

2.1 Rezone Butterfield Properties -

SECOND READING ORDINANCE NO. 1500-25 " AN ORDINANCE OF THE CITY OF ZEPHYRHILLS, FLORIDA, AMENDING THE OFFICIAL ZONING MAP BY REZONING TWO PARCELS TOTALING APPROXIMATELY 14,545.8 SQUARE FEET (0.33 ACRES), MORE OR LESS, FROM OP (OFFICE PROFESSIONAL) TO R3 (MEDIUM DENSITY RESIDENTIAL), LOCATED AT THE INTERSECTION OF NORTH AVENUE AND 12TH STREET, BEING PARCEL NUMBERS 02-26-21-0050-00000-0010 AND THE SOUTH 44.70 FEET OF PARCEL 02-26-21-0050-00000-0020, IN ZEPHYRHILLS, FLORIDA; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE. "

A. Council President opens Public Hearing

B. Council President closes Public Hearing

C. City Council considers Ordinance No. 1500-25 on the Second Reading
City Attorney Matthew Maggard read Ordinance No. 1500-25 by title.

Council President opened a public hearing.

Principal Planner Rodney Corriveau presented a request to rezone a property at North Avenue and 12th Street from Office Professional (OP) back to its original Residential R3 zoning. The applicant owns five adjoining lots and intends to construct single-family detached homes, proposing access along the eastern boundary to reduce traffic impact at the high-traffic intersection. While no site plan has been submitted, staff confirmed the lots meet R3 zoning requirements. An access easement will require legal review.

Council discussed concerns about traffic, lot dimensions, and home placement. It was noted that if this item is approved it would not come before Council again if developed within allowable use.

Council President closed the public hearing.

Lance Smith motioned to approval of Ordinance No. 1500-25 on the Second Reading. Seconded by Kenneth Burgess. Motion Passed, 4-1. Opposed by Jodi Wilkeson.

2.2 Renewal of Residential Moratorium Twelve (12) Month Extension (7/14/25 – 7/13/26)

FIRST READING ORDINANCE NO. 1501-25 "AN ORDINANCE OF THE CITY OF ZEPHYRHILLS, FLORIDA ESTABLISHING A NEW TEMPORARY MORATORIUM ON THE CONSIDERATION OF NEW RESIDENTIAL APPLICATIONS FOR ANNEXATIONS, LAND USE MODIFICATIONS, REZONING, MAJOR PLANNED UNIT DEVELOPMENT AMENDMENTS, CONDITIONAL USES, OR VARIANCES FOR PROPERTY OVER ONE ACRE, NOT TO EXCEED TWELVE (12) MONTHS, PROVIDING FOR CONFLICTS, EXEMPTIONS, SEVERABILITY, EXPIRATION AND AN EFFECTIVE DATE."

A. City Council considers Ordinance No. 1501-25 on the First Reading

City Attorney Matthew Maggard read Ordinance 1501-25 by title. Mr. Maggard clarified the updated version of the Ordinance was not attached to the agenda. This was printed and provided to Council.

Ordinance No. 1501-25 establishes a new temporary moratorium on certain residential development due to pending modifications to the City's water use permit. Staff explained that the moratorium is necessary because the existing permit has not yet been updated by SWFWMD, and current development projections may already reach the anticipated new capacity. The moratorium excludes commercial and industrial development and allows single-family development on lots one acre or less.

Council discussed future permit implications, the need to reassess projects in the pipeline, and whether to continue, modify, or terminate the moratorium once the updated permit is approved.

Kenneth Burgess motioned to approve Ordinance No. 1501-25 on the First Reading. Seconded by Steven Spina. Motion Passed, 5-0.

2.3 Renewal of MMTC Moratorium - (July 23, 2025 - July 22, 2026)

First Reading **ORDINANCE NO. 1502-25 "AN ORDINANCE OF THE CITY OF ZEPHYRHILLS, FLORIDA ESTABLISHING A NEW TEMPORARY MORATORIUM ON THE OPENING OF ANY NEW MEDICAL MARIJUANA TREATMENT CENTERS NOT TO EXCEED TWELVE (12) MONTHS; ADOPTING FINDINGS OF FACT; PROVIDING DEFINITIONS; IMPOSING A MEDICAL MARIJUANA TREATMENT CENTERS; SEVERABILITY, REPEALER, AND AN EFFECTIVE DATE. "**

A. City Council considers Ordinance No. 1502-25 on the First Reading

City Attorney Matthew Maggard read Ordinance No. 1502-25 by title.

Ordinance No. 1502-25 establishes a 12-month moratorium on the opening of new Medical Marijuana Treatment Centers (MMTCs) within the City.

Representatives from Good Essence, a licensed medical cannabis cultivation company, addressed Council seeking support for a proposed cultivation and processing facility in Zephyrhills. They emphasized the operation's medical focus, job creation, discreet design, and sustainable practices.

Council raised concerns about water usage, community image, zoning compatibility, and long-term regulation. While some acknowledged the business opportunity and medical benefits, others expressed opposition based on the City's vision for its industrial corridor and public perception.

Mr. Maggard clarified that the moratorium allows time to establish appropriate land use regulations and does not serve as a denial of the specific project discussed.

Council asked Staff to provide a progress review on this issue within six months. Staff was directed to develop clear guidelines and land use policy for MMTCs, including whether cultivation, processing, and retail uses could be regulated separately. Staff was also encouraged to research and prepare a comprehensive narrative or framework outlining permitted uses within the industrial corridor to improve consistency and support business development clarity.

Jodi Wilkeson motioned to approve Ordinance No. 1502-25 on the First Reading. Seconded by Kenneth Burgess. Motion Passed, 4-1. Opposed by Steven Spina.

3. FINANCE DIRECTOR'S REPORT

3.1 Travel Per Diem Policy

Finance Director Ted Beason presented a proposed change to the City's travel per diem policy. The revision would adopt the GSA per diem rate as a daily allowance—such as \$80 per day for travel to Tallahassee—rather than regulating meal-specific reimbursements. Adjustments would be made if meals are provided at a conference. Additionally, City employees would begin using P-cards for travel expenses instead of receiving travel advances. Receipts would be required for all P-card purchases, and employees would be responsible for reimbursing the City for any undocumented expenses.

Lance Smith motioned to approve the revised policy. Seconded by Jodi Wilkeson. Motion Passed, 5-0.

3.2 Budget Adjustment and Increase Carlisle Thompson Authority from \$100,000 to \$175,000

Finance Director Ted Beason presented a request to increase the City's contract with Carlisle Thompson to \$175,000 for continued FEMA reimbursement assistance related to Hurricane Milton.

Steven Bryce, principal of Carlisle Thompson, explained the firm has submitted five of six priority projects totaling approximately \$3.8 million and anticipates full submissions reaching \$4.5 million. One project, valued at \$226,000, is close to FEMA approval, with reimbursement expected within 90 days of approval. A particularly complex \$2 million project, involving sewage removal documentation, required significantly more effort than originally anticipated.

Council discussed FEMA's current responsiveness, the reimbursement timeline, and the firm's hourly billing structure. It was noted that 5% of the total FEMA reimbursement can be used to cover administrative costs such as Carlisle Thompson's services.

Lance Smith motioned to approve this item. Seconded by Steven Spina. Motion Passed, 5-0.

3.3 Appointment of the Audit Selection Committee

Finance Director Ted Beason presented a request to appoint an Audit Selection Committee, as required by state law, to initiate a Request for Proposals (RFP) for auditing services. The proposed committee members are Amy Chappell, Mike Ward, and Councilman Kenneth Burgess, who will serve as chair.

Lance Smith motioned to approve this item. Seconded by Jodi Wilkeson. Motion Passed, 5-0.

4. CITY MANAGER'S REPORT - NONE

*****Skipped to City Manager Announcements*****

MAYOR ANNOUNCEMENTS - NONE

*****Done after City Manager Announcements*****

CITY MANAGER ANNOUNCEMENTS

City Manager Poe announced that this meeting marked the retirement of Christopher Hatton from Kimley-Horn, recognizing it as his last meeting with Zephyrhills. Mr. Hatton was commended for over 25 years of service and valued contributions as a consultant.

Council Vice-President Steven Spina added that Hatton had supported the City since 2002, helping modernize operations and departments. Both expressed their appreciation and offered best wishes for his retirement.

CITY ATTORNEY ANNOUNCEMENTS - NONE

CITY COUNCIL COMMENTS

Lance Smith - Expressed appreciation for the respectful and constructive discussions among Council members, noting that differing votes are healthy and part of effective governance. He also thanked staff and acknowledged Christopher Hatton's contributions, jokingly questioning his choice to attend a council meeting to mark his retirement but expressing sincere gratitude for his service.

Jodi Wilkeson - Commended the success of the 2025 KidsFest and Touch-a-Truck event, noting the hot weather and expressing appreciation for the dedicated volunteers and the City's award-winning Main Street program.

Steven Spina - NONE

Kenneth Burgess - Congratulated Christopher Hatton on his retirement, sharing from his own experience that retirement offers invaluable time for personal fulfillment. He jokingly remarked on the lack of a celebration and promised the City would make it up to him.

Charles Proctor - Acknowledged the extensive discussion on the cultivation issue and emphasized the importance of respectful dialogue, even when opinions differ. He thanked the Council for their input.

5. NOTED ITEMS - NONE

ADJOURN 7:54 PM

Submitted by Ricardo Quiñones

CONSENT ITEMS 1.2

Approval of Amendment 3 to DEO Grant Agreement HL135 (**24-21-07**), SVB Tennis Center PH
2

Issue:

Amendment 3 to Agreement HL135 with the Florida Department of Economic Opportunity

Background:

The City was appropriated \$4,665,000 through the Florida Department of Economic Opportunity (DEO) in 2021 (Agreement No. HL135). The initial agreement expiration date was for June 30, 2023. The City requested an extension to August 31, 2025 to give the contractors time to finalize the construction phase. The attached Amendment 3 of Agreement No. HL135, prepared by DEO, reflects the City's requested changes.

Attachment(s):

1. HL135 Amendment 3

Fiscal Impact:

\$4,665,000 State Appropriation.

Staff Recommendation:

Staff recommends approval for Amendment 3 to HL135.

**AMENDMENT THREE TO
GRANT AGREEMENT
BETWEEN
THE FLORIDA DEPARTMENT OF COMMERCE
AND
CITY OF ZEPHYRHILLS, FLORIDA**

On **September 21, 2021**, the State of Florida, Department of Commerce ("Commerce"), and the City of Zephyrhills, Florida ("Grantee"), entered into Grant Agreement Number HL135 ("Agreement") for the Sarah Vande Berg Tennis Center Project. Commerce and Grantee are sometimes referred to herein individually as a "Party" and collectively as "the Parties."

WHEREAS, Section D, Modification, of the Agreement provides that any amendment to the Agreement shall be in writing and executed by the Parties thereto; and

WHEREAS, the Agreement was previously amended on **October 21, 2022**, and **October 13, 2023**;

WHEREAS, the Parties wish to amend the Agreement as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. Section A, Agreement Period, is hereby deleted in its entirety and is replaced with the following:

This Agreement is effective as of July 1, 2021 (the "Effective Date") and shall continue until the earlier to occur of (a) August 31, 2025 (the "Expiration Date") or (b) the date on which either Party terminates this Agreement (the "Termination Date"). The period of time between the Effective Date and the Expiration Date or Termination is the "Agreement Period."

2. All other terms and conditions of the Agreement remain in full force and effect.

Remainder of this page left intentionally blank

IN WITNESS THEREOF, by signature below, the Parties agree to abide by the terms, conditions, and provisions of Agreement Number **HL135** as amended. This Amendment is effective on the date the last Party signs or on June 30, 2025, whichever happens earlier.

FLORIDA DEPARTMENT OF COMMERCE	CITY OF ZEPHYRHILLS, FLORIDA
SIGNED:	SIGNED:
J. Alex Kelly	Charles Proctor
Secretary	City Council President
DATE:	DATE:

Approved as to form and legal sufficiency, subject only to full and proper execution by the Parties.

**OFFICE OF GENERAL COUNSEL
FLORIDA DEPARTMENT OF COMMERCE**

By: _____

Approved Date: _____

CONSENT ITEMS 1.3

Approval of Amendment 1 to FDEP Grant Agreement LPA0407 (**24-23-02**), Kossik & Fort King Road Sewer Main/Water Main Extension

Issue:

Amendment 1 to Agreement LPA0407 with the Florida Department of Environmental Protection

Background:

The City was appropriated \$3,500,000 through the Florida Department of Environmental Protection (FDEP) in 2022 (Agreement No. LPA0407). The initial agreement expiration date was for April 30, 2025. The City requested an extension to October 31, 2026 to give the contractors time to finalize the construction phase. The City also requested that funds from Task #3 be reallocated to Task #4 for Project Management services. The attached Amendment 1 of Agreement No. LPA0407 prepared by FDEP reflects the City's requested changes.

Task No.	Task Title	Budget Category	Grant Amount	Task Start Date	Task End Date
1	Preconstruction Activities	Contractual Services	\$196,521	07/01/2022	04/30/2026
2	Bidding and Contractor Selection	Contractual Services	\$19,162	07/01/2022	04/30/2026
3	Construction	Contractual Services	\$3,218,545	07/01/2022	04/30/2026
4	Project Management	Contractual Services	\$65,772	07/01/2022	04/30/2026
Total:			\$3,500,000		

Attachment(s):

1. LPA0407 Amendment 1

Fiscal Impact:

FDEP State Funds - \$3,500,000.

Staff Recommendation:

Staff recommends approval of Amendment 1 to FDEP grant agreement LPA0407, Kossik & Fort King Road sewer/water main extension.

**AMENDMENT NO. 1
TO AGREEMENT NO. LPA0407
BETWEEN
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
CITY OF ZEPHYRHILLS**

This Amendment to Agreement No. LPA0407 (Agreement) is made by and between the Department of Environmental Protection (Department), an agency of the State of Florida, and the City of Zephyrhills (Grantee), on the date last signed below.

WHEREAS, the Department entered into the Agreement with the Grantee for Zephyrhills Kossik Road and Fort King Road Sewer Main/Water Main Extension (Project), effective February 21, 2023; and,

WHEREAS, the Grantee has requested a budget reallocation for the Project; and,

WHEREAS, the Grantee has requested to add a new task to the Grant Work Plan; and,

WHEREAS, the Grantee has requested an extension of the Agreement due to coordination issues, design revisions, and weather delays; and,

WHEREAS, other changes to the Agreement are necessary; and,

WHEREAS, the parties have agreed to amend the Agreement as set forth herein.

NOW THEREFORE, the parties agree as follows:

1. Section 3. of the Standard Grant Agreement is hereby revised to change the Date of Expiration to October 31, 2026. The Department and the Grantee shall continue to perform their respective duties during this extension period pursuant to the same terms and conditions provided in the Agreement.
2. The following is hereby added to Attachment 1 in Section 8:
State Funds Documentation. Pursuant to section 216.1366, F.S., if Contractor meets the definition of a non-profit organization under section 215.97(2)(m), F.S., Contractor must provide the Department with documentation that indicates the amount of state funds:
 - i. Allocated to be used during the full term of the contract or agreement for remuneration to any member of the board of directors or an officer of Contractor.
 - ii. Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the Contractor.

The documentation must indicate the amounts and recipients of the remuneration. Such information must be posted on the State's contract tracking system and maintained pursuant to section 215.985, F.S., and must be posted on the Contractor's website, if Contractor maintains a website.

3. Attachment 3, Grant Work Plan, is hereby deleted in its entirety and replaced with Attachment 3-1, Revised Grant Work Plan, as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 3 shall hereinafter refer to Attachment 3-1, Revised Grant Work Plan.
4. Attachment 5, Special Audit Requirements, is hereby deleted in its entirety and replaced with Attachment 5-1, Revised Special Audit Requirements, attached hereto and made a part of the Agreement. All references in the Agreement to Attachment 5 shall hereinafter refer to Attachment 5-1, Revised Special Audit Requirements.

5. Exhibit A, Progress Report Form, is hereby deleted in its entirety and replaced with Exhibit A-1, attached hereto and made a part of the Agreement. All references in the Agreement to Exhibit A shall hereinafter refer to Exhibit A-1.
6. All other terms and conditions of the Agreement remain in effect. If and to the extent that any inconsistency may appear between the Agreement and this Amendment, the provisions of this Amendment shall control.

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The parties agree to the terms and conditions of this Amendment and have duly authorized their respective representatives to sign it on the dates indicated below.

CITY OF ZEPHYRHILLS

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____
Authorized Signature

By: _____
Secretary or Designee

Jodi Wilkeson, City Council President
Print Name and Title

Angela Knecht, Division Director
Print Name and Title

Date: _____

Date: _____

Kate Pace, DEP Grant Manager

Nathan Jagoda, DEP QC Reviewer

List of attachments/exhibits included as part of this Amendment:

<u>Specify Type</u>	<u>Letter/ Number</u>	<u>Description</u>
Attachment	3-1	Revised Grant Work Plan
Attachment	5-1	Revised Special Audit Requirements
Exhibit	A-1	Progress Report Form

ATTACHMENT 3-1 REVISED GRANT WORK PLAN

PROJECT TITLE: Zephyrhills Kossik Road and Fort King Road Sewer Main/Water Main Extension

PROJECT LOCATION: The Project will be located in the City of Zephyrhills within Pasco County; Lat/Long (28.2737, -82.2042).

PROJECT BACKGROUND: This Project will improve utility access in the north and northwest parts of the City of Zephyrhills (Grantee) and unincorporated Pasco County. The water main portion of the project will create a looped system, allowing for redundancy, improving fire flow and pressures and water quality. The sewer main portion will allow decommissioning of up to 200 existing septic systems, prevent approximately 2,400 new septic systems, and provide up to 600,000 gallons per day at buildout of additional reclaimed water to benefit the Hillsborough River Basin Minimum Flow Level (MFL).

PROJECT DESCRIPTION: The Grantee will install sewer lines along Kossik Road from US 301 to Fort King Road, and along Fort King Road from Simons Road to Phelps Road. The Grantee will also install water main along Kossik Road from Greenslope Drive to Fort King Road.

TASKS: All documentation should be submitted electronically unless otherwise indicated and should be submitted prior to the expiration of the grant agreement.

Task 1: Preconstruction Activities

Deliverables: The Grantee will complete the design of the sewer and water main extensions and obtain all necessary permits for construction of the project. Activities necessary for design, such as surveys, geotechnical evaluations, and environmental assessments, are eligible under this task.

Documentation: The Grantee will submit a summary of preconstruction activities to date, indicating the percentage of design completion for the time period covered in the payment request.

For the final documentation, the Grantee will also submit a copy of the design completed with the funding provided for this task, a list of all required permits identifying issue dates and issuing authorities, and copies of any surveys, assessments, or other documents funded under this task. Upon request by the Department's Grant Manager, the Grantee will provide additional supporting documentation relating to this task.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, a payment request may be processed.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

Task 2: Bidding and Contractor Selection

Deliverables: The Grantee will prepare a bid package, publish a public notice, solicit bids, conduct pre-bid meetings, and respond to bid questions in accordance with the Grantee's procurement process, to select one or more qualified and licensed contractors to complete construction of the project.

Documentation: The Grantee will submit: 1) the public notice of advertisement for the bid; 2) the bid package; and 3) a written notice of selected contractor(s).

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, a payment request may be processed.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement following the conclusion of the task.

Task 3: Construction

Deliverables: The Grantee will construct Zephyrhills Kossik Road and Fort King Road Sewer Main/Water Main Extension in accordance with the final design.

Documentation: The Grantee will submit a signed summary of activities completed for the period of work covered in the payment request, using the format provided by the Department's Grant Manager. Upon request by the Department's Grant Manager, the Grantee will provide additional supporting documentation relating to this task.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, a payment request may be processed.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

Task 4: Project Management

Deliverables: The Grantee will provide project management services related to Zephyrhills Kossik Road and Fort King Road Sewer Main/Water Main Extension, to include review of documents and forms, budget oversight, preparation and submittal of quarterly progress reports, processing of payment requests and related documentation, field engineering services, construction observation, site meetings with construction contractor(s) and design professionals, and overall project coordination and supervision.

Documentation: The Grantee will submit a signed summary of activities completed for the period of work covered in the payment request, using the format provided by the Department's Grant Manager. Upon request by the Department's Grant Manager, the Grantee will provide additional supporting documentation relating to this task.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, a payment request may be processed.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

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PROJECT TIMELINE & BUDGET DETAIL: The tasks must be completed by the corresponding task end date. Cost reimbursable grant funding must not exceed the budget amounts as indicated below.

Task No.	Task Title	Budget Category	Grant Amount	Task Start Date	Task End Date
1	Preconstruction Activities	Contractual Services	\$196,521	07/01/2022	04/30/2026
2	Bidding and Contractor Selection	Contractual Services	\$19,162	07/01/2022	04/30/2026
3	Construction	Contractual Services	\$3,218,545	07/01/2022	04/30/2026
4	Project Management	Contractual Services	\$65,772	07/01/2022	04/30/2026
Total:			\$3,500,000		

Note that, per Section 8 of Attachment 1 of the Agreement, authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the Department if the Legislature reduces or eliminates appropriations. Extending the contract end date carries the risk that funds for this project may become unavailable in the future. This should be a consideration for the Grantee with this and future requests for extension.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Revised Special Audit Requirements
(State and Federal Financial Assistance)**

Attachment 5-1

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends \$1,000,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$1,000,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$1,000,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from non-federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <https://sam.gov/content/assistance-listings>.

Attachment 5-1

1 of 6

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512
 - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

Attachment 5-1

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5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and time the reporting package was delivered to the recipient and any correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT – 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program A	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	
Federal Program B	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	

Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:

Federal Program A	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	
Federal Program B	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	

Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program A	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program A	State Awarding Agency	State Fiscal Year ¹	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original Agreement	Department of Environmental Protection	2022-2023	37.039	Statewide Water Quality Restoration Projects - LI 1665A	\$3,500,000.00	140047
State Program B	State Awarding Agency	State Fiscal Year ²	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category

Total Award	\$3,500,000.00	
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Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<https://sam.gov/content/assistance-listings>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [https://apps.fldfs.com/fsaa/state_project_compliance.aspx]). The services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

¹ Subject to change by Change Order.

² Subject to change by Change Order.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Exhibit A-1
Progress Report Form**

The current **Exhibit A, Progress Report Form** for this grant can be found on the Department's website at this link:

<https://floridadep.gov/wra/wra/documents/progress-report-form>

Please use the most current form found on the website, linked above, for each progress report submitted for this project.

CONSENT ITEMS 1.4

Approval of General Construction Agreement **41-25-14** to Razorback LLC.

Issue:

Request Council approval of agreement with Razorback, LLC. for general construction services. The City advertised for RFP responses for general construction services for all departments when necessary.

Background:

The City of Zephyrhills advertised via public RFP, for a minimum of three (3) contractors for miscellaneous construction and/or repairs to City facilities, utility lines, etc. A total of five (5) responses were received, and the evaluation committee approved four (4) of them.

Attached for consideration is the agreement with Razorback, LLC., for general construction services.

Attachment(s):

1. 36440813v1 - Razorback_Gen Con Continuing Services Agreement
2. Wirtten Ranking

Fiscal Impact:

The fiscal impact will vary from year to year dependent upon the projects given approval by the City Council.

Projects classified under miscellaneous construction and repair will have a maximum price of \$7,500,000.

Staff Recommendation:

It is the recommendation of staff to the City Council to approve agreement #41-25-14.

GENERAL CONSTRUCTION CONTINUING SERVICES AGREEMENT

THIS GENERAL CONSTRUCTION CONTINUING SERVICES AGREEMENT (the "Contract"), made this ____ day of _____ 2025, between CITY OF ZEPHYRHILLS a Florida municipal corporation, having its principal office at 5335 8th Street, Zephyrhills, FL 33542 (hereinafter referred to as "CITY" or "Owner"), and Razorback, LLC, a Florida Limited Liability Company authorized to do business in the State of Florida, having its principal office at 177 Anclote Road, Tarpon Springs, FL 34689 (hereinafter referred to as "Contractor").

WHEREAS, CITY desires to obtain services as stated in the Request for Proposal RFP #2025-004 incorporated herein by reference from Contractor for assigned projects within the City of Zephyrhills, Florida (hereinafter referred to as "Professional Services-City Wide Continuing Service Projects") and issued RFP #2025-004 to find qualified professionals to fulfill the need for these services. Pursuant to Section 255.103(4), Florida Statutes, the total construction cost of each individual project shall not exceed \$7,500,000.00. Although the primary professional service sought by the contract is for general construction services, this Contract may cover other construction services if Contractor possesses the professional licensing and registration to legally perform these services. Further, Contractor may hire others who are properly licensed to perform construction services; and

WHEREAS, the Term of Contract is three (3) years after CITY approves the Contract, and CITY may, at its option, at a regular or special City Council meeting; renew this Contract at the end of the Term for an additional renewal term of two (2), three (3) year terms for a maximum term of nine years; and

WHEREAS, CITY retains Contractor, to perform the services described herein, and other required professional services on an "as needed" basis, as designated, authorized, and assigned by CITY, and CITY agrees to compensate Contractor for such services in accordance with this Contract; and

WHEREAS, it is the primary intent of this Contract to ensure that Contractor is available to provide services, in accordance with prior, mutually agreed upon conditions, and CITY has complied with all requirements of Section 287.055, Florida Statutes the "Consultants Competitive Negotiations Act," in the selection of Contractor and negotiations for this Contract; and

NOW, THEREFORE, CITY and Contractor, for and in consideration of the provisions, mutual promises, covenants and conditions hereinafter set forth or recited, agree as follows:

1. **Recitals.** The recitals in the WHEREAS clauses are incorporated by reference and made a part of this Contract.
2. **Incorporation of Request for Qualification and Response.** Request for Proposal (RFP) #2025-004 is incorporated into this Contract by reference. Contractor's response to the RFP is attached hereto and incorporated herein as Exhibit A.
3. **Scope of Services.**
 - (a) Contractor agrees to furnish and perform general construction services during design and construction phases of a Continuing Service Project ("Project" or "Task Assignment") in accordance with the terms and conditions set forth herein in accordance with generally accepted

professional standards to achieve a total cost to CITY which does not exceed the Project Budget. The scope of services (hereinafter referred to as "Basic Services") to be performed by Contractor under this Contract, to the satisfaction of CITY, shall be identified in Task Assignment. Contractor agrees to furnish and perform Basic Services and construction phase services as may be required in the specific scope of work and enumerated and described in the Task Assignment, in connection with Continuing Service Projects. Contractor further agrees to furnish and perform professional services not included as Basic Services (hereinafter referred to as "Additional Services"), when and if such Additional services are requested and authorized by CITY, in writing. The Hourly Labor Rates and Unit Rates for Basic and Additional Services is found in Exhibit B – Hourly Rate Schedule. No Additional Services shall be furnished by Contractor unless specifically requested and authorized by CITY in writing.

- (b) Continuing Service Projects shall be designed in accordance with all applicable Florida Statutes and the current City of Zephyrhills Ordinances in effect at the time this Contract is approved, or the work is performed.
- 4. **Project Construction Budget.** Contractor shall be provided with an individual Project Construction Budget for each Continuing Services Contract (Task Assignment). By accepting a Task Assignment, Contractor acknowledges that the Project Construction Budget is of the essence of this Contract and Contractor agrees to perform, in accordance with generally accepted professional standards.
 - (a) Although CITY looks to Contractor for the responsibility of design meeting CITY's Project Construction Budget, CITY may hire a cost consultant to verify costs on specific projects. Contractor shall cooperate with the CITY's cost consultant by providing all necessary information for the preparation and updating of all estimates of construction costs throughout all phases of Continuing Service Projects.
 - (b) The Construction Budget shall be defined as the total budget identified for the construction of Continuing Service Projects.
- 5. **Time of Completion.** Contractor shall commence Basic Services upon receipt of the Notice to Proceed and a purchase order issued by CITY. Contractor shall include in its proposal a schedule for the successful and timely completion of the project. Project schedule shall include the proposed start date, substantial completion date, and final completion date. The schedule will be agreed upon in writing on a project by project basis. Contractor shall complete work in accordance with the schedule, it being understood that time is of the utmost importance in this Contract. Contractor shall accelerate performance of Basic Services and Additional Services in the manner reasonably directed by CITY, in the event CITY, in its sole discretion, determines that such acceleration is necessary to maintain the Schedule. If acceleration is required because of delays caused solely by Contractor, acceleration shall be at no cost to CITY. If acceleration is required because of delays partially caused by Contractor, the CITY will not compensate Contractor for the delay caused by Contractor; however, the cost associated with that portion of any such delay not caused by Contractor shall be compensated as an Additional Service.
- 6. **Fees.** CITY agrees to pay to Contractor for Basic Services, based upon Exhibit B – Hourly Rate and Unit Rate Schedule, Contractor will give CITY a detailed written proposal for the work, and shall identify the number of hours of work by category of workers performing the service. The

categories must accurately reflect the type of service to be performed, not merely the job description of the employee performing the service. No additional fee or compensation shall be payable to Contractor under this Contract for said services if the actual cost of construction or work to be designed by Contractor exceeds the proposal or budget.

- (a) Initiation of services shall be upon receipt of the Notice to Proceed and a purchase order basis, referencing a written proposal for services related to this Contract.
- (b) Invoices received by the CITY on or before the 20th of any month will be submitted for check release on or before the 25th of the following month.
- (c) The responsibility of Contractor for performing its obligation under this Contract and under the construction contract(s) is not relieved or affected in any respect by the presence of or inspection by employees or agents of CITY. Contractor agrees that the responsibility assumed by it for approving and certifying work for payment is not shared by an employee of CITY.
- (d) Contractor's fee for Additional Services will be computed in accordance with hourly rates as described in Exhibit B – Hourly Rate and Unit Rate Schedule.
- (e) Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, and that Contractor has not paid or agreed to pay any person, company, corporation, individual, or firm other than bona fide employees working solely for Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, CITY shall have the right to terminate this Contract without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.
- (f) The fee structure and hourly rates may be revised only by written Task Assignment, agreed to by both parties to this agreement.

7. **Ownership of Documents.** Contractor shall make available to CITY all reproducible copies of plans, drawings, specifications, ideas, concepts, designs, sketches, models, artwork, programs, software, reports, or other tangible work product produced, originally developed, or submitted to CITY by Contractor pursuant to this Contract (hereinafter referred to as the "Original Work Product").

- (a) Contractor shall deliver reproduced copies of all Original Work Product to CITY upon completion, unless it is necessary for Contractor, in CITY's sole discretion, to retain possession for a longer period of time. Upon early termination of Contractor's services, Contractor shall deliver all Original Work Product, whether complete or not. CITY shall have the right to use any and all work product. Contractor shall retain copies for its permanent records; however, the same cannot be used without CITY's prior express written consent. Contractor agrees not to recreate any designs, or any other tangible work product contemplated by or originally developed under this Contract, or portions thereof, which if constructions or otherwise materialized, would be reasonably identifiable with the tangible work product originally developed by Contractor.

- (b) CITY exclusively retains all ownership and manufacturing rights to all materials or designs developed under this Agreement. To the extent the Services performed under this Agreement produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for CITY as the author, creator, or inventor thereof upon creation, and CITY shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. Contractor shall assign to CITY, all rights without limitation, including the copyright with respect to such work.

8. **Insurance.**

- (a) 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.
- (b) Nothing herein shall be construed to extend the City of Zephyrhills's liability beyond that provided in section 768.28, Florida Statutes.
- (c) If the Continuing Service Project 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.
- (d) All such insurance required in paragraph (a) shall be with companies and on forms acceptable

to CITY, shall name CITY, and its agents, employees, and assigns as additional insured, except the policies shall provide that the coverage may not be reduced or canceled unless 30 days' prior written notice is furnished to CITY. Certificates of insurance and copies of all policies shall be furnished to CITY within 10 days of the date of this Contract. In the event of any cancellation or reduction of coverage, Contractor shall obtain substitute coverage as required hereunder, without any lapse of coverage to CITY whatsoever.

- (e) Contractor will provide to CITY, within 10 days after the date of this Contract, (1) the original of the policy evidencing the existence of such insurance coverage, which CITY shall copy and return to Contractor within Seven (7) days, (2) proof acceptable to CITY that the premium for such policy for a period ending no earlier than 6 months after the date of this Contract has been paid in full by Contractor, and (3) a certificate of the insurer addressed to CITY evidencing the existence of such insurance coverage. Contractor will promptly renew, will keep and maintain in full force and effect, and will pay all premiums becoming due on said policy of insurance, and without request or demand Contractor will promptly provide proof thereof to CITY. If any such policy of insurance is a "claims made" policy, and not an "occurrence" policy, Contractor agrees to keep and maintain same in full force and effect for a period expiring not earlier than 12 months after construction of Continuing Service Projects is completed, and each such policy, or renewal or replacement policy, shall provide coverage for the acts and omissions of Contractor for all times subsequent to the date of this Contract.

9. **Representations.** Contractor hereby represents to CITY that:

- (a) It has the experience and skill to perform the services required to be performed by this Contract.
- (b) It shall provide and employ, in connection with the performance of such services, personnel qualified and experienced in their profession; it being understood that CITY may at any time require Contractor to remove, and Contractor shall immediately remove, any person employed in connection with the performance of the services who in the sole opinion of CITY is unfit for the proper performance of his/her duties.
- (c) It shall design to and comply with applicable non-conflicting federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements (both corporate and individual for all required basic disciplines) in effect during the term of this Contract, and shall, if requested by CITY, provide certification of compliance with all registration and licensing requirements.
- (d) It shall perform said services in accordance with generally accepted professional standards in an expeditious and economical manner.
- (e) It is adequately financed to meet any financial obligations it may be required to incur under this Contract.
- (f) The designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services of Contractor shall not call for the use of nor infringe any patent, trademark, service mark, copyright, or other proprietary interest claimed or held by any person or business entity absent prior written consent from CITY and such other person.

10. **Expense Records.** Contractor agrees to keep and maintain all of its direct personnel expense records, consultant and subcontractor expense records, and other expense records, pertaining to Continuing Service Projects, and its record of accounts between Contractor and CITY pertaining to Continuing Service Projects, on a general recognized and acceptable accounting basis, and the same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying. The records and documentation shall be retained by Contractor for a minimum of three (3) years from the date of termination of this Agreement or the date the Task Authorization is completed, or such longer period of time as may be required by this Agreement or law, whichever is later. Contractor agrees to keep and maintain accurate time records to within the nearest one tenth of an hour for each time entry, of all work performed by employees of Contractor, and same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying.

11. **Termination, Suspension, Disputes, or Abandonment.** The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon thirty (30) 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.
 - (a) If Continuing Service Projects are terminated or suspended by CITY, CITY shall pay Contractor all fees which have become due and payable to Contractor for that portion of the work of Contractor properly completed prior to such abandonment or suspension, and CITY shall have no further obligation to Contractor for payment to Contractor of the remainder of its fees, unless and until Continuing Service Projects are resumed by CITY. Contractor, at the option of CITY, shall complete the services of Contractor under this Contract upon resumption by CITY of Continuing Service Projects, and Contractor shall in that event be entitled to payment of the remaining unpaid fees which become payable to it under this Contract, same to be payable at the times and in the manner specified in this Contract. In no event will any fee or part thereof become due or payable to Contractor under this Contract unless and until Contractor has attained and completed that stage of work where the same would be due and payable.

 - (b) In the event of any such suspension or termination without cause, CITY shall pay to Contractor only that portion of the fee and compensation hereunder for the Basic Services of Contractor which has become due and payable to Contractor under the provisions of this Contract, and the remainder of Contractor's fees under this Contract shall be cancelled. Additionally, CITY shall pay other necessary, unavoidable, and reasonable expenses incurred by Contractor as a result of such suspension or termination (such as canceling orders for equipment, material, or services). Unless CITY authorizes Contractor to the contrary, Contractor shall not perform any services and shall not be entitled to receive payment from CITY on account of any such services performed during the period of suspension or after termination. Upon receipt of notice from CITY that the suspension has been canceled, Contractor shall perform its remaining services in accordance with the terms of this Contract and Contractor shall be entitled to time extension equal to the period of suspension.

 - (c) 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.

12. **Assignability.** This Contract is for the personal services of Contractor and may not be assigned by Contractor in any fashion, whether by operation of law, or by conveyance of any type, including without limitation, transfer of stock in Contractor, without the prior written consent of CITY, which consent CITY may withhold in its sole discretion.
13. **Errors and/or Omissions.** Contractor shall be obligated and responsible to CITY for, reasonable damages and additional costs and/or expenses in connection with construction of or delay in construction of Continuing Service Projects or otherwise incurred, sustained, and/or paid by CITY to the extent caused by (1) negligent errors and/or omissions made by Contractor in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services pursuant to this Contract and the project's Scope of Services for Contractor, and (2) negligent acts or omissions on the part of Contractor in any designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services or in the performance of any other services under this Contract and the project's Scope of Services for Contractor. It is the intent of the parties hereto that Contractor be held to and accountable for a degree of professionalism that is customary in the industry and commercially reasonable and for accuracy in the performance of the services of Contractor under this Agreement. CITY will hold Contractor harmless for any loss or claim related to an error or omission caused by the negligence of the CITY.
14. **Subcontractors/Separate contractors.**
 - (a) Any proposed subcontractors shall be submitted to CITY for approval prior to Contractor entering into a subcontract agreement. Such approval by CITY shall not be unreasonably withheld. CITY shall not be liable to Contractor in any manner whatsoever arising out of the CITY's objection to a proposed subcontractor.
 - (b) Contractor shall coordinate the services and work product of any subcontractor and remain fully responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services furnished by Contractor or its subcontractors, and Contractor shall review and approve any designs, drawings, specifications, shop drawings, submittals, work, materials, processes of manufacture, methods of construction, or other services produced or furnished by any subcontractors prior to submittal to CITY. Contractor shall correct or revise any of its errors or deficiencies in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services produced pursuant to this Contract and shall provide CITY with such corrected or revised designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services incorporating such corrections or revisions at its sole cost and expense.
 - (c) Any subcontractor agreement shall reflect the terms of this Contract and require the subcontractor, to the extent of the services to be performed by the subcontractor, to assume toward Contractor all the obligations which Contractor by this Contract assumes toward CITY, it being understood that nothing herein shall in any way relieve Contractor from any of its duties under this Contract.

- (d) Contractor shall cooperate at all times with CITY, and cooperate and coordinate with, and incorporate the work product of, any separate contractor, in any fashion appropriate or necessary to facilitate the construction of Continuing Service Projects within the project's budget and schedule. In the event CITY so elects and upon written mutual consent (which consent shall not be unreasonably withheld), as evidenced by a Task Assignment to this Contract, Contractor shall accept any assignment of any agreement or contract CITY may have with any separate contractor.

15. **Indemnification.** 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 agreement 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.

