

Action Item X
Information Only _____

CONSENT ITEM 2

Award contract to C.W. Roberts Contracting, Inc. for Runway 1-19 Miscellaneous Improvements, Part A.

Consider:

Award construction contract to C.W. Roberts Contracting, Inc. in the amount of Eight Hundred Twenty-Eight Thousand, Nine Hundred Sixty Dollars and no/100 (\$828,960.00).

Issue:

The total bid for Runway 1-19 improvements is \$1,439,710.00. This award contract is for **Part A** that is funded in FY 2017/2018, utilizing FDOT grants currently executed. **Part B** will follow, seeking additional FDOT funding in FY2018/2019 for the remaining project costs.

Attachments:

Section 120 Construction Contract

Analysis:

Projects will continue to modernize airport facilities using available FDOT grant funding sources. Funds are budgeted in FY 2017/2018.

Staff Recommendation:

Approval of Construction Contract with C.W. Roberts Contracting, Inc.

SECTION 120
CONSTRUCTION CONTRACT

THIS CONTRACT is entered by and between the City of Zephyrhills, a political subdivision of the State of Florida (hereinafter called the "Owner"), and **C.W. Roberts Contracting, Inc.** of Sumter County, Florida (hereinafter called the "Contractor"), on this 14th day of August, 2017.

WHEREAS, it has been determined that the execution of this contract is beneficial to the people of the City of Zephyrhills, Florida;

WITNESSETH,

The Owner and the Contractor for **Eight Hundred Twenty-Eight Thousand Nine Hundred Sixty Dollars and no/100 (\$828,960.00)** and other good and valuable consideration hereby covenant and agree as set forth below:

ARTICLE I.

THE CONTRACT DOCUMENTS

1. The Contractor shall perform all the work required by the Contract Documents to complete the Project as described and detailed in the drawings entitled: **Runway 1-19 Miscellaneous Improvements – Part A** prepared by AVCON, INC., and dated May 2017 and in accordance with the Project Manual prepared by AVCON, INC. all as pertaining to the Owner's property described in the Contract Documents. The Project comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.
2. Contractor represents and agrees that it has carefully examined and understands this Contract and the entire Contract Documents, has investigated the nature, locality and site of the Project and the conditions and difficulties under which it is to be performed, and that it enters into this Contract on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of the Owner, or of any of the Owner's agents, consultants or employees.

ARTICLE III.

TIME OF COMMENCEMENT AND COMPLETION DATE

1. This is a 135-calendar day Contract to be accomplished in three phases (Procurement, Construction, and Close-Out). Each of the phases will be allowed 30 days, 45 days, and 60 days, respectively, for completion. The Procurement Phase work to be performed under this

Contract shall commence immediately after written notification ("Notice to Procure") is provided by the Owner to the Contractor. The Contractor may not proceed with the Construction Phase of the work until the Owner provides a written "Notice to Proceed" to the Contractor. Once the Contractor receives and acknowledges the "Notice to Proceed," the Contractor shall thereafter diligently proceed with the completion of the Construction Phase within 45 days ("Construction Completion Date"). The Contractor may use the final 60 days of the Contract for Close-Out purposes ("Completion Date").

2. Notwithstanding anything else contained herein, if the Owner in its sole judgment, shall deem it advisable to terminate this Contract before delivery of Notice to Procure, then the Owner shall deliver written Notice of Termination of the Contract to the Contractor, the Contract shall be rendered null and void, and neither party shall be entitled to any damages or compensation in connection with such termination of the Contract.
3. Inasmuch as failure of the Contractor to complete the Project by the Completion Date may cause grave injury and damage to the Owner, time is of the essence in the performance of this Contract. Accordingly, the Contractor must commence work and complete the Project when and as required by this Contract.
4. In the event of delay in the completion of the Project by the Completion Date, the parties hereto acknowledge that the calculation of the actual damages to the Owner would be difficult, if not impossible, to determine. Consequently, should the Contractor fail to timely meet the work requirement of the Project by the Completion Date, the parties hereto agree that as liquidated damages, and not as penalty the Contractor will pay the Owner One Thousand Dollars (\$1,000.00) for each calendar day after the Completion Date, until the Project is Completed, all as certified by the Engineer or the Owner representatives as may be designated by the Owner hereunder.
5. In the event that the Contractor shall fall behind in schedule at any time, for any reason, and such delay is adversely affecting the Owner's ability to timely occupy and use the Project for its intended purpose, the Owner shall be entitled to direct acceleration or re-sequencing of the work to bring the project back on schedule. The Contractor shall reserve in each of its subcontracts entered into in connection with the Project, a right to accelerate consistent with the Contractor's obligations hereunder. In the event the Contractor determines that the Completion Date cannot be met by re-sequencing the work, then the Contractor shall immediately provide the Owner and in any event within three (3) calendar days after the date of receipt of the Owner's instruction for re-sequencing or accelerating, a plan to complete the Project in the shortest possible time. No approval by the Owner of any plan for re-sequencing or accelerating of the work submitted by the Contractor pursuant to this clause shall constitute a waiver by the Owner of its rights of recovery from damages or losses which the Owner may suffer by reason of delayed Project Completion.
6. Contractor agrees to provide the Owner with each application for progress payment pursuant to Article V hereof, the Contractor's best estimate of any anticipated revision to the Completion date for the purpose of the Owner's planning, provided, however, and notwithstanding the making of any progress payments, no anticipated revisions to the Completion Date shall be effective and binding on the Owner and the Contractor without a written Change Order executed by the Owner in accordance with the procedure set forth in Article VI hereof.

