



## City Council Staff Report

Date: June 15, 2011

CONSENT CALENDAR

Subject: AWARD OF CONTRACT FOR THE INDIAN CANYON DRIVE WIDENING (TRAMVIEW ROAD TO UPRR), FEDERAL PROJECT NO. STPLN-5282 (023), CITY PROJECT NO. 01-25

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

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### SUMMARY

The City received a \$2,199,000 federal grant to widen Indian Canyon Drive from 2 to 4 lanes between Tramview Road and the Union Pacific Railroad through the Whitewater River. Award of this contract will allow staff to proceed with this major capital improvement project.

### RECOMMENDATION:

- 1) Determine the Bid submitted by the apparent low bidder, Vance Corporation, as incomplete and containing at least one major irregularity, and reject it as non-responsive; and
- 2) Determine the apparent second low bidder, Griffith Company, as the lowest responsive bidder; and
- 3) Approve Agreement No. \_\_\_\_\_ in the amount of \$2,865,821.50 with Griffith Company, a California corporation, for the Indian Canyon Drive Widening (Tramview Road to UPRR), Federal Project No. STPLN-5282(023), City Project No. 01-25; and
- 4) Authorize the City Manager to execute all necessary documents.

### STAFF ANALYSIS:

The City of Palm Springs submitted a grant application in 2001 to the Riverside County Transportation Commission (RCTC) for discretionary State Transportation Improvement Program (STIP) federal funds for the widening of Indian Canyon Drive from 2 to 4 lanes through the Whitewater River. The grant process was competitive throughout Riverside

County, and the City's application was approved, earmarking \$2,199,000 in STIP federal funds to this project. The STIP funds were later taken by the state as part of its efforts 10 years ago to balance its budget; however, RCTC replaced the lost STIP funds with Surface Transportation Program (STP) funds. The local match for this project is allocated from Regional Measure A funding, made available through a Reimbursement Agreement subsequently approved by the City and the Coachella Valley Association of Governments (CVAG).

As a federally funded project, this project has oversight by the state through the California Department of Transportation ("Caltrans"). Caltrans coordinates all federal funding on local road projects, which requires both state and federal environmental clearance.

On February 15, 2006, the City Council awarded a contract services agreement to Dokken Engineering for this project. Subsequently, City staff coordinated environmental approvals, right-of-way acquisition, and final design with Dokken Engineering and Caltrans. On March 15, 2011, Caltrans authorized the City to proceed with construction of this project.

On April 6, 2011, the City Council approved the plans and authorized bidding. On April 9 and 16, 2011, the project was advertised for bids, and at 3:00 p.m. on May 24, 2011, the Procurement and Contracting Division received construction bids from the following seven contractors:

1. Vance Corporation; Rialto, CA:	\$2,773,625.75
2. Griffith Company; Santa Fe Springs, CA:	\$2,865,821.50
3. Riverside Construction Co. Inc.; Riverside, CA:	\$2,918,942.50
4. EBS General Engineering, Inc.; Corona, CA:	\$2,977,364.00
5. Ace Engineering, Inc.; La Verne, CA:	\$3,022,163.00
6. Granite Construction Co.; Watsonville, CA:	\$3,066,000.00
7. Skanska USA Civil West California District, Inc.; Riverside, CA:	\$3,073,506.00

The Engineer's Estimate was \$2,850,000.

On May 27, 2011, the City received a formal bid protest filed by the apparent second low bidder, Griffith Company (see Attachment 1). The protest cites several reasons the City should determine the apparent low bidder, Vance Corporation, as non-responsive. In consultation with the City Attorney's office, after reviewing the apparent low bidder's bid documents, it is staff's recommendation that the City Council find that the apparent low bidder is non-responsive for a failure to provide complete information on Part 1 and Part 2 of the Bidder's List of Subcontractors, and for an irregularity on the total bid amount listed in the Bid. A letter was sent to Vance Corporation on June 1, 2011, advising them of the City's receipt of a bid protest, and a determination finding their bid non-responsive (see Attachment 2).