16. **Governing Law.** This Contract shall be construed in accordance with, and be governed by, the laws of the State of Florida, and any dispute, difference, claim or counterclaim between CITY and Contractor arising out of or in connection with this Contract which cannot be amicably resolved by the parties shall be submitted to the Circuit Court in and for Pasco County, Florida (or if the Circuit Court does not have jurisdiction over the subject matter, then to the court sitting in Pasco County which has subject matter jurisdiction) for trial and determination by the court sitting without jury. The parties agree and are encouraged to submit such disputes to non-binding mediation by a mediator who is certified in Florida in an effort to resolve issues in an expedient manner. The parties consent to the jurisdiction of such court and to the service of process outside the State of Florida pursuant to the requirements of such court, and they expressly waive the right to a jury trial.
17. **Entire Agreement.** This Contract, together with any other documents incorporated herein by reference, and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Contract, and the related exhibits, proposals, and schedules (other than an exception expressly set forth as such in the schedules), the statements in the body of this Contract shall control. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

18. **Evaluation.** Contractor will be evaluated by CITY during the Contract period, at intervals established by CITY, and at the end of the construction of Continuing Service Projects. The results of each evaluation will be considered as tools for the measurement of Contractor's past performance and may be included in the review process for future solicitations for services. A copy of the evaluation(s) will be provided to Contractor upon request.
19. **Independent Contractor.** 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 Contract.
20. **Notices.** 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:

Razorback, LLC
ATTN: Anthony Houllis
177 Anclote Road
Tarpon Springs, FL 34689
Bidding@razorbackllc.com

To CITY:

City of Zephyrhills
ATTN: City Manager
5335 8th Street
Zephyrhills, Florida 33542
wpoc@ci.zephyrhills.fl.us

With copy to:

Matthew E. Maggard, Esq.
Shumaker, Loop & Kendrick, LLP
13134 US Highway 301
Dade City, Florida 33525
mmaggard@shumaker.com

21. **MISCELLANEOUS PROVISIONS.**

- (a) 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 Contract.

- (b) The continuing services to be provided by Contractor pursuant to this Contract shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.
- (c) This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) The City may withhold any payment in an amount that is sufficient to pay the direct costs and expenses the City reasonably expects to incur to protect City from liabilities for which Contractor is responsible
- (i) The City reserves the right to audit the records of the Contractor covered by this Contract at any time during the provision of Services and for a period of three (3) years after final payment is made under this Contract.

22. **PUBLIC RECORDS. IF THE CONSULTANT/CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'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.**

[The remainder of this page is intentionally left blank.]

IN WITNESS THEREOF, the above parties have executed this instrument, the name of each party being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

OWNER

CONTRACTOR

CITY OF ZEPHYRHILLS, FLORIDA

RAZORBACK, LLC

By: _____
Charles E. Proctor
City Council President

By: _____
Name: _____
Its: _____

ATTEST:

ATTEST:

By: _____
Ricardo Quiñones, City Clerk

By: _____
Name: _____
Its: _____

Vendor	Total Score
Beck	84.5
Blackwater Construction Services LLC	80
Cathcart Construction Company - Florida, LLC	74.75
Centennial Contractors Enterprises, Inc.	74
Foresight Construction Group, Inc.	84.25
Friedrich Watkins of Tampa, LLC.	84.75
Kokolakis Contracting	86.75
LEGO Construction Co.	77.5
New Vista Builders Group	70
Ryman Construction of Florida, Inc.	87.5
SEMCO Construction, Inc.	87.75
The A.D. Morgan Corporation	87.75
Trias Construction LLC	82.5
Wharton-Smith, Inc.	92.75
CII Contracting	81.75
Hometown Services of Florida, Inc.	87.5
National Metering Services, Inc.	83.25
Razorback LLC	86
RCM Utilities, LLC	86.25
The Cao Group, LLC	73.5

CONSENT ITEMS 1.5

Approval of General Construction Agreement **41-25-15** to National Metering Services (NMS)

Issue:

Request Council approval of agreement with National Metering Services for general construction services. The City advertised for RFP responses for general construction services for all departments when necessary.

Background:

The City of Zephyrhills advertised via public RFP, for a minimum of three (3) contractors for miscellaneous construction and/or repairs to City facilities, utility lines, etc.
A total of five (5) responses were received, and the evaluation committee approved four (4) of them.

Attached for consideration is the agreement with National Metering Services for general construction services.

Attachment(s):

1. 36440738v1 - National Metering_Gen Con Continuing Services Agreement
2. Wirtten Ranking

Fiscal Impact:

The fiscal impact will vary from year to year dependent upon the projects given approval by the City Council.

Projects classified under miscellaneous construction and repair will have a maximum price of \$7,500,000.

Staff Recommendation:

It is the recommendation of staff to the City Council to approve agreement #41-25-15.

GENERAL CONSTRUCTION CONTINUING SERVICES AGREEMENT

THIS GENERAL CONSTRUCTION CONTINUING SERVICES AGREEMENT (the "Contract"), made this ____ day of _____ 2025, between CITY OF ZEPHYRHILLS a Florida municipal corporation, having its principal office at 5335 8th Street, Zephyrhills, FL 33542 (hereinafter referred to as "CITY" or "Owner"), and National Metering Services, Inc., a New Jersey Corporation authorized to do business in the State of Florida, having its principal office at 163 Schuyler Ave. Box #491 Kearny, NJ 07032 (hereinafter referred to as "Contractor").

WHEREAS, CITY desires to obtain services as stated in the Request for Proposal RFP #2025-004 incorporated herein by reference from Contractor for assigned projects within the City of Zephyrhills, Florida (hereinafter referred to as "Professional Services-City Wide Continuing Service Projects") and issued RFP #2025-004 to find qualified professionals to fulfill the need for these services. Pursuant to Section 255.103(4), Florida Statutes, the total construction cost of each individual project shall not exceed \$7,500,000.00. Although the primary professional service sought by the contract is for general construction services, this Contract may cover other construction services if Contractor possesses the professional licensing and registration to legally perform these services. Further, Contractor may hire others who are properly licensed to perform construction services; and

WHEREAS, the Term of Contract is three (3) years after CITY approves the Contract, and CITY may, at its option, at a regular or special City Council meeting; renew this Contract at the end of the Term for an additional renewal term of two (2), three (3) year terms for a maximum term of nine years; and

WHEREAS, CITY retains Contractor, to perform the services described herein, and other required professional services on an "as needed" basis, as designated, authorized, and assigned by CITY, and CITY agrees to compensate Contractor for such services in accordance with this Contract; and

WHEREAS, it is the primary intent of this Contract to ensure that Contractor is available to provide services, in accordance with prior, mutually agreed upon conditions, and CITY has complied with all requirements of Section 287.055, Florida Statutes the "Consultants Competitive Negotiations Act," in the selection of Contractor and negotiations for this Contract; and

NOW, THEREFORE, CITY and Contractor, for and in consideration of the provisions, mutual promises, covenants and conditions hereinafter set forth or recited, agree as follows:

1. **Recitals.** The recitals in the WHEREAS clauses are incorporated by reference and made a part of this Contract.
2. **Incorporation of Request for Qualification and Response.** Request for Proposal (RFP) #2025-004 is incorporated into this Contract by reference. Contractor's response to the RFP is attached hereto and incorporated herein as Exhibit A.
3. **Scope of Services.**
 - (a) Contractor agrees to furnish and perform general construction services during design and construction phases of a Continuing Service Project ("Project" or "Task Assignment") in accordance with the terms and conditions set forth herein in accordance with generally accepted

professional standards to achieve a total cost to CITY which does not exceed the Project Budget. The scope of services (hereinafter referred to as "Basic Services") to be performed by Contractor under this Contract, to the satisfaction of CITY, shall be identified in Task Assignment. Contractor agrees to furnish and perform Basic Services and construction phase services as may be required in the specific scope of work and enumerated and described in the Task Assignment, in connection with Continuing Service Projects. Contractor further agrees to furnish and perform professional services not included as Basic Services (hereinafter referred to as "Additional Services"), when and if such Additional services are requested and authorized by CITY, in writing. The Hourly Labor Rates and Unit Rates for Basic and Additional Services is found in Exhibit B – Hourly Rate Schedule. No Additional Services shall be furnished by Contractor unless specifically requested and authorized by CITY in writing.

- (b) Continuing Service Projects shall be designed in accordance with all applicable Florida Statutes and the current City of Zephyrhills Ordinances in effect at the time this Contract is approved, or the work is performed.
- 4. **Project Construction Budget.** Contractor shall be provided with an individual Project Construction Budget for each Continuing Services Contract (Task Assignment). By accepting a Task Assignment, Contractor acknowledges that the Project Construction Budget is of the essence of this Contract and Contractor agrees to perform, in accordance with generally accepted professional standards.
 - (a) Although CITY looks to Contractor for the responsibility of design meeting CITY's Project Construction Budget, CITY may hire a cost consultant to verify costs on specific projects. Contractor shall cooperate with the CITY's cost consultant by providing all necessary information for the preparation and updating of all estimates of construction costs throughout all phases of Continuing Service Projects.
 - (b) The Construction Budget shall be defined as the total budget identified for the construction of Continuing Service Projects.
- 5. **Time of Completion.** Contractor shall commence Basic Services upon receipt of the Notice to Proceed and a purchase order issued by CITY. Contractor shall include in its proposal a schedule for the successful and timely completion of the project. Project schedule shall include the proposed start date, substantial completion date, and final completion date. The schedule will be agreed upon in writing on a project by project basis. Contractor shall complete work in accordance with the schedule, it being understood that time is of the utmost importance in this Contract. Contractor shall accelerate performance of Basic Services and Additional Services in the manner reasonably directed by CITY, in the event CITY, in its sole discretion, determines that such acceleration is necessary to maintain the Schedule. If acceleration is required because of delays caused solely by Contractor, acceleration shall be at no cost to CITY. If acceleration is required because of delays partially caused by Contractor, the CITY will not compensate Contractor for the delay caused by Contractor; however, the cost associated with that portion of any such delay not caused by Contractor shall be compensated as an Additional Service.
- 6. **Fees.** CITY agrees to pay to Contractor for Basic Services, based upon Exhibit B – Hourly Rate and Unit Rate Schedule, Contractor will give CITY a detailed written proposal for the work, and shall identify the number of hours of work by category of workers performing the service. The

categories must accurately reflect the type of service to be performed, not merely the job description of the employee performing the service. No additional fee or compensation shall be payable to Contractor under this Contract for said services if the actual cost of construction or work to be designed by Contractor exceeds the proposal or budget.

- (a) Initiation of services shall be upon receipt of the Notice to Proceed and a purchase order basis, referencing a written proposal for services related to this Contract.
- (b) Invoices received by the CITY on or before the 20th of any month will be submitted for check release on or before the 25th of the following month.
- (c) The responsibility of Contractor for performing its obligation under this Contract and under the construction contract(s) is not relieved or affected in any respect by the presence of or inspection by employees or agents of CITY. Contractor agrees that the responsibility assumed by it for approving and certifying work for payment is not shared by an employee of CITY.
- (d) Contractor's fee for Additional Services will be computed in accordance with hourly rates as described in Exhibit B – Hourly Rate and Unit Rate Schedule.
- (e) Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, and that Contractor has not paid or agreed to pay any person, company, corporation, individual, or firm other than bona fide employees working solely for Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, CITY shall have the right to terminate this Contract without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.
- (f) The fee structure and hourly rates may be revised only by written Task Assignment, agreed to by both parties to this agreement.

7. **Ownership of Documents.** Contractor shall make available to CITY all reproducible copies of plans, drawings, specifications, ideas, concepts, designs, sketches, models, artwork, programs, software, reports, or other tangible work product produced, originally developed, or submitted to CITY by Contractor pursuant to this Contract (hereinafter referred to as the "Original Work Product").

- (a) Contractor shall deliver reproduced copies of all Original Work Product to CITY upon completion, unless it is necessary for Contractor, in CITY's sole discretion, to retain possession for a longer period of time. Upon early termination of Contractor's services, Contractor shall deliver all Original Work Product, whether complete or not. CITY shall have the right to use any and all work product. Contractor shall retain copies for its permanent records; however, the same cannot be used without CITY's prior express written consent. Contractor agrees not to recreate any designs, or any other tangible work product contemplated by or originally developed under this Contract, or portions thereof, which if constructions or otherwise materialized, would be reasonably identifiable with the tangible work product originally developed by Contractor.

- (b) CITY exclusively retains all ownership and manufacturing rights to all materials or designs developed under this Agreement. To the extent the Services performed under this Agreement produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for CITY as the author, creator, or inventor thereof upon creation, and CITY shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. Contractor shall assign to CITY, all rights without limitation, including the copyright with respect to such work.

8. **Insurance.**

- (a) 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.
- (b) Nothing herein shall be construed to extend the City of Zephyrhills's liability beyond that provided in section 768.28, Florida Statutes.
- (c) If the Continuing Service Project 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.
- (d) All such insurance required in paragraph (a) shall be with companies and on forms acceptable

to CITY, shall name CITY, and its agents, employees, and assigns as additional insured, except the policies shall provide that the coverage may not be reduced or canceled unless 30 days' prior written notice is furnished to CITY. Certificates of insurance and copies of all policies shall be furnished to CITY within 10 days of the date of this Contract. In the event of any cancellation or reduction of coverage, Contractor shall obtain substitute coverage as required hereunder, without any lapse of coverage to CITY whatsoever.

- (e) Contractor will provide to CITY, within 10 days after the date of this Contract, (1) the original of the policy evidencing the existence of such insurance coverage, which CITY shall copy and return to Contractor within Seven (7) days, (2) proof acceptable to CITY that the premium for such policy for a period ending no earlier than 6 months after the date of this Contract has been paid in full by Contractor, and (3) a certificate of the insurer addressed to CITY evidencing the existence of such insurance coverage. Contractor will promptly renew, will keep and maintain in full force and effect, and will pay all premiums becoming due on said policy of insurance, and without request or demand Contractor will promptly provide proof thereof to CITY. If any such policy of insurance is a "claims made" policy, and not an "occurrence" policy, Contractor agrees to keep and maintain same in full force and effect for a period expiring not earlier than 12 months after construction of Continuing Service Projects is completed, and each such policy, or renewal or replacement policy, shall provide coverage for the acts and omissions of Contractor for all times subsequent to the date of this Contract.

9. **Representations.** Contractor hereby represents to CITY that:

- (a) It has the experience and skill to perform the services required to be performed by this Contract.
- (b) It shall provide and employ, in connection with the performance of such services, personnel qualified and experienced in their profession; it being understood that CITY may at any time require Contractor to remove, and Contractor shall immediately remove, any person employed in connection with the performance of the services who in the sole opinion of CITY is unfit for the proper performance of his/her duties.
- (c) It shall design to and comply with applicable non-conflicting federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements (both corporate and individual for all required basic disciplines) in effect during the term of this Contract, and shall, if requested by CITY, provide certification of compliance with all registration and licensing requirements.
- (d) It shall perform said services in accordance with generally accepted professional standards in an expeditious and economical manner.
- (e) It is adequately financed to meet any financial obligations it may be required to incur under this Contract.
- (f) The designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services of Contractor shall not call for the use of nor infringe any patent, trademark, service mark, copyright, or other proprietary interest claimed or held by any person or business entity absent prior written consent from CITY and such other person.

10. **Expense Records.** Contractor agrees to keep and maintain all of its direct personnel expense records, consultant and subcontractor expense records, and other expense records, pertaining to Continuing Service Projects, and its record of accounts between Contractor and CITY pertaining to Continuing Service Projects, on a general recognized and acceptable accounting basis, and the same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying. The records and documentation shall be retained by Contractor for a minimum of three (3) years from the date of termination of this Agreement or the date the Task Authorization is completed, or such longer period of time as may be required by this Agreement or law, whichever is later. Contractor agrees to keep and maintain accurate time records to within the nearest one tenth of an hour for each time entry, of all work performed by employees of Contractor, and same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying.

11. **Termination, Suspension, Disputes, or Abandonment.** The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon thirty (30) 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.
 - (a) If Continuing Service Projects are terminated or suspended by CITY, CITY shall pay Contractor all fees which have become due and payable to Contractor for that portion of the work of Contractor properly completed prior to such abandonment or suspension, and CITY shall have no further obligation to Contractor for payment to Contractor of the remainder of its fees, unless and until Continuing Service Projects are resumed by CITY. Contractor, at the option of CITY, shall complete the services of Contractor under this Contract upon resumption by CITY of Continuing Service Projects, and Contractor shall in that event be entitled to payment of the remaining unpaid fees which become payable to it under this Contract, same to be payable at the times and in the manner specified in this Contract. In no event will any fee or part thereof become due or payable to Contractor under this Contract unless and until Contractor has attained and completed that stage of work where the same would be due and payable.

 - (b) In the event of any such suspension or termination without cause, CITY shall pay to Contractor only that portion of the fee and compensation hereunder for the Basic Services of Contractor which has become due and payable to Contractor under the provisions of this Contract, and the remainder of Contractor's fees under this Contract shall be cancelled. Additionally, CITY shall pay other necessary, unavoidable, and reasonable expenses incurred by Contractor as a result of such suspension or termination (such as canceling orders for equipment, material, or services). Unless CITY authorizes Contractor to the contrary, Contractor shall not perform any services and shall not be entitled to receive payment from CITY on account of any such services performed during the period of suspension or after termination. Upon receipt of notice from CITY that the suspension has been canceled, Contractor shall perform its remaining services in accordance with the terms of this Contract and Contractor shall be entitled to time extension equal to the period of suspension.

 - (c) 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.

12. **Assignability.** This Contract is for the personal services of Contractor and may not be assigned by Contractor in any fashion, whether by operation of law, or by conveyance of any type, including without limitation, transfer of stock in Contractor, without the prior written consent of CITY, which consent CITY may withhold in its sole discretion.
13. **Errors and/or Omissions.** Contractor shall be obligated and responsible to CITY for, reasonable damages and additional costs and/or expenses in connection with construction of or delay in construction of Continuing Service Projects or otherwise incurred, sustained, and/or paid by CITY to the extent caused by (1) negligent errors and/or omissions made by Contractor in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services pursuant to this Contract and the project's Scope of Services for Contractor, and (2) negligent acts or omissions on the part of Contractor in any designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services or in the performance of any other services under this Contract and the project's Scope of Services for Contractor. It is the intent of the parties hereto that Contractor be held to and accountable for a degree of professionalism that is customary in the industry and commercially reasonable and for accuracy in the performance of the services of Contractor under this Agreement. CITY will hold Contractor harmless for any loss or claim related to an error or omission caused by the negligence of the CITY.
14. **Subcontractors/Separate contractors.**
 - (a) Any proposed subcontractors shall be submitted to CITY for approval prior to Contractor entering into a subcontract agreement. Such approval by CITY shall not be unreasonably withheld. CITY shall not be liable to Contractor in any manner whatsoever arising out of the CITY's objection to a proposed subcontractor.
 - (b) Contractor shall coordinate the services and work product of any subcontractor and remain fully responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services furnished by Contractor or its subcontractors, and Contractor shall review and approve any designs, drawings, specifications, shop drawings, submittals, work, materials, processes of manufacture, methods of construction, or other services produced or furnished by any subcontractors prior to submittal to CITY. Contractor shall correct or revise any of its errors or deficiencies in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services produced pursuant to this Contract and shall provide CITY with such corrected or revised designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services incorporating such corrections or revisions at its sole cost and expense.
 - (c) Any subcontractor agreement shall reflect the terms of this Contract and require the subcontractor, to the extent of the services to be performed by the subcontractor, to assume toward Contractor all the obligations which Contractor by this Contract assumes toward CITY, it being understood that nothing herein shall in any way relieve Contractor from any of its duties under this Contract.

- (d) Contractor shall cooperate at all times with CITY, and cooperate and coordinate with, and incorporate the work product of, any separate contractor, in any fashion appropriate or necessary to facilitate the construction of Continuing Service Projects within the project's budget and schedule. In the event CITY so elects and upon written mutual consent (which consent shall not be unreasonably withheld), as evidenced by a Task Assignment to this Contract, Contractor shall accept any assignment of any agreement or contract CITY may have with any separate contractor.

15. **Indemnification.** 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 agreement 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.

16. **Governing Law.** This Contract shall be construed in accordance with, and be governed by, the laws of the State of Florida, and any dispute, difference, claim or counterclaim between CITY and Contractor arising out of or in connection with this Contract which cannot be amicably resolved by the parties shall be submitted to the Circuit Court in and for Pasco County, Florida (or if the Circuit Court does not have jurisdiction over the subject matter, then to the court sitting in Pasco County which has subject matter jurisdiction) for trial and determination by the court sitting without jury. The parties agree and are encouraged to submit such disputes to non-binding mediation by a mediator who is certified in Florida in an effort to resolve issues in an expedient manner. The parties consent to the jurisdiction of such court and to the service of process outside the State of Florida pursuant to the requirements of such court, and they expressly waive the right to a jury trial.
17. **Entire Agreement.** This Contract, together with any other documents incorporated herein by reference, and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Contract, and the related exhibits, proposals, and schedules (other than an exception expressly set forth as such in the schedules), the statements in the body of this Contract shall control. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

18. **Evaluation.** Contractor will be evaluated by CITY during the Contract period, at intervals established by CITY, and at the end of the construction of Continuing Service Projects. The results of each evaluation will be considered as tools for the measurement of Contractor's past performance and may be included in the review process for future solicitations for services. A copy of the evaluation(s) will be provided to Contractor upon request.
19. **Independent Contractor.** 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 Contract.
20. **Notices.** 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:

National Metering Services, Inc.
ATTN: John Castle & William Castle
163 Schuyler Ave. Box #491
Kearny, NJ 07032
jcastle@nmsnj.com
wcastle@nmsnj.com

To CITY:

City of Zephyrhills
ATTN: City Manager
5335 8th Street
Zephyrhills, Florida 33542
wpoe@ci.zephyrhills.fl.us

With copy to:

Matthew E. Maggard, Esq.
Shumaker, Loop & Kendrick, LLP
13134 US Highway 301
Dade City, Florida 33525
mmaggard@shumaker.com

21. **MISCELLANEOUS PROVISIONS.**

- (a) 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 Contract.
- (b) The continuing services to be provided by Contractor pursuant to this Contract shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.
- (c) This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) The City may withhold any payment in an amount that is sufficient to pay the direct costs and expenses the City reasonably expects to incur to protect City from liabilities for which Contractor is responsible
- (i) The City reserves the right to audit the records of the Contractor covered by this Contract at any time during the provision of Services and for a period of three (3) years after final payment is made under this Contract.

22. **PUBLIC RECORDS. IF THE CONSULTANT/CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'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.**

[The remainder of this page is intentionally left blank.]

IN WITNESS THEREOF, the above parties have executed this instrument, the name of each party being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

OWNER

CONTRACTOR

CITY OF ZEPHYRHILLS, FLORIDA

**NATIONAL METERING SERVICES,
INC**

By: _____
Charles E. Proctor
City Council President

By: _____
Name: _____
Its: _____

ATTEST:

ATTEST:

By: _____
Ricardo Quiñones, City Clerk

By: _____
Name: _____
Its: _____

Vendor	Total Score
Beck	84.5
Blackwater Construction Services LLC	80
Cathcart Construction Company - Florida, LLC	74.75
Centennial Contractors Enterprises, Inc.	74
Foresight Construction Group, Inc.	84.25
Friedrich Watkins of Tampa, LLC.	84.75
Kokolakis Contracting	86.75
LEGO Construction Co.	77.5
New Vista Builders Group	70
Ryman Construction of Florida, Inc.	87.5
SEMCO Construction, Inc.	87.75
The A.D. Morgan Corporation	87.75
Trias Construction LLC	82.5
Wharton-Smith, Inc.	92.75
CII Contracting	81.75
Hometown Services of Florida, Inc.	87.5
National Metering Services, Inc.	83.25
Razorback LLC	86
RCM Utilities, LLC	86.25
The Cao Group, LLC	73.5

CONSENT ITEMS 1.6

Approval of General Construction Agreement **41-25-16** to Hometown Services of Florida

Issue:

Request Council approval of agreement with Hometown Services of Florida for general construction services. The City advertised for RFP responses for general construction services for all departments when necessary.

Background:

The City of Zephyrhills advertised via public RFP, for a minimum of three (3) contractors for miscellaneous construction and/or repairs to City facilities, utility lines, etc.
A total of five (5) responses were received, and the evaluation committee approved four (4) of them.

Attached for consideration is the agreement with Hometown Services of Florida for general construction services.

Attachment(s):

1. 36440555v1 - Hometown Services_Gen Con Continuing Services Agreement
2. Wirtten Ranking

Fiscal Impact:

The fiscal impact will vary from year to year dependent upon the projects given approval by the City Council.

Projects classified under miscellaneous construction and repair will have a maximum price of \$7,500,000.

Staff Recommendation:

It is the recommendation of staff to the City Council to approve agreement #41-25-16.

GENERAL CONSTRUCTION CONTINUING SERVICES AGREEMENT

THIS GENERAL CONSTRUCTION CONTINUING SERVICES AGREEMENT (the "Contract"), made this ____ day of _____ 2025, between CITY OF ZEPHYRHILLS a Florida municipal corporation, having its principal office at 5335 8th Street, Zephyrhills, FL 33542 (hereinafter referred to as "CITY" or "Owner"), and Hometown Services of Florida, Inc. a Florida Corporation authorized to do business in the State of Florida, having its principal office at 5031 Airport Road, Zephyrhills, FL 33542 (hereinafter referred to as "Contractor").

WHEREAS, CITY desires to obtain services as stated in the Request for Proposal RFP #2025-004 incorporated herein by reference from Contractor for assigned projects within the City of Zephyrhills, Florida (hereinafter referred to as "Professional Services-City Wide Continuing Service Projects") and issued RFP #2025-004 to find qualified professionals to fulfill the need for these services. Pursuant to Section 255.103(4), Florida Statutes, the total construction cost of each individual project shall not exceed \$7,500,000.00. Although the primary professional service sought by the contract is for general construction services, this Contract may cover other construction services if Contractor possesses the professional licensing and registration to legally perform these services. Further, Contractor may hire others who are properly licensed to perform construction services; and

WHEREAS, the Term of Contract is three (3) years after CITY approves the Contract, and CITY may, at its option, at a regular or special City Council meeting; renew this Contract at the end of the Term for an additional renewal term of two (2), three (3) year terms for a maximum term of nine years; and

WHEREAS, CITY retains Contractor, to perform the services described herein, and other required professional services on an "as needed" basis, as designated, authorized, and assigned by CITY, and CITY agrees to compensate Contractor for such services in accordance with this Contract; and

WHEREAS, it is the primary intent of this Contract to ensure that Contractor is available to provide services, in accordance with prior, mutually agreed upon conditions, and CITY has complied with all requirements of Section 287.055, Florida Statutes the "Consultants Competitive Negotiations Act," in the selection of Contractor and negotiations for this Contract; and

NOW, THEREFORE, CITY and Contractor, for and in consideration of the provisions, mutual promises, covenants and conditions hereinafter set forth or recited, agree as follows:

1. **Recitals.** The recitals in the WHEREAS clauses are incorporated by reference and made a part of this Contract.
2. **Incorporation of Request for Qualification and Response.** Request for Proposal (RFP) #2025-004 is incorporated into this Contract by reference. Contractor's response to the RFP is attached hereto and incorporated herein as Exhibit A.
3. **Scope of Services.**
 - (a) Contractor agrees to furnish and perform general construction services during design and construction phases of a Continuing Service Project ("Project" or "Task Assignment") in accordance with the terms and conditions set forth herein in accordance with generally accepted

professional standards to achieve a total cost to CITY which does not exceed the Project Budget. The scope of services (hereinafter referred to as "Basic Services") to be performed by Contractor under this Contract, to the satisfaction of CITY, shall be identified in Task Assignment. Contractor agrees to furnish and perform Basic Services and construction phase services as may be required in the specific scope of work and enumerated and described in the Task Assignment, in connection with Continuing Service Projects. Contractor further agrees to furnish and perform professional services not included as Basic Services (hereinafter referred to as "Additional Services"), when and if such Additional services are requested and authorized by CITY, in writing. The Hourly Labor Rates and Unit Rates for Basic and Additional Services is found in Exhibit B – Hourly Rate Schedule. No Additional Services shall be furnished by Contractor unless specifically requested and authorized by CITY in writing.

- (b) Continuing Service Projects shall be designed in accordance with all applicable Florida Statutes and the current City of Zephyrhills Ordinances in effect at the time this Contract is approved, or the work is performed.
- 4. **Project Construction Budget.** Contractor shall be provided with an individual Project Construction Budget for each Continuing Services Contract (Task Assignment). By accepting a Task Assignment, Contractor acknowledges that the Project Construction Budget is of the essence of this Contract and Contractor agrees to perform, in accordance with generally accepted professional standards.
 - (a) Although CITY looks to Contractor for the responsibility of design meeting CITY's Project Construction Budget, CITY may hire a cost consultant to verify costs on specific projects. Contractor shall cooperate with the CITY's cost consultant by providing all necessary information for the preparation and updating of all estimates of construction costs throughout all phases of Continuing Service Projects.
 - (b) The Construction Budget shall be defined as the total budget identified for the construction of Continuing Service Projects.
- 5. **Time of Completion.** Contractor shall commence Basic Services upon receipt of the Notice to Proceed and a purchase order issued by CITY. Contractor shall include in its proposal a schedule for the successful and timely completion of the project. Project schedule shall include the proposed start date, substantial completion date, and final completion date. The schedule will be agreed upon in writing on a project by project basis. Contractor shall complete work in accordance with the schedule, it being understood that time is of the utmost importance in this Contract. Contractor shall accelerate performance of Basic Services and Additional Services in the manner reasonably directed by CITY, in the event CITY, in its sole discretion, determines that such acceleration is necessary to maintain the Schedule. If acceleration is required because of delays caused solely by Contractor, acceleration shall be at no cost to CITY. If acceleration is required because of delays partially caused by Contractor, the CITY will not compensate Contractor for the delay caused by Contractor; however, the cost associated with that portion of any such delay not caused by Contractor shall be compensated as an Additional Service.
- 6. **Fees.** CITY agrees to pay to Contractor for Basic Services, based upon Exhibit B – Hourly Rate and Unit Rate Schedule, Contractor will give CITY a detailed written proposal for the work, and shall identify the number of hours of work by category of workers performing the service. The

categories must accurately reflect the type of service to be performed, not merely the job description of the employee performing the service. No additional fee or compensation shall be payable to Contractor under this Contract for said services if the actual cost of construction or work to be designed by Contractor exceeds the proposal or budget.

- (a) Initiation of services shall be upon receipt of the Notice to Proceed and a purchase order basis, referencing a written proposal for services related to this Contract.
- (b) Invoices received by the CITY on or before the 20th of any month will be submitted for check release on or before the 25th of the following month.
- (c) The responsibility of Contractor for performing its obligation under this Contract and under the construction contract(s) is not relieved or affected in any respect by the presence of or inspection by employees or agents of CITY. Contractor agrees that the responsibility assumed by it for approving and certifying work for payment is not shared by an employee of CITY.
- (d) Contractor's fee for Additional Services will be computed in accordance with hourly rates as described in Exhibit B – Hourly Rate and Unit Rate Schedule.
- (e) Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, and that Contractor has not paid or agreed to pay any person, company, corporation, individual, or firm other than bona fide employees working solely for Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, CITY shall have the right to terminate this Contract without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.
- (f) The fee structure and hourly rates may be revised only by written Task Assignment, agreed to by both parties to this agreement.

7. **Ownership of Documents.** Contractor shall make available to CITY all reproducible copies of plans, drawings, specifications, ideas, concepts, designs, sketches, models, artwork, programs, software, reports, or other tangible work product produced, originally developed, or submitted to CITY by Contractor pursuant to this Contract (hereinafter referred to as the "Original Work Product").

- (a) Contractor shall deliver reproduced copies of all Original Work Product to CITY upon completion, unless it is necessary for Contractor, in CITY's sole discretion, to retain possession for a longer period of time. Upon early termination of Contractor's services, Contractor shall deliver all Original Work Product, whether complete or not. CITY shall have the right to use any and all work product. Contractor shall retain copies for its permanent records; however, the same cannot be used without CITY's prior express written consent. Contractor agrees not to recreate any designs, or any other tangible work product contemplated by or originally developed under this Contract, or portions thereof, which if constructions or otherwise materialized, would be reasonably identifiable with the tangible work product originally developed by Contractor.

- (b) CITY exclusively retains all ownership and manufacturing rights to all materials or designs developed under this Agreement. To the extent the Services performed under this Agreement produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for CITY as the author, creator, or inventor thereof upon creation, and CITY shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. Contractor shall assign to CITY, all rights without limitation, including the copyright with respect to such work.

8. **Insurance.**

- (a) 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.
- (b) Nothing herein shall be construed to extend the City of Zephyrhills's liability beyond that provided in section 768.28, Florida Statutes.
- (c) If the Continuing Service Project 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.
- (d) All such insurance required in paragraph (a) shall be with companies and on forms acceptable

to CITY, shall name CITY, and its agents, employees, and assigns as additional insured, except the policies shall provide that the coverage may not be reduced or canceled unless 30 days' prior written notice is furnished to CITY. Certificates of insurance and copies of all policies shall be furnished to CITY within 10 days of the date of this Contract. In the event of any cancellation or reduction of coverage, Contractor shall obtain substitute coverage as required hereunder, without any lapse of coverage to CITY whatsoever.

- (e) Contractor will provide to CITY, within 10 days after the date of this Contract, (1) the original of the policy evidencing the existence of such insurance coverage, which CITY shall copy and return to Contractor within Seven (7) days, (2) proof acceptable to CITY that the premium for such policy for a period ending no earlier than 6 months after the date of this Contract has been paid in full by Contractor, and (3) a certificate of the insurer addressed to CITY evidencing the existence of such insurance coverage. Contractor will promptly renew, will keep and maintain in full force and effect, and will pay all premiums becoming due on said policy of insurance, and without request or demand Contractor will promptly provide proof thereof to CITY. If any such policy of insurance is a "claims made" policy, and not an "occurrence" policy, Contractor agrees to keep and maintain same in full force and effect for a period expiring not earlier than 12 months after construction of Continuing Service Projects is completed, and each such policy, or renewal or replacement policy, shall provide coverage for the acts and omissions of Contractor for all times subsequent to the date of this Contract.

9. **Representations.** Contractor hereby represents to CITY that:

- (a) It has the experience and skill to perform the services required to be performed by this Contract.
- (b) It shall provide and employ, in connection with the performance of such services, personnel qualified and experienced in their profession; it being understood that CITY may at any time require Contractor to remove, and Contractor shall immediately remove, any person employed in connection with the performance of the services who in the sole opinion of CITY is unfit for the proper performance of his/her duties.
- (c) It shall design to and comply with applicable non-conflicting federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements (both corporate and individual for all required basic disciplines) in effect during the term of this Contract, and shall, if requested by CITY, provide certification of compliance with all registration and licensing requirements.
- (d) It shall perform said services in accordance with generally accepted professional standards in an expeditious and economical manner.
- (e) It is adequately financed to meet any financial obligations it may be required to incur under this Contract.
- (f) The designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services of Contractor shall not call for the use of nor infringe any patent, trademark, service mark, copyright, or other proprietary interest claimed or held by any person or business entity absent prior written consent from CITY and such other person.

10. **Expense Records.** Contractor agrees to keep and maintain all of its direct personnel expense records, consultant and subcontractor expense records, and other expense records, pertaining to Continuing Service Projects, and its record of accounts between Contractor and CITY pertaining to Continuing Service Projects, on a general recognized and acceptable accounting basis, and the same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying. The records and documentation shall be retained by Contractor for a minimum of three (3) years from the date of termination of this Agreement or the date the Task Authorization is completed, or such longer period of time as may be required by this Agreement or law, whichever is later. Contractor agrees to keep and maintain accurate time records to within the nearest one tenth of an hour for each time entry, of all work performed by employees of Contractor, and same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying.

11. **Termination, Suspension, Disputes, or Abandonment.** The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon thirty (30) 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.
 - (a) If Continuing Service Projects are terminated or suspended by CITY, CITY shall pay Contractor all fees which have become due and payable to Contractor for that portion of the work of Contractor properly completed prior to such abandonment or suspension, and CITY shall have no further obligation to Contractor for payment to Contractor of the remainder of its fees, unless and until Continuing Service Projects are resumed by CITY. Contractor, at the option of CITY, shall complete the services of Contractor under this Contract upon resumption by CITY of Continuing Service Projects, and Contractor shall in that event be entitled to payment of the remaining unpaid fees which become payable to it under this Contract, same to be payable at the times and in the manner specified in this Contract. In no event will any fee or part thereof become due or payable to Contractor under this Contract unless and until Contractor has attained and completed that stage of work where the same would be due and payable.

 - (b) In the event of any such suspension or termination without cause, CITY shall pay to Contractor only that portion of the fee and compensation hereunder for the Basic Services of Contractor which has become due and payable to Contractor under the provisions of this Contract, and the remainder of Contractor's fees under this Contract shall be cancelled. Additionally, CITY shall pay other necessary, unavoidable, and reasonable expenses incurred by Contractor as a result of such suspension or termination (such as canceling orders for equipment, material, or services). Unless CITY authorizes Contractor to the contrary, Contractor shall not perform any services and shall not be entitled to receive payment from CITY on account of any such services performed during the period of suspension or after termination. Upon receipt of notice from CITY that the suspension has been canceled, Contractor shall perform its remaining services in accordance with the terms of this Contract and Contractor shall be entitled to time extension equal to the period of suspension.

 - (c) 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.

12. **Assignability.** This Contract is for the personal services of Contractor and may not be assigned by Contractor in any fashion, whether by operation of law, or by conveyance of any type, including without limitation, transfer of stock in Contractor, without the prior written consent of CITY, which consent CITY may withhold in its sole discretion.
13. **Errors and/or Omissions.** Contractor shall be obligated and responsible to CITY for, reasonable damages and additional costs and/or expenses in connection with construction of or delay in construction of Continuing Service Projects or otherwise incurred, sustained, and/or paid by CITY to the extent caused by (1) negligent errors and/or omissions made by Contractor in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services pursuant to this Contract and the project's Scope of Services for Contractor, and (2) negligent acts or omissions on the part of Contractor in any designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services or in the performance of any other services under this Contract and the project's Scope of Services for Contractor. It is the intent of the parties hereto that Contractor be held to and accountable for a degree of professionalism that is customary in the industry and commercially reasonable and for accuracy in the performance of the services of Contractor under this Agreement. CITY will hold Contractor harmless for any loss or claim related to an error or omission caused by the negligence of the CITY.
14. **Subcontractors/Separate contractors.**
 - (a) Any proposed subcontractors shall be submitted to CITY for approval prior to Contractor entering into a subcontract agreement. Such approval by CITY shall not be unreasonably withheld. CITY shall not be liable to Contractor in any manner whatsoever arising out of the CITY's objection to a proposed subcontractor.
 - (b) Contractor shall coordinate the services and work product of any subcontractor and remain fully responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services furnished by Contractor or its subcontractors, and Contractor shall review and approve any designs, drawings, specifications, shop drawings, submittals, work, materials, processes of manufacture, methods of construction, or other services produced or furnished by any subcontractors prior to submittal to CITY. Contractor shall correct or revise any of its errors or deficiencies in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services produced pursuant to this Contract and shall provide CITY with such corrected or revised designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services incorporating such corrections or revisions at its sole cost and expense.
 - (c) Any subcontractor agreement shall reflect the terms of this Contract and require the subcontractor, to the extent of the services to be performed by the subcontractor, to assume toward Contractor all the obligations which Contractor by this Contract assumes toward CITY, it being understood that nothing herein shall in any way relieve Contractor from any of its duties under this Contract.

- (d) Contractor shall cooperate at all times with CITY, and cooperate and coordinate with, and incorporate the work product of, any separate contractor, in any fashion appropriate or necessary to facilitate the construction of Continuing Service Projects within the project's budget and schedule. In the event CITY so elects and upon written mutual consent (which consent shall not be unreasonably withheld), as evidenced by a Task Assignment to this Contract, Contractor shall accept any assignment of any agreement or contract CITY may have with any separate contractor.

15. **Indemnification.** 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 agreement 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.

