

# *City of Dade City*

## **AGENDA MEMO**

**To:** Honorable Mayor and Members of the City Commission  
**From:** Lennie M. Naeyaert, P.E., City Engineer and Public Works Director  
**Subject:** Sidewalk Construction on Morningside Drive  
**Date:** 3/17/09

It is requested that the City Commission consider the following information and recommendation(s):

### **BACKGROUND:**

Since 2002, the residents of Morningside R.V. Park have requested the construction of a sidewalk from their park to the Wal-Mart shopping center on U.S. Highway 301. The proposed location of this sidewalk is along the south side of Morningside Drive, which is a County road. After an evaluation of the request, Staff concluded that the construction of this sidewalk will provide the pedestrian/vehicle separation necessary for the safe mobilization of pedestrians and motor vehicles and recommended to move forward with the project. The design and permitting of the project was completed in 2005. Funds to construct the project were allocated in FY 2005-2006 budget. Bids were received March 21, 2006 with bid responses exceeding the Staff estimate for this project. For this reason all bid responses were rejected. Finally, the construction of this sidewalk was included in the zoning conditions for the Highland Trail Subdivision to be built by Metro Development. Due to the real estate market conditions, the construction of this sidewalk by Metro Development remains uncertain.

### **ISSUES:**

Staff recently received a proposal from Ace Aluminum & Construction at \$19,525.00 for construction of the Morningside sidewalk. This proposal is based on the same unit prices utilized in previous projects, and is within the Staff estimate of \$20,000. An agreement has been prepared for the construction of this project.

### **ALTERNATIVES:**

- Approve Staff Recommendation.
- Recommend an alternative solution.
- Direct that no action be taken.

**RECOMMENDATION:**

Authorize Staff to award the additional work to Ace Aluminum & Construction.

**FUNDING:**

This project will be funded utilizing monies from the contingency fund.

## AGREEMENT

**THIS AGREEMENT**, made and entered into on this \_\_\_\_ day of March, 2009 by and between the CITY OF DADE CITY, a municipal corporation of the State of Florida, hereinafter referred to as the "City" and Ace Aluminum & Construction, LLC., herein referred to as the "Contractor".

### WITNESSETH:

**WHEREAS**, City has previously determined that it has a need for the construction of a sidewalk along Morningside Drive, from U.S. Highway 301 to the entrance of Morningside R.V. Park

**WHEREAS**, City solicited competitive proposals for such services pursuant to City of Dade City Ordinance No. 2008-0988 (hereinafter referred to as Proposal); and

**WHEREAS**, Contractor has represented that it is able to satisfactorily provide the services according to the terms and conditions of the proposal, which are incorporated herein by reference, and the terms and conditions contained herein; and

**WHEREAS**, based upon its representations and assurances, the City Commission has awarded the contract to Contractor.

**NOW THEREFORE**, in consideration of the above recitals and the mutual covenants contained herein, the parties agree as follows:

1. ***Scope of Services.*** The Contractor hereby agrees to provide the City with all required services for the construction as requested and more specifically outlined in the Proposal and this Agreement. The Proposed has been attached hereto and incorporated by reference.
2. ***Time of Service.*** The Contractor shall have twenty-one (21) days to complete all construction services from its receipt of the Notice to Proceed.
3. ***Term of Agreement.*** This Agreement shall commence on March\_\_\_\_, 2009 and shall remain in effect until thirty (30) days from the date of Contractor's receipt of the Notice to Proceed.
4. ***Amendment of Agreement/Change Order.*** This Agreement may be amended only by mutual written agreement of the parties. Changes in the work, if necessary, may be accomplished after execution of this Agreement only by written change order. Change orders shall be based upon the mutual agreement between the City and the Contractor and shall be performed under applicable provisions of this Agreement. The Contractor shall proceed promptly, unless otherwise provided in the change order.
5. ***Assignment.*** This Agreement may not be assigned without the prior written approval of both parties.

6. **Termination.** The City of Dade City reserves the right to terminate this Agreement, without cause, by giving fifteen (15) days prior written notice to the Contractor of the intention to cancel, or immediately upon written notice if the Contractor defaults or neglects to carry out the work in accordance with his permit, license, or this Agreement.
  