It is recommended that the City Council determine the apparent low bidder as non-responsive, and award this contract to the apparent second low bidder as the lowest, responsive bidder.

The lowest, responsive bidder recommended by staff is Griffith Company, whose principal officers are: Thomas L. Foss, President/CEO; Jaimie R. Angus, Ex. Vice President; and Gordon M. Csutak, Vice President/CFO/Secretary.

FISCAL IMPACT:

This project is funded with a \$2,199,000 federal STP grant, of which \$1,936,000 remains available for construction (\$263,000 was used for the design phase). The local match is funded by Regional Measure A funds.

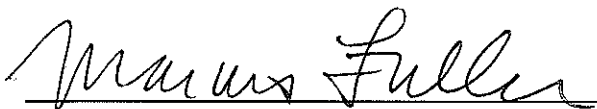
Expenditures to encumber the contract will be made as follows:

261-4491-50216: \$1,936,000  
134-4497-50216: \$929,821.50

No local miscellaneous or General Funds will be required for this project.

SUBMITTED:

Prepared by:




Marcus L. Fuller  
Assistant Director of Public Works

Recommended by:



David J. Barakian  
Director of Public Works/City Engineer

Approved by:

  
David H. Ready, City Manager

Attachments:

1. Griffith Company Bid Protest Letter
2. City Response to Bid Protest Letter
3. Agreement

Attachment # 1



**CORPORATE OFFICE**  
3050 E. Birch Street  
Brea, CA 92821  
[714] 984-5500  
Fax [714] 854-9754

May 27, 2011

**City of Palm Springs**  
**Marcus L. Fuller, P.E., P.L.S.**  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

**BAKERSFIELD DISTRICT**  
1898 South Union Ave.  
P.O. Box 70157  
Bakersfield, CA 93387-0157  
[661] 831-7331  
Fax [661] 831-0113

Dear Mr. Fuller,

Griffith Company is writing this letter because the apparent low bidder, Vance Corporation's, bid proposal was not responsive.

**LOS ANGELES DISTRICT**  
12200 Bloomfield Ave.  
Santa Fe Springs, CA 90670  
[562] 929-1128  
Fax [562] 864-8970

We protest the award of the Indian Canyon Drive Widening to Vance Corporation for the following reasons:

**ORANGE COUNTY DISTRICT**  
2020 South Yale Street  
Santa Ana, CA 92704-3974  
[714] 549-2291  
Fax [714] 549-4033

- Vance Corporation did not List Subcontractors in conformance with Section 2-1.054 and Section 2 – Proposal Requirements and Conditions. The **Address/Location of the subcontractors listed was not provided** by Vance Corporation (See Attachment A). In addition, the majority of the information requested on the Bidder's List...Part-I was left blank.

**STRUCTURE DIVISION**  
3050 E. Birch Street  
Brea, CA 92821  
[714] 984-5500  
Fax [714] 854-0227

- Section 2 of the Contract Specifications required the bidder to list all subcontractors, "regardless of the amount of work." Vance Corporation did not list a subcontractor for the following Portions of work:

**HEAVY DIVISION**  
3050 E. Birch Street  
Brea, CA 92821  
[714] 984-5500  
Fax [714] 854-0228

- Concrete Pavement – bid items 20
- Rebar – bid item 22
- Joint Seal (Type A) – bid item 21
- Minor Concrete – bid items 25, 26, 27
- Fencing – bid items 29,38,39
- Underground/Drainage System work – bid item 24
- Survey – included in various items
- Hydroseeding/Erosion Control (Type D) – bid item 16
- Electrical – bid item 36

**UNDERGROUND DIVISION**  
3050 E. Birch Street  
Brea, CA 92821  
[714] 984-5500  
Fax [714] 854-0226

[www.griffithcompany.net](http://www.griffithcompany.net)