16. **Governing Law.** This Contract shall be construed in accordance with, and be governed by, the laws of the State of Florida, and any dispute, difference, claim or counterclaim between CITY and Contractor arising out of or in connection with this Contract which cannot be amicably resolved by the parties shall be submitted to the Circuit Court in and for Pasco County, Florida (or if the Circuit Court does not have jurisdiction over the subject matter, then to the court sitting in Pasco County which has subject matter jurisdiction) for trial and determination by the court sitting without jury. The parties agree and are encouraged to submit such disputes to non-binding mediation by a mediator who is certified in Florida in an effort to resolve issues in an expedient manner. The parties consent to the jurisdiction of such court and to the service of process outside the State of Florida pursuant to the requirements of such court, and they expressly waive the right to a jury trial.
17. **Entire Agreement.** This Contract, together with any other documents incorporated herein by reference, and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Contract, and the related exhibits, proposals, and schedules (other than an exception expressly set forth as such in the schedules), the statements in the body of this Contract shall control. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

18. **Evaluation.** Contractor will be evaluated by CITY during the Contract period, at intervals established by CITY, and at the end of the construction of Continuing Service Projects. The results of each evaluation will be considered as tools for the measurement of Contractor's past performance and may be included in the review process for future solicitations for services. A copy of the evaluation(s) will be provided to Contractor upon request.
19. **Independent Contractor.** 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 Contract.
20. **Notices.** 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:

Hometown Services of Florida, Inc
ATTN: Linda Starr Kerns
5031 Airport Road,
Zephyrhills, FL 33542
linda@hometownroofingandconstruction.com

To CITY:

City of Zephyrhills
ATTN: City Manager
5335 8th Street
Zephyrhills, Florida 33542
wpoe@ci.zephyrhills.fl.us

With copy to:

Matthew E. Maggard, Esq.
Shumaker, Loop & Kendrick, LLP
13134 US Highway 301
Dade City, Florida 33525
mmaggard@shumaker.com

21. **MISCELLANEOUS PROVISIONS.**

- (a) 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 Contract.
- (b) The continuing services to be provided by Contractor pursuant to this Contract shall be non-

exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

- (c) This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) The City may withhold any payment in an amount that is sufficient to pay the direct costs and expenses the City reasonably expects to incur to protect City from liabilities for which Contractor is responsible
- (i) The City reserves the right to audit the records of the Contractor covered by this Contract at any time during the provision of Services and for a period of three (3) years after final payment is made under this Contract.

22. **PUBLIC RECORDS.** IF THE CONSULTANT/CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'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.

[The remainder of this page is intentionally left blank.]

IN WITNESS THEREOF, the above parties have executed this instrument, the name of each party being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

OWNER

CONTRACTOR

CITY OF ZEPHYRHILLS, FLORIDA

HOMETOWN SERVICES OF FLORIDA

By: _____
Charles E. Proctor
City Council President

By: _____
Name: _____
Its: _____

ATTEST:

ATTEST:

By: _____
Ricardo Quiñones, City Clerk

By: _____
Name: _____
Its: _____

Vendor	Total Score
Beck	84.5
Blackwater Construction Services LLC	80
Cathcart Construction Company - Florida, LLC	74.75
Centennial Contractors Enterprises, Inc.	74
Foresight Construction Group, Inc.	84.25
Friedrich Watkins of Tampa, LLC.	84.75
Kokolakis Contracting	86.75
LEGO Construction Co.	77.5
New Vista Builders Group	70
Ryman Construction of Florida, Inc.	87.5
SEMCO Construction, Inc.	87.75
The A.D. Morgan Corporation	87.75
Trias Construction LLC	82.5
Wharton-Smith, Inc.	92.75
CII Contracting	81.75
Hometown Services of Florida, Inc.	87.5
National Metering Services, Inc.	83.25
Razorback LLC	86
RCM Utilities, LLC	86.25
The Cao Group, LLC	73.5

CONSENT ITEMS 1.7

Approval of Agreement **37-25-10** - Construction Manager at Risk (CMAR) - Wharton Smith

Issue:

Request Council approval of agreement with Wharton Smith for Construction Manager at Risk (CMAR) services. The City advertised for RFP responses for CMAR services for all departments when necessary.

Background:

The City of Zephyrhills advertised, via public RFP, for a minimum of three (3) CMAR's. A total of fourteen (14) responses were received, and the evaluation committee approved four (4) of them.

Attached for consideration is the agreement with Wharton Smith for Construction Manager at Risk services.

Attachment(s):

1. 36441522v1 - Wharton Smith _CMAR_Continuing Services Agreement

Fiscal Impact:

The fiscal impact will vary from year to year dependent upon the projects given approval by the City Council.

Projects classified under CMAR will have a maximum price of \$7,500,000/project.

Staff Recommendation:

It is the recommendation of staff to the City Council to approve agreement #37-25-10.

CONSTRUCTION MANAGER AT RISK CONTINUING SERVICES AGREEMENT

THIS CONSTRUCTION MANAGER AT RISK CONTINUING SERVICES AGREEMENT (the "Contract"), made this ____ day of _____ 2025, between CITY OF ZEPHYRHILLS a Florida municipal corporation, having its principal office at 5335 8th Street, Zephyrhills, FL 33542 (hereinafter referred to as "CITY" or "Owner"), and Wharton-Smith, Inc., a Florida Corporation authorized to do business in the State of Florida, having its principal office at 750 Monroe Road, Sanford FL 32771 (hereinafter referred to as "CMAR").

WHEREAS, CITY desires to obtain services as stated in the Request for Proposal RFP #2025-004 incorporated herein by reference from CMAR for assigned projects within the City of Zephyrhills, Florida (hereinafter referred to as "Professional Services-City Wide Continuing Service Projects") and issued RFP #2025-004 to find qualified professionals to fulfill the need for these services. Pursuant to Section 255.103(4), Florida Statutes, the total construction cost of each individual project shall not exceed \$7,500,000.00. Although the primary professional service sought by the contract is for Construction Manager at Risk services, this Contract may cover other construction services if CMAR possesses the professional licensing and registration to legally perform these services. Further, CMAR may hire others who are properly licensed to perform construction services; and

WHEREAS, the Term of Contract is three (3) years after CITY approves the Contract, and CITY may, at its option, at a regular or special City Council meeting; renew this Contract at the end of the Term for an additional renewal term of two (2), three (3) year terms for a maximum term of nine years; and

WHEREAS, CITY retains CMAR, to perform the services described herein, and other required professional services on an "as needed" basis, as designated, authorized, and assigned by CITY, and CITY agrees to compensate CMAR for such services in accordance with this Contract; and

WHEREAS, it is the primary intent of this Contract to ensure that CMAR is available to provide services, in accordance with prior, mutually agreed upon conditions, and CITY has complied with all requirements of Section 287.055, Florida Statutes the "Consultants Competitive Negotiations Act," in the selection of CMAR and negotiations for this Contract; and

NOW, THEREFORE, CITY and CMAR, for and in consideration of the provisions, mutual promises, covenants and conditions hereinafter set forth or recited, agree as follows:

1. **Recitals.** The recitals in the WHEREAS clauses are incorporated by reference and made a part of this Contract.
2. **Incorporation of Request for Qualification and Response.** Request for Proposal (RFP) #2025-004 is incorporated into this Contract by reference. CMAR's response to the RFP is attached hereto and incorporated herein as Exhibit A.
3. **Scope of Services.**
 - (a) CMAR agrees to furnish and perform general construction services during design and construction phases of a Continuing Service Project ("Project" or "Task Assignment") in accordance with the terms and conditions set forth herein in accordance with generally accepted

professional standards to achieve a total cost to CITY which does not exceed the Project Budget. The scope of services (hereinafter referred to as "Basic Services") to be performed by CMAR under this Contract, to the satisfaction of CITY, shall be identified in Task Assignment. CMAR agrees to furnish and perform Basic Services and construction phase services as may be required in the specific scope of work and enumerated and described in the Task Assignment, in connection with Continuing Service Projects. CMAR further agrees to furnish and perform professional services not included as Basic Services (hereinafter referred to as "Additional Services"), when and if such Additional services are requested and authorized by CITY, in writing. The Hourly Labor Rates and Unit Rates for Basic and Additional Services is found in Exhibit B – Hourly Rate Schedule. No Additional Services shall be furnished by CMAR unless specifically requested and authorized by CITY in writing.

- (b) Continuing Service Projects shall be designed in accordance with all applicable Florida Statutes and the current City of Zephyrhills Ordinances in effect at the time this Contract is approved, or the work is performed.
- 4. **Project Construction Budget.** CMAR shall be provided with an individual Project Construction Budget for each Continuing Services Contract (Task Assignment). By accepting a Task Assignment, CMAR acknowledges that the Project Construction Budget is of the essence of this Contract and CMAR agrees to perform, in accordance with generally accepted professional standards.
 - (a) Although CITY looks to CMAR for the responsibility of design meeting CITY's Project Construction Budget, CITY may hire a cost consultant to verify costs on specific projects. CMAR shall cooperate with the CITY's cost consultant by providing all necessary information for the preparation and updating of all estimates of construction costs throughout all phases of Continuing Service Projects.
 - (b) The Construction Budget shall be defined as the total budget identified for the construction of Continuing Service Projects.
- 5. **Time of Completion.** CMAR shall commence Basic Services upon receipt of the Notice to Proceed and a purchase order issued by CITY. CMAR shall include in its proposal a schedule for the successful and timely completion of the project. Project schedule shall include the proposed start date, substantial completion date, and final completion date. The schedule will be agreed upon in writing on a project by project basis. CMAR shall complete work in accordance with the schedule, it being understood that time is of the utmost importance in this Contract. CMAR shall accelerate performance of Basic Services and Additional Services in the manner reasonably directed by CITY, in the event CITY, in its sole discretion, determines that such acceleration is necessary to maintain the Schedule. If acceleration is required because of delays caused solely by CMAR, acceleration shall be at no cost to CITY. If acceleration is required because of delays partially caused by CMAR, the CITY will not compensate CMAR for the delay caused by CMAR; however, the cost associated with that portion of any such delay not caused by CMAR shall be compensated as an Additional Service.
- 6. **Fees.** CITY agrees to pay to CMAR for Basic Services, based upon Exhibit B – Hourly Rate and Unit Rate Schedule, CMAR will give CITY a detailed written proposal for the work, and shall identify the number of hours of work by category of workers performing the service. The categories must accurately reflect the type of service to be performed, not merely the job

description of the employee performing the service. No additional fee or compensation shall be payable to CMAR under this Contract for said services if the actual cost of construction or work to be designed by CMAR exceeds the proposal or budget.

- (a) Initiation of services shall be upon receipt of the Notice to Proceed and a purchase order basis, referencing a written proposal for services related to this Contract.
- (b) Invoices received by the CITY on or before the 20th of any month will be submitted for check release on or before the 25th of the following month.
- (c) The responsibility of CMAR for performing its obligation under this Contract and under the construction contract(s) is not relieved or affected in any respect by the presence of or inspection by employees or agents of CITY. CMAR agrees that the responsibility assumed by it for approving and certifying work for payment is not shared by an employee of CITY.
- (d) CMAR's fee for Additional Services will be computed in accordance with hourly rates as described in Exhibit B – Hourly Rate and Unit Rate Schedule.
- (e) CMAR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CMAR, to solicit or secure this Contract, and that CMAR has not paid or agreed to pay any person, company, corporation, individual, or firm other than bona fide employees working solely for CMAR, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, CITY shall have the right to terminate this Contract without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.
- (f) The fee structure and hourly rates may be revised only by written Task Assignment, agreed to by both parties to this agreement.

7. **Ownership of Documents.** CMAR shall make available to CITY all reproducible copies of plans, drawings, specifications, ideas, concepts, designs, sketches, models, artwork, programs, software, reports, or other tangible work product produced, originally developed, or submitted to CITY by CMAR pursuant to this Contract (hereinafter referred to as the "Original Work Product").

- (a) CMAR shall deliver reproduced copies of all Original Work Product to CITY upon completion, unless it is necessary for CMAR, in CITY's sole discretion, to retain possession for a longer period of time. Upon early termination of CMAR's services, CMAR shall deliver all Original Work Product, whether complete or not. CITY shall have the right to use any and all work product. CMAR shall retain copies for its permanent records; however, the same cannot be used without CITY's prior express written consent. CMAR agrees not to recreate any designs, or any other tangible work product contemplated by or originally developed under this Contract, or portions thereof, which if constructions or otherwise materialized, would be reasonably identifiable with the tangible work product originally developed by CMAR.
- (b) CITY exclusively retains all ownership and manufacturing rights to all materials or designs developed under this Agreement. To the extent the Services performed under this Agreement

produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for CITY as the author, creator, or inventor thereof upon creation, and CITY shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. CMAR shall assign to CITY, all rights without limitation, including the copyright with respect to such work.

8. **Insurance.**

- (a) CMAR 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 CMAR/Vendor as required herein shall be considered, and CMAR/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 CMAR/Vendor as required herein.
- (b) Nothing herein shall be construed to extend the City of Zephyrhills's liability beyond that provided in section 768.28, Florida Statutes.
- (c) If the Continuing Service Project 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 CMAR 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 CMAR'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 CMAR shall be responsible. The risk of loss whether insured or not shall remain with the CMAR until final acceptance. Upon request, CMAR shall furnish to the City complete copies of the insurance policy.
- (d) All such insurance required in paragraph (a) shall be with companies and on forms acceptable to CITY, shall name CITY, and its agents, employees, and assigns as additional insured, except the policies shall provide that the coverage may not be reduced or canceled unless 30 days' prior written notice is furnished to CITY. Certificates of insurance and copies of all policies shall be furnished to CITY within 10 days of the date of this Contract. In the event of any

cancellation or reduction of coverage, CMAR shall obtain substitute coverage as required hereunder, without any lapse of coverage to CITY whatsoever.

- (e) CMAR will provide to CITY, within 10 days after the date of this Contract, (1) the original of the policy evidencing the existence of such insurance coverage, which CITY shall copy and return to CMAR within Seven (7) days, (2) proof acceptable to CITY that the premium for such policy for a period ending no earlier than 6 months after the date of this Contract has been paid in full by CMAR, and (3) a certificate of the insurer addressed to CITY evidencing the existence of such insurance coverage. CMAR will promptly renew, will keep and maintain in full force and effect, and will pay all premiums becoming due on said policy of insurance, and without request or demand CMAR will promptly provide proof thereof to CITY. If any such policy of insurance is a "claims made" policy, and not an "occurrence" policy, CMAR agrees to keep and maintain same in full force and effect for a period expiring not earlier than 12 months after construction of Continuing Service Projects is completed, and each such policy, or renewal or replacement policy, shall provide coverage for the acts and omissions of CMAR for all times subsequent to the date of this Contract.

9. **Representations.** CMAR hereby represents to CITY that:

- (a) It has the experience and skill to perform the services required to be performed by this Contract.
- (b) It shall provide and employ, in connection with the performance of such services, personnel qualified and experienced in their profession; it being understood that CITY may at any time require CMAR to remove, and CMAR shall immediately remove, any person employed in connection with the performance of the services who in the sole opinion of CITY is unfit for the proper performance of his/her duties.
- (c) It shall design to and comply with applicable non-conflicting federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements (both corporate and individual for all required basic disciplines) in effect during the term of this Contract, and shall, if requested by CITY, provide certification of compliance with all registration and licensing requirements.
- (d) It shall perform said services in accordance with generally accepted professional standards in an expeditious and economical manner.
- (e) It is adequately financed to meet any financial obligations it may be required to incur under this Contract.
- (f) The designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services of CMAR shall not call for the use of nor infringe any patent, trademark, service mark, copyright, or other proprietary interest claimed or held by any person or business entity absent prior written consent from CITY and such other person.

10. **Expense Records.** CMAR agrees to keep and maintain all of its direct personnel expense records, consultant and subcontractor expense records, and other expense records, pertaining to Continuing Service Projects, and its record of accounts between CMAR and CITY pertaining to

Continuing Service Projects, on a general recognized and acceptable accounting basis, and the same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying. The records and documentation shall be retained by CMAR for a minimum of three (3) years from the date of termination of this Agreement or the date the Task Authorization is completed, or such longer period of time as may be required by this Agreement or law, whichever is later. CMAR agrees to keep and maintain accurate time records to within the nearest one tenth of an hour for each time entry, of all work performed by employees of CMAR, and same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying.

11. **Termination, Suspension, Disputes, or Abandonment.** The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon thirty (30) days written notice to CMAR. In such event, the City shall pay CMAR compensation for Services rendered prior to the effective date of termination. The City shall not be liable to CMAR for any additional compensation, or for any consequential or incidental damages.
 - (a) If Continuing Service Projects are terminated or suspended by CITY, CITY shall pay CMAR all fees which have become due and payable to CMAR for that portion of the work of CMAR properly completed prior to such abandonment or suspension, and CITY shall have no further obligation to CMAR for payment to CMAR of the remainder of its fees, unless and until Continuing Service Projects are resumed by CITY. CMAR, at the option of CITY, shall complete the services of CMAR under this Contract upon resumption by CITY of Continuing Service Projects, and CMAR shall in that event be entitled to payment of the remaining unpaid fees which become payable to it under this Contract, same to be payable at the times and in the manner specified in this Contract. In no event will any fee or part thereof become due or payable to CMAR under this Contract unless and until CMAR has attained and completed that stage of work where the same would be due and payable.
 - (b) In the event of any such suspension or termination without cause, CITY shall pay to CMAR only that portion of the fee and compensation hereunder for the Basic Services of CMAR which has become due and payable to CMAR under the provisions of this Contract, and the remainder of CMAR's fees under this Contract shall be cancelled. Additionally, CITY shall pay other necessary, unavoidable, and reasonable expenses incurred by CMAR as a result of such suspension or termination (such as canceling orders for equipment, material, or services). Unless CITY authorizes CMAR to the contrary, CMAR shall not perform any services and shall not be entitled to receive payment from CITY on account of any such services performed during the period of suspension or after termination. Upon receipt of notice from CITY that the suspension has been canceled, CMAR shall perform its remaining services in accordance with the terms of this Contract and CMAR shall be entitled to time extension equal to the period of suspension.
 - (c) If CMAR fails to comply with any term or condition of this Agreement, or fails to perform any of its obligation hereunder, then CMAR shall be in default. The City shall have the right to terminate this Agreement, in the event CMAR fails to cure a default within ten (10) business days after receiving Notice of Default. CMAR understands and agrees that termination of this Agreement under this section shall not release CMAR from any obligations accruing prior to the effective date of termination.
12. **Assignability.** This Contract is for the personal services of CMAR and may not be assigned by CMAR in any fashion, whether by operation of law, or by conveyance of any type, including

without limitation, transfer of stock in CMAR, without the prior written consent of CITY, which consent CITY may withhold in its sole discretion.

13. **Errors and/or Omissions.** CMAR shall be obligated and responsible to CITY for, reasonable damages and additional costs and/or expenses in connection with construction of or delay in construction of Continuing Service Projects or otherwise incurred, sustained, and/or paid by CITY to the extent caused by (1) negligent errors and/or omissions made by CMAR in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services pursuant to this Contract and the project's Scope of Services for CMAR, and (2) negligent acts or omissions on the part of CMAR in any designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services or in the performance of any other services under this Contract and the project's Scope of Services for CMAR. It is the intent of the parties hereto that CMAR be held to and accountable for a degree of professionalism that is customary in the industry and commercially reasonable and for accuracy in the performance of the services of CMAR under this Agreement. CITY will hold CMAR harmless for any loss or claim related to an error or omission caused by the negligence of the CITY.
14. **Subcontractors/Separate contractors/consultants.**
 - (a) Any proposed subcontractors or subconsultants shall be submitted to CITY for approval prior to CMAR entering into a subcontract agreement. Such approval by CITY shall not be unreasonably withheld. CITY shall not be liable to CMAR in any manner whatsoever arising out of the CITY's objection to a proposed subcontractor or subconsultant.
 - (b) CMAR shall coordinate the services and work product of any subcontractor or subconsultant and remain fully responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services furnished by CMAR or its subcontractors or subconsultants and CMAR shall review and approve any designs, drawings, specifications, shop drawings, submittals, work, materials, processes of manufacture, methods of construction, or other services produced or furnished by any subcontractors or subconsultants prior to submittal to CITY. CMAR shall correct or revise any of its errors or deficiencies in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services produced pursuant to this Contract and shall provide CITY with such corrected or revised designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services incorporating such corrections or revisions at its sole cost and expense.
 - (c) Any subcontractor or subconsultant agreement shall reflect the terms of this Contract and require the subcontractor or subconsultant, to the extent of the services to be performed by the subcontractor or subconsultant, to assume toward CMAR all the obligations which CMAR by this Contract assumes toward CITY, it being understood that nothing herein shall in any way relieve CMAR from any of its duties under this Contract.
 - (d) CMAR shall cooperate at all times with CITY, and cooperate and coordinate with, and incorporate the work product of, any separate contractor, in any fashion appropriate or necessary to facilitate the construction of Continuing Service Projects within the project's budget and schedule. In the event CITY so elects and upon written mutual consent (which consent shall not

be unreasonably withheld), as evidenced by a Task Assignment to this Contract, CMAR shall accept any assignment of any agreement or contract CITY may have with any separate contractor.

15. **Indemnification.** CMAR 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 CMAR, its officers, agents or employees in performance or non-performance of its obligations under the Agreement. CMAR recognizes the broad nature of this indemnification and hold harmless clause, as well as the agreement 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 CMAR 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.

16. **Governing Law.** This Contract shall be construed in accordance with, and be governed by, the laws of the State of Florida, and any dispute, difference, claim or counterclaim between CITY and CMAR arising out of or in connection with this Contract which cannot be amicably resolved by the parties shall be submitted to the Circuit Court in and for Pasco County, Florida (or if the Circuit Court does not have jurisdiction over the subject matter, then to the court sitting in Pasco County which has subject matter jurisdiction) for trial and determination by the court sitting without jury. The parties agree and are encouraged to submit such disputes to non-binding mediation by a mediator who is certified in Florida in an effort to resolve issues in an expedient manner. The parties consent to the jurisdiction of such court and to the service of process outside the State of Florida pursuant to the requirements of such court, and they expressly waive the right to a jury trial.
17. **Entire Agreement.** This Contract, together with any other documents incorporated herein by reference, and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Contract, and the related exhibits, proposals, and schedules (other than an exception expressly set forth as such in the schedules), the statements in the body of this Contract shall control. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.
18. **Evaluation.** CMAR will be evaluated by CITY during the Contract period, at intervals established by CITY, and at the end of the construction of Continuing Service Projects. The results of each evaluation will be considered as tools for the measurement of CMAR's past performance and may be included in the review process for future solicitations for services. A

copy of the evaluation(s) will be provided to CMAR upon request.

19. **Independent Contractor.** CMAR 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, CMAR 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. CMAR further understands that Florida workers' compensation benefits available to employees of the City, are not available to CMAR. Therefore, CMAR agrees to provide workers' compensation insurance for any employee or agent of CMAR rendering services to the City under this Contract.
20. **Notices.** All notices, demands, correspondence and communication between the City and CMAR 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 CMAR:

Wharton-Smith, Inc.
ATTN: Jon Silling
750 Monroe Road,
Sandford FL 32771
Jsilling@whartonsmith.com

To CITY:

City of Zephyrhills
ATTN: City Manager
5335 8th Street
Zephyrhills, Florida 33542
wpoe@ci.zephyrhills.fl.us

With copy to:

Matthew E. Maggard, Esq.
Shumaker, Loop & Kendrick, LLP
13134 US Highway 301
Dade City, Florida 33525
mmaggard@shumaker.com

21. **MISCELLANEOUS PROVISIONS.**

- (a) The CMAR agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Contract.
- (b) The continuing services to be provided by CMAR pursuant to this Contract shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.
- (c) This Agreement shall be binding upon the Parties herein, their heirs, executors, legal

representatives, successors and assigns.

- (d) The CMAR 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) The City may withhold any payment in an amount that is sufficient to pay the direct costs and expenses the City reasonably expects to incur to protect City from liabilities for which CMAR is responsible
- (i) The City reserves the right to audit the records of the CMAR covered by this Contract at any time during the provision of Services and for a period of three (3) years after final payment is made under this Contract.

22. **PUBLIC RECORDS. IF THE CONSULTANT/CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'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.**

[The remainder of this page is intentionally left blank.]

IN WITNESS THEREOF, the above parties have executed this instrument, the name of each party being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

OWNER

CMAR

CITY OF ZEPHYRHILLS, FLORIDA

WHARTON-SMITH, INC.

By: _____
Charles E. Proctor
City Council President

By: _____
Name: _____
Its: _____

ATTEST:

ATTEST:

By: _____
Ricardo Quiñones, City Clerk

By: _____
Name: _____
Its: _____

CONSENT ITEMS 1.8

Approval of Agreement **37-25-11** - Construction Manager at Risk (CMAR) - Semco Construction

Issue:

Request Council approval of agreement with Semco Construction for Construction Manager at Risk (CMAR) services. The City advertised for RFP responses for CMAR services for all departments when necessary.

Background:

The City of Zephyrhills advertised, via public RFP, for a minimum of three (3) CMAR's. A total of fourteen (14) responses were received, and the evaluation committee approved four (4) of them.

Attached for consideration is the agreement with Semco Construction for Construction Manager at Risk services.

Attachment(s):

1. 36441435v1 - Semco Construction_CMAR_Continuing Services Agreement
2. Wirtten Ranking

Fiscal Impact:

The fiscal impact will vary from year to year dependent upon the projects given approval by the City Council.

Projects classified under CMAR will have a maximum price of \$7,500,000/project.

Staff Recommendation:

It is the recommendation of staff to the City Council to approve agreement #37-25-11.

CONSTRUCTION MANAGER AT RISK CONTINUING SERVICES AGREEMENT

THIS CONSTRUCTION MANAGER AT RISK CONTINUING SERVICES AGREEMENT (the "Contract"), made this ____ day of _____ 2025, between CITY OF ZEPHYRHILLS a Florida municipal corporation, having its principal office at 5335 8th Street, Zephyrhills, FL 33542 (hereinafter referred to as "CITY" or "Owner"), and SEMCO Construction, Inc., a Florida Corporation authorized to do business in the State of Florida, having its principal office at 205 Century Blvd., FL 33830 (hereinafter referred to as "CMAR").

WHEREAS, CITY desires to obtain services as stated in the Request for Proposal RFP #2025-004 incorporated herein by reference from CMAR for assigned projects within the City of Zephyrhills, Florida (hereinafter referred to as "Professional Services-City Wide Continuing Service Projects") and issued RFP #2025-004 to find qualified professionals to fulfill the need for these services. Pursuant to Section 255.103(4), Florida Statutes, the total construction cost of each individual project shall not exceed \$7,500,000.00. Although the primary professional service sought by the contract is for Construction Manager at Risk services, this Contract may cover other construction services if CMAR possesses the professional licensing and registration to legally perform these services. Further, CMAR may hire others who are properly licensed to perform construction services; and

WHEREAS, the Term of Contract is three (3) years after CITY approves the Contract, and CITY may, at its option, at a regular or special City Council meeting; renew this Contract at the end of the Term for an additional renewal term of two (2), three (3) year terms for a maximum term of nine years; and

WHEREAS, CITY retains CMAR, to perform the services described herein, and other required professional services on an "as needed" basis, as designated, authorized, and assigned by CITY, and CITY agrees to compensate CMAR for such services in accordance with this Contract; and

WHEREAS, it is the primary intent of this Contract to ensure that CMAR is available to provide services, in accordance with prior, mutually agreed upon conditions, and CITY has complied with all requirements of Section 287.055, Florida Statutes the "Consultants Competitive Negotiations Act," in the selection of CMAR and negotiations for this Contract; and

NOW, THEREFORE, CITY and CMAR, for and in consideration of the provisions, mutual promises, covenants and conditions hereinafter set forth or recited, agree as follows:

1. **Recitals.** The recitals in the WHEREAS clauses are incorporated by reference and made a part of this Contract.
2. **Incorporation of Request for Qualification and Response.** Request for Proposal (RFP) #2025-004 is incorporated into this Contract by reference. CMAR's response to the RFP is attached hereto and incorporated herein as Exhibit A.
3. **Scope of Services.**
 - (a) CMAR agrees to furnish and perform general construction services during design and construction phases of a Continuing Service Project ("Project" or "Task Assignment") in accordance with the terms and conditions set forth herein in accordance with generally accepted

professional standards to achieve a total cost to CITY which does not exceed the Project Budget. The scope of services (hereinafter referred to as "Basic Services") to be performed by CMAR under this Contract, to the satisfaction of CITY, shall be identified in Task Assignment. CMAR agrees to furnish and perform Basic Services and construction phase services as may be required in the specific scope of work and enumerated and described in the Task Assignment, in connection with Continuing Service Projects. CMAR further agrees to furnish and perform professional services not included as Basic Services (hereinafter referred to as "Additional Services"), when and if such Additional services are requested and authorized by CITY, in writing. The Hourly Labor Rates and Unit Rates for Basic and Additional Services is found in Exhibit B – Hourly Rate Schedule. No Additional Services shall be furnished by CMAR unless specifically requested and authorized by CITY in writing.

- (b) Continuing Service Projects shall be designed in accordance with all applicable Florida Statutes and the current City of Zephyrhills Ordinances in effect at the time this Contract is approved, or the work is performed.
- 4. **Project Construction Budget.** CMAR shall be provided with an individual Project Construction Budget for each Continuing Services Contract (Task Assignment). By accepting a Task Assignment, CMAR acknowledges that the Project Construction Budget is of the essence of this Contract and CMAR agrees to perform, in accordance with generally accepted professional standards.
 - (a) Although CITY looks to CMAR for the responsibility of design meeting CITY's Project Construction Budget, CITY may hire a cost consultant to verify costs on specific projects. CMAR shall cooperate with the CITY's cost consultant by providing all necessary information for the preparation and updating of all estimates of construction costs throughout all phases of Continuing Service Projects.
 - (b) The Construction Budget shall be defined as the total budget identified for the construction of Continuing Service Projects.
- 5. **Time of Completion.** CMAR shall commence Basic Services upon receipt of the Notice to Proceed and a purchase order issued by CITY. CMAR shall include in its proposal a schedule for the successful and timely completion of the project. Project schedule shall include the proposed start date, substantial completion date, and final completion date. The schedule will be agreed upon in writing on a project by project basis. CMAR shall complete work in accordance with the schedule, it being understood that time is of the utmost importance in this Contract. CMAR shall accelerate performance of Basic Services and Additional Services in the manner reasonably directed by CITY, in the event CITY, in its sole discretion, determines that such acceleration is necessary to maintain the Schedule. If acceleration is required because of delays caused solely by CMAR, acceleration shall be at no cost to CITY. If acceleration is required because of delays partially caused by CMAR, the CITY will not compensate CMAR for the delay caused by CMAR; however, the cost associated with that portion of any such delay not caused by CMAR shall be compensated as an Additional Service.
- 6. **Fees.** CITY agrees to pay to CMAR for Basic Services, based upon Exhibit B – Hourly Rate and Unit Rate Schedule, CMAR will give CITY a detailed written proposal for the work, and shall identify the number of hours of work by category of workers performing the service. The categories must accurately reflect the type of service to be performed, not merely the job

description of the employee performing the service. No additional fee or compensation shall be payable to CMAR under this Contract for said services if the actual cost of construction or work to be designed by CMAR exceeds the proposal or budget.

- (a) Initiation of services shall be upon receipt of the Notice to Proceed and a purchase order basis, referencing a written proposal for services related to this Contract.
- (b) Invoices received by the CITY on or before the 20th of any month will be submitted for check release on or before the 25th of the following month.
- (c) The responsibility of CMAR for performing its obligation under this Contract and under the construction contract(s) is not relieved or affected in any respect by the presence of or inspection by employees or agents of CITY. CMAR agrees that the responsibility assumed by it for approving and certifying work for payment is not shared by an employee of CITY.
- (d) CMAR's fee for Additional Services will be computed in accordance with hourly rates as described in Exhibit B – Hourly Rate and Unit Rate Schedule.
- (e) CMAR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CMAR, to solicit or secure this Contract, and that CMAR has not paid or agreed to pay any person, company, corporation, individual, or firm other than bona fide employees working solely for CMAR, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, CITY shall have the right to terminate this Contract without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.
- (f) The fee structure and hourly rates may be revised only by written Task Assignment, agreed to by both parties to this agreement.

7. **Ownership of Documents.** CMAR shall make available to CITY all reproducible copies of plans, drawings, specifications, ideas, concepts, designs, sketches, models, artwork, programs, software, reports, or other tangible work product produced, originally developed, or submitted to CITY by CMAR pursuant to this Contract (hereinafter referred to as the "Original Work Product").

- (a) CMAR shall deliver reproduced copies of all Original Work Product to CITY upon completion, unless it is necessary for CMAR, in CITY's sole discretion, to retain possession for a longer period of time. Upon early termination of CMAR's services, CMAR shall deliver all Original Work Product, whether complete or not. CITY shall have the right to use any and all work product. CMAR shall retain copies for its permanent records; however, the same cannot be used without CITY's prior express written consent. CMAR agrees not to recreate any designs, or any other tangible work product contemplated by or originally developed under this Contract, or portions thereof, which if constructions or otherwise materialized, would be reasonably identifiable with the tangible work product originally developed by CMAR.
- (b) CITY exclusively retains all ownership and manufacturing rights to all materials or designs developed under this Agreement. To the extent the Services performed under this Agreement

produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for CITY as the author, creator, or inventor thereof upon creation, and CITY shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. CMAR shall assign to CITY, all rights without limitation, including the copyright with respect to such work.

8. **Insurance.**

- (a) CMAR 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 CMAR/Vendor as required herein shall be considered, and CMAR/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 CMAR/Vendor as required herein.
- (b) Nothing herein shall be construed to extend the City of Zephyrhills's liability beyond that provided in section 768.28, Florida Statutes.
- (c) If the Continuing Service Project 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 CMAR 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 CMAR'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 CMAR shall be responsible. The risk of loss whether insured or not shall remain with the CMAR until final acceptance. Upon request, CMAR shall furnish to the City complete copies of the insurance policy.
- (d) All such insurance required in paragraph (a) shall be with companies and on forms acceptable to CITY, shall name CITY, and its agents, employees, and assigns as additional insured, except the policies shall provide that the coverage may not be reduced or canceled unless 30 days' prior written notice is furnished to CITY. Certificates of insurance and copies of all policies shall be furnished to CITY within 10 days of the date of this Contract. In the event of any

cancellation or reduction of coverage, CMAR shall obtain substitute coverage as required hereunder, without any lapse of coverage to CITY whatsoever.

- (e) CMAR will provide to CITY, within 10 days after the date of this Contract, (1) the original of the policy evidencing the existence of such insurance coverage, which CITY shall copy and return to CMAR within Seven (7) days, (2) proof acceptable to CITY that the premium for such policy for a period ending no earlier than 6 months after the date of this Contract has been paid in full by CMAR, and (3) a certificate of the insurer addressed to CITY evidencing the existence of such insurance coverage. CMAR will promptly renew, will keep and maintain in full force and effect, and will pay all premiums becoming due on said policy of insurance, and without request or demand CMAR will promptly provide proof thereof to CITY. If any such policy of insurance is a "claims made" policy, and not an "occurrence" policy, CMAR agrees to keep and maintain same in full force and effect for a period expiring not earlier than 12 months after construction of Continuing Service Projects is completed, and each such policy, or renewal or replacement policy, shall provide coverage for the acts and omissions of CMAR for all times subsequent to the date of this Contract.

9. **Representations.** CMAR hereby represents to CITY that:

- (a) It has the experience and skill to perform the services required to be performed by this Contract.
- (b) It shall provide and employ, in connection with the performance of such services, personnel qualified and experienced in their profession; it being understood that CITY may at any time require CMAR to remove, and CMAR shall immediately remove, any person employed in connection with the performance of the services who in the sole opinion of CITY is unfit for the proper performance of his/her duties.
- (c) It shall design to and comply with applicable non-conflicting federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements (both corporate and individual for all required basic disciplines) in effect during the term of this Contract, and shall, if requested by CITY, provide certification of compliance with all registration and licensing requirements.
- (d) It shall perform said services in accordance with generally accepted professional standards in an expeditious and economical manner.
- (e) It is adequately financed to meet any financial obligations it may be required to incur under this Contract.
- (f) The designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services of CMAR shall not call for the use of nor infringe any patent, trademark, service mark, copyright, or other proprietary interest claimed or held by any person or business entity absent prior written consent from CITY and such other person.

10. **Expense Records.** CMAR agrees to keep and maintain all of its direct personnel expense records, consultant and subcontractor expense records, and other expense records, pertaining to Continuing Service Projects, and its record of accounts between CMAR and CITY pertaining to

Continuing Service Projects, on a general recognized and acceptable accounting basis, and the same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying. The records and documentation shall be retained by CMAR for a minimum of three (3) years from the date of termination of this Agreement or the date the Task Authorization is completed, or such longer period of time as may be required by this Agreement or law, whichever is later. CMAR agrees to keep and maintain accurate time records to within the nearest one tenth of an hour for each time entry, of all work performed by employees of CMAR, and same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying.

11. **Termination, Suspension, Disputes, or Abandonment.** The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon thirty (30) days written notice to CMAR. In such event, the City shall pay CMAR compensation for Services rendered prior to the effective date of termination. The City shall not be liable to CMAR for any additional compensation, or for any consequential or incidental damages.
 - (a) If Continuing Service Projects are terminated or suspended by CITY, CITY shall pay CMAR all fees which have become due and payable to CMAR for that portion of the work of CMAR properly completed prior to such abandonment or suspension, and CITY shall have no further obligation to CMAR for payment to CMAR of the remainder of its fees, unless and until Continuing Service Projects are resumed by CITY. CMAR, at the option of CITY, shall complete the services of CMAR under this Contract upon resumption by CITY of Continuing Service Projects, and CMAR shall in that event be entitled to payment of the remaining unpaid fees which become payable to it under this Contract, same to be payable at the times and in the manner specified in this Contract. In no event will any fee or part thereof become due or payable to CMAR under this Contract unless and until CMAR has attained and completed that stage of work where the same would be due and payable.
 - (b) In the event of any such suspension or termination without cause, CITY shall pay to CMAR only that portion of the fee and compensation hereunder for the Basic Services of CMAR which has become due and payable to CMAR under the provisions of this Contract, and the remainder of CMAR's fees under this Contract shall be cancelled. Additionally, CITY shall pay other necessary, unavoidable, and reasonable expenses incurred by CMAR as a result of such suspension or termination (such as canceling orders for equipment, material, or services). Unless CITY authorizes CMAR to the contrary, CMAR shall not perform any services and shall not be entitled to receive payment from CITY on account of any such services performed during the period of suspension or after termination. Upon receipt of notice from CITY that the suspension has been canceled, CMAR shall perform its remaining services in accordance with the terms of this Contract and CMAR shall be entitled to time extension equal to the period of suspension.
 - (c) If CMAR fails to comply with any term or condition of this Agreement, or fails to perform any of its obligation hereunder, then CMAR shall be in default. The City shall have the right to terminate this Agreement, in the event CMAR fails to cure a default within ten (10) business days after receiving Notice of Default. CMAR understands and agrees that termination of this Agreement under this section shall not release CMAR from any obligations accruing prior to the effective date of termination.
12. **Assignability.** This Contract is for the personal services of CMAR and may not be assigned by CMAR in any fashion, whether by operation of law, or by conveyance of any type, including

without limitation, transfer of stock in CMAR, without the prior written consent of CITY, which consent CITY may withhold in its sole discretion.

