

City of Scottsbluff, Nebraska

Monday, June 19, 2017

Regular Meeting

Item Reports2

Council to consider approval of the Second Supplemental Agreement for public improvements with Menard, Inc. and authorize the Mayor to execute the agreement.

Staff Contact: Nathan Johnson, City Manager

SECOND SUPPLEMENTAL AGREEMENT FOR PUBLIC IMPROVEMENTS

This Second Supplemental Agreement for Public Improvements (“Agreement”) is made on June __, 2017, between City of Scottsbluff, Nebraska, a Municipal Corporation (the “City”) and Menard, Inc., a Wisconsin corporation (the “Owner”).

Recitals:

a. The Owner owns the following described real estate located within the City (the “Real Estate”):

Lots 1 through 6 of Menards Subdivision, a Subdivision of the City of Scottsbluff, Nebraska.

b. The City and Owner have entered into prior agreements related to the development of the Real Estate, including a Contract for Public Improvements dated May 21, 2007, a No-Contest Agreement dated June 16, 2008 and Supplemental Contract dated September 15, 2008, all of which are collectively called the previous agreements.

c. The Owner has caused certain improvements to be constructed, including Delta Drive, 21st Avenue, 25th Avenue and 20th Street (“Improvements”) however, portions of the Improvements have been determined to be deficient and not constructed according to City’s requirements.

d. The City and the Owner have now come to an understanding on how to complete the Improvements in order for them to meet and/or exceed the City’s requirements and agree to work together to reconstruct the Improvements according to the terms of this Agreement in order for the City to accept the Improvements and complete the Owner’s obligations under the previous agreements.

Agreement:

1. The Improvements which will be repaired, reconstructed and/or constructed, all at the Owner’s cost, shall include:

a. Mill and overlay Delta Drive from 21st Avenue to 25th Avenue in an amount not to exceed \$142,927.20.

b. Construct new intersection at Delta Drive and 25th Avenue in an amount not to exceed \$51,840.00.

c. Remove and replace four curb inlets, as set forth on page 9 of the Engineer's report in an amount not to exceed \$20,000.00.

2. All of the above not to exceed amounts include construction and engineering and must be completed for the Improvements to meet requirements of the City and for the City to accept the Improvements.

3. The parties agree the City shall complete, through its engineer or a special engineer appointed strictly for this purpose, the bidding, contracting and construction of the Improvements according to a contract between the City and the lowest responsible contractor to construct, repair or reconstruct the Improvements. The contract between the City and lowest responsible contractor shall include the Standard General Conditions of the Construction Contract as prepared by the Engineers Joint Contract Documents Committee (the "Improvements Contract"). The Owner shall pay all costs for the engineer, bidding and construction which is estimated not to exceed \$214,767.20. The Owner shall be provided copies of the bids and contract and shall be allowed input into the process to award the bid. The City agrees to share all information regarding the qualifications of the bidding entities and to confer with Owner in order to obtain the Owner's consent prior to awarding the bid, however, the City shall be the sole entity to determine the lowest responsible bid, approval of the Improvements Contract and acceptance of the Improvements.

4. In the event the bid of the lowest responsible bidder is more than the do not exceed amounts in this Agreement, then the Owner shall have the right to submit a written objection to the City prior to the City accepting the bid. The written objection must be submitted to the City no later than 7 business days from the date notice of the lowest responsible bid is sent to the Owner from the City. Once the written objection is received by the City, the parties will have 5 business days to meet and confer about the objection and attempt to reach a resolution about the bid and the Improvements Contract. If the parties are unable to reach a resolution within 5 business days, then the parties may either mutually agree to extend the time to reach a resolution for an additional 5 business days or either party may terminate this Agreement by written notice to the other party. In the event this Agreement is terminated by either party, then parties may exercise their rights under the Contract for Public Improvements, No-Contest Agreement and Supplemental Contract referred to herein.

5. Approval of all payments for the Improvements shall be subject to the terms of the Improvements Contract. At such time as a payment has been approved by the engineer or special engineer retained by the City for management and completion of the Improvements, the Owner shall be provided with a copy of the approved payment application. The Owner agrees to pay the approved amount to the City within 30 business days of the Owner's receipt of the approved application (each, a "Payment").

6. In the event that the Owner fails to make the Payment when due, then the City shall have a cause of action against the Owner for collection of the amount due. In addition, the unpaid portion of the Payment shall carry interest at the rate of 5% per annum from the due date of the Payment. Any notice under this paragraph shall be deemed properly sent if sent by certified mail, postage prepaid, to the Owner as follows:

Menard, Inc.
Attn: Properties Division
4777 Menard Drive
Eau Claire, WI 54703

7. The City and the Owner agree once the bid has been accepted, the Improvements Contract entered into and the Improvements completed, the City will accept the Improvements as the right of way and streets of the City and the City will work with the contractor on any warranty issues with the Improvements.

8. This Agreement shall run with the Real Estate and shall be binding on the successors and assigns of the parties. It shall be construed according to the laws of Nebraska.

City of Scottsbluff, Nebraska

By _____
Mayor

Attest:

City Clerk

Menard, Inc., a Wisconsin corporation

By: 

(Title)