Contractors  
License #88



Special license are often required to perform Electrical Work (item 36) and Landscaping Work (item 36). According to the information available to us from the Contractors State License Board, the Low Bidder does not hold a C-10 (Electrical) License or a C-27 (Landscape) License (See Attachment B). It is clear that **Vance Corporation bid proposal did not follow the additional requirements for Subcontractor Listing as defined in Section 2 of the**



**CORPORATE OFFICE**  
3050 E. Birch Street  
Brea, CA 92821  
[714] 984-5500  
Fax [714] 854-9754

**BAKERSFIELD DISTRICT**  
1898 South Union Ave.  
P.O. Box 70157  
Bakersfield, CA 93387-0157  
[661] 831-7331  
Fax [661] 831-0113

**LOS ANGELES DISTRICT**  
12200 Bloomfield Ave.  
Santa Fe Springs, CA 90670  
[562] 929-1128  
Fax [562] 864-8970

**ORANGE COUNTY DISTRICT**  
2020 South Yale Street  
Santa Ana, CA 92704-3974  
[714] 549-2291  
Fax [714] 549-4033

**STRUCTURE DIVISION**  
3050 E. Birch Street  
Brea, CA 92821  
[714] 984-5500  
Fax [714] 854-0227

**HEAVY DIVISION**  
3050 E. Birch Street  
Brea, CA 92821  
[714] 984-5500  
Fax [714] 854-0228

**UNDERGROUND DIVISION**  
3050 E. Birch Street  
Brea, CA 92821  
[714] 984-5500  
Fax [714] 854-0226

[www.griffithcompany.net](http://www.griffithcompany.net)

Contractors  
License #88



Project Specifications (See Section 2-Page 1, 2-1 General, Paragraph 2, in BOLD).

- Regarding the UDBE and DBE goals for the Project, Section 2 – Proposal Requirements and Conditions requires the Bidder to include in their proposal the name and address of “each DBE subcontractor to be used for credit in meeting the goals.” **Vance Corporation did not list any UDBE or DBE at bid time**; therefore, they cannot get any credit towards the UDBE/DBE goals (See Section 2-Page 1, 2-1 General, Paragraph 2).

Furthermore, many of the Public Agencies that have established a UDBE/DBE program would not accept/pass a Good Faith Effort that resulted in zero DBE/UDBE credit/participation. Caltrans is a prime example of one of these agencies.

- The “Bidder’s List of Subcontractors (DBE and Non-DBE) - Part II” was **left Blank** (See Attachment C).
- Page 19 of the bid package, Item number 10 was left blank (See Attachment D).
- The total amount of the bid did not match the summation of the unit totals (See Attachment E).

For these reason, we conclude that Vance Corporation’s proposal is not responsive.

Should you have any question regarding this matter, please contact me at 562-929-1128.

Respectfully,

Ryan Aukerman  
District Manger Southern Region  
Griffith Company

**BIDDERS LIST OF SUBCONTRACTORS (DBE and NON-DBE) - PART I**

INcomplete *Y*

The bidder shall list all subcontractors (both DBE and non-DBE) in accordance with Section 2-1.034 of the Standard Specifications and per Title 49, Section 26.11 of the Code of Federal Regulations. This listing is required in addition to listing DBE Subcontractors elsewhere in the proposal. Photocopy this form for additional firms.