13. **Errors and/or Omissions.** CMAR shall be obligated and responsible to CITY for, reasonable damages and additional costs and/or expenses in connection with construction of or delay in construction of Continuing Service Projects or otherwise incurred, sustained, and/or paid by CITY to the extent caused by (1) negligent errors and/or omissions made by CMAR in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services pursuant to this Contract and the project's Scope of Services for CMAR, and (2) negligent acts or omissions on the part of CMAR in any designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services or in the performance of any other services under this Contract and the project's Scope of Services for CMAR. It is the intent of the parties hereto that CMAR be held to and accountable for a degree of professionalism that is customary in the industry and commercially reasonable and for accuracy in the performance of the services of CMAR under this Agreement. CITY will hold CMAR harmless for any loss or claim related to an error or omission caused by the negligence of the CITY.
14. **Subcontractors/Separate contractors/consultants.**
 - (a) Any proposed subcontractors or subconsultants shall be submitted to CITY for approval prior to CMAR entering into a subcontract agreement. Such approval by CITY shall not be unreasonably withheld. CITY shall not be liable to CMAR in any manner whatsoever arising out of the CITY's objection to a proposed subcontractor or subconsultant.
 - (b) CMAR shall coordinate the services and work product of any subcontractor or subconsultant and remain fully responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services furnished by CMAR or its subcontractors or subconsultants and CMAR shall review and approve any designs, drawings, specifications, shop drawings, submittals, work, materials, processes of manufacture, methods of construction, or other services produced or furnished by any subcontractors or subconsultants prior to submittal to CITY. CMAR shall correct or revise any of its errors or deficiencies in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services produced pursuant to this Contract and shall provide CITY with such corrected or revised designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services incorporating such corrections or revisions at its sole cost and expense.
 - (c) Any subcontractor or subconsultant agreement shall reflect the terms of this Contract and require the subcontractor or subconsultant, to the extent of the services to be performed by the subcontractor or subconsultant, to assume toward CMAR all the obligations which CMAR by this Contract assumes toward CITY, it being understood that nothing herein shall in any way relieve CMAR from any of its duties under this Contract.
 - (d) CMAR shall cooperate at all times with CITY, and cooperate and coordinate with, and incorporate the work product of, any separate contractor, in any fashion appropriate or necessary to facilitate the construction of Continuing Service Projects within the project's budget and schedule. In the event CITY so elects and upon written mutual consent (which consent shall not

be unreasonably withheld), as evidenced by a Task Assignment to this Contract, CMAR shall accept any assignment of any agreement or contract CITY may have with any separate contractor.

15. **Indemnification.** CMAR 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 CMAR, its officers, agents or employees in performance or non-performance of its obligations under the Agreement. CMAR recognizes the broad nature of this indemnification and hold harmless clause, as well as the agreement 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 CMAR 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.

16. **Governing Law.** This Contract shall be construed in accordance with, and be governed by, the laws of the State of Florida, and any dispute, difference, claim or counterclaim between CITY and CMAR arising out of or in connection with this Contract which cannot be amicably resolved by the parties shall be submitted to the Circuit Court in and for Pasco County, Florida (or if the Circuit Court does not have jurisdiction over the subject matter, then to the court sitting in Pasco County which has subject matter jurisdiction) for trial and determination by the court sitting without jury. The parties agree and are encouraged to submit such disputes to non-binding mediation by a mediator who is certified in Florida in an effort to resolve issues in an expedient manner. The parties consent to the jurisdiction of such court and to the service of process outside the State of Florida pursuant to the requirements of such court, and they expressly waive the right to a jury trial.
17. **Entire Agreement.** This Contract, together with any other documents incorporated herein by reference, and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Contract, and the related exhibits, proposals, and schedules (other than an exception expressly set forth as such in the schedules), the statements in the body of this Contract shall control. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.
18. **Evaluation.** CMAR will be evaluated by CITY during the Contract period, at intervals established by CITY, and at the end of the construction of Continuing Service Projects. The results of each evaluation will be considered as tools for the measurement of CMAR's past performance and may be included in the review process for future solicitations for services. A

copy of the evaluation(s) will be provided to CMAR upon request.

19. **Independent Contractor.** CMAR 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, CMAR 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. CMAR further understands that Florida workers' compensation benefits available to employees of the City, are not available to CMAR. Therefore, CMAR agrees to provide workers' compensation insurance for any employee or agent of CMAR rendering services to the City under this Contract.
20. **Notices.** All notices, demands, correspondence and communication between the City and CMAR 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 CMAR:

SEMCO Construction, Inc.
ATTN: Jennifer Hall
205 Century Blvd.
Bartow, FL 33830
bids@semco.cc

To CITY:

City of Zephyrhills
ATTN: City Manager
5335 8th Street
Zephyrhills, Florida 33542
wpoe@ci.zephyrhills.fl.us

With copy to:

Matthew E. Maggard, Esq.
Shumaker, Loop & Kendrick, LLP
13134 US Highway 301
Dade City, Florida 33525
mmaggard@shumaker.com

21. **MISCELLANEOUS PROVISIONS.**

- (a) The CMAR agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Contract.
- (b) The continuing services to be provided by CMAR pursuant to this Contract shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.
- (c) This Agreement shall be binding upon the Parties herein, their heirs, executors, legal

representatives, successors and assigns.

- (d) The CMAR 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) The City may withhold any payment in an amount that is sufficient to pay the direct costs and expenses the City reasonably expects to incur to protect City from liabilities for which CMAR is responsible
- (i) The City reserves the right to audit the records of the CMAR covered by this Contract at any time during the provision of Services and for a period of three (3) years after final payment is made under this Contract.

22. **PUBLIC RECORDS. IF THE CONSULTANT/CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'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.**

[The remainder of this page is intentionally left blank.]

IN WITNESS THEREOF, the above parties have executed this instrument, the name of each party being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

OWNER

CMAR

CITY OF ZEPHYRHILLS, FLORIDA

SEMCO CONSTRUCTION, INC.

By: _____
Charles E. Proctor
City Council President

By: _____
Name: _____
Its: _____

ATTEST:

ATTEST:

By: _____
Ricardo Quiñones, City Clerk

By: _____
Name: _____
Its: _____

Vendor	Total Score
Beck	84.5
Blackwater Construction Services LLC	80
Cathcart Construction Company - Florida, LLC	74.75
Centennial Contractors Enterprises, Inc.	74
Foresight Construction Group, Inc.	84.25
Friedrich Watkins of Tampa, LLC.	84.75
Kokolakis Contracting	86.75
LEGO Construction Co.	77.5
New Vista Builders Group	70
Ryman Construction of Florida, Inc.	87.5
SEMCO Construction, Inc.	87.75
The A.D. Morgan Corporation	87.75
Trias Construction LLC	82.5
Wharton-Smith, Inc.	92.75
CII Contracting	81.75
Hometown Services of Florida, Inc.	87.5
National Metering Services, Inc.	83.25
Razorback LLC	86
RCM Utilities, LLC	86.25
The Cao Group, LLC	73.5

CONSENT ITEMS 1.9

Approval of Agreement **37-25-12** - Construction Manager at Risk (CMAR) - Ryman Construction of Florida

Issue:

Request Council approval of agreement with Ryman Construction of Florida for Construction Manager at Risk (CMAR) services. The City advertised for RFP responses for CMAR services for all departments when necessary.

Background:

The City of Zephyrhills advertised, via public RFP, for a minimum of three (3) CMAR's. A total of fourteen (14) responses were received, and the evaluation committee approved four (4) of them.

Attached for consideration is the agreement with Ryman Construction of Florida for Construction Manager at Risk services.

Attachment(s):

1. 36441250v1 - Ryman Construction_CMAR_Continuing Services Agreement
2. Wirtten Ranking

Fiscal Impact:

The fiscal impact will vary from year to year dependent upon the projects given approval by the City Council.

Projects classified under CMAR will have a maximum price of \$7,500,000/project.

Staff Recommendation:

It is the recommendation of staff to the City Council to approve agreement #37-25-12.

CONSTRUCTION MANAGER AT RISK CONTINUING SERVICES AGREEMENT

THIS CONSTRUCTION MANAGER AT RISK CONTINUING SERVICES AGREEMENT (the "Contract"), made this ____ day of _____ 2025, between CITY OF ZEPHYRHILLS a Florida municipal corporation, having its principal office at 5335 8th Street, Zephyrhills, FL 33542 (hereinafter referred to as "CITY" or "Owner"), and Ryman Construction of Florida, Inc., a Florida Corporation authorized to do business in the State of Florida, having its principal office at 36413 SR 54, Zephyrhills, FL 33541 (hereinafter referred to as "CMAR").

WHEREAS, CITY desires to obtain services as stated in the Request for Proposal RFP #2025-004 incorporated herein by reference from CMAR for assigned projects within the City of Zephyrhills, Florida (hereinafter referred to as "Professional Services-City Wide Continuing Service Projects") and issued RFP #2025-004 to find qualified professionals to fulfill the need for these services. Pursuant to Section 255.103(4), Florida Statutes, the total construction cost of each individual project shall not exceed \$7,500,000.00. Although the primary professional service sought by the contract is for Construction Manager at Risk services, this Contract may cover other construction services if CMAR possesses the professional licensing and registration to legally perform these services. Further, CMAR may hire others who are properly licensed to perform construction services; and

WHEREAS, the Term of Contract is three (3) years after CITY approves the Contract, and CITY may, at its option, at a regular or special City Council meeting; renew this Contract at the end of the Term for an additional renewal term of two (2), three (3) year terms for a maximum term of nine years; and

WHEREAS, CITY retains CMAR, to perform the services described herein, and other required professional services on an "as needed" basis, as designated, authorized, and assigned by CITY, and CITY agrees to compensate CMAR for such services in accordance with this Contract; and

WHEREAS, it is the primary intent of this Contract to ensure that CMAR is available to provide services, in accordance with prior, mutually agreed upon conditions, and CITY has complied with all requirements of Section 287.055, Florida Statutes the "Consultants Competitive Negotiations Act," in the selection of CMAR and negotiations for this Contract; and

NOW, THEREFORE, CITY and CMAR, for and in consideration of the provisions, mutual promises, covenants and conditions hereinafter set forth or recited, agree as follows:

1. **Recitals.** The recitals in the WHEREAS clauses are incorporated by reference and made a part of this Contract.
2. **Incorporation of Request for Qualification and Response.** Request for Proposal (RFP) #2025-004 is incorporated into this Contract by reference. CMAR's response to the RFP is attached hereto and incorporated herein as Exhibit A.
3. **Scope of Services.**
 - (a) CMAR agrees to furnish and perform general construction services during design and construction phases of a Continuing Service Project ("Project" or "Task Assignment") in accordance with the terms and conditions set forth herein in accordance with generally accepted

professional standards to achieve a total cost to CITY which does not exceed the Project Budget. The scope of services (hereinafter referred to as "Basic Services") to be performed by CMAR under this Contract, to the satisfaction of CITY, shall be identified in Task Assignment. CMAR agrees to furnish and perform Basic Services and construction phase services as may be required in the specific scope of work and enumerated and described in the Task Assignment, in connection with Continuing Service Projects. CMAR further agrees to furnish and perform professional services not included as Basic Services (hereinafter referred to as "Additional Services"), when and if such Additional services are requested and authorized by CITY, in writing. The Hourly Labor Rates and Unit Rates for Basic and Additional Services is found in Exhibit B – Hourly Rate Schedule. No Additional Services shall be furnished by CMAR unless specifically requested and authorized by CITY in writing.

- (b) Continuing Service Projects shall be designed in accordance with all applicable Florida Statutes and the current City of Zephyrhills Ordinances in effect at the time this Contract is approved, or the work is performed.
- 4. **Project Construction Budget.** CMAR shall be provided with an individual Project Construction Budget for each Continuing Services Contract (Task Assignment). By accepting a Task Assignment, CMAR acknowledges that the Project Construction Budget is of the essence of this Contract and CMAR agrees to perform, in accordance with generally accepted professional standards.
 - (a) Although CITY looks to CMAR for the responsibility of design meeting CITY's Project Construction Budget, CITY may hire a cost consultant to verify costs on specific projects. CMAR shall cooperate with the CITY's cost consultant by providing all necessary information for the preparation and updating of all estimates of construction costs throughout all phases of Continuing Service Projects.
 - (b) The Construction Budget shall be defined as the total budget identified for the construction of Continuing Service Projects.
- 5. **Time of Completion.** CMAR shall commence Basic Services upon receipt of the Notice to Proceed and a purchase order issued by CITY. CMAR shall include in its proposal a schedule for the successful and timely completion of the project. Project schedule shall include the proposed start date, substantial completion date, and final completion date. The schedule will be agreed upon in writing on a project by project basis. CMAR shall complete work in accordance with the schedule, it being understood that time is of the utmost importance in this Contract. CMAR shall accelerate performance of Basic Services and Additional Services in the manner reasonably directed by CITY, in the event CITY, in its sole discretion, determines that such acceleration is necessary to maintain the Schedule. If acceleration is required because of delays caused solely by CMAR, acceleration shall be at no cost to CITY. If acceleration is required because of delays partially caused by CMAR, the CITY will not compensate CMAR for the delay caused by CMAR; however, the cost associated with that portion of any such delay not caused by CMAR shall be compensated as an Additional Service.
- 6. **Fees.** CITY agrees to pay to CMAR for Basic Services, based upon Exhibit B – Hourly Rate and Unit Rate Schedule, CMAR will give CITY a detailed written proposal for the work, and shall identify the number of hours of work by category of workers performing the service. The categories must accurately reflect the type of service to be performed, not merely the job

description of the employee performing the service. No additional fee or compensation shall be payable to CMAR under this Contract for said services if the actual cost of construction or work to be designed by CMAR exceeds the proposal or budget.

- (a) Initiation of services shall be upon receipt of the Notice to Proceed and a purchase order basis, referencing a written proposal for services related to this Contract.
- (b) Invoices received by the CITY on or before the 20th of any month will be submitted for check release on or before the 25th of the following month.
- (c) The responsibility of CMAR for performing its obligation under this Contract and under the construction contract(s) is not relieved or affected in any respect by the presence of or inspection by employees or agents of CITY. CMAR agrees that the responsibility assumed by it for approving and certifying work for payment is not shared by an employee of CITY.
- (d) CMAR's fee for Additional Services will be computed in accordance with hourly rates as described in Exhibit B – Hourly Rate and Unit Rate Schedule.
- (e) CMAR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CMAR, to solicit or secure this Contract, and that CMAR has not paid or agreed to pay any person, company, corporation, individual, or firm other than bona fide employees working solely for CMAR, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, CITY shall have the right to terminate this Contract without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.
- (f) The fee structure and hourly rates may be revised only by written Task Assignment, agreed to by both parties to this agreement.

7. **Ownership of Documents.** CMAR shall make available to CITY all reproducible copies of plans, drawings, specifications, ideas, concepts, designs, sketches, models, artwork, programs, software, reports, or other tangible work product produced, originally developed, or submitted to CITY by CMAR pursuant to this Contract (hereinafter referred to as the "Original Work Product").

- (a) CMAR shall deliver reproduced copies of all Original Work Product to CITY upon completion, unless it is necessary for CMAR, in CITY's sole discretion, to retain possession for a longer period of time. Upon early termination of CMAR's services, CMAR shall deliver all Original Work Product, whether complete or not. CITY shall have the right to use any and all work product. CMAR shall retain copies for its permanent records; however, the same cannot be used without CITY's prior express written consent. CMAR agrees not to recreate any designs, or any other tangible work product contemplated by or originally developed under this Contract, or portions thereof, which if constructions or otherwise materialized, would be reasonably identifiable with the tangible work product originally developed by CMAR.
- (b) CITY exclusively retains all ownership and manufacturing rights to all materials or designs developed under this Agreement. To the extent the Services performed under this Agreement

produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for CITY as the author, creator, or inventor thereof upon creation, and CITY shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. CMAR shall assign to CITY, all rights without limitation, including the copyright with respect to such work.

8. **Insurance.**

- (a) CMAR 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 CMAR/Vendor as required herein shall be considered, and CMAR/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 CMAR/Vendor as required herein.
- (b) Nothing herein shall be construed to extend the City of Zephyrhills's liability beyond that provided in section 768.28, Florida Statutes.
- (c) If the Continuing Service Project 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 CMAR 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 CMAR'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 CMAR shall be responsible. The risk of loss whether insured or not shall remain with the CMAR until final acceptance. Upon request, CMAR shall furnish to the City complete copies of the insurance policy.
- (d) All such insurance required in paragraph (a) shall be with companies and on forms acceptable to CITY, shall name CITY, and its agents, employees, and assigns as additional insured, except the policies shall provide that the coverage may not be reduced or canceled unless 30 days' prior written notice is furnished to CITY. Certificates of insurance and copies of all policies shall be furnished to CITY within 10 days of the date of this Contract. In the event of any

cancellation or reduction of coverage, CMAR shall obtain substitute coverage as required hereunder, without any lapse of coverage to CITY whatsoever.

- (e) CMAR will provide to CITY, within 10 days after the date of this Contract, (1) the original of the policy evidencing the existence of such insurance coverage, which CITY shall copy and return to CMAR within Seven (7) days, (2) proof acceptable to CITY that the premium for such policy for a period ending no earlier than 6 months after the date of this Contract has been paid in full by CMAR, and (3) a certificate of the insurer addressed to CITY evidencing the existence of such insurance coverage. CMAR will promptly renew, will keep and maintain in full force and effect, and will pay all premiums becoming due on said policy of insurance, and without request or demand CMAR will promptly provide proof thereof to CITY. If any such policy of insurance is a "claims made" policy, and not an "occurrence" policy, CMAR agrees to keep and maintain same in full force and effect for a period expiring not earlier than 12 months after construction of Continuing Service Projects is completed, and each such policy, or renewal or replacement policy, shall provide coverage for the acts and omissions of CMAR for all times subsequent to the date of this Contract.

9. **Representations.** CMAR hereby represents to CITY that:

- (a) It has the experience and skill to perform the services required to be performed by this Contract.
- (b) It shall provide and employ, in connection with the performance of such services, personnel qualified and experienced in their profession; it being understood that CITY may at any time require CMAR to remove, and CMAR shall immediately remove, any person employed in connection with the performance of the services who in the sole opinion of CITY is unfit for the proper performance of his/her duties.
- (c) It shall design to and comply with applicable non-conflicting federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements (both corporate and individual for all required basic disciplines) in effect during the term of this Contract, and shall, if requested by CITY, provide certification of compliance with all registration and licensing requirements.
- (d) It shall perform said services in accordance with generally accepted professional standards in an expeditious and economical manner.
- (e) It is adequately financed to meet any financial obligations it may be required to incur under this Contract.
- (f) The designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services of CMAR shall not call for the use of nor infringe any patent, trademark, service mark, copyright, or other proprietary interest claimed or held by any person or business entity absent prior written consent from CITY and such other person.

10. **Expense Records.** CMAR agrees to keep and maintain all of its direct personnel expense records, consultant and subcontractor expense records, and other expense records, pertaining to Continuing Service Projects, and its record of accounts between CMAR and CITY pertaining to

Continuing Service Projects, on a general recognized and acceptable accounting basis, and the same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying. The records and documentation shall be retained by CMAR for a minimum of three (3) years from the date of termination of this Agreement or the date the Task Authorization is completed, or such longer period of time as may be required by this Agreement or law, whichever is later. CMAR agrees to keep and maintain accurate time records to within the nearest one tenth of an hour for each time entry, of all work performed by employees of CMAR, and same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying.

11. **Termination, Suspension, Disputes, or Abandonment.** The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon thirty (30) days written notice to CMAR. In such event, the City shall pay CMAR compensation for Services rendered prior to the effective date of termination. The City shall not be liable to CMAR for any additional compensation, or for any consequential or incidental damages.
 - (a) If Continuing Service Projects are terminated or suspended by CITY, CITY shall pay CMAR all fees which have become due and payable to CMAR for that portion of the work of CMAR properly completed prior to such abandonment or suspension, and CITY shall have no further obligation to CMAR for payment to CMAR of the remainder of its fees, unless and until Continuing Service Projects are resumed by CITY. CMAR, at the option of CITY, shall complete the services of CMAR under this Contract upon resumption by CITY of Continuing Service Projects, and CMAR shall in that event be entitled to payment of the remaining unpaid fees which become payable to it under this Contract, same to be payable at the times and in the manner specified in this Contract. In no event will any fee or part thereof become due or payable to CMAR under this Contract unless and until CMAR has attained and completed that stage of work where the same would be due and payable.
 - (b) In the event of any such suspension or termination without cause, CITY shall pay to CMAR only that portion of the fee and compensation hereunder for the Basic Services of CMAR which has become due and payable to CMAR under the provisions of this Contract, and the remainder of CMAR's fees under this Contract shall be cancelled. Additionally, CITY shall pay other necessary, unavoidable, and reasonable expenses incurred by CMAR as a result of such suspension or termination (such as canceling orders for equipment, material, or services). Unless CITY authorizes CMAR to the contrary, CMAR shall not perform any services and shall not be entitled to receive payment from CITY on account of any such services performed during the period of suspension or after termination. Upon receipt of notice from CITY that the suspension has been canceled, CMAR shall perform its remaining services in accordance with the terms of this Contract and CMAR shall be entitled to time extension equal to the period of suspension.
 - (c) If CMAR fails to comply with any term or condition of this Agreement, or fails to perform any of its obligation hereunder, then CMAR shall be in default. The City shall have the right to terminate this Agreement, in the event CMAR fails to cure a default within ten (10) business days after receiving Notice of Default. CMAR understands and agrees that termination of this Agreement under this section shall not release CMAR from any obligations accruing prior to the effective date of termination.
12. **Assignability.** This Contract is for the personal services of CMAR and may not be assigned by CMAR in any fashion, whether by operation of law, or by conveyance of any type, including

without limitation, transfer of stock in CMAR, without the prior written consent of CITY, which consent CITY may withhold in its sole discretion.

13. **Errors and/or Omissions.** CMAR shall be obligated and responsible to CITY for, reasonable damages and additional costs and/or expenses in connection with construction of or delay in construction of Continuing Service Projects or otherwise incurred, sustained, and/or paid by CITY to the extent caused by (1) negligent errors and/or omissions made by CMAR in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services pursuant to this Contract and the project's Scope of Services for CMAR, and (2) negligent acts or omissions on the part of CMAR in any designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services or in the performance of any other services under this Contract and the project's Scope of Services for CMAR. It is the intent of the parties hereto that CMAR be held to and accountable for a degree of professionalism that is customary in the industry and commercially reasonable and for accuracy in the performance of the services of CMAR under this Agreement. CITY will hold CMAR harmless for any loss or claim related to an error or omission caused by the negligence of the CITY.
14. **Subcontractors/Separate contractors/consultants.**
 - (a) Any proposed subcontractors or subconsultants shall be submitted to CITY for approval prior to CMAR entering into a subcontract agreement. Such approval by CITY shall not be unreasonably withheld. CITY shall not be liable to CMAR in any manner whatsoever arising out of the CITY's objection to a proposed subcontractor or subconsultant.
 - (b) CMAR shall coordinate the services and work product of any subcontractor or subconsultant and remain fully responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services furnished by CMAR or its subcontractors or subconsultants and CMAR shall review and approve any designs, drawings, specifications, shop drawings, submittals, work, materials, processes of manufacture, methods of construction, or other services produced or furnished by any subcontractors or subconsultants prior to submittal to CITY. CMAR shall correct or revise any of its errors or deficiencies in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services produced pursuant to this Contract and shall provide CITY with such corrected or revised designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services incorporating such corrections or revisions at its sole cost and expense.
 - (c) Any subcontractor or subconsultant agreement shall reflect the terms of this Contract and require the subcontractor or subconsultant, to the extent of the services to be performed by the subcontractor or subconsultant, to assume toward CMAR all the obligations which CMAR by this Contract assumes toward CITY, it being understood that nothing herein shall in any way relieve CMAR from any of its duties under this Contract.
 - (d) CMAR shall cooperate at all times with CITY, and cooperate and coordinate with, and incorporate the work product of, any separate contractor, in any fashion appropriate or necessary to facilitate the construction of Continuing Service Projects within the project's budget and schedule. In the event CITY so elects and upon written mutual consent (which consent shall not

be unreasonably withheld), as evidenced by a Task Assignment to this Contract, CMAR shall accept any assignment of any agreement or contract CITY may have with any separate contractor.

15. **Indemnification.** CMAR 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 CMAR, its officers, agents or employees in performance or non-performance of its obligations under the Agreement. CMAR recognizes the broad nature of this indemnification and hold harmless clause, as well as the agreement 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 CMAR 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.

16. **Governing Law.** This Contract shall be construed in accordance with, and be governed by, the laws of the State of Florida, and any dispute, difference, claim or counterclaim between CITY and CMAR arising out of or in connection with this Contract which cannot be amicably resolved by the parties shall be submitted to the Circuit Court in and for Pasco County, Florida (or if the Circuit Court does not have jurisdiction over the subject matter, then to the court sitting in Pasco County which has subject matter jurisdiction) for trial and determination by the court sitting without jury. The parties agree and are encouraged to submit such disputes to non-binding mediation by a mediator who is certified in Florida in an effort to resolve issues in an expedient manner. The parties consent to the jurisdiction of such court and to the service of process outside the State of Florida pursuant to the requirements of such court, and they expressly waive the right to a jury trial.
17. **Entire Agreement.** This Contract, together with any other documents incorporated herein by reference, and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Contract, and the related exhibits, proposals, and schedules (other than an exception expressly set forth as such in the schedules), the statements in the body of this Contract shall control. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.
18. **Evaluation.** CMAR will be evaluated by CITY during the Contract period, at intervals established by CITY, and at the end of the construction of Continuing Service Projects. The results of each evaluation will be considered as tools for the measurement of CMAR's past performance and may be included in the review process for future solicitations for services. A

copy of the evaluation(s) will be provided to CMAR upon request.

19. **Independent Contractor.** CMAR 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, CMAR 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. CMAR further understands that Florida workers' compensation benefits available to employees of the City, are not available to CMAR. Therefore, CMAR agrees to provide workers' compensation insurance for any employee or agent of CMAR rendering services to the City under this Contract.
20. **Notices.** All notices, demands, correspondence and communication between the City and CMAR 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 CMAR:

Ryman Construction of Florida, Inc.
ATTN: Michael Prado
36413 SR 54, Zephyrhills, FL 33541
mprado@rymanconstruction.com

To CITY:

City of Zephyrhills
ATTN: City Manager
5335 8th Street
Zephyrhills, Florida 33542
wpoe@ci.zephyrhills.fl.us

With copy to:

Matthew E. Maggard, Esq.
Shumaker, Loop & Kendrick, LLP
13134 US Highway 301
Dade City, Florida 33525
mmaggard@shumaker.com

21. **MISCELLANEOUS PROVISIONS.**

- (a) The CMAR agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Contract.
- (b) The continuing services to be provided by CMAR pursuant to this Contract shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.
- (c) This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.
- (d) The CMAR 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.

- (e) 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.
- (f) 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.
- (g) 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.
- (h) The City may withhold any payment in an amount that is sufficient to pay the direct costs and expenses the City reasonably expects to incur to protect City from liabilities for which CMAR is responsible
- (i) The City reserves the right to audit the records of the CMAR covered by this Contract at any time during the provision of Services and for a period of three (3) years after final payment is made under this Contract.

22. **PUBLIC RECORDS. IF THE CONSULTANT/CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'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.**

[The remainder of this page is intentionally left blank.]

IN WITNESS THEREOF, the above parties have executed this instrument, the name of each patty being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

OWNER

CMAR

CITY OF ZEPHYRHILLS, FLORIDA

**RYMAN CONSTRUCTION OF
FLORIDA, INC.**

By: _____
Charles E. Proctor
City Council President

By: _____
Name: _____
Its: _____

ATTEST:

ATTEST:

By: _____
Ricardo Quiñones, City Clerk

By: _____
Name: _____
Its: _____

Vendor	Total Score
Beck	84.5
Blackwater Construction Services LLC	80
Cathcart Construction Company - Florida, LLC	74.75
Centennial Contractors Enterprises, Inc.	74
Foresight Construction Group, Inc.	84.25
Friedrich Watkins of Tampa, LLC.	84.75
Kokolakis Contracting	86.75
LEGO Construction Co.	77.5
New Vista Builders Group	70
Ryman Construction of Florida, Inc.	87.5
SEMCO Construction, Inc.	87.75
The A.D. Morgan Corporation	87.75
Trias Construction LLC	82.5
Wharton-Smith, Inc.	92.75
CII Contracting	81.75
Hometown Services of Florida, Inc.	87.5
National Metering Services, Inc.	83.25
Razorback LLC	86
RCM Utilities, LLC	86.25
The Cao Group, LLC	73.5

CONSENT ITEMS 1.10

Approval of General Construction Agreement **41-25-13** to RCM Utilities

Issue:

Request Council approval of RCM Utilities general construction services agreement. The City advertised for RFP responses for General Construction Services for all Departments when necessary.

Background:

The City of Zephyrhills advertised via public RFP, for a minimum of three (3) contractors for miscellaneous construction and/or repairs to City facilities, utility lines, etc. A total of five (5) responses were received, and the evaluation committee approved four (4) of them.

Attached for consideration is the agreement with RCM Utilities for general construction services.

Attachment(s):

1. 36440704v1 - RCM Utilities_Gen Con Continuing Services Agreement
2. Written Ranking

Fiscal Impact:

The fiscal impact will vary from year to year dependent upon the projects given approval by the City Council.

Projects classified under miscellaneous construction and repair will have a maximum price of \$7,500,000.

Staff Recommendation:

It is the recommendation of staff to the City Council to approve agreement #41-25-13.

GENERAL CONSTRUCTION CONTINUING SERVICES AGREEMENT

THIS GENERAL CONSTRUCTION CONTINUING SERVICES AGREEMENT (the "Contract"), made this ____ day of _____ 2025, between CITY OF ZEPHYRHILLS a Florida municipal corporation, having its principal office at 5335 8th Street, Zephyrhills, FL 33542 (hereinafter referred to as "CITY" or "Owner"), and RCM Utilities, LLC, a Florida Limited Liability Company authorized to do business in the State of Florida, having its principal office at 1451 Pine Grove Road, Eustis, FL 32736 (hereinafter referred to as "Contractor").

WHEREAS, CITY desires to obtain services as stated in the Request for Proposal RFP #2025-004 incorporated herein by reference from Contractor for assigned projects within the City of Zephyrhills, Florida (hereinafter referred to as "Professional Services-City Wide Continuing Service Projects") and issued RFP #2025-004 to find qualified professionals to fulfill the need for these services. Pursuant to Section 255.103(4), Florida Statutes, the total construction cost of each individual project shall not exceed \$7,500,000.00. Although the primary professional service sought by the contract is for general construction services, this Contract may cover other construction services if Contractor possesses the professional licensing and registration to legally perform these services. Further, Contractor may hire others who are properly licensed to perform construction services; and

WHEREAS, the Term of Contract is three (3) years after CITY approves the Contract, and CITY may, at its option, at a regular or special City Council meeting; renew this Contract at the end of the Term for an additional renewal term of two (2), three (3) year terms for a maximum term of nine years; and

WHEREAS, CITY retains Contractor, to perform the services described herein, and other required professional services on an "as needed" basis, as designated, authorized, and assigned by CITY, and CITY agrees to compensate Contractor for such services in accordance with this Contract; and

WHEREAS, it is the primary intent of this Contract to ensure that Contractor is available to provide services, in accordance with prior, mutually agreed upon conditions, and CITY has complied with all requirements of Section 287.055, Florida Statutes the "Consultants Competitive Negotiations Act," in the selection of Contractor and negotiations for this Contract; and

NOW, THEREFORE, CITY and Contractor, for and in consideration of the provisions, mutual promises, covenants and conditions hereinafter set forth or recited, agree as follows:

1. **Recitals.** The recitals in the WHEREAS clauses are incorporated by reference and made a part of this Contract.
2. **Incorporation of Request for Qualification and Response.** Request for Proposal (RFP) #2025-004 is incorporated into this Contract by reference. Contractor's response to the RFP is attached hereto and incorporated herein as Exhibit A.
3. **Scope of Services.**
 - (a) Contractor agrees to furnish and perform general construction services during design and construction phases of a Continuing Service Project ("Project" or "Task Assignment") in accordance with the terms and conditions set forth herein in accordance with generally accepted

professional standards to achieve a total cost to CITY which does not exceed the Project Budget. The scope of services (hereinafter referred to as "Basic Services") to be performed by Contractor under this Contract, to the satisfaction of CITY, shall be identified in Task Assignment. Contractor agrees to furnish and perform Basic Services and construction phase services as may be required in the specific scope of work and enumerated and described in the Task Assignment, in connection with Continuing Service Projects. Contractor further agrees to furnish and perform professional services not included as Basic Services (hereinafter referred to as "Additional Services"), when and if such Additional services are requested and authorized by CITY, in writing. The Hourly Labor Rates and Unit Rates for Basic and Additional Services is found in Exhibit B – Hourly Rate Schedule. No Additional Services shall be furnished by Contractor unless specifically requested and authorized by CITY in writing.

- (b) Continuing Service Projects shall be designed in accordance with all applicable Florida Statutes and the current City of Zephyrhills Ordinances in effect at the time this Contract is approved, or the work is performed.
- 4. **Project Construction Budget.** Contractor shall be provided with an individual Project Construction Budget for each Continuing Services Contract (Task Assignment). By accepting a Task Assignment, Contractor acknowledges that the Project Construction Budget is of the essence of this Contract and Contractor agrees to perform, in accordance with generally accepted professional standards.
 - (a) Although CITY looks to Contractor for the responsibility of design meeting CITY's Project Construction Budget, CITY may hire a cost consultant to verify costs on specific projects. Contractor shall cooperate with the CITY's cost consultant by providing all necessary information for the preparation and updating of all estimates of construction costs throughout all phases of Continuing Service Projects.
 - (b) The Construction Budget shall be defined as the total budget identified for the construction of Continuing Service Projects.
- 5. **Time of Completion.** Contractor shall commence Basic Services upon receipt of the Notice to Proceed and a purchase order issued by CITY. Contractor shall include in its proposal a schedule for the successful and timely completion of the project. Project schedule shall include the proposed start date, substantial completion date, and final completion date. The schedule will be agreed upon in writing on a project by project basis. Contractor shall complete work in accordance with the schedule, it being understood that time is of the utmost importance in this Contract. Contractor shall accelerate performance of Basic Services and Additional Services in the manner reasonably directed by CITY, in the event CITY, in its sole discretion, determines that such acceleration is necessary to maintain the Schedule. If acceleration is required because of delays caused solely by Contractor, acceleration shall be at no cost to CITY. If acceleration is required because of delays partially caused by Contractor, the CITY will not compensate Contractor for the delay caused by Contractor; however, the cost associated with that portion of any such delay not caused by Contractor shall be compensated as an Additional Service.
- 6. **Fees.** CITY agrees to pay to Contractor for Basic Services, based upon Exhibit B – Hourly Rate and Unit Rate Schedule, Contractor will give CITY a detailed written proposal for the work, and shall identify the number of hours of work by category of workers performing the service. The

categories must accurately reflect the type of service to be performed, not merely the job description of the employee performing the service. No additional fee or compensation shall be payable to Contractor under this Contract for said services if the actual cost of construction or work to be designed by Contractor exceeds the proposal or budget.

- (a) Initiation of services shall be upon receipt of the Notice to Proceed and a purchase order basis, referencing a written proposal for services related to this Contract.
- (b) Invoices received by the CITY on or before the 20th of any month will be submitted for check release on or before the 25th of the following month.
- (c) The responsibility of Contractor for performing its obligation under this Contract and under the construction contract(s) is not relieved or affected in any respect by the presence of or inspection by employees or agents of CITY. Contractor agrees that the responsibility assumed by it for approving and certifying work for payment is not shared by an employee of CITY.
- (d) Contractor's fee for Additional Services will be computed in accordance with hourly rates as described in Exhibit B – Hourly Rate and Unit Rate Schedule.
- (e) Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, and that Contractor has not paid or agreed to pay any person, company, corporation, individual, or firm other than bona fide employees working solely for Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, CITY shall have the right to terminate this Contract without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.
- (f) The fee structure and hourly rates may be revised only by written Task Assignment, agreed to by both parties to this agreement.

7. **Ownership of Documents.** Contractor shall make available to CITY all reproducible copies of plans, drawings, specifications, ideas, concepts, designs, sketches, models, artwork, programs, software, reports, or other tangible work product produced, originally developed, or submitted to CITY by Contractor pursuant to this Contract (hereinafter referred to as the "Original Work Product").

- (a) Contractor shall deliver reproduced copies of all Original Work Product to CITY upon completion, unless it is necessary for Contractor, in CITY's sole discretion, to retain possession for a longer period of time. Upon early termination of Contractor's services, Contractor shall deliver all Original Work Product, whether complete or not. CITY shall have the right to use any and all work product. Contractor shall retain copies for its permanent records; however, the same cannot be used without CITY's prior express written consent. Contractor agrees not to recreate any designs, or any other tangible work product contemplated by or originally developed under this Contract, or portions thereof, which if constructions or otherwise materialized, would be reasonably identifiable with the tangible work product originally developed by Contractor.

- (b) CITY exclusively retains all ownership and manufacturing rights to all materials or designs developed under this Agreement. To the extent the Services performed under this Agreement produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for CITY as the author, creator, or inventor thereof upon creation, and CITY shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. Contractor shall assign to CITY, all rights without limitation, including the copyright with respect to such work.

8. **Insurance.**

- (a) 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.
- (b) Nothing herein shall be construed to extend the City of Zephyrhills's liability beyond that provided in section 768.28, Florida Statutes.
- (c) If the Continuing Service Project 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.
- (d) All such insurance required in paragraph (a) shall be with companies and on forms acceptable

to CITY, shall name CITY, and its agents, employees, and assigns as additional insured, except the policies shall provide that the coverage may not be reduced or canceled unless 30 days' prior written notice is furnished to CITY. Certificates of insurance and copies of all policies shall be furnished to CITY within 10 days of the date of this Contract. In the event of any cancellation or reduction of coverage, Contractor shall obtain substitute coverage as required hereunder, without any lapse of coverage to CITY whatsoever.

- (e) Contractor will provide to CITY, within 10 days after the date of this Contract, (1) the original of the policy evidencing the existence of such insurance coverage, which CITY shall copy and return to Contractor within Seven (7) days, (2) proof acceptable to CITY that the premium for such policy for a period ending no earlier than 6 months after the date of this Contract has been paid in full by Contractor, and (3) a certificate of the insurer addressed to CITY evidencing the existence of such insurance coverage. Contractor will promptly renew, will keep and maintain in full force and effect, and will pay all premiums becoming due on said policy of insurance, and without request or demand Contractor will promptly provide proof thereof to CITY. If any such policy of insurance is a "claims made" policy, and not an "occurrence" policy, Contractor agrees to keep and maintain same in full force and effect for a period expiring not earlier than 12 months after construction of Continuing Service Projects is completed, and each such policy, or renewal or replacement policy, shall provide coverage for the acts and omissions of Contractor for all times subsequent to the date of this Contract.

9. **Representations.** Contractor hereby represents to CITY that:

- (a) It has the experience and skill to perform the services required to be performed by this Contract.
- (b) It shall provide and employ, in connection with the performance of such services, personnel qualified and experienced in their profession; it being understood that CITY may at any time require Contractor to remove, and Contractor shall immediately remove, any person employed in connection with the performance of the services who in the sole opinion of CITY is unfit for the proper performance of his/her duties.
- (c) It shall design to and comply with applicable non-conflicting federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements (both corporate and individual for all required basic disciplines) in effect during the term of this Contract, and shall, if requested by CITY, provide certification of compliance with all registration and licensing requirements.
- (d) It shall perform said services in accordance with generally accepted professional standards in an expeditious and economical manner.
- (e) It is adequately financed to meet any financial obligations it may be required to incur under this Contract.
- (f) The designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services of Contractor shall not call for the use of nor infringe any patent, trademark, service mark, copyright, or other proprietary interest claimed or held by any person or business entity absent prior written consent from CITY and such other person.

