

# **City of Scottsbluff, Nebraska**

**Monday, May 18, 2015**

**Regular Meeting**

## **Item Reports7**

**Council discussion and instructions to staff regarding Simon Contractor's liquidated damages.**

**Staff Contact: Mark Bohl, Public Works Director**

# Agenda Statement

Item No.

For Meeting of: May 18, 2015

**AGENDA TITLE:** Council to discuss liquidated damages from Simon Contractors on Avenue I project.

**SUBMITTED BY:** Mark Bohl, Director of Public Works

**PRESENTATION BY:** Rick Kuckkahn, City Manager

**SUMMARY EXPLANATION:** Council to discuss liquidated damages from Simon Contractors on Avenue I project; 27<sup>th</sup> Street to South Beltline Highway. Please see attached letter on recommendation from City of Scottsbluff.

**BOARD/COMMISSION RECOMMENDATION:**

**STAFF RECOMMENDATION:** Council to recommend allowance of 20 days to replace Perkin's contractors and deduct \$54,600 from \$178,753.79 being withheld for a total of \$124,153.79 as liquidated damages in the City's credit. Please see attached letter from Simon Contractors and city letter.

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## EXHIBITS

Resolution  Ordinance  Contract  Minutes  Plan/Map

Other (specify)  Simon Contractors letter, city letter.

Notification List: Yes  No  Further Instructions

**APPROVAL FOR SUBMITTAL:** \_\_\_\_\_

City Manager

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## SIMON CONTRACTORS

1914 W. Overland, PO Box 147, Scottsbluff, NE 69361. Phone 308-632-4111, Fax 308-632-4111

May 4, 2015

Rick Kuckkahn  
City Manager  
City of Scottsbluff  
2525 Circle Drive  
Scottsbluff, NE 69361

**Re: URB-5703(2), Avenue I, Liquidated Damages**

Dear Mr. Kuckkahn:

I attended the January 5, council meeting and requested that all damages being withheld on the above referenced project be waived because of the reasons spelled out in my letter dated October 17, 2014. The council requested that we meet with you and discuss a potential compromise. We met on January 9<sup>th</sup> and called Claude Oie of NDOR regarding the procedures and requirements of the DBE program when a DBE subcontractor defaults on their subcontract. During that meeting you requested that we make another request once the damages were finalized.

Simon Contractors has since received NDOR estimate number 6 for the above referenced project and the amount of liquidated damages has been adjusted to \$141,960.00 which matches the corrected day count. There has also been an additional \$36,793.79 withheld by the Department of Labor to compensate Perkins and Perkins employees that had not been paid. The total being withheld is \$178,753.79.

I would like to amend my previous request of alleviating all liquidated damages. Please consider not charging liquidated damages for days that were counted while Perkins and Perkins was not on the project as scheduled (8 days), and the time it took to find a replacement subcontractor (12 days). These 20 days would result in a credit to the contract of \$54,600.

It took the replacement subcontractor seven days to remove and replace Perkins and Perkins defective work. Please consider alleviating three of these seven days. This would result in an additional credit to the project of \$8,190.

Thank you for your consideration in this matter. Please contact me at 970-520-5032 if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Darren Gebhart".

Darren Gebhart  
Simon Contractors

## Mark Bohl

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**From:** Mark Bohl  
**Sent:** Wednesday, May 13, 2015 12:28 PM  
**To:** Rick Kuckkahn  
**Cc:** Nathan Johnson  
**Subject:** Simon Contactors

Rick, As requested I have the Letter from Simon's which is asking for reduced Liquidated damages due to the default of the sub-contractor that Simon's hired for Avenue I from the Beltline Highway to 27<sup>th</sup> street. I would like to make a few comments:

- 1) We the City only approve the Prime Contractor on any State let projects and the prime for this project was Simon Contractors.
- 2) This project began on April 6<sup>th</sup> 2014 and we are still not complete to date.
- 3) Simon's had choices when they chose Perkins and Perkins as there DBE for this project and we had no say in that decision.
- 4) The additional \$36,793.79 that the Department of Labor has withheld is for the DBE not paying there help and it was turned into the Dept. Of Labor for review and since Simon's was the General they are on the hook for that amount and should not be considered in this decision.
- 5) As we talked about some fairness to the general it was discussed that we give them the 20 days that there was no work going on while Simon's looked for another contractor to finish the work and again no fault of the City.
- 6) Simon's has ask for an additional 3 days of the 7 days that it took for another contractor to come in and remove Perkins work in certain areas of the project and once again that is the fault of the DBE and not the City in any way.

I could continue on about this project and here we are more than a year later and we are still not complete. I feel that after visiting with yourself and Legal counsel that we allow the 20 days that nobody was on site which results in a \$54,600 credit to the contractor. I do not believe that we owe any days that it took for someone to come in and remove and replace sub standard work that perkin's had done due to the fact that Simon's had folks on site as well as the Engineer we hired to be there watching our best interest. They ask for an additional 3 days from the 7 it took for the replacement contractor to once again replace work that Perkin's placed and I do not agree since the over sight should have been there and caught the mistakes early on. The 3 days they ask would be an additional \$8,190. My recommendation is that we allow the 20 days it took to replace Perkin's and Perkin's and deduct the \$54,600 from the \$178,753.79 being withheld for a total of \$124,153.79 as Liquidated damages in the City's credit.