ARTICLE IV.

CONTRACT SUM

1. In consideration of the performance of the Contract, the Owner agrees to pay the Contractor, by Owner's check, the contract sum of **Eight Hundred Twenty-Eight Thousand Nine Hundred Sixty and Zero Dollars (\$828,960.00)**.
2. For changes in the work, ordered by the Owner, the contract sum shall be adjusted accordingly. Article VI stipulates the conditions governing changes in the work.
3. The Contractor shall be paid ninety percent (90%) of the amount due with each progress payment, (such payments to be in accordance with the completed work as listed in the Unit Price Schedule for the Project) and the balance of the contract sum shall be paid at the time of Final Payment as described in Article VII hereof.

ARTICLE V.

PROGRESS PAYMENTS

1. Based upon applications for payment submitted to the Engineer by the Contractor and certificates of payment assured by the Engineer and approved by the Owner, the Owner shall make progress payments to the Contractor as provided in the Contract Documents and as specified hereunder.
2. Applications for progress payments will be submitted no more often than monthly and shall be submitted on or before the twenty-fifth (25th) day of each month during the performance of the Contract. The application for progress payments shall be submitted in the format approved by the Owner. Each such application for payment shall set forth the value of all work completed according to the Schedule of Values, including the sum of all prior payments. Quantities and other information shown on the Schedule of Values are for payment purposes only and are not to be construed as work description or limitation of quantities of materials required for completion of the Project. The Contract sum includes all labor and materials to complete the Project as described in the Contract Documents.
3. In each application for progress payment, the Contractor shall certify as follows:
 - A. "There are no known mechanic's or materialmen's liens outstanding at the date of this application other than those for which the Contractor has provided a bond or the approved security pursuant to the provisions of Article VII, paragraph 3, of the Construction Contract between Owner and the Contractor; all due and payable bills with respect to the Project have been paid to date or shall be paid from the proceeds of this application for payment; there is no known basis for the filing of any mechanic's or materialmen's liens on the Project, and waivers from all subcontractors and materialmen employed by the Contractor, have been or will be obtained in such form as to constitute an effective waiver of lien under the applicable laws of the State of Florida";

- B.** "All improvements have been installed in accordance with the Contract Documents (except where noted or agreed upon in writing by the Owner pursuant to an approved Change order)."
- 4.** Beginning with the second application for progress payment, the Contractor shall also deliver with each such application, as a condition precedent to payment thereof, waivers of lien for each of its subcontractors, current through the effective date of the previous application for payment. The Contractor may, if any subcontractor or supplier refuses to furnish a release in full, furnish a bond satisfactory to the Owner, against any lien.
- 5.** The Owner shall promptly review each application for progress payment and make such exceptions as the Owner reasonably deems necessary or appropriate under the state of circumstances then prevailing.
- 6.** Thirty (30) days following receipt of the approved application of progress payment by the Finance Department, the Owner shall make payment to the Contractor in the amount approved, subject, however, to Article V, paragraph 7 hereof. The payment of any application for progress payment by the Owner, including the final application, does not constitute approval or acceptance of that part of the Project to which such payment relates or relieve the Contractor of any of its obligations hereunder with respect hereto.
- 7.** Any provisions hereof to the contrary notwithstanding, the Owner shall not be obligated to make current payment to the Contractor hereunder if any one of the following conditions exists:
- A.** The Contractor fails to diligently prosecute the work in an efficient, timely and workmanlike manner and in strict accordance with the provisions of the Contract Documents;
- B.** The Contractor fails to use an adequate number of qualified personnel and sufficient equipment to complete the Project without undue delay.
- C.** The Contractor fails to make prompt payments to its subcontractors, suppliers, materialmen or laborers;
- D.** Any part of such payment to the Contractor is attributable to the work which is defective or not performed in accordance with the drawings and specifications; provided, however, such payment shall be made as to part thereof attributable to work which is performed in accordance with the drawings and specifications and is not defective;
- E.** The Contractor is otherwise in default of any of its obligations hereunder or otherwise is in default under any of the contract requirements; or
- F.** The Contractor fails to provide the Owner with updated as-built drawings for review prior to each application for payment.