10. **Expense Records.** Contractor agrees to keep and maintain all of its direct personnel expense records, consultant and subcontractor expense records, and other expense records, pertaining to Continuing Service Projects, and its record of accounts between Contractor and CITY pertaining to Continuing Service Projects, on a general recognized and acceptable accounting basis, and the same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying. The records and documentation shall be retained by Contractor for a minimum of three (3) years from the date of termination of this Agreement or the date the Task Authorization is completed, or such longer period of time as may be required by this Agreement or law, whichever is later. Contractor agrees to keep and maintain accurate time records to within the nearest one tenth of an hour for each time entry, of all work performed by employees of Contractor, and same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying.

11. **Termination, Suspension, Disputes, or Abandonment.** The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon thirty (30) 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.
 - (a) If Continuing Service Projects are terminated or suspended by CITY, CITY shall pay Contractor all fees which have become due and payable to Contractor for that portion of the work of Contractor properly completed prior to such abandonment or suspension, and CITY shall have no further obligation to Contractor for payment to Contractor of the remainder of its fees, unless and until Continuing Service Projects are resumed by CITY. Contractor, at the option of CITY, shall complete the services of Contractor under this Contract upon resumption by CITY of Continuing Service Projects, and Contractor shall in that event be entitled to payment of the remaining unpaid fees which become payable to it under this Contract, same to be payable at the times and in the manner specified in this Contract. In no event will any fee or part thereof become due or payable to Contractor under this Contract unless and until Contractor has attained and completed that stage of work where the same would be due and payable.

 - (b) In the event of any such suspension or termination without cause, CITY shall pay to Contractor only that portion of the fee and compensation hereunder for the Basic Services of Contractor which has become due and payable to Contractor under the provisions of this Contract, and the remainder of Contractor's fees under this Contract shall be cancelled. Additionally, CITY shall pay other necessary, unavoidable, and reasonable expenses incurred by Contractor as a result of such suspension or termination (such as canceling orders for equipment, material, or services). Unless CITY authorizes Contractor to the contrary, Contractor shall not perform any services and shall not be entitled to receive payment from CITY on account of any such services performed during the period of suspension or after termination. Upon receipt of notice from CITY that the suspension has been canceled, Contractor shall perform its remaining services in accordance with the terms of this Contract and Contractor shall be entitled to time extension equal to the period of suspension.

 - (c) 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.

12. **Assignability.** This Contract is for the personal services of Contractor and may not be assigned by Contractor in any fashion, whether by operation of law, or by conveyance of any type, including without limitation, transfer of stock in Contractor, without the prior written consent of CITY, which consent CITY may withhold in its sole discretion.
13. **Errors and/or Omissions.** Contractor shall be obligated and responsible to CITY for, reasonable damages and additional costs and/or expenses in connection with construction of or delay in construction of Continuing Service Projects or otherwise incurred, sustained, and/or paid by CITY to the extent caused by (1) negligent errors and/or omissions made by Contractor in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services pursuant to this Contract and the project's Scope of Services for Contractor, and (2) negligent acts or omissions on the part of Contractor in any designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services or in the performance of any other services under this Contract and the project's Scope of Services for Contractor. It is the intent of the parties hereto that Contractor be held to and accountable for a degree of professionalism that is customary in the industry and commercially reasonable and for accuracy in the performance of the services of Contractor under this Agreement. CITY will hold Contractor harmless for any loss or claim related to an error or omission caused by the negligence of the CITY.
14. **Subcontractors/Separate contractors.**
 - (a) Any proposed subcontractors shall be submitted to CITY for approval prior to Contractor entering into a subcontract agreement. Such approval by CITY shall not be unreasonably withheld. CITY shall not be liable to Contractor in any manner whatsoever arising out of the CITY's objection to a proposed subcontractor.
 - (b) Contractor shall coordinate the services and work product of any subcontractor and remain fully responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services furnished by Contractor or its subcontractors, and Contractor shall review and approve any designs, drawings, specifications, shop drawings, submittals, work, materials, processes of manufacture, methods of construction, or other services produced or furnished by any subcontractors prior to submittal to CITY. Contractor shall correct or revise any of its errors or deficiencies in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services produced pursuant to this Contract and shall provide CITY with such corrected or revised designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services incorporating such corrections or revisions at its sole cost and expense.
 - (c) Any subcontractor agreement shall reflect the terms of this Contract and require the subcontractor, to the extent of the services to be performed by the subcontractor, to assume toward Contractor all the obligations which Contractor by this Contract assumes toward CITY, it being understood that nothing herein shall in any way relieve Contractor from any of its duties under this Contract.

- (d) Contractor shall cooperate at all times with CITY, and cooperate and coordinate with, and incorporate the work product of, any separate contractor, in any fashion appropriate or necessary to facilitate the construction of Continuing Service Projects within the project's budget and schedule. In the event CITY so elects and upon written mutual consent (which consent shall not be unreasonably withheld), as evidenced by a Task Assignment to this Contract, Contractor shall accept any assignment of any agreement or contract CITY may have with any separate contractor.

15. **Indemnification.** 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 agreement 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.

16. **Governing Law.** This Contract shall be construed in accordance with, and be governed by, the laws of the State of Florida, and any dispute, difference, claim or counterclaim between CITY and Contractor arising out of or in connection with this Contract which cannot be amicably resolved by the parties shall be submitted to the Circuit Court in and for Pasco County, Florida (or if the Circuit Court does not have jurisdiction over the subject matter, then to the court sitting in Pasco County which has subject matter jurisdiction) for trial and determination by the court sitting without jury. The parties agree and are encouraged to submit such disputes to non-binding mediation by a mediator who is certified in Florida in an effort to resolve issues in an expedient manner. The parties consent to the jurisdiction of such court and to the service of process outside the State of Florida pursuant to the requirements of such court, and they expressly waive the right to a jury trial.
17. **Entire Agreement.** This Contract, together with any other documents incorporated herein by reference, and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Contract, and the related exhibits, proposals, and schedules (other than an exception expressly set forth as such in the schedules), the statements in the body of this Contract shall control. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

18. **Evaluation.** Contractor will be evaluated by CITY during the Contract period, at intervals established by CITY, and at the end of the construction of Continuing Service Projects. The results of each evaluation will be considered as tools for the measurement of Contractor's past performance and may be included in the review process for future solicitations for services. A copy of the evaluation(s) will be provided to Contractor upon request.
19. **Independent Contractor.** 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 Contract.
20. **Notices.** 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:

RCM Utilities, LLC
ATTN: Nick Sellers
1451 Pine Grove Road
Eustis, FL 32726
nick@rcmutilities.com
allen@rcmutilities.com
bob@rcmutilities.com

To CITY:

City of Zephyrhills
ATTN: City Manager
5335 8th Street
Zephyrhills, Florida 33542
wpoe@ci.zephyrhills.fl.us

With copy to:

Matthew E. Maggard, Esq.
Shumaker, Loop & Kendrick, LLP
13134 US Highway 301
Dade City, Florida 33525
mmaggard@shumaker.com

21. **MISCELLANEOUS PROVISIONS.**

- (a) 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 Contract.

- (b) The continuing services to be provided by Contractor pursuant to this Contract shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.
- (c) This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) The City may withhold any payment in an amount that is sufficient to pay the direct costs and expenses the City reasonably expects to incur to protect City from liabilities for which Contractor is responsible
- (i) The City reserves the right to audit the records of the Contractor covered by this Contract at any time during the provision of Services and for a period of three (3) years after final payment is made under this Contract.

22. PUBLIC RECORDS. IF THE CONSULTANT/CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'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.

[The remainder of this page is intentionally left blank.]

IN WITNESS THEREOF, the above parties have executed this instrument, the name of each party being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

OWNER

CONTRACTOR

CITY OF ZEPHYRHILLS, FLORIDA

RCM UTILITIES, LLC

By: _____
Charles E. Proctor
City Council President

By: _____
Name: _____
Its: _____

ATTEST:

ATTEST:

By: _____
Ricardo Quiñones, City Clerk

By: _____
Name: _____
Its: _____

Vendor	Total Score
Beck	84.5
Blackwater Construction Services LLC	80
Cathcart Construction Company - Florida, LLC	74.75
Centennial Contractors Enterprises, Inc.	74
Foresight Construction Group, Inc.	84.25
Friedrich Watkins of Tampa, LLC.	84.75
Kokolakis Contracting	86.75
LEGO Construction Co.	77.5
New Vista Builders Group	70
Ryman Construction of Florida, Inc.	87.5
SEMCO Construction, Inc.	87.75
The A.D. Morgan Corporation	87.75
Trias Construction LLC	82.5
Wharton-Smith, Inc.	92.75
CII Contracting	81.75
Hometown Services of Florida, Inc.	87.5
National Metering Services, Inc.	83.25
Razorback LLC	86
RCM Utilities, LLC	86.25
The Cao Group, LLC	73.5

CONSENT ITEMS 1.11

Approval of Agreement **37-25-09** - Construction Manager at Risk (CMAR) - AD Morgan

Issue:

Request Council approval of agreement with A.D. Morgan for Construction Manager at Risk (CMAR) services. The City advertised for RFP responses for CMAR services for all departments when necessary.

Background:

The City of Zephyrhills advertised, via public RFP, for a minimum of three (3) CMAR's. A total of fourteen (14) responses were received, and the evaluation committee approved four (4) of them.

Attached for consideration is the agreement with A.D. Morgan for Construction Manager at Risk services.

Attachment(s):

1. 36441496v1 - The AD Morgan Corp_CMAR_Continuing Services Agreement
2. Wirtten Ranking

Fiscal Impact:

The fiscal impact will vary from year to year dependent upon the projects given approval by the City Council.

Projects classified under CMAR will have a maximum price of \$7,500,000/project.

Staff Recommendation:

It is the recommendation of staff to the City Council to approve agreement #37-25-09.

CONSTRUCTION MANAGER AT RISK CONTINUING SERVICES AGREEMENT

THIS CONSTRUCTION MANAGER AT RISK CONTINUING SERVICES AGREEMENT (the "Contract"), made this ____ day of _____ 2025, between CITY OF ZEPHYRHILLS a Florida municipal corporation, having its principal office at 5335 8th Street, Zephyrhills, FL 33542 (hereinafter referred to as "CITY" or "Owner"), and The A.D. Morgan Corporation, a Florida Corporation authorized to do business in the State of Florida, having its principal office at 716 N. Renellie Dr. Tampa, FL 33609 (hereinafter referred to as "CMAR").

WHEREAS, CITY desires to obtain services as stated in the Request for Proposal RFP #2025-004 incorporated herein by reference from CMAR for assigned projects within the City of Zephyrhills, Florida (hereinafter referred to as "Professional Services-City Wide Continuing Service Projects") and issued RFP #2025-004 to find qualified professionals to fulfill the need for these services. Pursuant to Section 255.103(4), Florida Statutes, the total construction cost of each individual project shall not exceed \$7,500,000.00. Although the primary professional service sought by the contract is for Construction Manager at Risk services, this Contract may cover other construction services if CMAR possesses the professional licensing and registration to legally perform these services. Further, CMAR may hire others who are properly licensed to perform construction services; and

WHEREAS, the Term of Contract is three (3) years after CITY approves the Contract, and CITY may, at its option, at a regular or special City Council meeting; renew this Contract at the end of the Term for an additional renewal term of two (2), three (3) year terms for a maximum term of nine years; and

WHEREAS, CITY retains CMAR, to perform the services described herein, and other required professional services on an "as needed" basis, as designated, authorized, and assigned by CITY, and CITY agrees to compensate CMAR for such services in accordance with this Contract; and

WHEREAS, it is the primary intent of this Contract to ensure that CMAR is available to provide services, in accordance with prior, mutually agreed upon conditions, and CITY has complied with all requirements of Section 287.055, Florida Statutes the "Consultants Competitive Negotiations Act," in the selection of CMAR and negotiations for this Contract; and

NOW, THEREFORE, CITY and CMAR, for and in consideration of the provisions, mutual promises, covenants and conditions hereinafter set forth or recited, agree as follows:

1. **Recitals.** The recitals in the WHEREAS clauses are incorporated by reference and made a part of this Contract.
2. **Incorporation of Request for Qualification and Response.** Request for Proposal (RFP) #2025-004 is incorporated into this Contract by reference. CMAR's response to the RFP is attached hereto and incorporated herein as Exhibit A.
3. **Scope of Services.**
 - (a) CMAR agrees to furnish and perform general construction services during design and construction phases of a Continuing Service Project ("Project" or "Task Assignment") in accordance with the terms and conditions set forth herein in accordance with generally accepted

professional standards to achieve a total cost to CITY which does not exceed the Project Budget. The scope of services (hereinafter referred to as "Basic Services") to be performed by CMAR under this Contract, to the satisfaction of CITY, shall be identified in Task Assignment. CMAR agrees to furnish and perform Basic Services and construction phase services as may be required in the specific scope of work and enumerated and described in the Task Assignment, in connection with Continuing Service Projects. CMAR further agrees to furnish and perform professional services not included as Basic Services (hereinafter referred to as "Additional Services"), when and if such Additional services are requested and authorized by CITY, in writing. The Hourly Labor Rates and Unit Rates for Basic and Additional Services is found in Exhibit B – Hourly Rate Schedule. No Additional Services shall be furnished by CMAR unless specifically requested and authorized by CITY in writing.

- (b) Continuing Service Projects shall be designed in accordance with all applicable Florida Statutes and the current City of Zephyrhills Ordinances in effect at the time this Contract is approved, or the work is performed.
- 4. **Project Construction Budget.** CMAR shall be provided with an individual Project Construction Budget for each Continuing Services Contract (Task Assignment). By accepting a Task Assignment, CMAR acknowledges that the Project Construction Budget is of the essence of this Contract and CMAR agrees to perform, in accordance with generally accepted professional standards.
 - (a) Although CITY looks to CMAR for the responsibility of design meeting CITY's Project Construction Budget, CITY may hire a cost consultant to verify costs on specific projects. CMAR shall cooperate with the CITY's cost consultant by providing all necessary information for the preparation and updating of all estimates of construction costs throughout all phases of Continuing Service Projects.
 - (b) The Construction Budget shall be defined as the total budget identified for the construction of Continuing Service Projects.
- 5. **Time of Completion.** CMAR shall commence Basic Services upon receipt of the Notice to Proceed and a purchase order issued by CITY. CMAR shall include in its proposal a schedule for the successful and timely completion of the project. Project schedule shall include the proposed start date, substantial completion date, and final completion date. The schedule will be agreed upon in writing on a project by project basis. CMAR shall complete work in accordance with the schedule, it being understood that time is of the utmost importance in this Contract. CMAR shall accelerate performance of Basic Services and Additional Services in the manner reasonably directed by CITY, in the event CITY, in its sole discretion, determines that such acceleration is necessary to maintain the Schedule. If acceleration is required because of delays caused solely by CMAR, acceleration shall be at no cost to CITY. If acceleration is required because of delays partially caused by CMAR, the CITY will not compensate CMAR for the delay caused by CMAR; however, the cost associated with that portion of any such delay not caused by CMAR shall be compensated as an Additional Service.
- 6. **Fees.** CITY agrees to pay to CMAR for Basic Services, based upon Exhibit B – Hourly Rate and Unit Rate Schedule, CMAR will give CITY a detailed written proposal for the work, and shall identify the number of hours of work by category of workers performing the service. The categories must accurately reflect the type of service to be performed, not merely the job

description of the employee performing the service. No additional fee or compensation shall be payable to CMAR under this Contract for said services if the actual cost of construction or work to be designed by CMAR exceeds the proposal or budget.

- (a) Initiation of services shall be upon receipt of the Notice to Proceed and a purchase order basis, referencing a written proposal for services related to this Contract.
- (b) Invoices received by the CITY on or before the 20th of any month will be submitted for check release on or before the 25th of the following month.
- (c) The responsibility of CMAR for performing its obligation under this Contract and under the construction contract(s) is not relieved or affected in any respect by the presence of or inspection by employees or agents of CITY. CMAR agrees that the responsibility assumed by it for approving and certifying work for payment is not shared by an employee of CITY.
- (d) CMAR's fee for Additional Services will be computed in accordance with hourly rates as described in Exhibit B – Hourly Rate and Unit Rate Schedule.
- (e) CMAR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CMAR, to solicit or secure this Contract, and that CMAR has not paid or agreed to pay any person, company, corporation, individual, or firm other than bona fide employees working solely for CMAR, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, CITY shall have the right to terminate this Contract without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.
- (f) The fee structure and hourly rates may be revised only by written Task Assignment, agreed to by both parties to this agreement.

7. **Ownership of Documents.** CMAR shall make available to CITY all reproducible copies of plans, drawings, specifications, ideas, concepts, designs, sketches, models, artwork, programs, software, reports, or other tangible work product produced, originally developed, or submitted to CITY by CMAR pursuant to this Contract (hereinafter referred to as the "Original Work Product").

- (a) CMAR shall deliver reproduced copies of all Original Work Product to CITY upon completion, unless it is necessary for CMAR, in CITY's sole discretion, to retain possession for a longer period of time. Upon early termination of CMAR's services, CMAR shall deliver all Original Work Product, whether complete or not. CITY shall have the right to use any and all work product. CMAR shall retain copies for its permanent records; however, the same cannot be used without CITY's prior express written consent. CMAR agrees not to recreate any designs, or any other tangible work product contemplated by or originally developed under this Contract, or portions thereof, which if constructions or otherwise materialized, would be reasonably identifiable with the tangible work product originally developed by CMAR.
- (b) CITY exclusively retains all ownership and manufacturing rights to all materials or designs developed under this Agreement. To the extent the Services performed under this Agreement

produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for CITY as the author, creator, or inventor thereof upon creation, and CITY shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. CMAR shall assign to CITY, all rights without limitation, including the copyright with respect to such work.

8. **Insurance.**

- (a) CMAR 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 CMAR/Vendor as required herein shall be considered, and CMAR/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 CMAR/Vendor as required herein.
- (b) Nothing herein shall be construed to extend the City of Zephyrhills's liability beyond that provided in section 768.28, Florida Statutes.
- (c) If the Continuing Service Project 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 CMAR 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 CMAR'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 CMAR shall be responsible. The risk of loss whether insured or not shall remain with the CMAR until final acceptance. Upon request, CMAR shall furnish to the City complete copies of the insurance policy.
- (d) All such insurance required in paragraph (a) shall be with companies and on forms acceptable to CITY, shall name CITY, and its agents, employees, and assigns as additional insured, except the policies shall provide that the coverage may not be reduced or canceled unless 30 days' prior written notice is furnished to CITY. Certificates of insurance and copies of all policies shall be furnished to CITY within 10 days of the date of this Contract. In the event of any

cancellation or reduction of coverage, CMAR shall obtain substitute coverage as required hereunder, without any lapse of coverage to CITY whatsoever.

- (e) CMAR will provide to CITY, within 10 days after the date of this Contract, (1) the original of the policy evidencing the existence of such insurance coverage, which CITY shall copy and return to CMAR within Seven (7) days, (2) proof acceptable to CITY that the premium for such policy for a period ending no earlier than 6 months after the date of this Contract has been paid in full by CMAR, and (3) a certificate of the insurer addressed to CITY evidencing the existence of such insurance coverage. CMAR will promptly renew, will keep and maintain in full force and effect, and will pay all premiums becoming due on said policy of insurance, and without request or demand CMAR will promptly provide proof thereof to CITY. If any such policy of insurance is a "claims made" policy, and not an "occurrence" policy, CMAR agrees to keep and maintain same in full force and effect for a period expiring not earlier than 12 months after construction of Continuing Service Projects is completed, and each such policy, or renewal or replacement policy, shall provide coverage for the acts and omissions of CMAR for all times subsequent to the date of this Contract.

9. **Representations.** CMAR hereby represents to CITY that:

- (a) It has the experience and skill to perform the services required to be performed by this Contract.
- (b) It shall provide and employ, in connection with the performance of such services, personnel qualified and experienced in their profession; it being understood that CITY may at any time require CMAR to remove, and CMAR shall immediately remove, any person employed in connection with the performance of the services who in the sole opinion of CITY is unfit for the proper performance of his/her duties.
- (c) It shall design to and comply with applicable non-conflicting federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements (both corporate and individual for all required basic disciplines) in effect during the term of this Contract, and shall, if requested by CITY, provide certification of compliance with all registration and licensing requirements.
- (d) It shall perform said services in accordance with generally accepted professional standards in an expeditious and economical manner.
- (e) It is adequately financed to meet any financial obligations it may be required to incur under this Contract.
- (f) The designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services of CMAR shall not call for the use of nor infringe any patent, trademark, service mark, copyright, or other proprietary interest claimed or held by any person or business entity absent prior written consent from CITY and such other person.

10. **Expense Records.** CMAR agrees to keep and maintain all of its direct personnel expense records, consultant and subcontractor expense records, and other expense records, pertaining to Continuing Service Projects, and its record of accounts between CMAR and CITY pertaining to

Continuing Service Projects, on a general recognized and acceptable accounting basis, and the same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying. The records and documentation shall be retained by CMAR for a minimum of three (3) years from the date of termination of this Agreement or the date the Task Authorization is completed, or such longer period of time as may be required by this Agreement or law, whichever is later. CMAR agrees to keep and maintain accurate time records to within the nearest one tenth of an hour for each time entry, of all work performed by employees of CMAR, and same shall be available to CITY or its authorized representatives at all reasonable times for inspection and copying.

11. **Termination, Suspension, Disputes, or Abandonment.** The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon thirty (30) days written notice to CMAR. In such event, the City shall pay CMAR compensation for Services rendered prior to the effective date of termination. The City shall not be liable to CMAR for any additional compensation, or for any consequential or incidental damages.
 - (a) If Continuing Service Projects are terminated or suspended by CITY, CITY shall pay CMAR all fees which have become due and payable to CMAR for that portion of the work of CMAR properly completed prior to such abandonment or suspension, and CITY shall have no further obligation to CMAR for payment to CMAR of the remainder of its fees, unless and until Continuing Service Projects are resumed by CITY. CMAR, at the option of CITY, shall complete the services of CMAR under this Contract upon resumption by CITY of Continuing Service Projects, and CMAR shall in that event be entitled to payment of the remaining unpaid fees which become payable to it under this Contract, same to be payable at the times and in the manner specified in this Contract. In no event will any fee or part thereof become due or payable to CMAR under this Contract unless and until CMAR has attained and completed that stage of work where the same would be due and payable.
 - (b) In the event of any such suspension or termination without cause, CITY shall pay to CMAR only that portion of the fee and compensation hereunder for the Basic Services of CMAR which has become due and payable to CMAR under the provisions of this Contract, and the remainder of CMAR's fees under this Contract shall be cancelled. Additionally, CITY shall pay other necessary, unavoidable, and reasonable expenses incurred by CMAR as a result of such suspension or termination (such as canceling orders for equipment, material, or services). Unless CITY authorizes CMAR to the contrary, CMAR shall not perform any services and shall not be entitled to receive payment from CITY on account of any such services performed during the period of suspension or after termination. Upon receipt of notice from CITY that the suspension has been canceled, CMAR shall perform its remaining services in accordance with the terms of this Contract and CMAR shall be entitled to time extension equal to the period of suspension.
 - (c) If CMAR fails to comply with any term or condition of this Agreement, or fails to perform any of its obligation hereunder, then CMAR shall be in default. The City shall have the right to terminate this Agreement, in the event CMAR fails to cure a default within ten (10) business days after receiving Notice of Default. CMAR understands and agrees that termination of this Agreement under this section shall not release CMAR from any obligations accruing prior to the effective date of termination.
12. **Assignability.** This Contract is for the personal services of CMAR and may not be assigned by CMAR in any fashion, whether by operation of law, or by conveyance of any type, including

without limitation, transfer of stock in CMAR, without the prior written consent of CITY, which consent CITY may withhold in its sole discretion.

13. **Errors and/or Omissions.** CMAR shall be obligated and responsible to CITY for, reasonable damages and additional costs and/or expenses in connection with construction of or delay in construction of Continuing Service Projects or otherwise incurred, sustained, and/or paid by CITY to the extent caused by (1) negligent errors and/or omissions made by CMAR in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services pursuant to this Contract and the project's Scope of Services for CMAR, and (2) negligent acts or omissions on the part of CMAR in any designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services or in the performance of any other services under this Contract and the project's Scope of Services for CMAR. It is the intent of the parties hereto that CMAR be held to and accountable for a degree of professionalism that is customary in the industry and commercially reasonable and for accuracy in the performance of the services of CMAR under this Agreement. CITY will hold CMAR harmless for any loss or claim related to an error or omission caused by the negligence of the CITY.
14. **Subcontractors/Separate contractors/consultants.**
 - (a) Any proposed subcontractors or subconsultants shall be submitted to CITY for approval prior to CMAR entering into a subcontract agreement. Such approval by CITY shall not be unreasonably withheld. CITY shall not be liable to CMAR in any manner whatsoever arising out of the CITY's objection to a proposed subcontractor or subconsultant.
 - (b) CMAR shall coordinate the services and work product of any subcontractor or subconsultant and remain fully responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services furnished by CMAR or its subcontractors or subconsultants and CMAR shall review and approve any designs, drawings, specifications, shop drawings, submittals, work, materials, processes of manufacture, methods of construction, or other services produced or furnished by any subcontractors or subconsultants prior to submittal to CITY. CMAR shall correct or revise any of its errors or deficiencies in the designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services produced pursuant to this Contract and shall provide CITY with such corrected or revised designs, drawings, specifications, work, materials, processes of manufacture, methods of construction, and other services incorporating such corrections or revisions at its sole cost and expense.
 - (c) Any subcontractor or subconsultant agreement shall reflect the terms of this Contract and require the subcontractor or subconsultant, to the extent of the services to be performed by the subcontractor or subconsultant, to assume toward CMAR all the obligations which CMAR by this Contract assumes toward CITY, it being understood that nothing herein shall in any way relieve CMAR from any of its duties under this Contract.
 - (d) CMAR shall cooperate at all times with CITY, and cooperate and coordinate with, and incorporate the work product of, any separate contractor, in any fashion appropriate or necessary to facilitate the construction of Continuing Service Projects within the project's budget and schedule. In the event CITY so elects and upon written mutual consent (which consent shall not

be unreasonably withheld), as evidenced by a Task Assignment to this Contract, CMAR shall accept any assignment of any agreement or contract CITY may have with any separate contractor.

15. **Indemnification.** CMAR 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 CMAR, its officers, agents or employees in performance or non-performance of its obligations under the Agreement. CMAR recognizes the broad nature of this indemnification and hold harmless clause, as well as the agreement 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 CMAR 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.

16. **Governing Law.** This Contract shall be construed in accordance with, and be governed by, the laws of the State of Florida, and any dispute, difference, claim or counterclaim between CITY and CMAR arising out of or in connection with this Contract which cannot be amicably resolved by the parties shall be submitted to the Circuit Court in and for Pasco County, Florida (or if the Circuit Court does not have jurisdiction over the subject matter, then to the court sitting in Pasco County which has subject matter jurisdiction) for trial and determination by the court sitting without jury. The parties agree and are encouraged to submit such disputes to non-binding mediation by a mediator who is certified in Florida in an effort to resolve issues in an expedient manner. The parties consent to the jurisdiction of such court and to the service of process outside the State of Florida pursuant to the requirements of such court, and they expressly waive the right to a jury trial.
17. **Entire Agreement.** This Contract, together with any other documents incorporated herein by reference, and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Contract, and the related exhibits, proposals, and schedules (other than an exception expressly set forth as such in the schedules), the statements in the body of this Contract shall control. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.
18. **Evaluation.** CMAR will be evaluated by CITY during the Contract period, at intervals established by CITY, and at the end of the construction of Continuing Service Projects. The results of each evaluation will be considered as tools for the measurement of CMAR's past performance and may be included in the review process for future solicitations for services. A

copy of the evaluation(s) will be provided to CMAR upon request.

19. **Independent Contractor.** CMAR 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, CMAR 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. CMAR further understands that Florida workers' compensation benefits available to employees of the City, are not available to CMAR. Therefore, CMAR agrees to provide workers' compensation insurance for any employee or agent of CMAR rendering services to the City under this Contract.
20. **Notices.** All notices, demands, correspondence and communication between the City and CMAR 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 CMAR:

The A.D. Morgan Corporation
ATTN: Matthew D'Amaddio
716 N. Renellie Dr.
Tampa, FL 33609
mdamaddio@admorgan.com

To CITY:

City of Zephyrhills
ATTN: City Manager
5335 8th Street
Zephyrhills, Florida 33542
wpoe@ci.zephyrhills.fl.us

With copy to:

Matthew E. Maggard, Esq.
Shumaker, Loop & Kendrick, LLP
13134 US Highway 301
Dade City, Florida 33525
mmaggard@shumaker.com

21. **MISCELLANEOUS PROVISIONS.**

- (a) The CMAR agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Contract.
- (b) The continuing services to be provided by CMAR pursuant to this Contract shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.
- (c) This Agreement shall be binding upon the Parties herein, their heirs, executors, legal

representatives, successors and assigns.

- (d) The CMAR 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) The City may withhold any payment in an amount that is sufficient to pay the direct costs and expenses the City reasonably expects to incur to protect City from liabilities for which CMAR is responsible
- (i) The City reserves the right to audit the records of the CMAR covered by this Contract at any time during the provision of Services and for a period of three (3) years after final payment is made under this Contract.

22. **PUBLIC RECORDS. IF THE CONSULTANT/CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'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.**

[The remainder of this page is intentionally left blank.]

IN WITNESS THEREOF, the above parties have executed this instrument, the name of each patty being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

OWNER

CMAR

CITY OF ZEPHYRHILLS, FLORIDA

THE A.D. MORGAN CORPORATION

By: _____
Charles E. Proctor
City Council President

By: _____
Name: _____
Its: _____

ATTEST:

ATTEST:

By: _____
Ricardo Quiñones, City Clerk

By: _____
Name: _____
Its: _____

Vendor	Total Score
Beck	84.5
Blackwater Construction Services LLC	80
Cathcart Construction Company - Florida, LLC	74.75
Centennial Contractors Enterprises, Inc.	74
Foresight Construction Group, Inc.	84.25
Friedrich Watkins of Tampa, LLC.	84.75
Kokolakis Contracting	86.75
LEGO Construction Co.	77.5
New Vista Builders Group	70
Ryman Construction of Florida, Inc.	87.5
SEMCO Construction, Inc.	87.75
The A.D. Morgan Corporation	87.75
Trias Construction LLC	82.5
Wharton-Smith, Inc.	92.75
CII Contracting	81.75
Hometown Services of Florida, Inc.	87.5
National Metering Services, Inc.	83.25
Razorback LLC	86
RCM Utilities, LLC	86.25
The Cao Group, LLC	73.5

CONSENT ITEMS 1.12

Approval of ZPD Generator Purchase Change Order #1

Issue:

In November 2024, City Council approved the purchase of a replacement generator for the Zephyrhills Police Department (41-24-43 / Contract #RCM 25-02). The initial project estimate was \$111,300. Due to timing delays, a revised estimate has been issued, increasing the total cost by \$13,520. The updated project total is now \$124,820.

Background:

ZPD replacement generator ensures ZPD has reliable backup power to maintain essential operations during outages and emergencies.

Attachment(s):

1. Zephyrhills PD Gen_ATS Replacement

Fiscal Impact:

ZPD will utilize the Police Impact Fee Contingency Fund to cover the full cost of this project, including the recent increase.

Staff Recommendation:

Staff recommends approval of this change order as presented.



RCM Utilities, LLC
1451 Pine Grove Road
Eustis, FL 32726
352-561-2990
billing@rcmutilities.com

Estimate 30846561
Estimate Date 7/8/2025

Billing Address
City of Zephyrhills
5335 8th Street
Zephyrhills, FL 33542 USA

Job Address
Zephyrhills PD
6118 8th St
Zephyrhills, FL 33542 United States

Description of work

INCLUDES:

Disassemble terminations and remove existing generator and A.T.S.
Existing equipment to be turned over to owner.
Bollards and concrete slab to be adjusted according to generator dimensions.
Install new 125KW Cummins diesel driven generator and 400A A.T.S.
Startup with generator technician and 500 gallons of diesel fuel included.
Custom 549-gallon fuel tank included to ensure no EPA contract is needed.
Proper grounding as required.
Electrician present during start up.

- Current Submittal Lead Time: 3-4 weeks
- Current Production Lead Time (after receipt of approved submittal and accepted PO):
- Transfer Switch(es): 22-24 weeks
- Generator: 26-30 weeks
- Warranty: Cummins 5-year warranty begins at the successful completion of startup and testing in lieu of acceptance or substantial completion.

THIS DOES NOT INCLUDE:

1. PCP, pumps, or level controls.
2. Any cutting of sidewalks and driveways.
3. Any sod, seeding, mulching and landscaping of disturbed areas.
4. Housekeeping pad around equipment rack.
5. Any cost for electric service fee to the Power Co.

Sales Tax Included. Price for the above scope of work: \$124,820.00.

Service #	Description	Quantity	Your Price	Total
Electrical - Service	Electrical Service Work	1.00	\$124,820.00	\$124,820.00

Sub-Total	\$124,820.00
Tax	\$0.00
Total Due	\$124,820.00
Deposit/Downpayment	\$0.00

Payment is due within 30 days of the date of invoice. Thereafter, monthly finance charges of 1.5% or the maximum allowed by law, whichever is less, will be assessed on unpaid amounts.

****ESTIMATE IS VALID FOR 30 DAYS****

****ESTIMATE INCLUDES ALL APPLICABLE SALES TAXES.****

- DUE TO CURRENT MARKET CONDITIONS MATERIAL PRICING IS SUBJECT TO CHANGE. RCM HOLDS THE RIGHT TO REPRICE BASED ON DATE OF ORDER. DATE OF ORDER IS WHEN ALL STAMPED PLANS AND SUBMITTALS ARE RETURNED, NOT THE RELEASE OF PURCHASE ORDER OR SUB CONTRACT.

Force Majeure. Neither party shall be liable in damages nor have the right to terminate this Contract for any delay or default in performing hereunder if such delay or default is caused by conditions beyond their control including, but not limited to natural disasters, including but not limited to ground subsidence or upheaval, acts of God, Government restrictions (including the denial or cancellation of any permits, tax incentive, or other license or approvals), covid-19, labor shortage, material delays, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Furthermore, neither party shall be liable for any failure or delay in performance under this Contract to the extent said failures or delays are proximately caused by those causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or any other party to substantially meet its performance obligations under this Contract. The party experiencing the difficulty shall give the other prompt written notice, with details following the occurrence of the cause relied

upon. Dates by which performance obligations are scheduled to be met will be extended for a period equal to the time lost due to any delay so caused. Contractor's failure to perform any term or condition of this Contract because of conditions beyond its control mentioned herein or other conditions that cause delay, damage, or destruction of its work by others shall not be deemed a breach of this Contract.

Material Escalation. The Contract Price for this Project has been calculated based on the current prices for the component building materials. However, the market for these building materials is considered volatile and sudden price increases could occur. Contractor agrees to use its best efforts to obtain the lowest possible prices from available building material suppliers but should there be an increase in the prices of these materials that are purchased after execution of this Contract for use in this Project, then Owner or General Contractor agrees and shall pay the substantiated cost increase to Contractor. Any request or change order for payment of a cost increase shall state the increased cost, the building materials in question, and the source of supply, supported by invoices or bills of sale.

1. This proposal is an offer to enter into a contract, with the mutual promises contained herein constituting valuable and sufficient consideration. The execution of this proposal by the owner listed above (the "Owner") shall constitute acceptance of the offer and formation of contract (the "Contract") between the Owner (the "Owner") and RCM Utilities, LLC. The terms set forth herein, including those after the acceptance signature below and/or on subsequent pages, shall govern the Contract.

2. **Warranty.** The Contractor warrants all supplied materials and workmanship to be free of defects for a period of one year after installation. The Contractor warrants that materials and equipment furnished under the Contract will be new and good quality.

3. **Payment.** The Contractor will invoice the Owner in accordance with the schedule set forth above or, if no terms are set forth above, monthly for work performed during each calendar month. The Owner agrees that there shall be no retainage except as set forth in the schedule above. Payment is due within 30 days of the date of invoice. Thereafter, monthly finance charges of 1.5% or the maximum allowed by law, whichever is less, will be assessed on unpaid amounts.

4. **Time.** The Contractor shall achieve substantial completion of the work within a commercially reasonable time. At the Owner's request, the Contractor shall submit for information a construction schedule for the work, and the Contractor shall revise the schedule at appropriate intervals as required by the conditions of the work. Schedule information set forth above are estimates. The Contractor shall not be responsible for delays caused by circumstances outside the control of the Contractor.

5. **Permits and Approvals.** The Contractor shall secure and pay for the building permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the work. This responsibility is limited to building permits and, for the avoidance of doubt, does not extend to land use approvals, environmental permits, consumptive use permits, or other governmental approvals outside of building permits.

6. **Contract Documents.** Except as otherwise provided herein, the Owner shall furnish, at its expense, all necessary surveys, plans, drawings, approvals, easements, assignments, and changes required for the construction and use of the improvements. The Owner warrants the information, plans and specifications provided to the Contractor. The Contractor shall be entitled to rely on the plans and drawings supplied by the Owner; the Contractor warrants only that the work will conform to the design documents and shall have no responsibility or obligation arising out of design defects. The Contractor's warranties contained in this Contract exclude remedy for damage or defect caused by abuse, alterations to the work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear.

7. **Termination.** The Contractor may terminate this Contract if the Owner fails to make payment as set forth herein and the failure continues for 10 days after notice, if the Contractor is unable to perform due to the failure of the owner to provide access to the site, necessary approvals, or its efforts to complete the work are frustrated by the actions or omissions of the Owner. In the event the Contractor terminates the Contract, it may recover payment for work executed, included reasonable overhead and profit, costs incurred by reason of such termination, and damages. No refund of payments made by the Owner shall be due as a result of termination under this section.

8. **Governing Law; Venue; Attorney Fees.** This Contract shall be governed by the laws of the state of Florida. Venue for any dispute arising in connection with this Contract shall lie exclusively in the court of appropriate jurisdiction in the county where the work is to be performed. The parties hereby irrevocably waive the right to a jury trial in connection with any matter related to or arising out of this contract or the work performed hereunder and consent to a bench trial in any such action. The prevailing party in any litigation shall be entitled to recover its reasonable attorneys' fees from the other party.

9. **Assignment; Subcontractors.** This Agreement may not be assigned without consent; provided, however that nothing herein shall limit the right of the Contractor to use subcontractors and contract labor in completion of the work. Notwithstanding the foregoing, the Contract may be assigned by the Owner to a lender providing construction financing if the lender has assumed the Owner's rights and obligations under the Contract.

10. **Hazards.** The Owner represents that, except as disclosed in writing, there is no hazardous condition, material or substance at the site of the work. The Owner shall indemnify and hold harmless the Contractor, its subcontractors, agents and employees from and against claims, damages, losses, and expense arising out of or resulting from performance of the work in the affected area if in fact, a hazardous condition, material or substance presents the risk of bodily injury or death and has not been rendered harmless, except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance by reason of performing the work described herein, the Owner shall indemnify the Contractor for all cost and expenses thereby incurred.

11. **Insurance; Beneficiaries.** The Contractor shall maintain appropriate commercial general liability insurance and statutory worker's compensation insurance and will provide certificates of insurance upon the request of the Owner. The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and property insurance until the work is complete. This Contract has no third-party beneficiaries.

