

City of Scottsbluff, Nebraska

Monday, September 28, 2020

Special Meeting

Item 1

Council to discuss & consider action on the change order increase for 23 Club from Paul Reed Construction for \$12,665 and consider approval of revising the final completion day and/or the terms of the penalties in the Contract due to the delayed start & authorize the Mayor to execute the Contract.

Staff Contact: Rick Kuckkahn, Interim City Manager

EMAILS CONCERNING CHANGE ORDER REQUEST:

Rick and Mark

We just got this email back from Paul Reed Construction yesterday – please see below. They were waiting to sign contracts until they checked with their subs and suppliers for any price changes since the bid technically expired around the end of June. As you can see they are requesting a total increase of \$12,665.00, and they would like to revise the final completion day and/or revise the terms of the penalties in the contract due to the delayed start.

Based on the current economic climate and the increases we have seen in a number of material prices, we are not surprised to see some increase. This request seems reasonable considering the size of the contract and the delayed start date. If you are agreeable to the increase, we will revise the agreement to increase \$12,665.00 and we will remove the penalty clause from the contract and resend for signatures.

Please let us know if you have any questions.

Thank you,
Jack

From: Tom Corr <TomC@paulreedconstruction.com>
Sent: Monday, September 21, 2020 11:55 AM
To: Jack Baker <JWBaker@baker-eng.com>
Cc: Jeff Marks <JeffM@paulreedconstruction.com>; Adam Reed <AdamR@paulreedconstruction.com>; Taylor Propp <TaylorP@paulreedconstruction.com>; Alicia Warren <AliciaW@paulreedconstruction.com>
Subject: FW: 23 Club

Jack, we have revisited our subs and suppliers to confirm pricing for the 23 Club project. Price changes have been primarily due to lumber and steel price increases. The cost increase is \$12,655.00. We also have concerns about the delayed start date, and the final completion date still remaining at May 15, 2021, with \$500.00/day LDS. At this point, it is almost certain that we will incur substantial costs to contend with pouring and maintaining concrete temperatures during the cold weather season. Please consider our concerns and let me know when we can meet and discuss options which will be favorable for both parties.

Thank you,
Tom Corr

From: Jeff Marks <JeffM@paulreedconstruction.com>
Sent: Monday, September 14, 2020 8:06 AM
To: Tom Corr <TomC@paulreedconstruction.com>
Subject: FW: 23 Club

Jeff Marks
COO
2970 North 10th Street
Gering, Nebraska 69341
(308)635-2213



DOCUMENT 00520 AGREEMENT

THIS AGREEMENT is dated as of the 9th day of September in the year 2020 by and between city of Scottsbluff, Nebraska (hereinafter called OWNER) and Paul Reed Construction & Supply, Inc (hereinafter called CONTRACTOR).

CONTRACT NAME: 23 Club Improvements 2020
 Contract 002-169-18

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is described as follows:

Schedules A, B, and C

Article 2. CONTRACT PRICE.

2.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds as demonstrated on the attached Bid Forms with a total agreement price of \$1,062,968.62, as described in Article 1 above.

Article 3. ENGINEER.

The Project has been designed by Baker & Associates, Inc, 120 East 16th, Suite A, Scottsbluff, NE 69361, who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 4. CONTRACT TIME.

4.1 The Work will be substantially completed by May 1, 2021 and completed and ready for final payment in accordance with paragraph 15.06 of the General Conditions within 15 days from the substantial completion date..

4.2 Liquidated Damages.

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and the OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.1 above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER \$500.00 for each day that expires after the time specified in paragraph 4.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$500.00 for each day that expires after the time specified in paragraph 4.1 for completion and readiness for final payment.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments.

OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the last day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 2.03 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

- A. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 15.01.C.5 of the General Conditions.
 - 1. Payment shall be equal to 90% of Work completed (10% retainage). If the Contract has reached the 50% completion status, as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be a 5% retainage on account of Work completed in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 95% of the Work completed.
 - 2. Payment for materials shall be equal to 90% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 15.02 of the General Conditions).

- B. Upon Substantial Completion, progress payments will be made in an amount sufficient to increase total payments to CONTRACTOR to 100% of the Contract Price, less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 15.01.C.5 of the General Conditions.

5.2 Final Payment.

Upon final completion and acceptance of the Work in accordance with paragraph 15.06 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 15.06.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 6.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 5.03 of the General Conditions, and accepts the determination set forth in the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to reply.
- 6.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 6.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 5.03 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

- 6.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 5.05 of the General Conditions.
- 6.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 6.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article 7. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 7.1 This Agreement (pages 1 to 7, inclusive).
- 7.2 Exhibits to this Agreement including none
- 7.3 Notice of Award, identified as Document C-510 and consisting of 1 page.
- 7.4 Notice to Proceed, identified as Document C-550 and consisting of 1 page
- 7.5 Performance Bond, identified as Documents C-610 and consisting of 3 pages.
- 7.6 Payment Bond, identified as Documents C-615 and consisting of 3 pages.
- 7.7 General Conditions (pages 1 to 62, inclusive).
- 7.8 Supplementary Conditions (Document 0800, inclusive).
- 7.9 Specifications bearing the title “**23 Club Improvements 2020**” listed in table of contents thereof.

- 7.10 Drawings bearing the title “**23 Club Improvements 2020**” as listed in the table of contents of the Specifications.
- 7.11 Addenda numbers 1 to 2 , inclusive.
- 7.12 CONTRACTOR's Bid (Document C-410, inclusive).
- 7.13 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 11.01 of the General Conditions.
- 7.14 The documents listed in paragraphs 7.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 11.01 of the General Conditions.

Article 8. MISCELLANEOUS.

- 8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 8.2 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 moneys that may become due and moneys 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.
- 8.3 OWNER and 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, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on September 25, 2020.

OWNER City of Scottsbluff

CONTRACTOR Paul Reed Construction
& Supply, Inc

BY _____

BY _____

TITLE _____

TITLE _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

Attest _____

Mailing Address for giving notices

Mailing Address for giving notices

(If OWNER is a public body,
attach evidence of authority
to sign and resolution or
other documents authorizing
execution of Agreement).

License No. _____

Agent for service of process:

(If CONTRACTOR is a corporation,
attach evidence of authority to sign.)