7. **Payment.** The City agrees to pay the Contractor a total of \$19,525.00 for services provided pursuant to this Agreement in one lump sum payment upon Contractor's completion of, and City's acceptance of, the services required herein and as specified in the proposal. The City agrees to extend to the Contractor the rights to any salvageable materials. No application for payment shall become due until the Contractor submits to the City: (1) an affidavit that, bills for materials and equipment, and other indebtedness connected with the work for which the City might be responsible or its property encumbered (less amounts withheld by the City) have been paid or otherwise satisfied; (2) consent of a surety, if any, to final payment; and (3) any other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interest or encumbrances arising out of this Agreement, to the extent and in such form as may be designated by the City. However, all payments shall be made in accordance with Florida Prompt Payment Act, Section 218.70, Florida Statutes, as amended. The Contractor understands and agrees that the City shall bear no obligation under this Agreement, or otherwise, to pay, or to be responsible in any way, for payment to a subcontractor performing portions of the work for the Contractor. If, however, the City receives a Notice to Owner claiming that the Contractor has not properly paid any party that has contracted with the Contractor for any work associated in any way with this project, then the City may, at its sole discretion and after providing notice to the Contractor, pay such party and then deduct the sums paid from any amounts remaining to be paid to the Contractor. The Contractor further understands and agrees that the making of final payment by the City shall, in no way, constitute a waiver of claims by the City pertaining to this Agreement.
  
8. **Permits, Licenses, and Safety Measures.** Prior to commencement, the Contractor must secure and maintain any and all permits and licenses required pursuant to this Agreement. The Contractor shall be responsible to ensure that all subcontractors satisfy the same licensing requirements as the Contractor. In addition, the Contractor shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of this Agreement. More specifically, the Contractor shall take all necessary precautions required to ensure the safety of, and shall provide any necessary protection to prevent damage, injury or loss to: (1) employees on the work site and other persons who may be affected thereby; (2) the work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor; and (3) other property at or adjacent to the work site such as trees, shrubs, lawns, walks, pavement, roadways, structures and utilities. The Contractor shall give all required notices and comply with any and all applicable laws, ordinances, rules, regulations, codes, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss.

9. ***Audit.*** The Contractor shall retain all records relating to this Agreement for a period of at least three (3) years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes.
10. ***Insurance/Indemnification.*** The Contractor and any of its sub-contractors must maintain insurance in accordance with City of Dade City Code of Ordinances, Chapter 22, Section 22-96. The Contractor and any of its sub-contractors must provide a Certificate of Insurance, evidencing such coverage and listing the City of Dade City as an additional insured, prior to commencement of any work under this Agreement. In addition, the Contractor agrees to indemnify, hold harmless, and defend the City and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the work, provided that such indemnity shall only be required to the extent caused by the negligence, negligent acts, errors or omissions, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor, including subcontractor, in the performance of the work. The Contractor shall promptly remedy damage and loss to property at the work site caused in whole or in part by the Contractor or subcontractor, or anyone directly or indirectly employed by them, or by anyone for whose acts they may be liable.
11. ***Governing Law.*** The laws of the State of Florida shall govern this Agreement. Venue shall be in Pasco County, Florida.
12. ***Independent Contractor/ Immigration Reform and Control Act of 1986.*** The Contractor and its subcontractor are and shall remain independent contractors of the City, and are not the agent, employee, partner, or joint venturer of the City. The Contractor acknowledges that it and its sub-contractor are responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324, et. seq., and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of this Agreement.
13. ***Severability.*** The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the Agreement to be impossible to perform.

APPROVED this \_\_\_\_ day of March 2009.

ATTEST:

CITY OF DADE CITY, FLORIDA

\_\_\_\_\_  
James D. Class, City Clerk

\_\_\_\_\_  
Scott Black, Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Approved as to Legal Form and Sufficiency

\_\_\_\_\_  
Karla S. Owens, City Attorney

\_\_\_\_\_  
Name

\_\_\_\_\_  
Company

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness

4926 Airport Rd.  
Zephyrhills, FL 33542  
Lic. # CRC1329266

Job No. \_\_\_\_\_  
Phone: (813) 782-2616  
Fax: (813) 783-1804

# ACE ALUMINUM & CONSTRUCTION, L.L.C.

SOLD TO City of Dade City  
ADDRESS \_\_\_\_\_  
SHIP TO Morning side Sidewalk  
DATE \_\_\_\_\_  
PHONE \_\_\_\_\_

Sidewalk going to Wal-Mart to  
M.H Park of morning side

Approx: 5 x 1100 New Sidewalk

Job includes: form, pour, New side-  
walk, grade, clean up,  
job site, cut expansion  
joints, Colvert in ditch,  
use 3000 psi Concrete  
with fiber Mesh

\* Will also repair damaged Concrete  
on 17<sup>th</sup> St. on (2) areas done by  
trucks/heavy Vehicles

Att: Jose or Donny

The undersigned agrees to pay  
INSTALLERS IN FULL ON COMPLETION

PERMIT \_\_\_\_\_  
PRICE \_\_\_\_\_  
TAX \_\_\_\_\_  
TOTAL PRICE 19,525.<sup>00</sup>  
DEPOSIT \_\_\_\_\_  
BALANCE C.O.D. \_\_\_\_\_

Maria  
Rep.

Customers Signature