12. **Consequential Damages.** The Owner waives claims against the Contractor for consequential damages arising out of or relating to this Contract. This waiver includes damages incurred by Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons. This waiver is applicable to damages due to termination.

13. **Entire Agreement; Modifications.** This Contract, together with the information, plans, and specifications provided to the Contractor, constitute the entire agreement. Any previous agreements and understanding between the parties regarding the subject matter of this Contract, whether oral or in writing, are superseded by the Contract. Any amendments, modifications, or change orders must be in writing. Any change orders require the agreement of the Contractor and shall include appropriate modifications to the contract price to include the Contractor's cost of labor, material, equipment, and reasonable overhead and profit.

14. ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA

STATUTES. 15. ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER." FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY

Approved By: _____ Date: _____

CONSENT ITEMS 1.13

Approval of Piggyback Agreement **41-25-17** with A.C. Schultes for As Needed Well Drilling Construction, Rehabilitation and Repair Services

Issue:

Approval of Piggyback Agreement with A.C. Schultes for As Needed Well Drilling Construction, Rehabilitation and Repair Services

Background:

The city has seven (7) drinking water wells and the Water Division needs to have a reputable company available to perform emergency maintenance, regular construction, and misc services related to each well site.

Attachment(s):

1. 36761397v2 - A.C. Shultes of Florida Inc. Piggyback Agreement 45-25-17 07142025
2. 36761398v1 - Exhibit A - A.C. Schultes of Florida Piggyback

Fiscal Impact:

It is foreseen the city will utilize this service when necessary and has budgeted funds to cover FY 25 costs. FY 26 and beyond will arise when the time comes.

Staff Recommendation:

It is staff's recommendation to the City Council to approve this item as presented.

**AGREEMENT TO PIGGYBACK ON A CONTRACT
FOR SERVICES BID BY ANOTHER GOVERNMENTAL ENTITY**

WHEREAS, **A.C. SCHULTES OF FLORIDA, INC.**, a Florida corporation (the "Contractor"), whose address is 11865 S. US HWY 31, Gibsonton, FL 33534, in this Agreement referred to as 'CONTRACTOR', entered into an agreement dated April 22, 2025, with the **PASCO COUNTY, FLORIDA**, whose address is 19420 Central Boulevard, Land O' Lakes, FL 34637, for **AS NEEDED WELL DRILLING CONSTRUCTION, REHABILITATION AND REPAIR SERVICES (IFB-BW-25-019)** services procured pursuant to F.S. §287.057 (the "Contract");

WHEREAS, the **City of Zephyrhills**, a Florida municipal corporation (the "City") has the legal authority under its purchasing policies adopted by the Zephyrhills City Council to "piggyback" onto a contract procured pursuant to F. S. §287.057 by another governmental entity when seeking to utilize the same or similar services provided for in the said contract; and

WHEREAS, the City desires to continue "piggybacking" onto the above referenced Contract for utilization of the same or similar services and the Contractor consents to the aforesaid "piggybacking".

NOW THEREFORE, having found it to be in the public interest,

1. The Contractor affirms and ratifies the terms and conditions of the above referenced Contract with the **Pasco County, Florida** and agrees to perform the services set forth therein for the City in accordance with the terms of said Contract until the work is completed.
2. The City agrees to utilize the services of the Contractor in a manner and upon the terms and conditions as set forth in the Contract until the work is completed.
3. The City and Contractor agree to follow the current terms of the Contract with **Pasco County, Florida** which expires on **September 20, 2028**, with two (2) additional (1) one-year renewal if so desired and agreed to by the City of Zephyrhills and the Contractor.
4. The following document is incorporated into and made a part of this Agreement: **Pasco County, Florida for IFB-BW-25-019 As Needed Well Drilling Construction, Rehabilitation and Repair Services** dated April 22, 2025, is attached hereto as **Exhibit A**.
5. The parties agree that venue for any litigation arising from this piggyback agreement shall be in Dade City, Pasco County, Florida.
6. The parties agree that the City shall have forty-five (45) days from the date of invoice to provided payment pursuant to Florida Statute section 218.74.
7. Notwithstanding any provision herein to the contrary, the City may terminate this

Agreement at any time without regard to cause at City's convenience with thirty (30) days' notice to Company. In such event, the Company shall only be entitled to payment for services actually performed hereunder prior to such termination.

8. The City reserves the right to delete any portion of this contract at any time without cause. If such right is exercised, the total fee shall be reduced by the amount established for that service. If work has already been accomplished on the portion of the contract to be deleted, the Company shall be paid for the work performed through the notification effective date of the deleted services.
9. City expressly retains all rights, benefits, and immunities of sovereign immunity. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of the City's sovereign immunity or limits of liability contained in Section 768.28, Florida Statutes.
10. Indemnity. 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.
11. Insurance. 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 as required herein shall be considered, and Contractor 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 as required herein

12. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'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.

A.C. SCHULTES OF FLORIDA, INC.

CITY OF ZEPHYRHILLS

Signature
Date

Charles E. Proctor	Date
City Council President	

Print Name and Title

WITNESS

ATTEST

Signature
Date

Ricardo Quiñones	Date
City Clerk	

EXHIBIT

A

AGREEMENT

THIS AGREEMENT is entered by and between **PASCO COUNTY, FLORIDA**, by and through its Board of County Commissioners (hereinafter called "Owner" or "County") **A.C. Schultes of Florida, Inc.** (hereinafter called "Contractor").

WITNESSETH:

WHEREAS, Owner desires to retain Contractor to provide **AS NEEDED WELL DRILLING CONSTRUCTION, REHABILITATION AND REPAIR SERVICES**; and

WHEREAS, Owner has selected Contractor in accordance with competitive bidding procedures; and

WHEREAS, Contractor agrees to serve as Owner's Contractor for **AS NEEDED WELL DRILLING CONSTRUCTION, REHABILITATION AND REPAIR SERVICES**, based upon the terms and conditions set forth in this Agreement and as set forth Owner's **Solicitation No. IFB-BW-25-019** ("Solicitation"), and Contractor's Bid Proposal ("Bid"), which are incorporated herein by reference as though set forth fully herein.

NOW, THEREFORE, in consideration of the premises set forth hereinabove, and of the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE 1 – RECITALS

The recitations in the Whereas clauses above are incorporated herein by reference and made a part hereof. Capitalized terms in this Agreement, not otherwise defined, shall have the meaning as in the Solicitation.

ARTICLE 2 - WORK

Contractor will provide as needed well drilling construction, rehabilitation, and repair services, as set forth in the Solicitation and listed specifications.

ARTICLE 3 – OWNER'S REPRESENTATIVE

The Project is administered by:

Public Infrastructure
Pasco County Utilities Department

Which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Owner's representative in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIME

- 4.1 Except as otherwise specified herein, **this Agreement shall remain in full force and effect from date of Pasco County Board of County Commission (BOCC) approval and continue for three years until September 30, 2028**, unless otherwise terminated or extended as provided in this Agreement, subject to the Price Escalation terms described elsewhere herein, unless cancelled in writing by Pasco County. The County reserves the right to extend this agreement, under the same prices, terms, and conditions as in the original Agreement approved by Pasco County for two additional one-year periods, as found to be in the best interest of the County. All contracts are subject to the appropriation of funds by Pasco County.
- 4.2 In the event that a properly executed Work Order initiated within the initial term of the Agreement, or Addendum to such Work Order requires or expressly permits work to be performed by the Contractor after termination of this Agreement, such WORK ORDER or Addendum to such Work Order shall automatically extend the effective period of the Agreement to coincide with the completion date delineated in the Work Order or Addendum to such Work Order. No additional Work Orders shall be issued during the extension.
- 4.3 Each Work Order will be completed within the time stipulated in the Work Order Form.
- 4.4 Liquidated Damages. The Contractor agrees that should the Contractor fail to complete the work as specified and as directed in the Work Order(s), the Contractor shall pay the Owner for delay and loss of use, and not as a penalty but as liquidated damages, the sum of One Hundred Dollars and 00/100 (\$100.00) for each calendar day after the date of completion listed in the Work Order. Default days will be counted in calendar days, excluding Sundays and legal holidays.

ARTICLE 5 - CONTRACT PRICE

- 5.1 The Owner shall pay the Contractor for completion of the Work in current funds and in accordance with the Contract Documents subject to the Not to Exceed amount of **\$1,082,000.00** provided however, the Owner may increase this amount via unilateral Change Order.

- 5.2 All incidental costs, including allowances for profit and tools of the trade, must be included in the Contract bid prices.

ARTICLE 6 - CONFLICTS

- 6.1 To the extent there is a conflict regarding indemnification and contract term between the Solicitation and this Agreement, the provisions of this Agreement will control.

ARTICLE 7 - TERMINATION OF AGREEMENT

- 7.1 In return for good and valuable consideration in the amount of \$100.00, the receipt of which is acknowledged by the Contractor, Owner may terminate or cancel this Agreement at its discretion and termination will be effective, with cause immediately or without cause after 30 days, after written notice has been provided to the Contractor.
- 7.2 Following termination, Owner shall make a settlement with the Contractor upon a pro rata basis as determined by Owner, which will fix the value of the Services performed by the Contractor prior to the termination or cancellation of this Agreement.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

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

- 8.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.
- 8.2 Contractor understands the estimate of quantities of the various items of work and materials, if set forth in the Proposal Form, is approximate only and is given solely to be used as a uniform basis for the comparison of Proposals. The quantities actually required to complete the work may be less or more than so estimated, and, if awarded a contract for the work specified, the Contractor agrees that it will not make any claim for damages or for loss of profits or for an extension of time because of a difference between the quantities of the various classes of work assumed for comparison of Proposals and quantities of work actually performed. The Owner further reserves the right to vary the quantities in any amount.

ARTICLE 9 - CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire Agreement between Owner and Contractor concerning the Work, consist of the following:

- 9.1 This Agreement.
- 9.2 Invitation to Bid.
- 9.3 General and Special Conditions of Contract.
- 9.4 Proposal and Bid Forms.
- 9.5 Insurance Certificates.
- 9.6 Contract Forms
- 9.7 Specifications.
- 9.8 Exhibits.
- 9.9 Addenda numbers 0 to Q inclusive.
- 9.10 Documents submitted by Contractor prior to Notice of Award ((Bid Form, Offeror Information/Certification Form, List of Subcontractors, Questionnaire inclusive).
- 9.11 The following, which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All written WORK ORDERS or authorizations; all written amendments; and all other documents amending, modifying, or supplementing the Contract Documents.

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 the Conditions of Contract section of the Contract Documents.

ARTICLE 10 - SUBCONTRACTORS

The Contractor shall not sublet, assign, or transfer any Goods and/or Services specifically set forth under this Agreement without the prior written consent of Owner. All persons used by the Contractor for fulfilling the requirements of this Agreement must be employees of the Contractor.

ARTICLE 11 – INDEMNIFICATION

- 11.1 The CONTRACTOR shall indemnify and hold harmless the COUNTY and the employees and agents of the COUNTY from, and against, all liabilities, claims, suits, demands, damages,

losses, and expenses, including, but not limited to, attorneys' fees, arising out of, or resulting from, the performance of the Work, provided that any such liability, claim, suit, demand, damage, loss, or expense: (a) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and (b) to the extent caused by an act or omission of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

- 11.2 In any and all claims against the COUNTY, or against any of the agents or employees of the COUNTY, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under the previous paragraph will not be limited in any way as to the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts, or other employee benefit acts.
- 11.3 The CONTRACTOR shall indemnify and hold harmless the COUNTY and anyone directly or indirectly employed by the COUNTY from and against all claims, suits, demands, damages, losses, and expenses including, but not limited to, attorneys' fees, arising out of any infringement of patent rights, copyrights, trademarks, trade dress, or other intellectual property rights held by others, and shall defend all such claims in connection with any alleged infringement of such rights.
- 11.4 The CONTRACTOR shall, at the option of the COUNTY, underwrite on an interim basis all expenses associated with the legal defense of the COUNTY, pending the outcome of any litigation through appeal, with respect to any liabilities, claims, suits, demands, damages, losses, and expenses, including, but not limited to, attorneys' fees, for which the CONTRACTOR may be liable to the COUNTY, in whole or in part, pursuant to 10.1 – 10.3 above, irrespective of whether said liabilities, claims, suits, demands, damages, losses, and expenses, including, but not limited to, attorneys' fees, may ultimately be found by a court of law to have been caused, in whole or in part, by the negligence or other fault of the COUNTY. In discharging this duty to the COUNTY, the CONTRACTOR shall strictly account to the COUNTY on a monthly basis for all expenditures so incurred. Upon the conclusion of any litigation through appeal, to the extent that the CONTRACTOR has been found less than fully liable for any liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, the COUNTY shall reimburse the CONTRACTOR for that portion of the reasonable costs of underwriting the legal defense of the COUNTY.
- 11.5 With respect to, and in consideration for, the indemnification provided herein by the CONTRACTOR, as well as the duty of the CONTRACTOR, at the option of the COUNTY, to underwrite the legal defense of the COUNTY pending the outcome of any litigation

through appeal, the COUNTY agrees to pay to the CONTRACTOR, as separate consideration, the sum of \$100.00, the sufficiency and receipt of which is hereby acknowledged.

- 11.6 Notwithstanding any language to the contrary which may be contained herein, the ultimate duty of the CONTRACTOR to indemnify and hold the COUNTY harmless under this Article will be limited to the extent that any liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, are caused by the negligence, recklessness, or intentional wrongful misconduct of the indemnifying party and persons employed or utilized by the indemnifying party in the performance of the Agreement.

ARTICLE 12 - MISCELLANEOUS

- 12.1 Contractor shall provide Goods and/or perform all Services under this Agreement as an independent contractor. Contractor will not be considered an agent of Owner nor will Contractor's subcontractors, suppliers, experts, or other persons, or organizations retained or utilized by the Contractor be considered agents of Owner.
- 12.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without 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.
- 12.3 Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.
- 12.4 The Contractor hereby guarantees all work performed in accordance with the terms of this Agreement with Owner against defects due to faulty workmanship or materials for a period of 365 days from the date of service. During the period of the guarantee, the Contractor agrees to make all repairs necessitated by reason of faulty workmanship or materials at no cost to the Owner, subject to the following additional conditions.
- 12.4.1 This guarantee is in addition to factory warranties covering certain equipment where applicable under contract.

- 12.4.2 Nothing herein contained will serve to modify or limit the obligations of the Contractor to faithfully fulfill and complete its obligations under this Agreement.
- 12.4.3 Specifically excluded from this guarantee is maintenance of equipment or repair of any damage caused by normal wear and tear, fire, windstorm, or other casualties.
- 12.5 The Agreement will be governed by and construed under the laws of the State of Florida.
- 12.6 Venue for any action arising under this Agreement will lie in Pasco County, Florida at the West Pasco Judicial Center.
- 12.7 During the performance of this Agreement, the CONTRACTOR herein assures the COUNTY that said CONTRACTOR is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and The Florida Civil Rights Act of 1992 in that the CONTRACTOR does not on the grounds of race, color, national origin, religion, sex, age, handicap or marital status, discriminate in any form or manner against the employees of the CONTRACTOR or its applicants for employment. The CONTRACTOR understands and agrees that this Agreement is conditioned upon the veracity of this Statement of Assurance. Furthermore, the CONTRACTOR herein assures the COUNTY that said CONTRACTOR shall comply with Title VI of the Civil Rights Act of 1964 when any Federal grant is involved. Other applicable Federal and State laws, executive orders and regulations prohibiting the type of discrimination as hereinabove delineated are included by this reference thereto. This Statement of Assurance shall be interpreted to include Vietnam Era Veterans and Disabled Veterans within its protective range of applicability.
- 12.8 Any notices or other writings permitted or required to be delivered as described and required under the provisions of this Agreement must be delivered by sending the notice by Certified Mail, Return Receipt Requested, and addressed as follows:

If to Owner:

Pasco County Utilities
19420 Central Boulevard
Land O' Lakes, FL 34637

Attention: Branford Adumuah
Assistant County Administrator, Public Infrastructure

If to the Contractor:

A.C. Schultes of Florida, Inc.
11865 S. US HWY 41
Gibsonton, FL 33534

Attention: Greg Schultes, Vice President

ARTICLE 13 – LAW COMPLIANCE

- 13.1 Each party will comply with all applicable Federal, State and Local laws, rules, regulations and guidelines, related to performance under this Agreement. In particular, the Contractor verifies and affirms that it is in compliance with 8 USC Sec. 1324 prohibiting the employment either directly or by contract, subcontract or exchange of unauthorized aliens in the United States. The County will consider the employment of unauthorized aliens by any Contractor during the term of the Agreement a violation of the Immigration and Nationality Act. Such violation will be cause for unilateral cancellation of this Agreement by the County.
- 13.2 Countries of Concern. As required by section 286.101, Florida Statutes, for contracts of \$100,000.00 or more, contractors shall disclose to the Owner any current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern if such interest, contract, or grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous 5 years ("Item"). "Foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern. Contractor, by executing this Agreement, affirms that it has not received an Item from a foreign country of concern.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly qualified representatives on the date noted below.

CONTRACTOR,
A.C. Schultes of Florida, Inc.

WITNESS:



IVAN COLLAZO

Date: _____

By: 

Gregory Schultes
Name

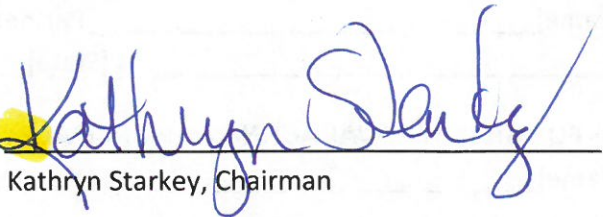
(SEAL)





Nikki Alvarez-Sowles, Esq.
Pasco County Clerk & Comptroller

OWNER,
PASCO COUNTY, FLORIDA

By: 

Kathryn Starkey, Chairman

APPROVED
IN SESSION

APR 22 2025

Date: _____
PASCO COUNTY
BCC

NOTARY PUBLIC
STATE OF FLORIDA
COMMISSION #12345
EXPIRES 12/31/25



NOTARY ACKNOWLEDGMENT

STATE OF FLORIDA }

} ss

COUNTY OF HILLSBOROUGH }

The foregoing instrument was acknowledged before me on 19th February, 2025, by means of:

☒ physical presence, or

☐ online notarization

by:

[as applicable, complete one (1) of the four (4) choices below]:

(1) FOR A CORPORATION OR LIMITED LIABILITY COMPANY:

[Name] Gregory Schultes who executed the foregoing instrument as [Title] Vice President
of [Corporation or Company Name] A.C. Schultes of Florida, Inc., a:

☒ corporation, or

☐ limited liability company

organized under the laws of [State] Florida

(2) FOR AN INDIVIDUAL ACTING IN HIS OR HER OWN RIGHT:

[Name] _____.

(3) FOR A PARTNERSHIP:

[Name] _____ Partner (or Agent), on behalf of [Name of Partnership] _____
_____, a [State] _____ partnership.

(4) FOR AN INDIVIDUAL ACTING AS PRINCIPAL BY AN ATTORNEY IN FACT:

[Name] _____, as attorney in fact for _____.

Said person is (check one below):

☒ Personally known to me, or

☐ Has produced _____ as identification

on behalf of [Write: Name of Corporation, Company, Partnership, Principal, as applicable]:

A.C. Schultes of Florida, Inc.

Anna Cominski
Signature of person taking acknowledgment

[Notary Stamp or Seal]

Anna Cominski
Print Notary's Name

(This line is required to be completed by §117.05, F.S.)



ANNA COMINSKI
Notary Public
State of Florida
Comm# HH248646
Expires 4/4/2026

APPROVED
IN SESSION

APR 22 2025

PASCO COUNTY
BCC

FLORIDA PERFORMANCE BOND

PROJECT: AS NEEDED WELL DRILLING CONSTRUCTION, REHABILITATION AND REPAIR SERVICES

BID NO.: IFB-BW-25-019

PROJECT NO.: _____

PROJECT LOCATION: Pasco County

BOND NO.: 30239943

AMOUNT: \$35,000.00

KNOW ALL MEN BY THESE PRESENT, that we, A.C. Schultes of Florida, Inc.

(Name of Contractor)

located at 11865 Highway 41 South, Gibsonton, FL 33534

(Address and Telephone Number of Contractor)

hereinafter called the Principal, and Western Surety Company

(Name of Surety)

located at 151 N. Franklin Street, CHICAGO, IL 60606

(Address and Telephone Number of Surety)

hereinafter called the SURETY, are held and firmly bound unto PASCO COUNTY BOARD OF COUNTY COMMISSIONERS, 7536 STATE STREET, NEW PORT RICHEY, FLORIDA 34654, (727) 847-2411, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, hereinafter called the COUNTY, in the penal sum of Thirty-five Thousand and 00/100 Dollars (\$35,000.00) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns for the faithful performance of a certain written CONTRACT, entered into between the Principal and the COUNTY, for the WORK described, a copy of which said CONTRACT dated: the _____ day of _____, 20____ is made a part hereof as if fully copied herein.

Now, therefore, the conditions of this obligation are such, that if the Principal shall In all respects comply with the terms and conditions of said CONTRACT, and his obligation thereunder, including the CONTRACT Documents which include the Notice to BIDDERS, Instructions to BIDDERS, CONTRACT CONDITIONS, PROPOSAL AND BID FORMS, Contract Forms, Notice of Award, Exhibits and Technical SPECIFICATIONS therein referred to and made a part thereof, and such alterations as may be made in said SPECIFICATIONS as therein provided for, NOTICE TO PROCEED, CONTRACT BOND, and any CHANGE ORDER, Purchase Order, or SUPPLEMENTAL AGREEMENT, and shall indemnify, defend, and save harmless the said COUNTY against and from all costs, expenses,

damages, injury, or conduct, want of care or skill, negligence or default, including patent infringements on the part of the said Principals, agents, or employees, in the execution of performance of said CONTRACT, including errors in the plans furnished by the Principal, and further, if such CONTRACTOR or CONTRACTORS shall promptly make payments to all persons supplying him, them, or it, labor, MATERIAL, and supplies, used directly or indirectly by said CONTRACTOR, CONTRACTORS, SUBCONTRACTOR, or SUBCONTRACTORS in the prosecution of the WORK provided for in said CONTRACT, this obligation shall be void; otherwise, the Principal and SURETY jointly and severally agree to pay to the COUNTY any difference between the sum to which the said Principal would be entitled on the completion of the CONTRACT, and that which the COUNTY may be obliged to pay for the completing of said WORK BY CONTRACT or otherwise, and any damages, direct or indirect, or consequential, which the said COUNTY may sustain on account of such WORK, or on account of the failure of the said CONTRACTOR to properly and in all things keep and execute all provisions of said CONTRACT.

And the said Principal and SURETY hereby further bind themselves, their successors, and executors, administrators, and assigns jointly and severally, that they will amply and fully protect the said COUNTY against, and will pay any and all amounts, damage costs, and judgements which may be recovered against or which the COUNTY may be called upon to pay to any person or corporation by reason of any damages arising from the performance of said WORK, or of the repair or maintenance thereof, or the manner of doing the same or the neglect of the said Principal, or his agents or servants, or the improper performance of the said WORK by the Principal, or his agents or servants, or the failure to keep and execute all provisions of said CONTRACT or the infringements of any patent rights by reason of the use of any MATERIAL furnished, or WORK done; as aforesaid, or otherwise.

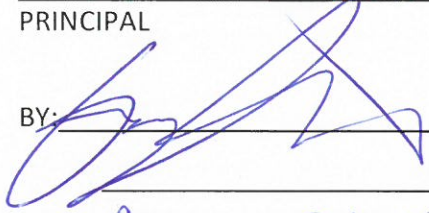
And the said Principal and SURETY hereby further bind themselves, their successors, heirs, executors, administrators, and assigns, jointly and severally, to repay the COUNTY any sum which the COUNTY may be compelled to pay because of any lien for labor or MATERIAL furnished for the WORK embraced by said CONTRACT, and the said SURETY, for value received, hereby stipulates and agrees that no change, purchase order, task order, extension of time, alterations, or additions to the terms of the CONTRACT or to the WORK to be performed thereunder, or the SPECIFICATIONS accompanying the same shall in any way affect its obligations on this BOND, and it does hereby waive notice of any such change, extensions of time, alterations, or additions to the WORK or to the SPECIFICATIONS.

In testimony whereof, witness the hands and seals of the parties hereto this 14th day of February, 2025.

(Contractor)

A.C. Schultes of Florida, Inc.

PRINCIPAL

BY: 

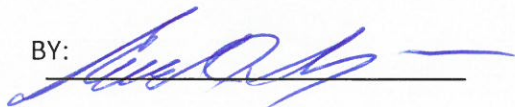
Name: Gregory Schultes

Title: Vice President

ATTEST:

Western Surety Company

SURETY

BY: 

Name: Daniel P. Dunigan

Title: Attorney-in-Fact

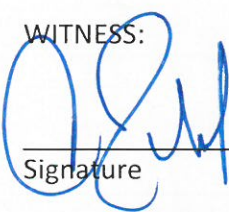
ADDRESS 1041 Old Cassatt Road

CITY Berwyn, PA

STATE PA ZIP 19312

PHONE NO. 610-727-5300

WITNESS:


Signature

Name: Catharine Roberts

COUNTERSIGNERS:

N/A

BY: N/A

Title: _____

NOTARY ACKNOWLEDGMENT

STATE OF FLORIDA }

COUNTY OF HILLSBOROUGH } ss }

The foregoing instrument was acknowledged before me on 19th February, 20 25, by means of:

☒ physical presence, or

☐ online notarization

[as applicable, complete one (1) of the four (4) choices below]:

(1) FOR A CORPORATION OR LIMITED LIABILITY COMPANY:

[Name] Gregory Schultes, who executed the foregoing instrument as [Title] Vice President
of [Corporation or Company Name] A.C. Schultes of Florida, Inc., a:

☒ corporation, or

☐ limited liability company

organized under the laws of [State] Florida, and who severally and duly acknowledged the execution of such instrument as aforesaid on behalf of the corporation or limited liability company.

(2) FOR AN INDIVIDUAL ACTING IN HIS OR HER OWN RIGHT:

[Name] _____.

(3) FOR A PARTNERSHIP:

[Name] _____ Partner (or Agent), on behalf of [Name of Partnership] _____
_____, a [State] _____ partnership.

(4) FOR AN INDIVIDUAL ACTING AS PRINCIPAL BY AN ATTORNEY IN FACT:

[Name] _____, as attorney in fact.

Said person is (check one below):

☒ Personally known to me, or

☐ Has produced _____ as identification

on behalf of [Write: Name of Corporation, Company, Partnership, Principal, as applicable]:

A.C. Schultes of Florida, Inc.

Anna Cominski
Signature of person taking acknowledgment

[Notary Stamp or Seal]

Anna Cominski
Print Notary's Name

(This line is required to be completed by §117.05, F.S.)



ANNA COMINSKI
Notary Public
State of Florida
Comm# HH248646
Expires 4/4/2026

ACKNOWLEDGEMENT OF SURETY

State of Pennsylvania}

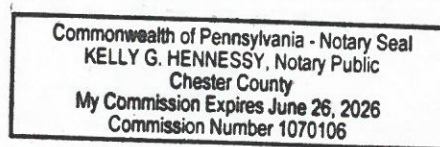
County of Chester}

On this 14th day of February 2025, before me, Kelly G. Hennessy, a Notary Public in and for said Chester County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared Daniel P. Dunigan known to me to be the person whose name is subscribed to the within instruments as the Attorney in Fact of Western Surety Company, and acknowledged to me that he subscribed the name of Western Surety Company thereto, as Surety, and his own as Attorney in Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, and year in this certificate first above written.

By: _____

Kelly G. Hennessy
Notary Public



Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Daniel P Dunigan, Brian C Block, Joseph W Kolok Jr, James L Hahn, Kelly G Hennessy, Individually

of Berwyn, PA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the Authorizing By-Laws and Resolutions printed at the bottom of this page, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 5th day of January, 2024.



WESTERN SURETY COMPANY

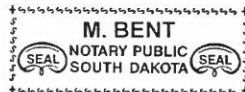
Larry Kasten, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 5th day of January, 2024, before me personally came Larry Kasten, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

March 2, 2026



M. Bent, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law and Resolutions of the corporation printed below this certificate are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 14th day of February, 2025.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Laws and Resolutions

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

This Power of Attorney is signed by Larry Kasten, Vice President, who has been authorized pursuant to the above Bylaw to execute power of attorneys on behalf of Western Surety Company.

This Power of Attorney may be signed by digital signature and sealed by a digital or otherwise electronic-formatted corporate seal under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 27th day of April, 2022:

"RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company."

Go to www.cnasurety.com > Owner / Oblige Services > Validate Bond Coverage, if you want to verify bond authenticity.

APR 22 2025

PASCO COUNTY
BCC

INCREASE PENALTY RIDER

BOND NO. 30239943

To be attached and form a part of Bond No. 30239943 dated the 14th Day of February, 2025, executed by Western Surety Company as surety, on behalf of A.C. Schultes of Florida, Inc. as current principal of record, and in favor of Pasco County Board of County Commissioners, as Obligee for As Needed Well Drilling Construction, Rehabilitation and Repair Services - Solicitation No. IFB-BW-25-019, and in the amount of Thirty Five Thousand Dollars and 00/100 (\$35,000.00).

In consideration of the agreed premium charged for this bond, it is understood and agreed that Western Surety Company hereby consents that effective from the 1st Day of April, 2025, said bond shall be amended as follows:

THE BOND PENALTY SHALL BE INCREASED:

FROM: Thirty Five Thousand Dollars and 00/100 (\$35,000.00)

TO: Six Hundred Twenty Thousand Dollars and 00/100 (\$620,000.00)

The INCREASE of said bond penalty shall be effective as of the 1st Day of April, 2025, and does hereby agree that the continuity of protection under said bond subject to changes in penalty shall not be impaired hereby, provided that the aggregate liability of the above mentioned bond shall not exceed the amount of liability assumed by it at the time the act and/or acts of default were committed and in no event shall such liability be cumulative.

Signed, sealed and dated this 1st Day of April, 2025



A.C. Schultes of Florida, Inc.
PRINCIPAL

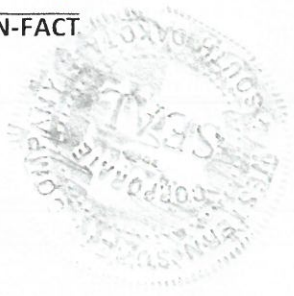
BY

Gregory Schultes, V.P.

Western Surety Company
SURETY

BY

Daniel P. Dunigan, ATTORNEY-IN-FACT



Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint Daniel P. Dunigan, Individually of Berwyn, PA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

Surety Bond No: 30239943
Principal: A.C. Schultes of Florida, Inc.
Obligee: Pasco County Board of County Commissioners

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the Authorizing By-Laws and Resolutions printed at the bottom of this page, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 10th day of January, 2024.



WESTERN SURETY COMPANY

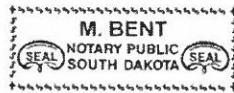
Larry Kasten, Vice President

State of South Dakota } ss
County of Minnehaha }

On this 10th day of January, 2024, before me personally came Larry Kasten, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

March 2, 2026



M. Bent, Notary Public

CERTIFICATE

I, Paula Kolsrud, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law and Resolutions of the corporation printed below this certificate are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 1st day of April, 2025.



WESTERN SURETY COMPANY

Paula Kolsrud, Assistant Secretary

Authorizing By-Laws and Resolutions

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

This Power of Attorney is signed by Larry Kasten, Vice President, who has been authorized pursuant to the above Bylaw to execute power of attorneys on behalf of Western Surety Company.

This Power of Attorney may be signed by digital signature and sealed by a digital or otherwise electronic-formatted corporate seal under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 27th day of April, 2022:

"RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company."

Go to www.cnasurety.com > Owner / Obligor Services > Validate Bond Coverage, if you want to verify bond authenticity.

BUSINESS ITEMS/PUBLIC HEARING 2.1

Renewal of Residential Moratorium Twelve (12) Month Extension (July 14, 2025 - July 13, 2026)

Second Reading **ORDINANCE NO. 1501-25 "AN ORDINANCE OF THE CITY OF ZEPHYRHILLS, FLORIDA ESTABLISHING A NEW TEMPORARY MORATORIUM ON THE CONSIDERATION OF NEW RESIDENTIAL APPLICATIONS FOR ANNEXATIONS, LAND USE MODIFICATIONS, REZONING, MAJOR PLANNED UNIT DEVELOPMENT AMENDMENTS, CONDITIONAL USES, OR VARIANCES FOR PROPERTY OVER ONE ACRE, NOT TO EXCEED TWELVE (12) MONTHS, PROVIDING FOR CONFLICTS, EXEMPTIONS, SEVERABILITY, EXPIRATION AND AN EFFECTIVE DATE."**

- A. Council President opens Public Hearing.
- B. Council President closes Public Hearing.
- C. City Council considers Ordinance No. 1501-25 on the Second Reading.

Issue:

At the May 15, 2023, City Council/Planning Commission Workshop, staff was directed to bring back information for Council to consider a temporary suspension of accepting applications for rezoning, major amendments to master development agreements, site plan approvals, plat approvals, or variances for residential development over one acre to allow time to study the City's water use permit and impact fees. Council approved the 12-month moratorium on June 26, 2023. At that time, staff began working on the water use permit and impact fees. The impact fees study was completed and workshops have been scheduled. Staff continues to work with SWFWMD to resolve the additional pumping capacity needed to provide water to meet future demands.

On June 10, 2024 City Council approved Ordinance 1479-24 to extend the residential moratorium for 12 months. Staff is still working with SWFWMD to modify our WUP, therefore, it is requested to extend the moratorium an additional 12 months.

Background:

In order for a moratorium on development to be valid, it must be adopted in good faith, for a limited duration, and for the purpose of developing a plan to address a specific issue. Furthermore, the local government must act expeditiously to address the issue.

Attachment(s):

1. Ordinance 1501-25 - Residential Moratorium 12 Month Extension

Fiscal Impact:

N/A

Staff Recommendation:

Staff recommends Council's approval of Ordinance No. 1501-25 Residential Development Moratorium.

ORDINANCE NO. 1501-25

**AN ORDINANCE OF THE CITY OF ZEPHYRHILLS, FLORIDA
ESTABLISHING A NEW TEMPORARY MORATORIUM ON THE
CONSIDERATION OF NEW RESIDENTIAL APPLICATIONS FOR
ANNEXATIONS, LAND USE MODIFICATIONS, REZONING, MAJOR
PLANNED UNIT DEVELOPMENT AMENDMENTS, CONDITIONAL
USES, OR VARIANCES FOR PROPERTY OVER ONE ACRE, NOT TO
EXCEED TWELVE (12) MONTHS, PROVIDING FOR CONFLICTS,
EXEMPTIONS, SEVERABILITY, EXPIRATION AND AN EFFECTIVE
DATE.**

WHEREAS, as provided in section 2(b), Article VIII of the Constitution of the State of Florida, and section 166.021(1), Florida Statutes, the City of Zephyrhills, Florida (the “City”), a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, as provided in section 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state legislature may act, except when expressly prohibited by law; and

WHEREAS, the Southwest Florida Water Management District (“SWFWMD”) regulates, through the issuance of a Water Use Permit, the amount of water the City of Zephyrhills is permitted to provide to users of the City’s potable water supply; and

WHEREAS, the City of Zephyrhills has experienced substantial growth in a short time causing the addition of new residential annexations, land use modifications, rezonings, Major Planned Unit Development Amendments, conditional uses, and variances for property over one acre resulting in significant increased demand for City provided potable water; and

WHEREAS, the City of Zephyrhills is in the process of approving the maximum number of new residential annexations, land use modifications, rezonings, Major Planned Unit Development Amendments, conditional uses, and variances for property over one acre that the City’s current Water Use Permit will allow; and

WHEREAS, the City of Zephyrhills has applied for an expansion of its Water Use Permit and that application is under review by SWFWMD; and

WHEREAS, due to the historically high number of proposed and/or approved new residential projects within the boundaries of the City, the City of Zephyrhills is nearing its maximum daily usage allowed under the current Water Use Permit; and

WHEREAS, the City of Zephyrhills, through the adoption of Ordinance No.: 1479-24, implemented a renewal of a 12-month temporary moratorium on accepting applications for new residential annexations, land use modifications, rezonings, Major Planned Unit Development Amendments, conditional uses, and variances for property over one acre within the City limits of the City of Zephyrhills; and

WHEREAS, the City of Zephyrhills has been working consistently and diligently with the help of its consultant, to answer all of the questions presented to it by SWFMWD during the Water Use Permit Expansion Application process;

WHEREAS, the City of Zephyrhills Moratorium as establish by Ordinance No.: 1479-24 expires on June 26, 2025;

WHEREAS, the City of Zephyrhills is still actively pursuing a Waster Use Permit expansion. As of the date of this ordinance, changes to the current Water Use Permit has not yet been approved by SWFWMD. The City of Zephyrhills needs additional time to complete the Water Use Permit Expansion process;

WHEREAS, the purpose of this ordinance is to place a new temporary moratorium on accepting applications for new residential annexations, land use modifications, rezonings, Major Planned Unit Development Amendments, conditional uses, and variances for property over one acre within the City limits of the City of Zephyrhills; and

WHEREAS, the City Council of the City of Zephyrhills, Florida hereby finds that the new temporary moratorium imposed by this ordinance is being imposed for a reasonable duration intended to give the City the time reasonably necessary to obtain the proper and necessary increases to the City's Water Use Permit; and

WHEREAS, the City Council of the City of Zephyrhills, Florida hereby finds that this ordinance advances an important government purpose by preventing the demand for City potable water service to exceed the current Water Use Permit limits; and

WHEREAS, the City Council of the City of Zephyrhills, Florida hereby finds that this ordinance is in the best interest of the public's health, safety, and welfare; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Zephyrhills, Florida, as follows:

Section 1. Authority.

This Ordinance is enacted pursuant to Chapter 163, Florida Statutes, and under the home rule powers of the City.

Section 2. Legislative Findings of Fact.

The foregoing **WHEREAS** clauses are hereby adopted as legislative findings of the City Council of the City of Zephyrhills and are ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 3. Temporary Moratorium

Beginning on July 14, 2025, and continuing for twelve (12) consecutive months or sooner, if provided pursuant to section 5 of this ordinance, a moratorium is hereby imposed on the consideration of applications for new residential annexations, rezoning, land use modification, conditional uses, variances, and Major Planned Unit Development Amendments.

During the moratorium, the City of Zephyrhills will not accept, review, or consider applications for new residential annexations, rezoning, land use modification, conditional uses, variances, and Major Planned Unit Development Amendments.

Section 4. Exemptions.

The new temporary moratorium imposed by Section 3 of this ordinance shall not apply to any property and/or project that filed an application for residential annexations, land use modifications, rezonings, Major Planned Unit Development Amendments, conditional uses, and variances for property over one acre prior to the effective date Ordinance 1461-23. Additionally, this new moratorium shall not apply to utility service agreements or other utility-related agreements, which may be sought from the City (the mere submittal of which shall not obligate the City to approve the same).

Additionally, the new temporary moratorium imposed by Section 3 of this ordinance shall not apply to any residential project that is on one acre or less.

Any property and/or project that is exempt under this section may continue to apply for and receive any approvals, plats, permits or consents from the City allowed by the Land Development Code.

Section 5. Expiration of the Temporary Moratorium.

