



## City Council Staff Report

Date: June 5, 2013 CONSENT CALENDAR

Subject: AWARD OF CONTRACT FOR THE SIDEWALK REPLACEMENT IN PARKS CITYWIDE, CITY PROJECT NO. 13-06

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

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### SUMMARY

The Palm Springs City Council approved Measure J funds for sidewalk replacement in parks Citywide. The project includes removal and replacement of existing damaged sidewalks in 8 parks. Award of this contract will allow staff to proceed with the construction of the "Sidewalk Replacement in Parks Citywide" project, City Project No. 13-06.

### RECOMMENDATION:

- 1) Approve Agreement No. \_\_\_\_\_, in the amount of \$57,036.25 with Golden Valley Construction Company, for the construction of Sidewalk Replacement in Parks Citywide project, City Project No. 13-06;
- 2) Find bid from Above All Names Construction Services Inc. non-responsive due to their failure to complete the bid documents in accordance with the instructions;
- 3) Authorize the City Manager to execute all necessary documents.

### STAFF ANALYSIS:

At the November 7, 2012, Palm Springs City Council meeting, the Measure J Oversight Commission asked the City Council to consider the Commission's recommendations for Measure J project funding. The City Council approved a number of projects to be funded with Measure J funds, including the "Sidewalk Replacement in Parks Citywide" project.

The project design was prepared by the Public Works & Engineering Department. The proposed sidewalk replacement work is located at the following parks in Palm Springs:

- Desert Highland Park – 480 W. Tramview Rd.
- Victoria Park – 2650 Via Miraleste
- Wellness Park – 677 E. Tachevah Dr.
- Ruth Hardy Park – 700 Tamarisk Rd.
- Frances Stevens Park – 538 N. Palm Canyon Dr.
- Baristo Park – 385 Calle El Segundo
- Sunrise Park - 450 S. Sunrise Way
- Demuth Park – 4375 E. Mesquite Ave.

On April 18, 2013 and April 25, 2013, the project was advertised for bids, and on May 21, 2013, the Procurement and Contracting Division received construction bids from the following contractors:

1. Above All Names Construction Services Inc., Rialto, CA	\$ 15,000.00 *
2. <b>Golden Valley Construction, Indio, CA</b>	<b>\$ 57,036.25</b>
3. Victor Concrete, Riverside, CA	\$ 61,745.00
4. J. RDMMAC, Victorville, CA	\$ 78,407.00
5. Tri-Star Contracting II, Inc., Desert Hot Springs, CA	\$ 88,315.50
6. G & M Construction, CA	\$ 91,182.50
7. Westcon Construction Group, Inc., Indio, CA	\$ 91,820.75
8. O'Connell Engineering & Construction, Inc., Winchester, CA	\$ 93,530.00
9. Coachella Valley Construction & Engineering, Beaumont, CA	\$ 94,060.00
10. Zeus Construction Co., Palm Desert, CA	\$ 97,782.50
11. Mora's Equipment & Construction, Pico Rivera,	\$102,435.00
12. Landmark Site Contractors, Corona, CA	\$105,189.50

\* Staff recommends this bid to be considered non-responsive. The cost of Schedule H was listed as "Total of all items of the Bid Schedules A, B, C, D, E, F, G, and H." As a result of this mistake the bid is \$97,920.00 lower than should be. The contractor submitted a "Notice of Mistake in Bid" requesting to be relieved of its bid because he failed to add all required costs of the project.

The lowest, responsive bidder is Golden Valley Construction Company from Indio, California, whose principal officer is Michael Emerson, President.

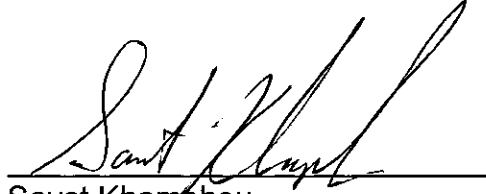
The Engineer's estimate was \$97,000.00

FISCAL IMPACT:

Funding for this project is in Measure J account number 260-4500-59406.

**SUBMITTED:**

Prepared by:



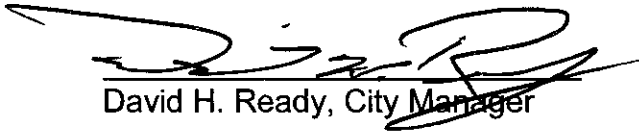
Savat Khamphou  
Assistant Director of Public Works

Recommended by:



David J. Barakian  
Director of Public Works/City Engineer

Approved by:



David H. Ready, City Manager

Attachments: Agreement  
Letter Re: Notice of Mistake in Bid and Request for Relief

## **AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2013, 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 Golden Valley Construction Company, 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 Schedules of the City's Contract Documents entitled:

#### **SIDEWALK REPLACEMENT IN PARKS CITYWIDE CITY PROJECT NO. 13-06**

The Work is generally described as follows:

Removal and reconstruction of damaged sidewalks and curbs in the City parks.

### **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 \$700.00 for each calendar day that expires after the time specified in Article 2, herein.

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

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 Schedules.

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

The Contract Documents consist of the Notice Inviting Bids, Instructions to Bidders, the accepted Bid and Bid Schedule(s), List of Subcontractors, Non-collusion Affidavit, Bidder's General Information, Bid Security or Bid Bond, this Agreement, Worker's Compensation Certificate, Performance Bond, Payment Bond, Standard Specifications, Special Provisions, the Drawings, Addendum number 1, 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 \_\_\_\_\_

**APPROVED AS TO FORM:**

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

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: \_\_\_\_\_ Check one: \_\_Individual \_\_Partnership \_\_Corporation  
Address: \_\_\_\_\_  
\_\_\_\_\_

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.

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WITNESS my hand and official seal.

WITNESS my hand and official seal.

Notary Signature:

Notary Signature:

\_\_\_\_\_

\_\_\_\_\_

Notary Seal:

Notary Seal:

**Above All Names Construction Services, Inc.**

1648 W. Persimmon Ave.

Rialto Ca 92377

909-421-1770 Phone 909-357-3404 Fax

May 21, 2013

City of Palm Springs  
3200 Tahquitz Canyon

Re: Notice of Mistake in Bid and Request for Relief

"Craig L. Gladders C.P.M."  
Procurement and Contracting


This letter is notice to the City of Palm Springs under California Public Contract Code Section 5101 et seq. that Above All Names Construction Services Inc. has made a grievous error in the preparation of its bid for SIDEWALK REPLACEMENT IN PARKS CITYWIDE #13-06

The error made the bid materially different than it was intended to be. The mistake was due to a mathematical error; it was not due to poor judgment, carelessness in inspecting the jobsite, or failure in reading the documents correctly. Above All Names Construction Services Inc. requests to be relieved of its bid and have its bid bond released.

At the time of the bid Above All Names Services Inc. did not see the line that read "Total of all items of the bid schedules a, b, c, d, e, f, g and h (basis of award)" and did not calculate with the balance of the estimate, therefore failing to add all the required costs of the project. The result of this mistake makes our bid \$97,920.00 lower than it should have been. Above All Names Construction Services Inc. would suffer serious financial harm attempting to complete this project at the original bid amount.

Above All Names Construction Service Inc. apologizes for any inconvenience this may cause and is hopeful that we can work together on future projects.

Sincerely,  
John Pedregon

  
PRESIDENT