Firm Name Address City, State, ZIP	Phone Fax	Annual Gross Receipts	Description of Portion of Work to be Performed	
Name <i>J.P. Steig</i> Address <i>J.P. Steig</i> City, State, ZIP	Phone  Fax	<input type="checkbox"/> < \$1 million <input type="checkbox"/> < \$5 million <input type="checkbox"/> < \$10 million <input type="checkbox"/> < \$15 million <input type="checkbox"/> > \$15 million	<i>Steig</i>	
Name <i>Jill Simon</i> Address  City, State, ZIP	Phone  Fax	<input type="checkbox"/> < \$1 million <input type="checkbox"/> < \$5 million <input type="checkbox"/> < \$10 million <input type="checkbox"/> < \$15 million <input type="checkbox"/> > \$15 million	<i>Fabric - Painting</i>	
Name  Address  City, State, ZIP	Phone  Fax	<input type="checkbox"/> < \$1 million <input type="checkbox"/> < \$5 million <input type="checkbox"/> < \$10 million <input type="checkbox"/> < \$15 million <input type="checkbox"/> > \$15 million		
Name  Address  City, State, ZIP	Phone  Fax	<input type="checkbox"/> < \$1 million <input type="checkbox"/> < \$5 million <input type="checkbox"/> < \$10 million <input type="checkbox"/> < \$15 million <input type="checkbox"/> > \$15 million		
Name  Address  City, State, ZIP	Phone  Fax	<input type="checkbox"/> < \$1 million <input type="checkbox"/> < \$5 million <input type="checkbox"/> < \$10 million <input type="checkbox"/> < \$15 million <input type="checkbox"/> > \$15 million		

Distributor: 1) Original - Local Agency File

INDIAN CANYON DR. WIDENING  
CITY PROJECT NO. 01-25  
April 4, 2011

BIDDERS LIST OF SUBCONTRACTORS - PART I  
BID FORMS - PAGE 7

*Attachment B*

**Department of Consumer Affairs  
Contractors State License Board**

**Contractor's License Detail - License # 414567**

**DISCLAIMER:** A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

- CSLB complaint disclosure is restricted by law (B&P 7124.6) If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.
- Per B&P 7071.17, only construction related civil judgments reported to the CSLB are disclosed.
- Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.
- Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

License Number	414567	Extract Date: 5/26/2011
Business Information	VANCE CORPORATION 2271 N LOCUST AVENUE RIALTO, CA 92377	
	Business Phone Number: (909) 355-4333	
Entity:	Corporation	
Issue Date	11/23/1981	
Expire Date	11/30/2011	
License Status	This license is current and active. All information below should be reviewed.	
Additional Status:		
Classifications:	CLASS	DESCRIPTION
	A	GENERAL ENGINEERING CONTRACTOR
	C31	CONSTRUCTION ZONE TRAFFIC CONTROL
Bonding:	CONTRACTOR'S BOND	
	This license filed Contractor's Bond number 5106533 in the amount of \$12,500 with the bonding company SAFECO INSURANCE COMPANY OF AMERICA.	
	Effective Date: 01/01/2007 <u>Contractor's Bonding History</u>	
	BOND OF QUALIFYING INDIVIDUAL	
	1. The Responsible Managing Officer (RMO) THOMAS VERNER EUGENE certified that he/she owns 10 percent or more of the voting stock/equity of the corporation. A bond of qualifying individual is not required.	
	Effective Date: 11/14/2008 <u>BQI's Bonding History</u>	
Workers' Compensation:	This license has workers compensation insurance with the <u>OLD REPUBLIC GENERAL INSURANCE CORPORATION</u>	



Policy Number: A1CW95541000

Effective Date: 07/01/2010

Expire Date: 07/01/2011

Workers' Compensation History

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	DATE	DESCRIPTION
Miscellaneous Information:	04/08/2011	HAZ CERTIFICATION REMOVED

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Personnel listed on this license (current or disassociated) are listed on other licenses.

Personnel List	Other Licenses
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**BIDDERS LIST OF SUBCONTRACTORS (DBE and NON-DBE) - PART II**

*P. Archmont*

The bidder shall list all subcontractors who provided a quote or bid but were not selected to participate as a subcontractor on this project. This is required for compliance with Title 49, Section 36 of the Code of Federal Regulations. Photocopy this form for additional firms.