The temporary moratorium imposed by Section 3 of this ordinance expires as of the earliest of the follow occurrences:

- A. At the end of July 13, 2026; or
- B. A date before July 13, 2026, if provided by Ordinance of the City Council of the City of Zephyrhills, Florida.

Section 6. Repealer.

Any and all ordinances in conflict herewith are hereby repealed to the extent of any conflict.

Section 7. Severability.

It is declared to be the intent of the City Council of the City of Zephyrhills, Florida, that if any section, subsection, sentence, clause, or provision of this ordinance is held invalid, the remainder of the ordinance shall be construed as not having continued the said section, subsection, sentence, clause, or provision and shall not be affected by such holding.

Section 8. Inclusion into the Code.

It is the intent of the City Council that the provisions of this Ordinance shall become and be made a part of the City of Zephyrhills code, and that the sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be changed to “section,” “article,” “regulation,” or such other appropriate word or phrase in order to accomplish such intentions.

Section 9. Effective Date.

This Ordinance shall become effective upon passage on the second reading and signing by the Mayor.

The foregoing Ordinance No. 1501-25 was read and passed on the first reading in an open and regular meeting of the City Council of the City of Zephyrhills, Florida, on this 23rd day of June 2025.

Attest: _____
Ricardo Quiñones, City Clerk

Charles E. Proctor
Council President

The foregoing Ordinance No. 1501-25 was read and passed on the second reading, following a public hearing, in an open and regular meeting of the City Council of the City of Zephyrhills, Florida, on this 14th day of July 2025.

Attest: _____
Eileen Mercado
Assistant City Clerk

Charles E. Proctor
Council President

The foregoing Ordinance No: 1501-25 was approved by me this 14th day of July 2025.

Melonie Bahr Monson, Mayor

Approved as to legal form and content:

Matthew E. Maggard, Esq.
City Attorney

BUSINESS ITEMS/PUBLIC HEARING 2.2

Renewal of MMTC Moratorium - (July 23, 2025 - July 22, 2026)

Second Reading **ORDINANCE NO. 1502-25 "AN ORDINANCE OF THE CITY OF ZEPHYRHILLS, FLORIDA RELATED TO MEDICAL MARIJUANA TREATMENT CENTERS; ADOPTING FINDINGS OF FACT; PROVIDING DEFINITIONS; IMPOSING A NEW TEMPORARY MORATORIUM ON THE OPENING OF ANY NEW MEDICAL MARIJUANA TREATMENT CENTERS NOT TO EXCEED TWELVE (12) MONTHS; PROVIDING FOR SEVERABILITY, REPEALER, AND AN EFFECTIVE DATE. "**

- A. Council President opens Public Hearing.
- B. Council President closes Public Hearing.
- C. City Council considers Ordinance No. 1502-25 on the Second Reading.

Issue:

The City Staff believes that an adequate number of medical marijuana treatment centers exist within the boundaries of the City of Zephyrhills and the moratorium will allow Staff time to review possible regulations permitted under Section 381.986, Florida Statutes.

Background:

The City Staff is requesting City Council pass a continuance of a temporary moratorium on the opening of any new medical marijuana treatment centers not to exceed twelve (12) months from the effective date of this ordinance. The ordinance would apply to all requests for said use that are not complete / approved by the City.

Attachment(s):

1. Ordinance 1502-25 Medical Marijuana Treatment Centers Moratorium Extension (36454429v2)

Fiscal Impact:

N/A

Staff Recommendation:

Staff recommends approval of Ordinance No. 1502-25 on the first reading.

ORDINANCE NO. 1502-25

**AN ORDINANCE OF THE CITY OF ZEPHYRHILLS, FLORIDA
RELATED TO MEDICAL MARIJUANA TREATMENT CENTERS;
ADOPTING FINDINGS OF FACT; PROVIDING DEFINITIONS;
IMPOSING A NEW TEMPORARY MORATORIUM ON THE OPENING
OF ANY NEW MEDICAL MARIJUANA TREATMENT CENTERS NOT
TO EXCEED TWELVE (12) MONTHS; PROVIDING FOR
SEVERABILITY, REPEALER, AND AN EFFECTIVE DATE.**

WHEREAS, as provided in section 2(b), Article VIII of the Constitution of the State of Florida, and section 166.021(1), Florida Statutes, the City of Zephyrhills, Florida (the “City”), a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, as provided in section 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state legislature may act, except when expressly prohibited by law; and

WHEREAS, on November 8, 2016, Florida voters approved an amendment to the Florida Constitution to legalize the cultivation, production, and dispensing of medical marijuana for a broad population of eligible patients; and

WHEREAS, the Florida Legislature enacted SB-8A during Special Session A in July of 2017 to implement Section 29, Article X in the State of Florida Constitution and to create a unified regulatory structure for the use of marijuana for medical purposes by persons with debilitating diseases in the State of Florida which has been codified as Section 381.986, Florida Statutes; and

WHEREAS, SB-8A pre-empted local governments from regulation regarding cultivation, processing and delivery of marijuana by medical marijuana treatment centers, except as otherwise provided in SB-8A;

WHEREAS, the preemption has prevented the City from appropriately restricting the zoning districts where medical marijuana treatment centers can be located;

WHEREAS, on July 22, 2024 the City passed Ordinance 1484-24 implementing a twelve (12) month moratorium on the opening of new Medical Marijuana Treatment Centers within the boundaries of the City of Zephyrhills which is set to expire on July 22, 2025;

WHEREAS, City staff believes that an adequate amount of medical marijuana treatment centers exist within the boundaries of the City of Zephyrhills and would prepare appropriate Land Development Code modifications to address how the City wants to regulate medical marijuana treatment centers going forward including cultivation operations;

WHEREAS, City staff requests City Council extend the temporary moratorium on the opening of new medical marijuana treatment centers within the boundaries of the City of Zephyrhills, not to exceed twelve (12) months from the effective date of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ZEPHYRHILLS, FLORIDA, AS FOLLOWS:

Section 1. Authority.

This Ordinance is enacted pursuant to Chapter 163, Florida Statutes, and under the home rule powers of the City.

Section 2. Legislative Findings of Fact.

The foregoing **WHEREAS** clauses are hereby adopted as legislative findings of the City Council of the City of Zephyrhills and are ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 3. Definitions.

For the purposes of this ordinance, the following words, terms, and phrases, including their respective derivatives, have the following meanings:

a. *Marijuana* means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.

b. *Medical Marijuana Treatment Centers (MMTC's)* means a vertically integrated licensed medical marijuana cultivator, processor, and dispenser. MMTC's are the only businesses in Florida authorized to dispense medical marijuana and low-THC cannabis to qualified patients and caregivers. Each MMTC must receive authorization at three stages, (1) cultivation authorization, (2) processing authorization, and (3) dispensing authorization, prior to dispensing low-THC cannabis or medical marijuana. MMTC's are commonly referred to as Cannabis Dispensaries or Medical Marijuana Dispensaries.

Section 4. Temporary Moratorium

a. Beginning on July 23, 2025, the moratorium on the opening of new Medical Marijuana Treatment Centers within the boundaries of the City of Zephyrhills is hereby extended for twelve (12) months.

b. During the moratorium, it is unlawful and a violation of this ordinance for any person, firm, group, corporation, partnership or other company to open or cause to be opened any Medical Marijuana Treatment Centers within the boundaries of the City of Zephyrhills.

Section 5. Expiration of the Temporary Moratorium.

The temporary moratorium imposed by section 4 of this ordinance expires as of the earliest of the follow occurrences:

a. Twelve (12) months from July 23, 2025; or

b. A date before the expiration in paragraph 5.a. above, if provided by Ordinance of the City Council of the City of Zephyrhills, Florida.

Section 6. Repealer.

Any and all ordinances in conflict herewith are hereby repealed to the extent of any conflict.

Section 7. Penalties.

Any and all violation of the Ordinance shall constitute a separate Class VI offense as set forth in the Uniform Fine and Citation Schedule as adopted by the Sixth Judicial Circuit of Florida for Pasco County, and shall be prosecuted as provided in Section 162.21, Florida Statutes. Each violation and each day constituting a violation shall be fined and prosecuted as a separate offense.

Section 8. Severability.

It is declared to be the intent of the City Council of the City of Zephyrhills, Florida, that if any section, subsection, sentence, clause, or provision of this ordinance is held invalid, the remainder of the ordinance shall be construed as not having continued the said section, subsection, sentence, clause, or provision and shall not be affected by such holding.

Section 10. Effective Date.

This Ordinance shall become effective on the later of July 23, 2025, or upon passage on the second reading and signing by the Mayor.

The foregoing Ordinance No. 1502-25 was read and passed on the first reading in an open and regular meeting of the City Council of the City of Zephyrhills, Florida, on this 23rd day of June 2025.

Attest: _____	_____
Ricardo Quiñones, City Clerk	Charles E. Proctor Council President

The foregoing Ordinance No. 1502-25 was read and passed on the second reading, following a public hearing, in an open and regular meeting of the City Council of the City of Zephyrhills, Florida, on this 14th day of July 2025.

Attest: _____	_____
Eileen Mercado Assistant City Clerk	Charles E. Proctor Council President

The foregoing Ordinance No: 1502-25 was approved by me this 14th day of July 2025.

Melonie Bahr Monson, Mayor

Approved as to legal form and content:

Matthew E. Maggard, Esq.
City Attorney

BUSINESS ITEMS/PUBLIC HEARING 2.3

CCC - Annexation

First Reading ORDINANCE NO. 1503-25 "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS, FLORIDA ANNEXING APPROXIMATELY 13.72 ACRES (MOL) INTO THE CORPORATE LIMITS OF THE CITY DESCRIBED AS PARCEL NUMBER 18-26-22-0010-09300-0000 ZEPHYRHILLS, FLORIDA, IN ACCORDANCE WITH SECTION 171.044, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE."

- A. Council President opens Public Hearing.
- B. Council President closes Public Hearing.
- C. City Council considers Ordinance No. 1503-25 on the First Reading.

Issue:

Proposed Annexation from unincorporated Pasco County to be included in the municipal boundaries of the City of Zephyrhills for Parcel ID 18-26-22-0010-09300-0000.

Background:

This annexation petition is for one parcel located in the curve of Chancey Road on the west side of the roadway and abutting the Zephyrhills Municipal Airport on its western border, totaling 13.72 acres. The applicant seeks to include the property within the municipal boundaries of the City of Zephyrhills; rezone the property from AC (County Agricultural) to LI (Light Industrial) to allow for the development of industrial warehousing and offices; and change the future land use designation from IL (County Industrial Light) to IN (Industrial).

Access to the site will be provided through a driveway straddling the northern property boundary, to be shared with the property to the north. This will help minimize traffic impacts along Chancey Road. The annexation, rezoning, and FLUMA support compatibility with the surrounding industrial uses and align with the City's long-term planning goals for the Industrial Corridor.

Facts at a Glance:

Location: West side of Chancey Road and east of the Zephyrhills Municipal Airport, City of Zephyrhills, FL

Parcel IDs: 18-26-22-0010-09300-0000

Current Zoning: AC (Agricultural)

Proposed Zoning: LI (Light Industrial)

Current Future Land Use: IL (Industrial Light)

Proposed Future Land Use: IN (Industrial)

Total Acreage: Approximately 13.72 acres

Existing Use: Vacant

Surrounding Uses: Warehousing, airport and skydiving-related uses, and other industrial uses.

Zoning Overview:

Proposed Zoning (LI):

The LI zoning district accommodates light manufacturing, materials processing, storage of bulk commodities, distribution facilities, and similar processes. This district is appropriate for areas supported by adequate infrastructure and services.

Consistency with Comprehensive Plan:

The proposed rezoning aligns with the City's Future Land Use Map and Comprehensive Plan, which support industrial development in this area. The shift from AC to LI reflects current land use trends and enhances opportunities for needed industrial options.

Future Land Use Overview:

Proposed Future Land Use (IN):

The IN future land use designation outlines primary uses of research/development, light manufacturing/assembly, wholesale/distribution, and storage/warehouse. Secondary uses supported include office, retail commercial, personal business service, commercial/business service, transient accommodations, and public/semi-public. This category is generally appropriate for locations with sufficient size to encourage an industrial park-type arrangement.

Consistency with Comprehensive Plan:

The proposed FLU amendment aligns with the Future Land Use Map and the Comprehensive Plan, which supports and encourages industrial uses in this area.

Development Standards (LI):

Minimum Lot Width: 75 feet

Front Yard Setback: 20 feet; 75 feet if adjacent to residentially zoned areas.

Side Yard Setback: 10 feet

Rear Yard Setback: 10 feet

Maximum Height: 30 feet/2 stories

*These standards ensure compatibility with surrounding land uses while supporting appropriately scaled development.

Attachment(s):

1. 36742571v1 - Ordinance 1503-25 CCC Property Holdings Chancey Annexation Ordinance - Draft
2. Chancey Annexation Aerial Map

Fiscal Impact:

Staff Recommendation:

Staff recommends approval of the annexation request for Parcel ID 18-26-22-0010-09300-0000. The proposed land use regulations are consistent with the City's goals of promoting growth along the Chancey Road industrial corridor and aligning zoning and land use with the area's existing residential character. This annexation and its proposed use are not anticipated to create arduous impacts on the city's current services and the proposed shared access along Chancey Road will reduce the opportunities for access-related incidents along the bend in the roadway.

ORDINANCE NO. 1503-25

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS, FLORIDA ANNEXING APPROXIMATELY 13.72 ACRES (MOL) INTO THE CORPORATE LIMITS OF THE CITY DESCRIBED AS PARCEL NUMBER 18-26-22-0010-09300-0000 ZEPHYRHILLS, FLORIDA, IN ACCORDANCE WITH SECTION 171.044, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, CCC Property Holdings LLC., owner of the lands hereinafter described in Section 1 below, and have requested and consented through a Petition for Annexation for approximately 13.72 acres of property (MOL) described in Section 1 below to be annexed into the boundaries of the City of Zephyrhills; and

WHEREAS, the City Council has determined that said property is contiguous to the municipal boundaries of the City, that the area of annexation is reasonably compact, the area will be developed for urban purposes, and currently lies within unincorporated Pasco County, and that the annexation of said property will not result in the creation of any enclave; and

WHEREAS, the City is authorized by Chapter 171.044, Florida Statutes, to annex contiguous and infill areas, and to extend the City limits upon receipt of written consent of the landowners together with the approval of the City Council after published notice and public hearings; and

WHEREAS, the City Council finds that the Ordinance number, heading, brief description of the area to be annexed and a map depicting where the lands to be annexed are located was properly published and advertised as request by Florida Statutes; and

WHEREAS, all other procedural and notice requirements mandated by State Law and the City's Land Development Regulations have been followed and satisfied; and

WHEREAS, the City Council has reviewed and evaluated the Petition submitted, and has determined that the annexation of said lands into the City is in the public interest and is consistent with the City's Comprehensive Plan and Land Development Regulations; and

NOW THEREFORE, BE IT ENACTED, AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS, FLORIDA, AS FOLLOWS:

SECTION 1: The following described lands, lying and being situated in Pasco County, Florida, is hereby annexed to and included within the boundaries of the City of Zephyrhills, Florida, and municipal corporation:

Parcel I.D. No. 18-26-22-0010-09300-0000

Legal Description: ZEPHYRHILLS COLONY COMPANY LANDS PB 1 PG 55
THAT PORTION OF TRACT 109 110 115 116 & & 125 LYING WEST OF
ZEPHYRHILLS BY-PASS IN SECTION 18 OR 9664 PG 1518.

SECTION 2: Said lands are contiguous to or are infill of the present City limits of the City of Zephyrhills. That said lands are now unincorporated and lie in the same County as said City, and when annexed would form a compact addition to the incorporated territory of said City. That owners of said lands contained in said area to be annexed have given written consent to have such annexation for said area.

SECTION 3: The City of Zephyrhills, Florida is authorized by the legislature of the State of Florida, pursuant to Section 177.044, Florida Statutes, and pursuant to the Charter of the City of Zephyrhills, to annex contiguous and infill areas and to extend the City limits or territorial boundaries upon receipt of a written consent of all owners of land contained in the area to be annexed, together with the approval of the City Council of the City of Zephyrhills, of said annexation duly expressed by Ordinance.

SECTION 4: Upon this Ordinance becoming effective, the property Owners of said property shall be entitled to all the rights and privileges and immunities as are from time-to-time granted to property Owners of the City of Zephyrhills, Florida as further provided in Chapter 171.044, Florida Statutes, and shall further be subject to the responsibilities of ownership as may from time-to-time be determined by the governing authority of the City of Zephyrhills, Florida and the provisions of said Chapter 171.044, Florida Statutes.

SECTION 5: It is the intention of the City Council of the City of Zephyrhills, Florida by passage of this Ordinance to annex the above-described lands to said City within its territorial limits and the boundary lines of said City are hereby redefined and extended so as to include said area of land within its territorial limits upon the final passage of this Ordinance.

SECTION 6: Within seven (7) days after adoption, the City Clerk shall file a certified copy of the Ordinance, together with a map which clearly shows the annexed area, with the Clerk of the Courts of Pasco County, Florida; the Chairman of the Board of County Commissioners of Pasco County, Florida; the Property Appraiser of Pasco County, Florida; and the Department of State, Secretary of State, State of Florida, pursuant to Section 171.044, Florida Statutes.

SECTION 7: The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, this decision shall not affect the validity of the remaining section, sentences, clause and phrases of this ordinance, which shall remain in effect it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

SECTION 8: Any ordinance in conflict with this ordinance is hereby repealed by implication.

SECTION 9: The provisions of this Ordinance shall not be codified, but the annexed property shall be incorporated and included in all appropriate maps of the City Limits of the City of Zephyrhills.

SECTION 10: This Ordinance shall become effective upon passage on the second reading and signing by the Mayor.

The foregoing Ordinance No. 1503-25 was introduced, read, and passed on the first reading in an open and regular meeting of the City Council of the City of Zephyrhills, Florida, on this 14th day of July 2025.

Attest:

Ricardo Quiñones, City Clerk

Charles E. Proctor, Council President

The foregoing Ordinance No. 1503-25 was read and passed on the second reading, following a public hearing, in an open and regular meeting of the City Council of the City of Zephyrhills, Florida, on this 28th day of July 2025.

Attest:

Ricardo Quiñones, City Clerk

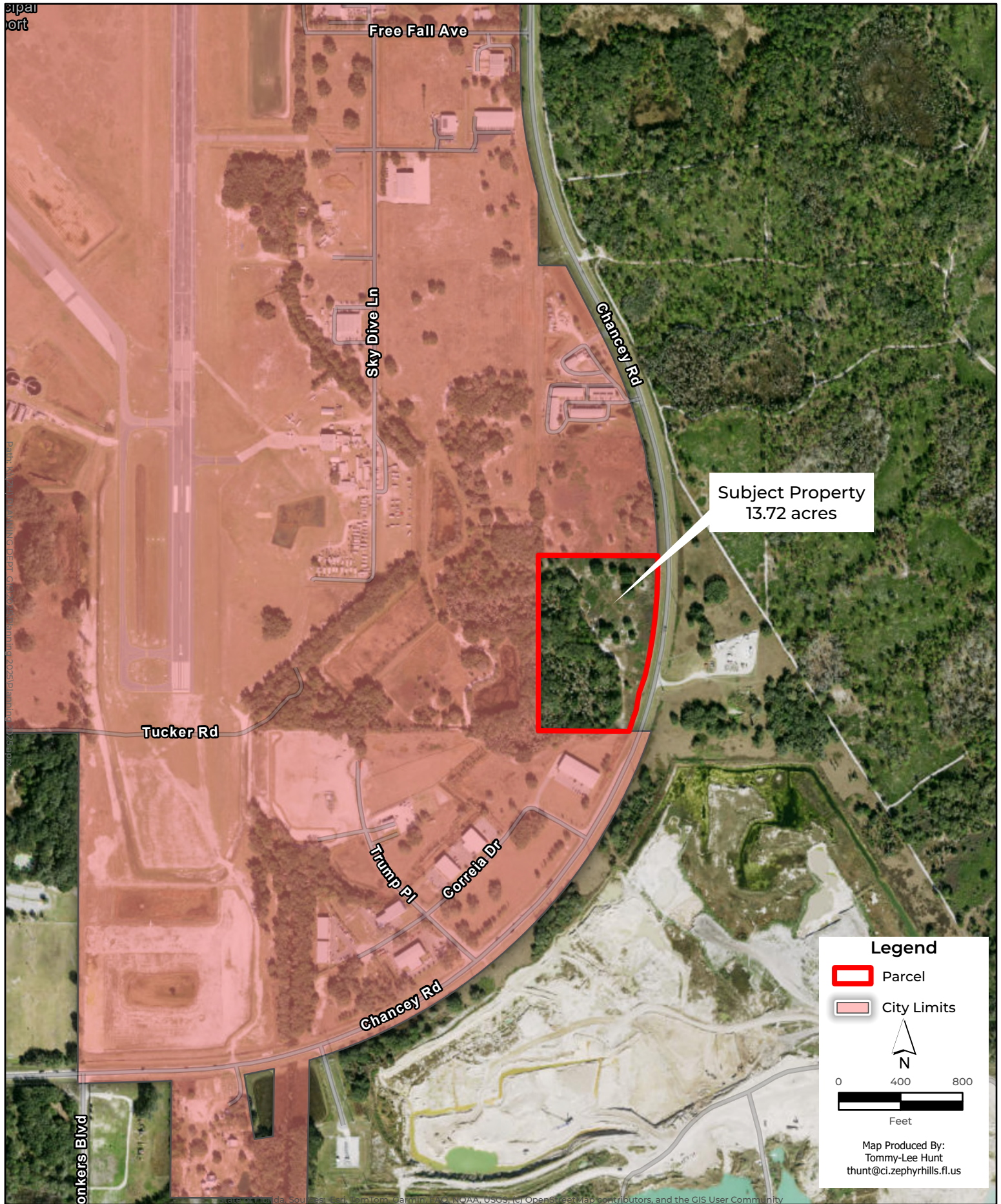
Charles E. Proctor, Council President

The foregoing Ordinance No. 1503-25 was approved by me on this 28th day of July 2025.

Melonie Bahr Monson, Mayor

Approved as to legal form and legal content
for the reliance of the City of Zephyrhills only:

Matthew E. Maggard, Esq.
City Attorney



BUSINESS ITEMS/PUBLIC HEARING 2.4

CCC - Rezoning and FLU

First Reading ORDINANCE NO. 1504-25 "AN ORDINANCE OF THE CITY OF ZEPHYRHILLS, FLORIDA PROPOSING AN AMENDMENT TO THE CITY'S COMPREHENSIVE PLAN, PROVIDING FOR A SMALL-SCALE COMPREHENSIVE PLAN AMENDMENT TO THE FUTURE LAND USE MAP CHANGING FROM COUNTY IL TO CITY IN (INDUSTRIAL) AND THE ZONING DESIGNATION FROM COUNTY AC TO CITY LI (LIGHT INDUSTRIAL) FOR APPROXIMATELY 13.72 ACRES OF REAL PROPERTY LOCATED WEST OF CHANCEY ROAD, AND EAST OF THE ZEPHYRHILLS AIRPORT AND ZEPHYRHILLS MUNICIPAL BOUNDARY AND HAVING PARCEL ID# 18-26-22-0010-09300-0000; PROVIDING FOR REPEALER, CONFLICT SEVERABILITY, AND AN EFFECTIVE DATE."

- A. Council President opens Public Hearing.
- B. Council President closes Public Hearing.
- C. City Council considers Ordinance No. 1504-25 on the First Reading.

Issue:

Proposed rezoning for Parcel ID 18-26-22-0010-09300-0000 from county AC to City LI-Light Industrial and future land use map amendment from county IL to IN-Industrial.

Background:

This annexation petition is for one parcel located in the curve of Chancey Road on the west side of the roadway and abutting the Zephyrhills Municipal Airport on its western border, totaling 13.72 acres. The applicant seeks to include the property within the municipal boundaries of the City of Zephyrhills; rezone the property from AC (County Agricultural) to LI (Light Industrial) to allow for the development of industrial warehousing and offices; and change the future land use designation from IL (County Industrial Light) to IN (Industrial).

Access to the site will be provided through a driveway straddling the northern property boundary, to be shared with the property to the north. This will help minimize traffic impacts along Chancey Road. The annexation, rezoning, and FLUMA support compatibility with the surrounding industrial uses and align with the City's long-term planning goals for the Industrial Corridor.

Facts at a Glance:

Location: West side of Chancey Road and east of the Zephyrhills Municipal Airport, City of Zephyrhills, FL

Parcel IDs: 18-26-22-0010-09300-0000

Current Zoning: AC (Agricultural)

Proposed Zoning: LI (Light Industrial)

Current Future Land Use: IL (Industrial Light)

Proposed Future Land Use: IN (Industrial)

Total Acreage: Approximately 13.72 acres

Existing Use: Vacant

Surrounding Uses: Warehousing, airport and skydiving-related uses, and other industrial uses.

Zoning Overview:

Proposed Zoning (LI):

The LI zoning district accommodates light manufacturing, materials processing, storage of bulk commodities, distribution facilities, and similar processes. This district is appropriate for areas supported by adequate infrastructure and services.

Consistency with Comprehensive Plan:

The proposed rezoning aligns with the City's Future Land Use Map and Comprehensive Plan, which support industrial development in this area. The shift from AC to LI reflects current land use trends and enhances opportunities for needed industrial options.

Future Land Use Overview:

Proposed Future Land Use (IN):

The IN future land use designation outlines primary uses of research/development, light manufacturing/assembly, wholesale/distribution, and storage/warehouse. Secondary uses supported include office, retail commercial, personal business service, commercial/business service, transient accommodations, and public/semi-public. This category is generally appropriate for locations with sufficient size to encourage an industrial park-type arrangement.

Consistency with Comprehensive Plan:

The proposed FLU amendment aligns with the Future Land Use Map and the Comprehensive Plan, which supports and encourages industrial uses in this area.

Development Standards (LI):

Minimum Lot Width: 75 feet

Front Yard Setback: 20 feet; 75 feet if adjacent to residentially zoned areas.

Side Yard Setback: 10 feet

Rear Yard Setback: 10 feet

Maximum Height: 30 feet/2 stories

*These standards ensure compatibility with surrounding land uses while supporting appropriately scaled development.

Attachment(s):

1. 36742566v1 - ORDINANCE 1504-25 CCC Property Holdings Chancey Rezoning and FLU - Draft
2. Chancey Annexation Aerial Map

Fiscal Impact:

Staff Recommendation:

Staff recommends approval of the annexation request for Parcel ID 18-26-22-0010-09300-0000. The proposed land use regulations are consistent with the City's goals of promoting growth along the Chancey Road industrial corridor and aligning zoning and land use with the area's existing residential character. This annexation and its proposed use are not anticipated to create arduous impacts on the city's current services and the proposed shared access along Chancey Road will reduce the opportunities for access-related incidents along the bend in the roadway.

ORDINANCE NO. 1504-25

AN ORDINANCE OF THE CITY OF ZEPHYRHILLS, FLORIDA PROPOSING AN AMENDMENT TO THE CITY'S COMPREHENSIVE PLAN, PROVIDING FOR A SMALL-SCALE COMPREHENSIVE PLAN AMENDMENT TO THE FUTURE LAND USE MAP CHANGING FROM COUNTY IL TO CITY IN (INDUSTRIAL) AND THE ZONING DESIGNATION FROM COUNTY AC TO CITY LI (LIGHT INDUSTRIAL) FOR APPROXIMATELY 13.72 ACRES OF REAL PROPERTY LOCATED WEST OF CHANCEY ROAD, AND EAST OF THE ZEPHYRHILLS AIRPORT AND ZEPHYRHILLS MUNICIPAL BOUNDARY AND HAVING PARCEL ID# 18-26-22-0010-09300-0000; PROVIDING FOR REPEALER, CONFLICT SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, Chapters 125 and 163 Florida Statutes, authorize the City Council of the City of Zephyrhills to prepare and enforce a Comprehensive Plan for the development of the City; and

WHEREAS, the City Council has determined that the proposed amendment meets the criteria for a Small-Scale Comprehensive Plan Amendment pursuant to Section 163.3184, Florida Statutes, and the Zephyrhills Comprehensive Plan; and

WHEREAS, the Zephyrhills Planning Commission, the Local Planning Agency, on May 20, 2025, held a public meeting on the proposed amendment to the Comprehensive Plan with due public notice, pursuant to Section 125.55(2), Florida Statutes, and recommended approval to the City Council; and

WHEREAS, the City has complied with all requirements and procedures of Florida law in processing this amendment to the Zephyrhills Comprehensive Plan including, but not limited to, Section 163.3184, Florida Statutes.

WHEREAS, the proposed Future Land Use Map amendment meets the criteria of a small-scale Future Land Use Map amendment and is consistent with the goals, objectives and policies of the Comprehensive Plan; and

WHEREAS, the City Council has determined that the Industrial (IN) future land use classification would be appropriate, would promote the general welfare, and would encourage proper development within the City; and

WHEREAS, the City Council has determined that the Light Industrial zoning designation would be appropriate, would promote the general welfare, and would encourage proper development within the City; and

WHEREAS, the City Council desires to hereby formally adopt the amendment to the City's Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Zephyrhills, Florida, as follows:

Section 1. The Whereas Clauses above are true and accurate and are incorporated by reference and made a part of this Ordinance.

Section 2. This Ordinance is enacted pursuant to Chapter 163, Florida Statutes, and under the home rule powers of the City.

Section 3. The following described lands, lying and being situated in the City of Zephyrhills, to wit:

Parcel I.D. No. 18-26-22-0010-09300-0000

Legal Description: ZEPHYRHILLS COLONY COMPANY LANDS PB 1 PG 55
THAT PORTION OF TRACT 109 110 115 116 & & 125 LYING WEST OF
ZEPHYRHILLS BY-PASS IN SECTION 18 OR 9664 PG 1518

The Future Land Use Map designation is hereby changed from County IL to City IN (Industrial) and included within the boundaries of the City of Zephyrhills, Florida and the Zoning Designation is hereby rezoned from County AC to City LI (Light Industrial) and included within the boundaries of the City of Zephyrhills, Florida.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. That if any section, sentence, clause, or phrase of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Section 6. This Ordinance shall become effective upon passage on the second reading and signing by the Mayor.

The foregoing Ordinance No. 1504-25 was read and passed on the first reading in an open and regular meeting of the City Council of the City of Zephyrhills, Florida, on this 14th day of July 2025.

Attest:

Ricardo Quiñones, City Clerk

Charles E. Proctor, Council President

The foregoing Ordinance No. 1504-25 was read and passed on the second reading, following a public hearing, in an open and regular meeting of the City Council of the City of Zephyrhills, Florida, on this 28th day of July 2025.

Attest:

Ricardo Quiñones, City Clerk

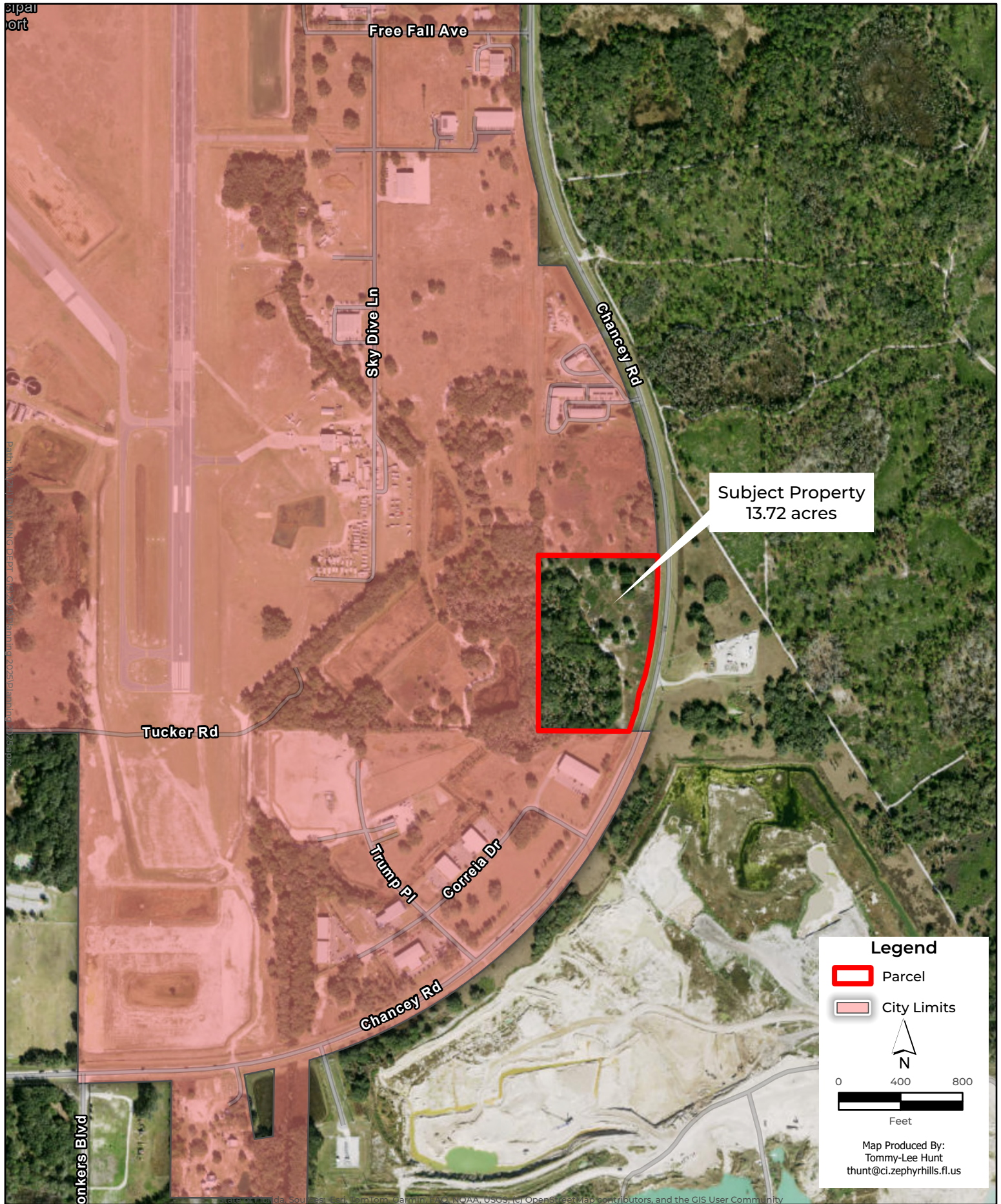
Charles E. Proctor, Council President

The foregoing Ordinance No. 1504-25 was approved by me on this 28th day of July, 2025.

Melonie Bahr Monson, Mayor

Approved as to legal form and legal content
for the reliance of the City of Zephyrhills only:

Matthew E. Maggard, Esq.
City Attorney



BUSINESS ITEMS/PUBLIC HEARING 2.5

Chicken Ordinance

First Reading ORDINANCE NO. 1505-25 " **AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS, FLORIDA CREATING A NEW SECTION TO CHAPTER 93 OF THE CITY OF ZEPHYRHILLS CODE OF ORDINANCES, SECTION 93.03 ESTABLISHING REGULATIONS FOR THE KEEPING, HARBORING AND MAINTENANCE OF BACKYARD CHICKENS; PROVIDING FOR APPLICABILITY, REPEALER, SEVERABILITY, INCLUSION IN THE CODE, AND PROVIDING AN EFFECTIVE DATE. "**

A. City Council considers Ordinance No. 1505-25 on the First Reading.

Issue:

A discussion took place at the May 12th and June 9th Council meetings regarding the keeping of backyard chickens. Council directed staff to draft ordinance language and bring back to a future meeting for discussion. Attached is the proposed ordinance language and associated application.

The proposed rules are as follows:

- The keeping of chickens shall be allowed only in the following residential zoning districts: ER, R1, R2, and R3
- No roosters shall be allowed on any property within the city at any time.
- Any property having live chickens thereon shall have chicken coops or pens on said property, in the rear yard only, constructed in a manner to keep the chickens housed therein at all times. Each chicken coop or pen must have at least four (4) square feet of space per chicken kept on the property. Chickens shall be allowed outside the coops or pens periodically between sunrise and sunset, only, so long as the same are properly confined on the property with an impenetrable fence. No chicken pen shall exceed fifty (50) square feet in area.
- The coop must be no taller than six (6) feet from the ground.
- Any property on which live chickens are allowed must be properly maintained and properly remove waste products and ensure proper vegetative ground covers are maintained at all times. Any property on which a live chicken is kept that has more than one hundred (100) square feet of defoliated ground, outside a chicken pen or chicken coop area, shall be in violation of this section.
- No property shall have more than five (5) live chickens thereon at any time.
- Live chickens shall not be slaughtered or processed for consumption on any property within the city at any time.
- The coop shall be set back a minimum of 20 feet from side and rear lot lines.
- The on-site sale of eggs or any chicken products shall be prohibited.

- These requirements shall not be waived or varied.
- These regulations do not affect deed restrictions or covenants concerning chickens.
- Chickens will be removed after three (3), separate violation events as determined by the City's Code Enforcement Officer.

Background:

Attachment(s):

1. 36742574v1 - Chicken Ordinance No. 1505-25
2. Backyard Chicken Application

Fiscal Impact:

No fiscal impact is expected.

Staff Recommendation:

Staff recommends approval of Ordinance 1505-25 on the first reading and approval to advertise for the 2nd reading.

ORDINANCE 1505-25

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS, FLORIDA CREATING A NEW SECTION TO CHAPTER 93 OF THE CITY OF ZEPHYRHILLS CODE OF ORDINANCES, SECTION 93.03 ESTABLISHING REGULATIONS FOR THE KEEPING, HARBORING AND MAINTENANCE OF BACKYARD CHICKENS; PROVIDING FOR APPLICABILITY, REPEALER, SEVERABILITY, INCLUSION IN THE CODE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Florida Constitution and Chapter 166, Florida Statutes, the City of Zephyrhills has broad home rule powers to carry out city government, including the power to adopt ordinances to provide for the public health, safety and welfare; and

WHEREAS, an interest in local food sources, food resilience and desire for fresher, more nutritious foods is being embraced by residents throughout the country; and

WHEREAS, the City of Zephyrhills intends to integrate sustainability and resilience strategies that foster healthy communities, educate and empower residents to lead healthy, sustainable lifestyles, and invest in the wellbeing and success of our children; and

WHEREAS, many communities in Florida and throughout the United States have found in adopting ordinances to integrate the keeping of chickens in residential areas that up to four (4) chickens are sufficient to meet the needs of the average family's egg consumption; and

WHEREAS, pursuant to law, notice has been given by publication in a newspaper of general circulation in the City, notifying the public of the proposed ordinance and of a public hearing; and

WHEREAS, the City Council has conducted duly noticed public hearings as required by law, at which hearings all parties in interest and citizens were afforded notice and the opportunity to be heard; and

WHEREAS, the City Council hereby finds and declares that this Ordinance is in the best interest of the public health, safety and welfare, and that it advances a valid and important public purpose.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Zephyrhills, Florida, that the following addition to the City of Zephyrhills Code of Ordinances shall be referred to as the "Backyard Chickens Ordinances," as follows:

SECTION 1. Authority

This ordinance is enacted pursuant to Chapter 166, Florida Statutes, and under the home rule powers of the City.

SECTION 2. Legislative Findings of Fact

The foregoing Whereas clauses are hereby adopted as legislative finds of the City Council of the City of Zephyrhills and are ratified and confirmed as being true and correct and are hereby made a specific part of the Ordinance upon adoption.

SECTION 3. Purpose and Intent

This Ordinance establishes standards and regulations for the keeping, harboring and maintenance of backyard chickens in the City of Zephyrhills, Florida, to protect public health, safety and welfare.