ARTICLE VI.

CHANGES

1. The Owner may at any time, without notice to the sureties, make changes within the general scope of the Project, issue additional instructions, require additional work or direct the omission of portions of the work; provided, however, that the Contractor shall not proceed with any change involving an increase or decrease in contract sum, without prior written authorization from the Owner in accordance with the procedure outlines hereunder.
2. The Owner shall order changes in the Project by giving the Contractor a written change order request ("Change Order Request"), upon receipt of a Change Order Request, the Contractor shall forthwith, but in no event later than 10 days thereafter, furnish to the Owner setting forth in detail, with a suitable breakdown by trades and work classifications, the Contractor's estimate of the changes in the contract sum attributable to the changes set forth in such Change Order Request, and a proposed adjustment to the Completion Date resulting from such changes and any adjustment of time and costs applicable to unchanged work resulting from such Contractor, such Change Order Request and such estimate shall constitute a Change Order, and the contract sum, and the Completion Date shall be adjusted as set forth in such estimate. The foregoing procedure shall apply to both additive and deductive settlement on all items covered therein, subject to performance thereof and payment thereof pursuant to the terms of this Contract. If the Owner and the Contractor cannot agree on the cost of any Change order work, then the Owner may direct the Contractor to proceed with the Change Order work and the cost will be determined in accordance with the procedures established in the General Provisions of the Contract. Change Order Requests may require City Council approval.
3. The price estimates for Change Order Requests shall be made on the basis of the actual cost of labor and materials involved in such work. Additional provision for determining the price of change orders is included in the General Provisions of the Contract.

ARTICLE VII.

FINAL PAYMENT

1. Final payment constituting the entire unpaid balance of the amount due to the Contractor under this Contract shall not be paid by the Owner to the Contractor until the Project has been completed, the Contract fully performed, and a final certificated application for payment has been issued by the Engineer.
2. Anything to the contrary in this Contract or elsewhere in the Contract Documents notwithstanding, fifteen (15) days after final completion of the Project, including final punch-list items and acceptance thereof by the Owner or as soon thereafter as possible, the Contractor shall submit Final Application for payment ("Final Application") which shall set for the all amounts due to the Contractor and remaining unpaid. The Owner shall pay to the Contractor the amount due under such final application within sixty (60) days following final completion of the Project (including final punch list items).

3. The Final Application shall not be made until the Contractor delivers to the Owner, a complete release of all liens arising out of this Contract in a form acceptable to the Owner and an affidavit that so far as the Contractor has knowledge or information, the release includes and covers all materials and services for which a lien could be filed, but the Contractor may, if any subcontractor or supplier refuses to furnish a release in full, furnish a bond satisfactory to the Owner, to properly indemnify the Owner against any lien.
4. In the event of a bona fide dispute by the Owner of any sums for which payment has been requested, no interest shall be due on disputed sums until such dispute is resolved, provided that all undisputed sums shall have been paid in due course.

ARTICLE VIII.

TERMINATION

1. The performance of work under this Contract may be terminated by the Owner in accordance with this clause in whole, or from time to time in part, whenever the Owner shall determine that such termination is in the best interest of the Owner. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.
2. After receipt of a Notice of Termination, and except as otherwise directed by the Owner, the Contractor shall:
 - A. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
 - B. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as it is not terminated.
 - C. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
 - D. Assign to the Owner, in the manner, at the time and to the extent directed by the Owner, all the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - E. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner, to the extent the Owner may require, which approval or ratification shall be final for all the purposes of this clause.
 - F. Transfer title and deliver to the Owner, in the manner, at the times, and to the extent, if any, directed by the Owner:

- B.** The total of:
- i.** the costs incurred in the performance of the work and services terminated, including initial costs and reparatory expenses allocable thereto, but exclusive of any costs attributable to the work and services paid or to be paid for under paragraph 5(a) hereof;
 - ii.** a sum, as profit on (I) above, determined by the Owner to be fair and reasonable.
- 6.** In the event the Contract is terminated because of the Contractor's default, the Owner may take over the work and services and complete the same by contract or otherwise, and the Contractor shall be liable to the Owner for any increased cost of the project.
- 7.** If the Contractor's failure to perform and default arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor (such causes may include, but are not restricted to acts of God, acts of the public enemy, acts of the Owner in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor) and the Contractor, within ten (10) days from the beginning of any such delay notifies the Owner in writing of the causes of delay, then the Owner shall ascertain the facts and the extent of delay and extend the time for completing the Project within the findings of fact justify such an extension.
- 8.** If, after Notice of Termination of the Contract for default, it is determined for any reason that the Contractor was not in default or that the default was excusable under the provisions of paragraph 7 above, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to the stipulations of Article VIII paragraph 1, hereof.

ARTICLE IX

MISCELLANEOUS PROVISIONS

- 1.** Terms used in the Contract, which are defined in the General Provisions of the Contract, shall have the meanings designated in those Provisions.
- 2.** The Contractor shall provide insurance coverage in the amounts, type and classification required by the Owner, as provided in the Contract Documents (Special Provision No. 7), prior to commencement of the work. He shall provide all policies and certificates evidencing such insurance coverage for Owner's review and approval.
- 3.** The Owner shall require and the Contractor shall provide separate payment and performance bonds each in the amount of the contract sum, appearing in Article IV hereof, in such form, as the Owner requires and with a surety acceptable to the Owner. The cost thereof is included in the contract sum. Upon approval by the Owner of any Change Order increasing the contract sum, Contractor shall provide new bonds reflecting the adjustment in Penal Sums, accordingly.

4. All references herein and in the General Provisions to "Engineer" in the context of supervisor/inspecting authority, including review of change orders and applications for payment, shall refer to any Owner's representative authorized as such by the Owner.
5. All covenants and agreements herein contained shall extend to and be obligatory on the successors and assigns of the Contractor and of the Owner, but the Contractor shall not assign this agreement or any payments to become due thereunder except with the prior written consent of the Owner. The Contractor agrees that its rights to payment hereunder and rights of any assignee shall be subject to the rights of the Owner arising prior to such payment. The Owner shall have the right to assign its rights hereunder without prior notice to the Contractor and, in the event of such assignment, the Contractor shall continue to perform its obligations hereunder for the account of the assignee; provided, however, that such obligation shall be conditioned upon such assignee covenanting to make all payments required by the Contract Documents and not paid prior to the date of such substitution.
6. The Contractor hereby assigns to the Owner (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by the Contractor for performance of any part of the work which assignment will be effective upon acceptance by the Owner in writing and only as to those subcontracts and purchase orders which the Owner designates in said assignment at any time during the course of construction prior to final completion. **IT IS FURTHER UNDERSTOOD AND AGREED THAT ALL SUBCONTRACTS AND PURCHASE ORDERS SHALL PROVIDE THAT THEY ARE FREELY ASSIGNABLE BY THE CONTRACTOR TO THE OWNER AND/OR ITS ASSIGNS. THIS ASSIGNMENT IS PART OF THE CONSIDERATION FOR ENTERING INTO THIS CONTRACT WITH THE CONTRACTOR AND MAY NOT BE WITHDRAWN PRIOR TO FINAL COMPLETION OF THE PROJECT.**
7. For purposes of verifying that cost or pricing data submitted, in conjunction with the negotiation of this Contract or any contract change or other modification, are accurate, complete, and current, the Owner or its authorized representatives, shall -- until the expiration of three (3) years from the date of Final Payment under this Contract -- have the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computation and projections used therein, which were prepared by the Contractor prior to and after the date of execution of the Contract, but relating to the Contract. The Contractor agrees to insert the substance of this clause in all subcontracts hereunder so as to apply until three (3) years after Final payment under the subcontract, unless the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices are set by law or regulation.
8. The laws of the State of Florida shall govern all matters arising out of or related to this Contract.
9. Venue for any cause of action arising out of or related to this Contract shall be in the City of Zephyrhills, Florida, in Pasco County, East Side.