Name	Address	City/State/ZIP	Phone/Fax	Annual Gross Receipts		Description of Portion of Work to be Performed	
				< \$5 million	> \$5 million		
				<input type="checkbox"/> < \$5 million	<input type="checkbox"/> > \$5 million		
				<input type="checkbox"/> < \$5 million	<input type="checkbox"/> > \$5 million		
				<input type="checkbox"/> < \$10 million	<input type="checkbox"/> > \$10 million		
				<input type="checkbox"/> < \$15 million	<input type="checkbox"/> > \$15 million		
				<input type="checkbox"/> < \$20 million	<input type="checkbox"/> > \$20 million		
				<input type="checkbox"/> < \$25 million	<input type="checkbox"/> > \$25 million		
				<input type="checkbox"/> < \$30 million	<input type="checkbox"/> > \$30 million		
				<input type="checkbox"/> < \$35 million	<input type="checkbox"/> > \$35 million		
				<input type="checkbox"/> < \$40 million	<input type="checkbox"/> > \$40 million		
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				<input type="checkbox"/> < \$50 million	<input type="checkbox"/> > \$50 million		
				<input type="checkbox"/> < \$55 million	<input type="checkbox"/> > \$55 million		
				<input type="checkbox"/> < \$60 million	<input type="checkbox"/> > \$60 million		
				<input type="checkbox"/> < \$65 million	<input type="checkbox"/> > \$65 million		
				<input type="checkbox"/> < \$70 million	<input type="checkbox"/> > \$70 million		
				<input type="checkbox"/> < \$75 million	<input type="checkbox"/> > \$75 million		
				<input type="checkbox"/> < \$80 million	<input type="checkbox"/> > \$80 million		
				<input type="checkbox"/> < \$85 million	<input type="checkbox"/> > \$85 million		
				<input type="checkbox"/> < \$90 million	<input type="checkbox"/> > \$90 million		
				<input type="checkbox"/> < \$95 million	<input type="checkbox"/> > \$95 million		
				<input type="checkbox"/> < \$100 million	<input type="checkbox"/> > \$100 million		

Distribution: 1) Original - Local Agency Site

INDIAN CANYON DR. WIDENING  
CITY PROJECT NO. 01-25  
April 4, 2011

BIDDER'S GENERAL INFORMATION (Continued)

8. Number of years experience as a contractor in this specific type of construction work: 29yrs

9. List at least three related projects completed to date:

- a. Owner City of Victorville Address 14343 Civic Center Dr., Victorville, CA  
 Contact John A. McGlade Class of Work Roadway Reconstruction  
 Phone (760)955-5157 Contract Amount \$1,409,853.00  
 Project 2010 Reconstruct Roadway Project Date Completed December, 2010  
 Contact Person John McGlade Telephone number (760)955-5157
- b. Owner City of Indio Address 100 Civic Center Mall, Indio CA  
 Contact Adrienne E. Dunfee Class of Work Street Rehabilitation  
 Phone (760)541-4251 Contract Amount \$1,172,577.55  
 Project Street Rehabilitation Phase 7 Date Completed May, 2009  
 Contact Person Adrienne Dunfee Telephone number (760)541-4251
- c. Owner Caltrans Address District 8th Construction, Unit 522  
790 Via Lata, Ste 100, Colton CA 92324  
 Contact Fred Alipanah Class of Work Pavement and Road Widening  
 Phone (909)783-8274 Contract Amount \$1,099, 829.00  
 Project Rte 62, Joshua Tree Widening 08-476804 Date Completed December, 2008  
 Contact Person Fred Alipanah Telephone number (909)783-8274

10. List the name and title of the person who will supervise full-time the proposed work for your firm: \_\_\_\_\_

11. Is full-time supervisor an employee  contract services  ?

12. A financial statement or other information and references sufficiently comprehensive to permit an appraisal of your current financial condition may be required by the Engineer.

