

# *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:** FDOT Landscape Grant –Agreement for Construction - Morelli Landscaping, Inc.  
**Date:** 4/14/09

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

### **BACKGROUND:**

On May 28<sup>th</sup>, 2008 the City Commission approved a Grant Agreement with FDOT to receive up to \$60,000.00 in reimbursement funding for landscaping as part of the Meridian Ave (S.R. 52) improvements. The area on Meridian Ave between U.S. Hwy 98 Bypass and 14<sup>th</sup> St. was identified as the project area.

On October 14, 2008 the City Commission approved Staff recommendation to retain the services of Morelli Landscaping, Inc. for the planning and construction of the project.

On December 9, 2008 the City Commission approved the proposed landscape plan for the project, which was accepted and approved by FDOT.

### **ISSUES:**

The City needs a formal agreement with Morelli Landscaping, Inc. for the construction portion of the project. The agreement is attached to this Agenda Item.

### **ALTERNATIVES:**

- Approve staff recommendation.
- Direct that other action be taken.

### **RECOMMENDATION:**

It is recommended that the City Commission approve the agreement with Morelli Landscaping, Inc. for the construction of the approved landscape plan.

### **FUNDING:**

Reimbursement funding that will cover the above costs will be remitted to the City after a 90 day establishment period and final acceptance by the FDOT.

## AGREEMENT

**THIS AGREEMENT**, made and entered into on this 14th day of April, 2009 by and between the CITY OF DADE CITY, a municipal corporation of the State of Florida, hereinafter referred to as the "City" and Morelli Landscaping, Inc., herein referred to as the "Contractor".

### WITNESSETH:

**WHEREAS**, the City has previously determined that it has a need for the landscaping along Meridian Ave in conjunction with an FDOT Grant agreement (FP# 424547-1-58-01 Contract #AP502)

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

**WHEREAS**, the 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 sixty (60) days to complete all construction services from its receipt of the Notice to Proceed.
3. ***Term of Agreement.*** This Agreement shall commence on April 14, 2009 and shall remain in effect until sixty (60) 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 thirty (30) 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 \$55,005.00 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 subcontractor 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 14th day of April, 2009.

ATTEST:

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

CITY OF DADE CITY, FLORIDA  
\_\_\_\_\_  
Scott Black, Mayor

\_\_\_\_\_

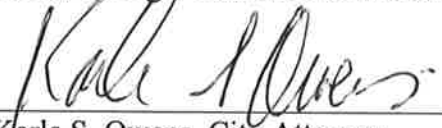
\_\_\_\_\_

Witness

\_\_\_\_\_

Witness

Approved as to Legal Form and Sufficiency

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

\_\_\_\_\_

Name

\_\_\_\_\_

Company

\_\_\_\_\_

Title