SECTION 4. Establishment of Section 93.03 Standards and Conditions for the Keeping of Backyard Chickens

§93.03 Standards and Conditions for the Keeping of Backyard Chickens

Backyard Chickens shall be permitted to be raised, kept, maintained, harbored and/or allowed as an accessory use to owner-occupied single-family detached residential dwelling units in the following zoning districts: Estate Residential (ER), Low Density Residential (R1), Single-Family Residential (R2), and Medium Density Residential (R3). The keeping of live domesticated chickens shall be prohibited in all other zoning districts and on all duplex and multi-family residential lots.

- (A) A maximum of five (5) chickens, whether hens or pullets or a combination thereof, shall be kept on a property at any one given time. The keeping of roosters, capons or cockerels shall be prohibited.
- (B) All chickens shall be protected from the elements and kept in a secure enclosure at all times; except that chickens may be allowed outside the enclosure periodically between

sunrise and sunset only, provided they are confined on the property by a secured fence a minimum of six (6) feet in height. No person shall release or set any chicken free from such fence or enclosure.

- (C) Enclosures shall be covered and ventilated, and shall consist of a chicken coop and fenced run area. The coop shall have not less than four (4) square feet of space per chicken kept on the property to permit free movement but shall not exceed 50 square feet in size.
- (D) Enclosures shall be located in the rear yard of the property, behind the residence, and shall meet a set back of a minimum of 20 feet from side and rear lot lines.
- (E) Enclosures shall be kept in a neat and sanitary condition at all times, and shall be regularly cleaned to prevent offensive odors and attraction of vermin.
- (F) Properties shall be maintained by properly removing waste and ensure vegetation and groundcovers are maintained at all times. Any property on which live chickens are kept that has more than 100 square feet of defoliated ground, outside the enclosure area, shall be in violation of this section.
- (G) The chicken coop must be no taller than six (6) feet from the ground.
- (H) Live chickens shall be properly fed and watered. Stored feed shall be kept in a rodent and predator-proof container.
- (I) It shall be unlawful to slaughter or process live chickens for consumption on any property residentially zoned property within the boundaries of the City of Zephyrhills.
- (J) Backyard chickens shall be kept for personal use only. The onsite sale of eggs, poultry, or manure shall be prohibited.
- (K) Residents wishing to own or possess backyard chickens must complete a Residential Backyard Chicken Application as established and amended by the City of Zephyrhills.
- (L) For purposes of this section, the breeding of chickens is prohibited.
- (M) The keeping, maintaining, harboring, feeding, and/or providing of shelter to ducks, geese, turkeys, peafowl, or any other poultry or fowl is not authorized under the provisions of this section. Further, this section shall not be construed to authorize the keeping, maintaining, harboring, feeding, and/or providing of shelter for wild (roaming) chickens and roosters within the City limits.
- (N) It shall be a violation of this section to keep, maintain, harbor, feed and/or provide shelter to chickens within the boundaries of the City, except as authorized by this section.
- (O) A violation of this section shall result in a fine in the amount of \$500.00 per day that the violation continues.
- (P) If a resident or property is subject to three (3), separate code enforcement violations being issued by the City of Zephyrhills shall lose their ability to own or possess backyard chickens as determined by a City Code Enforcement Officer.

SECTION 5. Repealer

All ordinances and resolutions or parts thereof of the City in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 6. Severability

It is declared the intent of the City Council of the City of Zephyrhills, Florida, that if any section, subsection, sentence, clause, or provision of this Ordinance shall be declared invalid, the remainder of this Ordinance shall be construed as not having contained said section, subsection, sentence, clause or provisions and shall not be affected by such holding.

SECTION 7. Inclusion in Code

It is the intent of the City Council of the City of Zephyrhills, Florida that the provisions of this Ordinance shall become and be made a part of the City of Zephyrhills Code of Ordinances, and that the sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be changed to “section,” “article,” “regulation,” or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 8. Effective Date

This Ordinance shall become effective upon passage on the second reading and signing by the Mayor.

The foregoing Ordinance No. 1505-25 was read and passed on the first reading in an open and regular meeting of the City Council of the City of Zephyrhills, Florida, on this 14th day of July 2025.

Attest: _____
Ricardo Quiñones, City Clerk

Charles E. Proctor, Council President

The foregoing Ordinance No. 1505-25 was read and passed on the second reading, following a public hearing, in an open and regular meeting of the City Council of the City of Zephyrhills, Florida, on this 28th day of July, 2025.

Attest: _____
Ricardo Quiñones, City Clerk

Charles E. Proctor, Council President

The foregoing Ordinance No. 1505-25 was approved by me this 28th day of July 2025.

Melonie Bahr Monson, Mayor

Approved as to legal form and legal content

Matthew E. Maggard, City Attorney



Residential Backyard Chicken Application

Name: _____

Address: _____

Phone: _____ Email: _____

RULES & REGULATIONS

- The keeping of live chickens within the city shall at all times be in accordance with this section.
- It shall be a violation of this Code of Ordinances to have, keep, maintain, or allow live chickens to be on any property within the city limits, except as provided in this section.
- The keeping of chickens shall be allowed only the following residential zoning districts: **Fill in the districts**
- No roosters shall be allowed on any property within the city at any time.
- Any property having live chickens thereon shall have chicken coops or pens on said property, in the rear yard only, constructed in a manner to keep the chickens housed therein at all times. Each chicken coop or pen must have at least four (4) square feet of space per chicken kept on the property. Chickens shall be allowed outside the coops or pens periodically between sunrise and sunset, only, so long as the same are properly confined on the property with an impenetrable fence. No chicken pen shall exceed fifty (50) square feet in area.
- The coop must be no taller than six (6) feet from the ground.
- Any property on which live chickens are allowed must be properly maintained to properly remove waste products and to ensure proper vegetative ground covers are maintained at all times. Any property on which a live chicken is kept that has more than one hundred (100) square feet of defoliated ground, outside a chicken pen or chicken coop area, shall be in violation of this section.
- No property shall have more than five (5) live chickens thereon at any time.
- Live chickens shall not be slaughtered or processed for consumption on any property within the city at any time.
- The coop shall be set back a minimum of 20 feet from side and rear lot lines.
- The on-site sale of eggs or any chicken products shall be prohibited.
- These requirements shall not be waived or varied.
- These regulations do not affect deed restrictions or covenants concerning chickens.
- Chickens will be removed after three (3), separate violation events as determined by the City's Code Enforcement Officer.

I have read, understand, and agree to comply with the City of Zephyrhills Ordinance XXXX-xx.

Registrant Signature

Date

CITY MANAGER'S REPORT 3.1

Amendment to Lease Agreement **29-21-03** with Tina and Joe's

Issue:

Council requested staff to remove the Carriage House from the Tina and Joe's Café Management Agreement.

Background:

Attachment(s):

1. 36742597v1 - First Amendment to the Tina and Joe's Cafe Management Agreement
2. 36742599v1 - Exhibit A - First Amendment T&J

Fiscal Impact:

No anticipated fiscal impact anticipated.

Staff Recommendation:

Staff recommends approval of the amendment to agreement 29-21-03 with Tina and Joe's.

**FIRST AMENDMENT TO THE
TINA AND JOE'S CAFE MANAGEMENT AGREEMENT**

THIS AMENDMENT is made and entered into this ____ day of July 2025, by and between the **CITY OF ZEPHYRHILLS**, a Florida municipal corporation (hereinafter "CITY"), and **TINA AND JOE'S CAFE, LLC**, a Florida limited liability company ("CONTRACTOR").

WHEREAS, the parties hereto entered into a management lease agreement on **November 8, 2021**, entitled ***Tina and Joe's Cafe Management Agreement***, ("AGREEMENT") attached hereto as Exhibit "A" and made apart hereof by reference; and

WHEREAS, the parties desire to amend and modify the original Agreement.

NOW THEREFORE, the parties hereby stipulate and agree to amend the ***Tina and Joe's Cafe Management Agreement*** dated **November 8, 2021**, as follows:

1. Article 1. Definitions, paragraph "5. PROPERTY" shall be replaced with the following:

5. PROPERTY means the land on which the Café is located which has a street address of 38537 5th Avenue, Zephyrhills, FL 33542, and Parcel ID Number of 11-26-21-0010-14200-0070 and commonly referred to as "The Jefferies House."

2. Removal of the Carriage House. The property commonly referred to as "The Carriage House" which has a street address of 5323 9th Street, Zephyrhills, Florida 33542 and a Parcel ID Number of 11-26-21-0010-15200-0080 ("CARRIAGE HOUSE") shall no longer be subject to the AGREEMENT.

- a. Immediately upon execution of this Amendment, CONTRACTOR, relinquishes all right, title and possession of the Carriage House to the CITY.

b. CONTRACTOR hereby releases any and all claim to use, possession, or rental income of the CARRIAGE HOUSE.

3. Repealer. Any and all sections of the AGREEMENT inconsistent with this Amendment shall be repealed from said AGREEMENT and shall have no force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the _____ day of July 2025.

CITY OF ZEPHYRHILLS, FLORIDA

ATTEST:

By: _____
Ricardo Quiñones, City Clerk

By: _____
Charles E. Proctor, Council President

Approved as to Legal Form and Content

Matthew E. Maggard, City Attorney

Witnesses:

TINA AND JOE'S CAFE, LLC

Signature

Printed Name

Signature

Printed Name

By: _____

Printed Name: _____

Title: _____

EXHIBIT

A

**TINA AND JOE'S CAFE
MANAGEMENT AGREEMENT**

This TINA AND JOE'S CAFE MANAGEMENT AGREEMENT (hereinafter "AGREEMENT") is made between the **CITY OF ZEPHYRHILLS**, a Florida municipal corporation (hereinafter "CITY"), and **TINA AND JOE'S CAFE, LLC**, a Florida limited liability company ("CONTRACTOR").

WHEREAS, CITY desires to enter into an agreement with CONTRACTOR to manage the operation of the CITY'S JEFFRIES HOUSE (hereinafter "HOUSE") and the CITY'S CARRIAGE HOUSE, (hereinafter "CARRIAGE HOUSE"), collectively referred to as "THE PROPERTY", as specifically described below;

WHEREAS, the CITY and CONTRACTOR agree that the House shall, at all times, operate as TINA AND JOE'S CAFÉ (hereinafter "Café");

WHEREAS, the CITY and CONTRACTOR agree that the Carriage House shall, at all times, operate as a PRODUCE AND PLANT RETAIL OPERATION (hereinafter "Retail Operation");

NOW, THEREFORE, CITY and CONTRACTOR, for and in consideration of the provisions, mutual promises, covenants, and conditions hereinafter set forth or recited, agree as follows:

ARTICLE 1. DEFINITIONS

1. The Effective Date of this Agreement shall be the date when the last party has signed and delivered this Agreement. BEGINNING DATE shall mean on or Before November 8, 2021.

2. EXPIRATION DATE shall September 30, 2026, or if the Agreement is automatically

renewed, the renewal expiration date as provided in Section 3.1.

3. FISCAL YEAR shall mean the period beginning October 1st of any year through September 30th of the following year.

4. TINA AND JOE'S CAFE means the property and all improvements located on the Property that the CITY may make available to the CONTRACTOR as provided herein.

5. PROPERTY means the land on which the Café is located which has a street address of 38537 5th Avenue, Zephyrhills, FL 33542, and a Parcel ID Number of 11-26-21-0010-15200-0070 as well as the Carriage House on which the Retail Operation is located which has a street address of 5323 9th Street, Zephyrhills, Florida 33542 and a Parcel ID Number of 11-26-21-0010-15200-0080.

ARTICLE 2. GENERAL REQUIREMENTS

§2.1 Management of the Café and Retail Operation. CITY hereby hires CONTRACTOR to manage, supervise, and operate the Café and Retail Operation in accordance with this Agreement. CONTRACTOR has the responsibility and authority to implement operating policies that adhere to policies that are customary with similar types of facilities where applicable and shall take all actions necessary to manage and operate the Café and Retail Operation in a manner that meets standards which are customary with other similar facilities.

§2.2 Independent Contractor. CONTRACTOR is, at all times and for all purposes, an independent contractor with respect to the CITY and the CITY shall not have the authority or responsibility to supervise the day-to-day activities of the CONTRACTOR or CONTRACTOR'S employees. Nothing in this Agreement and its performance shall create an employment or agency relationship between CITY and CONTRACTOR. Nevertheless, CONTRACTOR agrees

to seek advice from CITY and cooperate with CITY in its management of the Café and Retail Operation, and the parties both agree to cooperate with each other regarding the management of the Café and Retail Operation.

§2.3 Use of the Property. CITY grants to CONTRACTOR the use and possession of the Property during the term of this Agreement for the purposes of managing and operating the Café and Retail Operation, subject to the rights of CITY under this Agreement. The CITY has the right to utilize the property for special events at no cost to the CITY.

§2.4 CITY'S Right to Inspection. CITY and its representatives have the right at all reasonable times to enter upon and to examine and inspect the Café and Retail Operation for any reason. In the event of a default, CITY has the right of access to the Café and Retail Operation that is reasonably necessary to cause the proper maintenance of the Café and Retail Operation.

§2.5 ALTERATIONS to Property. CONTRACTOR shall not make any material alterations to the Property without the express written consent of CITY. A material alteration shall be defined by an action by CONTRACTOR that would require a permit to perform.

ARTICLE 3. TERM

§3.1 Term. The term of this Agreement shall be for Five (5) years commencing on or before November 8, 2021, and expiring on September 30, 2026. There are two (2) subsequent, five (5) year renewal options, unless terminated earlier under one of the provisions of Article 10 of the Agreement. Nothing in this Article shall be construed as a limitation on either party's right to terminate this Agreement in accordance with Section 10.7 hereof. Both Parties shall issue its decision, in writing, to renew the Agreement, or allow the Agreement to expire a minimum of six (6) months in advance of the expiration date, to ensure a smooth transition if a change is to occur following the end of the then current term.

ARTICLE 4. RESPONSIBILITIES OF CONTRACTOR

§4.1 Operation of the Café and Retail Operation. In the management, supervision and operation of the Café and Retail Operation, CONTRACTOR shall:

- a) operate the Café and Retail Operation as a restaurant and retail store which is open to the general public without discrimination on any basis prohibited by applicable law, regulation or ordinance, subject to fees, rules, and policies approved by the CITY, and within this Agreement;
- b) remit proceeds of any rent from the upstairs apartment in the Carriage House, in the amount of ninety (90) percent of all proceeds from any rental agreement to be due to the City.
- c) obtain all permits and licenses required by the State of Florida or any political subdivision to operate a Café and Retail Operation.
- d) be responsible for transferring all utilities from the City of Zephyrhills, including but not limited to, electric, water, sewer, phone, cable, pest control services, internet, etc.
- e) be responsible for all furnishings and equipment to operate a Café and Retail Operation.
- f) provide the day to day maintenance and clean up from the management and operation of Café and Retail Operation.
- g) operate the Café and Retail Operation in a professional, efficient and cost-effective manner and provide services and retail sales;
- h) adhere to best practice financial management principles, and maintain efficient and accurate accounting records in accordance with generally accepted accounting principles in the format defined by the CITY'S Finance Director. CONTRACTOR must

provide audited financial statements to the CITY at the end of each fiscal year.

- i) comply with all applicable federal, state and local laws, ordinances, rules, policies, and regulations;
- j) operate and maintain a clean, well-organized, efficient, customer business, which provides quality customer service;
- k) maintain the Café and Retail Operation in a quality and safe condition;
- l) maintain all personal property, equipment and supplies owned by CONTRACTOR in good working order;
- m) pay all operating expenses of the Café and Retail Operation, except for those expenses which the CITY agrees herein to pay;
- n) limit sales of alcohol on the Café and Retail Operation premises to beer and wine and ensure that the gross sales of alcohol does not exceed 49% of the total food and beverage sales;
- o) notify CITY when, in the opinion of CONTRACTOR, any part of the Property maintained by CITY requires maintenance. Notification should be made in writing, to the CITY MANAGER or his/her designee. If, however, the parties disagree about the condition and/or required maintenance of the CITY maintained facilities, CONTRACTOR will notify CITY in writing of the reasons behind CONTRACTOR'S request. CITY will respond to CONTRACTOR in writing within ten (10) business days of receipt of CONTRACTOR'S written request along with a response and reasoning for any denial of requested maintenance. CITY'S determination regarding the need for maintenance will be final but will not be unreasonable in denying any request for maintenance. Any maintenance requests which were not denied, but

failed to uphold in a reasonable time, may be resolved by CONTRACTOR so long as the repair does not exceed \$2,500.00 and costs shall be reimbursed to CONTRACTOR. An annual inspection by both parties will be made to determine any on-going maintenance and long-term improvements.

- p) not operate a Café and Retail Operation that competes with the operations subject to this Agreement as of the BEGINNING date without specific written permission from the CITY, but CONTRACTOR may collaborate with competing Café and Retail Operations if beneficial to the success of the Café and Retail Operation.

§4.2 Improvements and Equipment Provided by Contractor.

- (a) All capital improvements to the Property shall be permanent and shall become property of the CITY.
- (b) CONTRACTOR agrees to provide adequate equipment to the Café and Retail Operation which shall be maintained by CONTRACTOR:
 - i. The Café and Retail Operation equipment shall be replaced by CONTRACTOR periodically according to generally accepted industry standards.

§4.3 Rules and Policies. CONTRACTOR agrees to conduct business at the Property in the course and conduct of operating a Café and Retail Operation in accordance with policies similar to other like facilities. Additionally, the CONTRACTOR shall provide written notice to the CITY MANAGER when CONTRACTOR makes any substantial changes to its operating procedures or policies affecting the use of the Property. CONTRACTOR agrees not to utilize the Property without the CITY's prior written approval for any purpose other than for conducting the operations of Café and Retail Operation, provided, however, that the CITY's approval shall not unreasonably be withheld.

CONTRACTOR agrees not to make any permanent physical improvements without written approval from the CITY MANAGER. All proposed projects/improvements will be considered on a project by project basis and must be consistent with the overall intended use of the Café and Retail Operation. Requests for CITY MANAGER approval must be made a minimum of ninety (90) days in advance of the proposed installation date of any proposed improvement. The CITY MANAGER is the point of contact for any desired improvements or modification, and will determine the appropriate course of action for CITY approval.

CITY owned property and fixtures located at the Property as of the beginning date of this Agreement will remain at the Property for the use of the CONTRACTOR in the operation of the Café and Retail Operation. However, said property will remain CITY property and shall be returned to the CITY upon request.

§4.4 Café and Retail Operation Personnel.

- (a) CONTRACTOR shall provide employees and/or contractors for the Café and Retail Operation, including management and other necessary staff determined by CONTRACTOR to be necessary for the operation of the Café and Retail Operation to the standards customary with similar facilities. All personnel shall be employees of CONTRACTOR or independent sub-contractors of CONTRACTOR, and not employees or independent sub-contractors of CITY.
- (b) CONTRACTOR shall ensure that its employees and contractors maintain a professional appearance and demeanor at all times.

§4.5 Licenses and Permits. CONTRACTOR shall obtain all licenses and permits required by governmental entities for activities conducted at the Café and Retail Operation.

CONTRACTOR will provide a copy of all licenses to the CITY MANAGER.

§ 4.6 Information Technology.

- (a) CONTRACTOR will be responsible for all technical support for software and hardware utilized in the management of the Café.
- (b) CONTRACTOR will be responsible for obtaining private internet service necessary for the operation of the Café.
- (c) CONTRACTOR will be responsible for obtaining the phone service necessary for the operation of the Café.
- (d) CITY will retain rights to the IT Equipment Closet on the first floor of the Jeffries House and space for the laptop and repeater on the second floor for Wi-Fi connectivity to Main Street/Downtown

ARTICLE 5. CITY / CONTRACTOR RIGHTS AND RESPONSIBILITIES

§ 5.1 CITY / CONTRACTOR responsibilities.

- (a) CONTRACTOR shall be responsible for the maintenance of Café and Retail Operation related items including, but not limited to, walls, doors, flooring, landscape areas (including landscape lighting), hardscape areas, permanent seating, and walkways. CONTRACTOR shall also be responsible for all general clean-up, including providing for interior janitorial services.
- (b) CONTRACTOR shall be responsible for the maintenance of all landscaping and sod, including routine cutting, pruning, mowing, and fertilizing. Any plants, shrubs, trees, etc. that die, must be replaced by CONTRACTOR within a reasonable time.

- (c) CITY shall be responsible for maintaining and repairing all plumbing, electrical, lighting fixtures, nob and tube removal, heating, ventilating and air conditioning, natural gas, systems and fixtures (light bulbs, lamps and air conditioning filters shall be provided by CONTRACTOR).
- (d) CONTRACTOR agrees to maintain the Café and Retail Operation in a good and operational condition. CONTRACTOR shall assist the CITY by notifying the CITY in writing of any specific needs for repair, and the CITY will respond to the CONTRACTOR in writing with an estimated timeline for repair.
- (e) CONTRACTOR shall be responsible for monthly billing statements for services for water, sewer, electricity, natural gas, and security (alarm monitoring) expenses. All utility and monthly billing statements shall be transferred and made into the names of the CONTRACTORS. CONTRACTOR is not responsible for the maintenance or repairs of said items.
- (f) CONTRACTOR shall be responsible for any clogged drainage and plumbing resulting from the operation Café and Retail Operation.
- (g) CONTRACTOR shall not make any permanent or structural changes to the exterior of the buildings (Jeffries House and Carriage House) on the property due to the historic classification of the property and its buildings.
- (h) Except as provided in Section 5.2(b), CITY grants CONTRACTOR the exclusive right to conduct all intended activities at the Café and Retail Operation, unless otherwise waived by CONTRACTOR.

ARTICLE 6. CONSIDERATION

§6.1 Revenues Due to CITY. During the first year of this agreement, from the date of opening of the Café and Retail Operation, there shall be no revenues due to the CITY. During Year two (2), CONTRACTOR shall pay CITY one percent (1%) of the Café and Retail Operation's gross income. During Year three (3), CONTRACTOR shall pay CITY two percent (2%) of the Café and Retail Operation's gross income. During years four (4) and five (5), CONTRACTOR shall pay CITY three percent (3%) of the Café and Retail Operation's gross income due in quarterly payments on or before April 15, July 15, October 15, and January 15 of each year. After final gross income is calculated each fiscal year, any adjustments for underpayment or overpayment, shall be factored into the next quarterly payment. The CITY and CONTRACTOR agree to review the percentage of gross income remitted to CITY by CONTRACTOR a minimum of six (6) months in advance of the expiration date of the initial term and any subsequent term.

ARTICLE 7. ACCOUNTING, REPORTS, AND AUDITS

§8.1 Annual Financial Review. Within 90 days after the close of each fiscal year of the CITY, CONTRACTOR shall submit to CITY Finance Director a financial review certified by CONTRACTOR, covering the specific financial condition and performance of the Café and Retail Operation. The financial review must span the fiscal year then ended. Included with the financial review must be statements for the fiscal year reviews by an independent CPA licensed in the State of Florida. CITY reserves the right to require audited financial statements in lieu of reviewed financial statements, with the difference in cost paid for by the CITY. If an audit is required and the audit report does not contain an "unqualified

opinion," the Contractor will provide a written plan for correcting the cause that prevented an unqualified opinion within ten business days, to be reviewed and approved by the CITY'S Finance Director.

§8.2 CITY'S Right to Inspect and Audit. CITY has the right to inspect the books, records, invoices, deposits, sales slips, canceled checks, and other financial data or transactions of CONTRACTOR'S operation of the Café and Retail Operation at reasonable times during normal business hours.

§8.3 Location of Records. CONTRACTOR shall store all current fiscal year Café and Retail Operation records on the Property.

§8.5 Fiduciary Relationship. CONTRACTOR has a fiduciary duty to CITY in all of CONTRACTOR'S financial obligations to CITY in accordance with this Agreement, including, but not limited to, faithfully accounting, depositing, and reporting all payments hereunder.

ARTICLE 8. INDEMNITY AND INSURANCE.

§9.1 INDEMNITY BY CONTRACTOR. CONTRACTOR ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR AND AGREES TO FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF A PERSON OR DAMAGE TO PROPERTY, ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, THE OPERATION OF THE CAFE AND RETAIL OPERATION, AND THE PERFORMANCE, ATTEMPTED PERFORMANCE OR NONPERFORMANCE OF THE WORK AND SERVICES DESCRIBED HEREUNDER OR IN ANY WAY RESULTING FROM OR ARISING OUT OF THE

MANAGEMENT, SUPERVISION, AND OPERATION OF THE CAFÉ AND RETAIL OPERATION UNDER THIS AGREEMENT, INCLUDING THE WORK, SERVICES, OPERATIONS AND LEGAL DUTIES OF CONTRACTOR, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, SUBCONTRACTORS, OR LICENSEES, IF ANY, REGARDLESS OF WHETHER SUCH INJURY, DEATH, OR DAMAGE IS CAUSED IN PART BY THE CITY'S NEGLIGENCE. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED AS WAIVING ANY DEFENSE OF THE PARTIES UNDER FLORIDA LAW, INCLUDING THE DEFENSE OF SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

§9.2 Insurance.

- (a) Insurance. In the event of a Contract Award, the CONTRACTOR shall maintain Worker's Compensation Insurance at statutory limits. The CONTRACTOR shall be responsible for insuring, at its own expense, against claims resulting from the firm's performance under the contract for errors and omissions, personal injury, loss of life, and property damage, under a policy of liability insurance, with limits of at least \$1,000,000. All such policies shall be issued by insurers of recognized responsibility satisfactory to the CITY. The CONTRACTOR shall furnish the CITY Risk Department with duly executed certificates and policy showing that such insurance is in full force and effect and providing for 30 days' notice to the CITY prior to cancellation or termination of any policy.

- (b) Indemnity. CONTRACTOR shall defend, indemnify and hold harmless CITY and all of CITY'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 CITY when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by CITY 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 CITY as set forth in this article of the Agreement.
- (c) Insurance. 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, 000.00 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 CITY as a named, additional insured, as well as furnishing CITY 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 as required herein, including but not limited to any excess and/or umbrella coverages, shall be considered, and CONTRACTOR 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 CITY, and that any other insurance, or self-insurance available to CITY shall be considered secondary to, or in excess of, the insurance coverage(s) procured by CONTRACTOR as required herein.

- (d) **Evidence of Insurance:** The CONTRACTOR shall furnish the CITY with Certificates of Insurance. The Certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The CITY is to be specifically included as an additional insured on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued 30- days prior to said expiration date. The policy shall provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the CITY before the

commencement of any work activities.

§9.3 No Liens or Mortgages by Contractor. CONTRACTOR agrees to pay for all materials, equipment, and labor used in connection with the performance of this Agreement when and as bills or claims become due. CONTRACTOR agrees not to allow any lien or mortgage to be placed on the Property, fixtures, equipment, or other improvements at the Cafe and Retail Operation regardless of whether said fixtures, equipment or improvements were provided by the CONTRACTOR without the prior written consent of CITY. CONTRACTOR shall indemnify, hold harmless and protect the premises, fixtures, equipment and the CITY from and against any claims, liens or mortgages.

ARTICLE 9. TERMINATION

§10.1 For Default. Either party may terminate this Agreement in accordance with this article for a default by the other party.

§10.2 What Constitutes a Default.

- (1) The following events constitute a default by CONTRACTOR:
 - (a) a breach of the fiduciary obligations of CONTRACTOR including, but not limited to, those under Sections 6.1, 7.1, and 8.5 of this Agreement;
 - (b) filing by CONTRACTOR of a voluntary petition for protection under federal bankruptcy laws, or the failure to obtain the dismissal of an involuntary petition under federal bankruptcy laws within 30 days after filing;
 - (c) the inability of CONTRACTOR to provide an unqualified opinion in any required annual audit report as described in Article 8;
 - (d) a failure of CONTRACTOR to perform its duties under this Agreement; or
 - (e) The failure to cure a default of any term of this agreement after being

provided thirty (30) days written notice.

(2) The following events constitute a default by CITY:

- (a) A failure on the part of the CITY to maintain the Property in a good and operational condition, fulfill all of its obligations under this agreement regarding the physical maintenance of the Property, and make timely repairs as requested by CONTRACTOR in accordance with 5.1(c) of this Agreement.
- (b) A failure of CITY to perform any of its duties under this Agreement.

§10.3 Correction.

- (1.) CONTRACTOR shall have 30 days after written notice from CITY specifying the nature of a default under Section 10.2(1)(a)(b)(c) or (d), to correct the default, If the default is of such a nature that it cannot reasonably be corrected within 30 days, the CITY may grant CONTRACTOR additional time as may be reasonably necessary to correct the default so long as CONTRACTOR diligently pursues the correction, and takes all reasonable measures to insure the safety of the public and fulfillment of CONTRACTOR'S other obligations hereunder.
- (2) CITY shall have 30 days after written notice from CONTRACTOR specifying the nature of a default under Section 10.2(2) to cure the default. If the default is of such a nature that it cannot reasonably be corrected within 30 days, the CONTRACTOR may grant CITY additional time as may be reasonably necessary to correct the default so long as CITY diligently pursues the correction, and takes all reasonable measures to insure the safety of the public and fulfillment of CITY'S other obligations hereunder.

§10.4 Election to Terminate.

- (1) If CONTRACTOR is in default, CITY may elect to terminate this Agreement pursuant to this article by giving written notice of default to CONTRACTOR subject to the following: If the default is under Section 10.2(1)(b) or is under Section 10.2(1)(e) because of the commission of an offense by CONTRACTOR, this agreement shall terminate immediately upon delivery of written notice from CITY to CONTRACTOR of its election to terminate the agreement. If the default is under Section 10.2(d) or is under Section 10.2(e) because of the commission of an offense by an employee of CONTRACTOR, this Agreement shall terminate upon expiration of the correction period if correction has not been made pursuant to Section 10.3, and CITY delivers to CONTRACTOR written notice of its election to terminate the Agreement via certified mail.
- (2) CONTRACTOR may elect to terminate this Agreement pursuant to this article by giving written notice of default to CITY. This Agreement shall terminate upon expiration of the correction period if correction has not occurred pursuant to Section 10.3 and CONTRACTOR delivers written notice to City of its election to terminate the Agreement via certified mail.

§10.5 Remedy for Certain Defaults.

- (a) If CONTRACTOR defaults under Section 10.2(1)(a), CONTRACTOR shall pay all amounts due CITY at the time of its default under the terms of this Agreement.
- (b) CONTRACTOR may withhold fees owed to CITY if CITY fails to maintain the Cafe and Retail Operation per this Agreement.

§10.6 Lien. CITY has, at all times, a valid security interest to secure payment of all fees and other sums of money becoming due under this Agreement from CONTRACTOR and to secure payment of any damages or loss that CITY may suffer by reason of CONTRACTOR'S breaching any covenant, agreement, or condition contained in this Agreement. The security interest covers all goods, wares, equipment, fixtures, furniture, and other personal property of CONTRACTOR that is now on the Property or placed on the Property at some later date, and all proceeds attributable to them. This property may not be removed from the premises without CITY'S consent until all arrearages in fees and all other sums of money then due the CITY under this Agreement have been paid and discharged, and all the covenants, agreements, and conditions of this lease have been fully complied with and performed by CONTRACTOR.

If CONTRACTOR is in default, CITY may, in addition to any other remedies provided in this Agreement or by law, after giving reasonable notice of the intent to take possession and giving an opportunity for a hearing on the issue, enter on the Property and take possession of any goods, wares, equipment, fixtures, furniture, and other personal property, provided by CONTRACTOR, situated on the premises, without liability for trespass or conversion, and sell the property at public or private sale, with or without having the property at the sale, after giving CONTRACTOR reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made. CITY or its assigns may buy any items to be sold at such a sale unless they are prohibited from doing so by law. Unless otherwise provided by law, and without excluding any other manner of giving CONTRACTOR reasonable notice, the reasonable notice requirement is met if notice is given at least ten (10) days before the time of sale. The proceeds from any such disposition, less any expenses connected with taking possession, holding, and selling the property (including reasonable attorney's fees and other

expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this section. Any surplus will be paid to CONTRACTOR or as otherwise required by law, and CONTRACTOR will pay any deficiencies immediately.

ARTICLE 11. ASSIGNMENT AND DELEGATION

Neither party shall assign or delegate this agreement without the prior written consent of the other party.

ARTICLE 12. NOTICES

All notices to the parties shall be in writing and shall be sent by certified mail, return receipt requested, to the addressees and addresses specified below:

All notices to CONTRACTOR shall be sent to:

**TINA AND JOE'S CAFE, LLC
37936 TUCKER ROAD
ZEPHYRHILLS, FL 33543**

All notices to CITY shall be sent to:

**City Manager
City of Zephyrhills
5335 Eighth Street
Zephyrhills, FL 33542**

ARTICLE 13. MISCELLANEOUS

§13.1 Construction. This Agreement shall not be construed against the drafting party.

§13.2 Non-Waiver. No waiver of any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement.

§13.3 Partnerships with CONTRACTOR. Any proposed partnerships with CONTRACTOR and a Third Party must be approved by CITY in advance. All agreements

between CONTRACTOR and Third Parties are subject to, and shall be bound by, this agreement. CONTRACTOR shall ensure that all agreements entered into with Third Parties shall include a provision informing the Third Party that they are bound by this Agreement.

§13.4 TINA AND JOE'S CAFE, LLC. Joseph and Christina Novak shall retain majority ownership of TINA AND JOE'S CAFE, LLC. If at any time Joseph and Christina Novak owns less a majority ownership interest in TINA AND JOE'S CAFE, LLC, CITY can deem such event a material breach of this Agreement and can immediately terminate same.

§13.5 ADA COMPLIANCE. CONTRACTOR shall be compliant with any and all ADA Accessibility rules and regulations and shall be responsible for costs of installing and providing a concrete ADA Accessible ramp where needed to operate the Cafe and Retail Operation.

ARTICLE 14. SEVERABILITY

If any provision of this Agreement is held to be invalid or unenforceable as applied in a particular case for any reason, those circumstances shall not have the effect of rendering the provision invalid or unenforceable in any other case. The invalidity of one or more phrases, sentences, clauses, or sections in this Agreement shall not affect the remaining portions of the Agreement.

ARTICLE 15. GOVERNING LAW

This Agreement shall be governed by and construed under the laws of the State of Florida, and venue in any proceeding relating to this Agreement shall be in Dade City, Pasco County, Florida.

ARTICLE 16. BINDING CLAUSE

This Agreement shall be binding upon the parties, their heirs, executors, administrators, devisees, legatees, trustees, successors, and assigns.

ARTICLE 17. PUBLIC RECORDS

Pursuant to section 119.0701, Florida Statutes, for any tasks performed by CONTRACTOR on behalf of the CITY, CONTRACTOR shall: (a) keep and maintain all public records, as that term is defined in chapter 119, Florida Statutes ("Public Records"), required by the CITY to perform the work contemplated by this Agreement; (b) upon request from the CITY'S custodian of public records, provide the CITY with a copy of the requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the costs provided in chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion or termination of this Agreement, if Contractor does not transfer the records to the CITY in accordance with (d) below; and (d) upon completion or termination of this Agreement, (i) if the CITY, in its sole and absolute discretion, requests that all Public Records in possession of Contractor be transferred to the CITY, Contractor shall transfer, at no cost, to the CITY, all Public Records in possession of CONTRACTOR within thirty (30) days of such request or (ii) if no such request is made by the CITY, CONTRACTOR shall keep and maintain the Public Records required by the CITY to perform the work contemplated by this Agreement. If CONTRACTOR transfers all Public Records to the CITY pursuant to (d)(i) above, CONTRACTOR shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements within thirty (30) days of transferring the Public Records to the CITY and provide the CITY with written confirmation that such records have been destroyed within thirty (30) days of

transferring the Public Records. If CONTRACTOR keeps and maintains Public Records pursuant to (d)(ii) above, CONTRACTOR shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the CITY, upon request from the CITY'S custodian of public records, in a format that is compatible with the information technology of the CITY. If CONTRACTOR does not comply with a Public Records request, or does not comply with a Public Records request within a reasonable amount of time, the CITY may pursue any and all remedies available in law or equity including, but not limited to, specific performance. The provisions of this section only apply to those tasks in which CONTRACTOR is acting on behalf of CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 813-780-000, EXT. 3543 OR CITYCLERK@ZEPHYRHILLS.FL.US OR CITY CLERK – CITY OF ZEPHYRHILLS – 5335 EIGHTH STREET – ZEPHYRHILLS, FLORIDA 33542.

ARTICLE 18. ENTIRE AGREEMENT

This Agreement and the attached exhibit(s) listed below constitute the entire agreement between the parties and, unless otherwise provided herein, may be amended only in writing, signed by all parties to this Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the

8th day of November 2021.

ATTEST:

By: Lori L. Hillman

Lori L. Hillman, City Clerk

CITY OF ZEPHYRHILLS, FLORIDA

By: W. Alan Knight

W. Alan Knight, Council President

Approved as to Legal Form and Content

Matthew E. Maggard
Matthew E. Maggard, City Attorney

Witnesses:

TINA AND JOE'S CAFE, LLC

Signature [Signature]

Printed Name Paul R. Hillman

Signature Lori L. Hillman

Printed Name Lori L. Hillman

By: Christine Novak

Printed Name: Christine Novak

Title: Owner

CITY MANAGER'S REPORT 3.2

CivicRec Implementation & Facility Reservation Online Impact

Issue:

Background:

In April 2024, the City of Zephyrhills launched CivicPlus' CivicRec software to streamline facility reservations and recreation program registration. This platform, now available through the City's official website, allows residents and civic organizations to reserve key community assets — including the Alice Hall Community Center and the Zephyrhills Train Depot — entirely online without needing to visit City Hall during normal business hours:

<https://secure.rec1.com/FL/zephyrhills-fl/catalog>

In addition to facility reservations, CivicRec has been instrumental in managing registrations for the City's Free Summer Recreation Program and now serves as an accessible database for information on City parks and facilities.

The implementation of CivicRec was a coordinated effort involving the City Clerk's Office, Finance Office, and Public Information Office, respectively.

To evaluate the effectiveness of CivicRec, staff conducted a year-over-year comparison of reservation data. Staff reviewed and tallied reservation records from May 2023 to April 2024 (in-house reservations) and compared them with usage from May 2024 to April 2025 (CivicRec online reservations).

Key findings from the evaluation include:

- A 38% overall increase in facility reservations across City-managed venues.
- The Train Depot showed the most significant growth, with reservations increasing by 135% following the implementation of CivicRec.

These numbers demonstrate that CivicRec has not only improved access and convenience for residents but also significantly increased engagement with City facilities. Staff will continue to monitor usage and feedback to ensure the platform remains a responsive and effective tool for public use.

	5/23 - 4/24	5/24 - 4/25		
	In-House	CivicRec	Delta	%
Alice Hall	164	177	13	8%
Train Depot	51	120	69	135%
Total	215	297	82	38%

Attachment(s):

None

Fiscal Impact:

Staff Recommendation:

CITY MANAGER'S REPORT 3.3

City Parks Addition of New Equipment to Gunner Paw, Veterans, Depot, Ellis Harrold and Shepherds Park.

Issue:

City Council directed staff to create a plan for the addition of new equipment to the city parks. Staff will present the designs and cost for each park to the City Council.

Background:

The Parks Master Plan Phase I called for the addition of park equipment in all city parks. Staff has worked with Scott Brushwood of REP Services to design and locate engaging park equipment for all ages within the city parks. Hercules, Krusen, and Zephyr Park are not included in the update.

Attachment(s):

None

Fiscal Impact:

Funding for the park equipment is in the FY 2024/2025 approved budget.

Staff Recommendation:

Staff seeks approval for the City Parks Addition of New Equipment Plan.