Attachment E

**BID SCHEDULE - REVISED (ADDENDUM NO. 2)**  
 (Continued)  
**INDIAN CANYON DRIVE WIDENING**  
**CITY PROJECT NO. 01-25**  
**FEDERAL AID PROJECT STPLN 5282 (023)**

Item No.	Description	Estimated Quantity	Unit	Unit Price	Amount
35.	Pavement Marker (Reflective)	1,780	EA	\$ <u>7.00</u>	\$ <u>12,460.00</u>
36.	4" Conduit	200	LF	\$ <u>35.00</u>	\$ <u>7,000.00</u>
37.	Mobilization	---	LS	\$ <u>130,000.00</u>	
38.	4' Pedestrian Swing Gate	2	EA	\$ <u>1,000.00</u>	\$ <u>2,000.00</u>
39.	20' Vehicular Double Swing Gate	2	EA	\$ <u>1,500.00</u>	\$ <u>3,000.00</u>
40.	Maintain Traffic	---	LS	\$ <u>50,000.00</u>	
41.	Clearing and Grubbing	---	LS	VI \$ <u>7,500.00</u> <del>15,000.00</del>	
42.	Storm Water Pollution Control Measures	---	LS	VI \$ <u>1,800.00</u> <del>1,200.00</del>	
43.	Project Mitigation Measures (Environmental Commitments Record)	---	LS	VI \$ <u>1,200.00</u> <del>1,200.00</del>	
44.	Biological Mitigation Measures	---	LS	\$ <u>10,200.00</u>	
45.	Air Quality & Dust Control Measures	---	LS	\$ <u>18,000.00</u>	

TOTAL OF ALL ITEMS OF THE BID SCHEDULE:

\$ 2,756,625.75      \$2,773,625.76 <sup>MP</sup> 6/24/11

(Price in figures)

*Two Million Seven Hundred Fifty Six Thousand,*

(Price in words)

**QUANTITIES OF WORK:** *Six Hundred Twenty five Dollars &*

The quantities of work or material stated in the unit price items of the Bid Schedule are supplied only to give an indication of the general scope of the Work. The City does not expressly nor by implication agree that the actual amounts of work or material will correspond therewith, and reserves the right after award to increase or decrease the quantity of any unit price bid item, by an amount up to 25 percent of increase or decrease, without a change in the unit prices, and shall have the right to delete any bid item in its entirety, and receive full credit in the amount shown in the Bid Schedule for the deleted item of Work.

*Seventy five Cents.*

Vance Corporation  
 Name of Bidder or Firm

Attachment #2



## City of Palm Springs

Department of Public Works and Engineering  
3200 East Tahquitz Canyon Way • Palm Springs, California 92262  
Tel: (760) 323-8253 • Fax: (760) 322-8360 • Web: www.palmspringsca.gov

June 1, 2011

Via US Certified Mail  
Via Facsimile: (909) 355-4339  
Via E-Mail: [cmcintosh@vancecorp.net](mailto:cmcintosh@vancecorp.net)

Verner E. Thomas, President  
Vance Corporation  
2271 North Locust Avenue  
Rialto, CA 92377

Re: **City of Palm Springs – Indian Canyon Drive Widening Project No. 01-25  
Bid Protest Submitted by Griffith Company**

Dear Mr. Thomas:

On May 24, 2011, Vance Corporation ("Vance") submitted a bid in response to the City of Palm Springs' ("City") call for bids for the above-referenced project. After an initial review, Vance was the apparent low-bidder. Subsequently, on May 27, 2011, the apparent second low-bidder, Griffith Company ("Griffith"), submitted a protest requesting that Vance's bid be rejected by the City as non-responsive to the bid specifications.

The City has thoroughly reviewed the bid submitted by Vance and City staff has found that Vance's bid is non-responsive to the bid specifications for the following reasons:

1. The Bidder's List of Subcontractors (DBE and NON-DBE) – Part I submitted by Vance lists only two subcontractors and fails to provide their addresses as specifically required by the specifications. In fact, Vance failed to provide any of the requested information beyond the name of the subcontractor and the description of the work to be performed.