10. **IF CONSULTANT OR CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S OR CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT OR CONTRACT, THEY SHALL CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**LORI HILLMAN, CITY CLERK
CITY OF ZEPHYRHILLS
5335 8TH STREET
ZEPHYRHILLS, FLORIDA 33542
LHILLMAN@CI.ZEPHYRHILLS.FL.US
813-780-0000**

11. Based upon Contractor's review of the Contract Documents and site, the Contractor represents that Contractor or Contractor's subcontractors will not submit any requests for change orders during the construction of the project unless the Owner requests changes to the project or unforeseen conditions become apparent during the construction of the project.
12. All addenda will be mailed to each firm to whom Contract Documents have been issued, but it shall be the Bidder's responsibility to make inquiry as to, and obtain the Addenda issued, if any. All such Addenda shall become part of the contract. Each Bidder shall be bound by such Addenda, whether or not received by the Bidder. Only a written interpretation or correction by Addendum issued by the Engineer will be binding.
13. The Intent of the specifications is to outline or indicate the items or work, including labor, materials, equipment, or other items which cannot readily be shown on the Drawings, and further to indicate the types and qualities of materials necessary for the execution and completion of the work. Work not covered under any heading or Section of the Specification shall be supplied in accordance with best industry practice if it is reasonably inferable therefrom as being necessary to produce the intended results. Drawings and Specifications shall be considered as being complementary. Should drawings disagree in themselves or with the Specifications, or should the Specifications disagree in themselves, the better quality or greater quantity or work or materials shall be estimated upon, and unless otherwise ordered in writing, shall be provided.
14. When discrepancies, conflicts, or interferences between documents are discovered, the Engineer shall be notified and a clarification will be issued in accordance with 3.2.3 and 3.2.4. The Bidder's obligation is to either: (a) report the discrepancy, conflict, or interference and seek a clarification, or (b) estimate the work based upon the better quality or greater quantity of work or materials.
15. Rejected products may not be resubmitted.

16. FEES, NOTICES, AND COMPLIANCE WITH LAWS

The Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

17. If, prior to the Notice of Award, the Owner, the Architect or the Engineer has reasonable objection to and refuses to accept any Subcontractor, person or organization listed, the apparent low Bidder may, prior to Notice of Award either (1) submit an acceptable substitute without an increase in his Bid or (2) withdraw his Bid without forfeiting his Bid security.

18. Neither the General Contractor nor any subcontractors will receive any compensation for preparing Change Proposals, Change Orders, Construction Change Directives, Proposal Requests, Supplemental Instructions, Clarifications, etc.

19. Mark-ups for chargeable costs, overhead and profit for change Orders or Construction Change Directives shall be as follows, unless otherwise agreed to in the Agreement between Owner and Contractor:

A. For work accomplished by the Contractor's own forces and for direct material suppliers, Contractor may add a maximum of ten percent (10%) mark-up to his actual costs for the combined overhead and profit.

B. For work accomplished by Subcontractors, the Contractor may add a maximum of seven and one-half (7 ½ %) above the subcontractor's charges for his overhead and profit. The respective subcontract may add a maximum of ten percent (10%) to his actual costs for his overhead and profit.

20. The Contractor shall not be entitled to any claim for damages including loss of profits, loss of use, overhead expenses, equipment rental, etc., on account of hindrances or delays for any cause whatsoever, but if occasioned by an act of God, or by any act or omission of the part of the Owner, Owner's agents or governmental agencies having jurisdiction, such act, hindrance or delay may entitle the Contractor to an extension of time in which to complete the work which shall be determined by the Engineer, provided that the Contractor will give written notice within two (2) weeks as provided herein of the cause of such act, hindrance, or delay. An extension of contract time shall be the Contractor's sole and exclusive remedy for all claims for delay, including delays attributable to breach of Contract or tort.

21. Owner will employ and pay for services of an independent testing laboratory to perform specified inspections and testing. Employment of testing laboratory in no way relieves the Contractor of obligation to perform work in accordance with requirements of Contract Documents.

IN WITNESS WHEREOF, the parties have made and executed this Agreement, the day and year first above written.

ATTEST:

C.W. Roberts Contracting, Inc. _____

By: _____
(Title)

(SEAL)

Date: _____

ATTEST:

CITY OF ZEPHYRHILLS, a political subdivision of
the State of Florida

City Council President W. Alan Knight

(SEAL)

Date 8/14/2017

APPROVED AS TO FORM. TECHNICAL PROVISIONS OF
CONTRACT APPROVED:

City Attorney Matthew E. Maggard

Date 8/14/2017