

From: Michael Corso
To: Rick Wester; Tom Zaccagnino
Cc: Bill Thomas; Curt Schilling
Subject: Re: Req
Date: Thursday, May 26, 2011 12:53:53 PM
Attachments: Requisition #5.xls

Rick:

With regards to the requisition, the paperwork does not continue to change. The project has always been morphing because of the expedited nature of the work. We worked off estimates rather than hard numbers. The original budget was \$10,698,589 then when some actual costs came in the requisition three increased to \$10,705,189. It increased \$6,600 because the new voltage panel actual number came in for the medium voltage panels in the electrical line item. In Requisition 4 the contract sum increased to \$10,748,274 with \$430,850 in actual change orders. This requisition reflected a number of hard quotes being received and therefore adjusting the contract sum. We executed 11 change orders in that requisition. I am attaching a new sheet for Requisition 5 that Nappa will execute and puts furniture back in. It reflects some credits and changes that bring the contract sum to \$10,991,000 for a net change of \$247,849. In addition, you had this month's change of \$206,904.79 plus the previous changes of \$430,850.10 and the adjusted sum with change orders (keeping furniture in) totals \$11,633,000. Therefore changes from original contract sum equal \$885,000.

Michael

On 5/26/11 9:52 AM, "Rick Wester" <rwester@38studios.com> wrote:

Here's the email I originally sent on 5.11. Paperwork does not tie or roll from prior rec. This needs to be corrected. Also, need audit legal letter.

Rick Wester
Chief Financial Officer
38 Studios, LLC

401.243.8363 T

From: Tom Zaccagnino
Sent: Thursday, May 26, 2011 9:08 AM
To: Rick Wester
Cc: Michael; Bill Thomas; Curt Schilling
Subject: Re: Req

You are confusing issues. This has absolutely nothing to do with Mike, legal letter, or warrants.

What is the status of payment on the construction req?

Sent from my iPhone

On May 26, 2011, at 8:00 PM, "Rick Wester" <rwester@38studios.com> wrote:

Nothing to do with cash. We never got an answer as to why the



paperwork keeps changing. At some point, we'll have to answer that question.

Also, still no audit legal letter to PWC from Mike and the warrant, as approved by the board, needs to be delivered to him.

Rick Wester
Chief Financial Officer
38 Studios, LLC

401.243.8363 T

-----Original Message-----

From: Tom Zaccagnino
Sent: Wednesday, May 25, 2011 10:44 PM
To: Michael
Cc: Rick Wester; Bill Thomas; Curt Schilling
Subject: Re: Req

Rick - can you please provide an update. The subs are slowing and in some cases not coming back until payment is made. I know we are managing cash but the cost to remobilize will be material..plus completion of the building will be delayed and cause staff frustration. We will also pay a premium for punch list if we don't pay on time. Tis the game.

What is holding payment up?

Sent from my iPhone

On May 25, 2011, at 9:52 PM, "Michael" <mcorso@kingstoncap.com> wrote:

Rick:

What is the status of payment of the requisition? We need to fund this week as subs have already begun to slow down. All the change orders were reviewed and approved. Most of which were necessitated by 38 requirements. Some are additional landlord work, which are reimbursable. Finally I have reviewed the lease amendment with Tom and Duffy Sweeney and it is ready for execution. This will allow reimbursement for all Landlord base building work.

Michael

just two points. We're (currently) going to spend \$1m more than anticipated (so more pressure on cash) and the paperwork (backup) is inconsistent ... that's it.

Rick Wester
Chief Financial Officer
38 Studios, LLC

401.243.8363 T

From: Tom Zaccagnino
Sent: Wednesday, May 11, 2011 9:47 PM
To: Rick Wester; Michael
Cc: Bill Thomas; Gavian Whishaw; Eric Valentine
Subject: Re: budget vs actual req#5

Sorry...I haven't looked at the numbers but what is the point?
The original budget was crafted without CD's or final specs. We don't have final CD's and final specs now...subs prepared estimates based on what info they had at the time, we knew this and it is typical when you are in a design/build process vs. a design/bid/build process. The Company wasn't able to drive the plans and specs to completion prior to beginning construction... again, we discussed this back in Curt's office in Maynard when the original budget was presented. If the point is simply to quantify how much has changed in terms of dollars than I guess it, however, I am not sure what it does for us. If I am missing the point, please let me know. I would expect more changes as the Company continues to drive changes even from the original incomplete plans.

Thanks.

Best,

TZ

<image003.png> **Thomas J. Zaccagnino** *Vice Chairman & Lead Director*
T: 401.243.8320
F: 401.243.8301
tz@38studios.com
www.38studios.com <<http://www.38studios.com/>>

From: Rick Wester <rwester@38studios.com>
Date: Wed, 11 May 2011 16:01:41 -0400
To: Thomas J Zaccagnino <tz@38studios.com>, Michael <mcorso@kingstoncap.com>
Cc: Bill Thomas <bthomas@38studios.com>, Gavian Whishaw <gwhishaw@38studios.com>, Eric Valentine <evalentine@38studios.com>

Subject: FW: budget vs actual req#5

Here's a view of the changes. \$1.1m....

Rick Wester
Chief Financial Officer
38 Studios, LLC

401.243.8363 T

From: Eric Valentine
Sent: Wednesday, May 11, 2011 3:42 PM
To: Rick Wester
Subject: budget vs actual req#5

Rick,
As discussed see attached, the variance was the related contractor fee of \$50k which I added.

<image004.jpg> **Eric Valentine**
Corporate Controller
One Empire Plaza Providence, RI 02903 T: 401.243.8328
evalentine@38studios.com <<mailto:bfisher@38studios.com>>

<image005.jpg>

APPLICATION AND CERTIFICATION FOR PAYMENT

TO OWNER: 38 Studios, LLC

PROJECT: 38 Studios

APPLICATION NO 05

Distribution to:

5 Clock Tower Place, Suite 140
Maynard, MA 01754One Empire Plaza
Providence, RI 02903

<input checked="" type="checkbox"/>	OWNER
<input type="checkbox"/>	ARCHITECT
<input type="checkbox"/>	
<input type="checkbox"/>	

FROM: Nappa Construction Management,
473 Washington Street
Providence, RI 02903VIA ARCHITECT: McMahon Architect
1005 Main Street, Suite 2
Pawtucket, RI 02903

PERIOD TO: 04/30/11

PROJECT NOS: 01

CONTRACT FOR:**CONTRACTOR'S APPLICATION FOR PAYMENT**Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	10,996,123.42
2. Net change by Change Orders	\$	637,754.89
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$	11,633,878.31
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	8,003,090.89
5. RETAINAGE:		
a. 5 % of Completed Work (Column D + E on G703)	\$	385,764.99
b. 5 % of Stored Material (Column F on G703)	\$	0
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$	385,764.99
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)	=	\$ 7,617,325.90
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	5,785,719.09
8. CURRENT PAYMENT DUE	\$	1,831,606.81
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)		4,016,552.41

GE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$430,850.10	
Total approved this Month	\$206,904.79	
TOTALS	\$637,754.89	\$0.00
NET CHANGES by Change Order	\$637,754.89	

The undersigned certifies that to the best of its knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

##

By: _____ Date: _____

State of: Rhode Island County of: Providence

Subscribed and sworn to before me this ____ day of _____

Notary Public:

My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,831,606.81

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.