In addition, the Bidder's List of Subcontractors (DBE and NON-DBE) – Part II submitted by Vance was blank, even though on May 27, 2011, Vance submitted a completed form that included 18 subcontractors. As a result, the City must conclude that this form was not completed as required by the specifications.

Section 2-1.054 of the Standard Specifications states that,

*Each proposal shall have listed therein the name and address of each subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of one-half of one percent of the total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code.*

Further, Section 2-1 of the Special Provisions states,

Mr. Verner E. Thomas  
June 1, 2011  
Page 2

*In addition to the subcontractors required to be listed in accordance with Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications, each proposal shall have listed therein the name and address of all subcontractors, **regardless of the amount of work**, and each DBE subcontractor to be used for credit in meeting the goals, and to whom the bidder proposes to directly subcontract portions of the work.*

The bid submitted by Vance does not comply with these provisions.

2. After the initial review of the bid that was submitted by Vance it was determined that the bid amount listed on page 3 of the Bid Schedule did not match the total of the bid items. The amount Vance listed in both numbers and words was \$2,756,625.75. The actual total of the bid items is \$2,773,625.75.

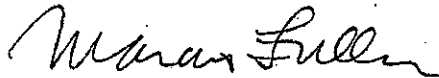
Section 2-1.06 of the Standard Specifications states,

*Proposals may be rejected if they have been transferred to another bidder, or if they show any alteration of form, additions not called for, conditional bids, **incomplete bids**, erasures, **or irregularities of any kind**. (Emphasis added).*

In the present case, and as specifically pointed out above, the bid submitted by Vance was both incomplete and also contains at least one major irregularity. As a result, City staff will recommend at the June 15, 2011, City Council meeting that the City Council find Vance's bid non-responsive and further recommend that it be rejected. In addition, City staff will recommend that the City Council award the project to the apparent second lowest bidder Griffith Company.

If you have any questions, please feel free to contact me at (760) 323-8253, extension 8744, or by e-mail at [Marcus.Fuller@palmspringsca.gov](mailto:Marcus.Fuller@palmspringsca.gov).

Sincerely,



Marcus L. Fuller, P.E., P.L.S.  
Assistant Director of Public Works/  
Assistant City Engineer

cc: David Barakian  
James Donich  
Craig Gladders  
Doug Holland  
Jay Thompson  
file

## AGREEMENT

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Palm Springs, a charter city, organized and existing in the County of Riverside, under and by virtue of the laws of the State of California, hereinafter designated as the City, and Griffith Company, a California corporation, hereinafter designated as the Contractor.

The City and the Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### ARTICLE 1 -- THE WORK

The Contractor shall complete the Work as specified or indicated under the Bid Schedule(s) of the City's Contract Documents entitled:

#### **INDIAN CANYON DRIVE WIDENING CITY PROJECT NO. 01-25; FEDERAL AID PROJECT STPLN 5282 (023)**

The Work comprises the widening of Indian Canyon Drive between Tramview Road and the Union Pacific Railroad (through the Whitewater River), including: clearing and grubbing; earthwork, excavation, imported borrow, and backfill; asphalt concrete pavement; concrete pavement; structural concrete; minor concrete; bar reinforcing steel; reinforced concrete pipe; traffic striping and markings, and all appurtenant work.

### ARTICLE 2 -- COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall commence on the date specified in the Notice to Proceed by the City, and the Work shall be fully completed within the time specified in the Notice to Proceed.

The City and the Contractor recognize that time is of the essence of this Agreement, and that the City will suffer financial loss if the Work is not completed within the time specified in Article 2, herein, plus any extensions thereof allowed in accordance with applicable provisions of the Standard Specifications, as modified herein. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and the Contractor agree that as liquidated damages or delay (but not as a penalty), the Contractor shall pay the City the sum of **\$4,750** for each calendar day that expires after the time specified in Article 2, herein. In executing the Agreement, the Contractor acknowledges it has reviewed the provisions of the Standard Specifications, as modified herein, related to liquidated damages, and has made itself aware of the actual loss incurred by the City due to the inability to complete the Work within the time specified in the Notice to Proceed.

### **ARTICLE 3 -- CONTRACT PRICE**

**\$2,865,821.50**

The City shall pay the Contractor for the completion of the Work, in accordance with the Contract Documents, in current funds the Contract Price(s) named in the Contractor's Bid and Bid Schedule(s).

### **ARTICLE 4 -- THE CONTRACT DOCUMENTS**

The Contract Documents consist of the Notice Inviting Bids, Instructions to Bidders, the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations, Federal Labor Standards Provisions, Federal Rates of Prevailing Wages, Federal Requirements for Federal-Aid Construction Projects (Form FHWA 1273), the accepted Bid and Bid Schedule(s), List of Subcontractors, Non-collusion Affidavit, Equal Employment Opportunity Certification, Debarment and Suspension Certification, Non-Lobbying Certification for Federal-Aid Contracts, Disclosure of Lobbying Activities, Bid Security or Bid Bond, Bidder's General Information, Exhibit 15G1 Local Agency Bidder UDBE Commitment, Exhibit 15G2 Local Agency Bidder DBE Information, Exhibit 15H UDBE Information – Good Faith Efforts, Public Contract Code Section 10285.1 Statement, Public Contract Code Section 10162 Questionnaire, Public Contract Code Section 10232 Statement, this Agreement, Worker's Compensation Certificate, Performance Bond, Payment Bond, Standard Specifications, Special Provisions, the Drawings, Addenda numbers 01 to 02, inclusive, and all Change Orders and Work Change Directives which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto.

### **ARTICLE 5 -- PAYMENT PROCEDURES**

The Contractor shall submit Applications for Payment in accordance with the Standard Specifications as amended by the Special Provisions. Applications for Payment will be processed by the Engineer or the City as provided in the Contract Documents.

### **ARTICLE 6 -- NOTICES**

Whenever any provision of the Contract Documents requires the giving of a written Notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the Notice.

### **ARTICLE 7 -- MISCELLANEOUS**

Terms used in this Agreement which are defined in the Standard Specifications and the Special Provisions will have the meanings indicated in said Standard Specifications and the Special Provisions. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies 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.

The City and the Contractor each binds itself, its partners, successors, assigns, and legal representatives, to the other party hereto, its partners, successors, assigns, and legal representatives, in respect of all covenants, agreements, and obligations contained in the Contract Documents.

**IN WITNESS WHEREOF**, the City and the Contractor have caused this Agreement to be executed the day and year first above written.

**ATTEST:**  
**CITY OF PALM SPRINGS,**  
**CALIFORNIA**

**APPROVED BY THE CITY COUNCIL:**

By \_\_\_\_\_  
City Clerk

Date \_\_\_\_\_

Agreement No. \_\_\_\_\_

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
City Attorney

Date \_\_\_\_\_

**CONTENTS APPROVED:**

By \_\_\_\_\_  
City Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_



Corporations require two notarized signatures: One signature must be from Chairman of Board, President, or any Vice President. The second signature must be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.

CONTRACTOR: Name: Griffith Company Check one:  Individual  Partnership  Corporation  
Address: 12200 Bloomfield Avenue  
Santa Fe Springs, CA 90670

By: \_\_\_\_\_  
Signature (notarized)

By: \_\_\_\_\_  
Signature (notarized)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

(This Agreement must be signed in the above space by one of the following: Chairman of the Board, President or any Vice President)

This Agreement must be signed in the above space by one of the following: Secretary, Chief Financial Officer or any Assistant Treasurer)

State of \_\_\_\_\_   
County of \_\_\_\_\_  ss

State of \_\_\_\_\_   
County of \_\_\_\_\_  ss

On \_\_\_\_\_  
before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_

On \_\_\_\_\_  
before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

WITNESS my hand and official seal.

Notary Signature:

Notary Signature:

Notary Seal:

Notary Seal: