

**IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT, IN AND
FOR BAY COUNTY FLORIDA**

**PHOENIX CONSTRUCTION SERVICES,
Inc.,** A Florida for Profit Corporation,

Plaintiff,

v.

Case No.: 23001405CA

PANHANDLE ENGINEERING, INC.,

Defendant.

_____ /

INITIAL COMPLAINT

The Plaintiff, Phoenix Construction, A Florida for Profit Corporation, by and through its undersigned attorneys, sues the Defendants named above as follows:

JURISDICTION, VENUE AND PARTIES

1. This is an action for damages in excess of \$50,000.00, exclusive of interest, costs, and attorney's fees.
2. This complaint advances cause of action for Tortious Interference with a Business Relationship, and Tortious Interference with a Contractual Relationship.
3. The conduct at issue in this matter surrounds the business relationship between the Plaintiff and the City of Lynn Haven as it relates to certain public work projects in Lynn Haven, Florida.
4. Defendant Panhandle Engineering, Inc. (hereinafter "PH"), A Florida for Profit Corporation is located in this judicial circuit.
5. In the alternative and to the extent that PH is not a resident of the State of Florida, PH is subject to the jurisdiction of the courts of the State of Florida pursuant to Section

48.193(1)(a)(2), Florida Statutes, because PH committed a tortious act within the State of Florida as alleged herein.

6. Lynn Haven (hereinafter "LH") is the City of Lynn Haven, Florida, in its municipal corporate form and is located in this judicial circuit.

7. Plaintiff Phoenix Construction Services, Inc., (hereinafter "Phoenix") consents to the jurisdiction of this Court for bringing this suit.

8. James Finch (hereinafter "Finch") is the CEO of Phoenix and actively works in its day to day operations.

**FACTS COMMON TO ALL
(BACKGROUND)**

9. Phoenix is a local construction company that primarily works doing development work and public work projects.

10. Phoenix has been doing business in Lynn Haven, Florida for over forty (40) years.

11. Plaintiff has successfully completed numerous large contracts with LH.

12. The City of Lynn Haven routinely engaged with Phoenix as a bidder for city and public works projects.

13. As a result of this bidding process, Phoenix was from time to time awarded contracts by the City of Lynn Haven, when Phoenix was found to be the lowest responsive bidder, or to otherwise have submitted the bid that was in the City's best interests.

14. In 2017, Plaintiff and LH entered into the contract attached hereto as Exhibit "A."

15. Said contract was for the following categories of work:

address of 1805 Tennessee Avenue, Lynn Haven Florida 32444 (hereinafter called "CONTRACTOR"), for the performance of the Work (as that terms is defined below) in connection with the construction of environmental and infrastructure improvements within the Owner's jurisdiction to include:

- All Infrastructure Improvements funded in whole or in part by the ½ Cent Infrastructure Surtax and other projects the City desires.
- Each Project is to be identified by a Task Order specifically describing Scope and Compensation of the Work.

The TERM of this AGREEMENT shall extend throughout the duration of the Infrastructure Surtax, as may be extended by the voters.

16. Phoenix Construction and Panhandle Engineering submitted a joint proposal for this Contract as a team. This team was successful in their submission, as the City of Lynn Haven awarded Phoenix Construction the contract for this work as the Prime Contractor for the team.

17. Historically, LH has engaged Plaintiff in construction projects with knowledge that Plaintiff routinely subcontracts with companies that provide paving equipment.

18. As of February 2020, Phoenix had completed \$10,318,704 of work for the City as part of the Lynn Haven Half Cent Surtax Design/Build Contract. All work had been completed to the satisfaction of the City. This work consisted primarily of rebuilding several miles of municipal roadways within the city limits.

19. The Contract *did not require* the Plaintiff to own its own paving equipment.

20. On or about Summer 2019, LH city manager Vicki Gainer (Gainer) and Finch engaged in a heated argument relating to Finch's charge that Gainer had negligently paid invoices stemming from Hurricane Michael related storm repair work.

21. Based on information and belief, this dispute was the true provenance of Gainer's ill will towards the Plaintiff.

22. Gainer thereafter communicated with Panhandle and worked in concert with others to exclude Phoenix from construction projects within the jurisdictional bounds of the city.

23. Chris Forehand, as a Professional Engineer and as the primary operating principal for Panhandle Engineering, cooperated with Vickie Gainer to exclude Phoenix Construction from any further road paving contracts let by the City of Lynn Haven, disregarding any contractual obligations or business relationships Panhandle Engineering had with Phoenix Construction.

24. Following this dispute, Finch and his companies began to experience retribution and retaliation from LH, which culminated with Gainer and LH officials altering bidding criteria so as to exclude Plaintiff from qualifying as a bidder.

25. As a matter of their regular operating practice in bidding roadway projects, the City required bidders to be prequalified in asphalt paving by the Florida Department of Transportation, and to hold a Florida Contractor's license.

26. The City advertised for bids in 2021 for a project identified as Lynn Haven Legislative Paving 2021. To qualify for this bid, the bidders had to certify that they would self-perform 75% of the work with their own labor and equipment. This was a more restrictive requirement than the City had used in the past for similar projects.

27. On June 28, 2021, the City opened bids for the project known as Lynn Haven Legislative Roadway Repairs 2021.

28. The bid results were as follows:

BIDDER	TOTAL LUMP SUM BID
Phoenix	\$2,760,553.00
Roberts & Roberts	\$3,046,334.50
GCUC	\$3,981,584.50
American Sand & Asphalt	\$4,362,972.00
Anderson Columbia	\$5,108,573.03

29. Although the Phoenix bid was the lowest bid-submitted to the City by over \$285,000,

the City elected to reject all bids and readvertise the project for re-bid at a later date.

30. Despite being the lowest qualified bidder, Phoenix was *not* selected to perform the contracted work.

31. The stated reason for the aforementioned behavior was that the project was over budget.

32. The bid form had been structured in such a way that the City could deduct areas of work to fit the project within their budget, but instead of doing that, the City rejected all bids and moved to re-bid the project.

33. As part of the rebidding process, the City tasked the engineer, Defendant Panhandle Engineering (hereinafter “Panhandle”), with reducing the scope of the project so that the new bids would be within the City’s budget.

34. As part of the re-bid, Gainer directed Defendant Panhandle to change the qualification requirements for bidding the Road Repairs project. Accordingly, Defendant Panhandle changed the qualification requirements to be even more restrictive, requiring that the Prime Contractor (bidder) perform *all paving activities with its own labor and equipment*.

35. Based on information and belief, Phoenix was the sole bidder from the original bid request and process who *could not* satisfy this new requirement.

36. On September 08, 2021, the City opened bids for the re-bidding of the project known as Lynn Haven Legislative Roadway Repairs 2021 (hereinafter “Road Repairs”). Plaintiff was unable to rebid the project for the reasons stated herein. The bid results were as follows:

BIDDER	TOTAL LUMP SUM BID
Roberts & Roberts	\$2,847,554.95
American Sand &	\$3,463,105.48

37. The project as re-bid involved less work than the project originally bid out.

38. The lowest bid received by the City for the re-bid was \$2,847,554.95. *This was a higher price than the low bid submitted by Phoenix for the original bid, even though Panhandle had reduced the scope of the project at the direction of the City.*

39. The City moved forward with the award of this bid to the lowest bidder (Roberts & Roberts), even though the lowest bid received was in excess of the amount budgeted by the City for the project.

40. As a result, the City spent \$87,001.95 more on the Road Repairs than they would have for the full scope of work if they had elected to award Phoenix's bid for the project originally.

41. This campaign of targeted conduct resulted in LH awarding the contract at a higher bid price, covering less deliverable work, than the Plaintiff's original proposal.

42. This campaign of conduct was a deliberate attempt to exclude Phoenix from bidding for the Road Repairs project.

43. Prior to this conduct, Phoenix and Panhandle were a team as it relates to design build work commissioned by the LH.

44. Based on information and belief, this change in bidding criteria was designed to make Plaintiff ineligible to bid on projects *for the City of Lynn Haven.*

45. Based on information and belief, this change in bidding criteria was done due to personal animosity between city manager Victoria Gainer and Plaintiff's principal James Finch, and Panhandle aided Victoria Gainer in such a change.

COUNT I: TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP

46. The Plaintiff incorporates preceding paragraphs 9-45 as if the same are fully pled herein.

47 The Plaintiff and Defendant LH had an ongoing business relationship and a course of dealings between the parties.

48 Defendant Panhandle was aware of said business relationship between Plaintiff and Defendant LH.

49 At all material times Phoenix and Finch had a clear legal right to do business with LH.

50 Defendant Panhandle was aware that the Plaintiff was contractually due to receive any construction project in Lynn Haven, Florida, funded by the half-cent sales tax.

51 As a direct and proximate result of Defendant Panhandle's continued interference as described above, Finch lost his long-established business relationship with LH and his ongoing and future ability to continue and maintain said business relationship as pled herein.

52 The Defendant's actions were malicious, intentional, and without justification, resulting in significant harm to the Plaintiff, including but not limited to financial losses, reputational damage, and business opportunities.

53 Due to Defendant Panhandle's actions, the Plaintiff's business relationship with the City of Lynn Haven has suffered and deteriorated to a remnant of what existed before the improper conduct described.

54 Accordingly, Plaintiff has suffered damages as a result of the breach of the aforementioned business relationship.

**COUNT II: TORTIOUS INTERFERENCE WITH A CONTRACTUAL
RELATIONSHIP**

55 The Plaintiff incorporates preceding paragraphs 9-45 as if the same are fully pled herein.

56 The Plaintiff and LH had an ongoing contractual relationship and a course of dealings between the parties.

57 Defendant Panhandle was aware of said contractual relationship between Plaintiff and LH.

58 At all material times Phoenix and Finch had a clear legal right to do business with LH.

59 Defendant Panhandle was aware that the Plaintiff was contractually due to receive any construction project in Lynn Haven, Florida, funded by the half-cent sales tax.

60 Based on information and belief, after the change in bidding criteria construction projects which were funded by the half-cent sales tax and contractually obligated to the Plaintiff have been assigned to other contractors in breach of this agreement.

61 The Defendant intentionally interfered with the Plaintiff's contractual relationship with LH, as outlined in detail in Exhibit "A" attached hereto.

62 As a direct and proximate result of Panhandle's continued interference Phoenix lost its long-established contractual relationship with LH and the ongoing and future ability to continue and maintain said contractual relationship as pled herein.

63 The Defendant's actions were malicious, intentional, and without justification, resulting in significant harm to the Plaintiff, including but not limited to financial losses, reputational damage, and business opportunities.

64 Due to the Defendant's actions, the Plaintiff's business relationship with the City of Lynn Haven has suffered.

65 Accordingly, Plaintiff has suffered damages as a result of the breach of that relationship.

COUNT III: CIVIL CONSPIRACY

66 The Plaintiff incorporates preceding paragraphs 9-45 as if the same are fully pled herein.

67 The Defendant PH and LH employee Vicki Gainer had a conspiracy amongst themselves to change the bidding procedure for LH in such a way as to intentionally exclude Phoenix and Finch from the bidding process.

68 The conspiracy involved altering bidding criteria in violation of Florida Statute 255.20.

69 The change in bidding criteria would itself be an otherwise lawful act, but was accomplished unlawfully, as the change in criteria was done without Lynn Haven Commissioners voting on the issue and imposed more onerous requirements than those imposed by the State DOT, and arbitrarily ignores Florida Statutes Section 255's command that contracts for public work are to be granted to the lowest price qualified bidder.

70 Based on information and belief Defendant PH and Gainer met and discussed their intentions to exclude Phoenix and Finch from the bidding process, and subsequently took the overt act to actually rewrite LH bidding criteria to exclude the Plaintiff.

71 Based on information and belief Defendant PH and Gainer likely engaged in additional overt acts in furtherance of the conspiracy, which will be discovered during the process of discovery.

72 Accordingly, Plaintiff has suffered damages as a result of the unlawful conspiracy

between LH and Gainer.

COUNT IV: AIDING AND ABETTING

73 The Plaintiff incorporates preceding paragraphs 9-45 as if the same are fully pled herein.

74 The Defendant PH and LH employee Vicki Gainer had a course of dealings involving public work projects in Lynn Haven, Florida.

75 LH employee Vicki Gainer engaged in tortious interference with a contractual business relationship by interfering with a contract between Plaintiff and LH due to personal animus.

76 Gainer's tortious interference with a contractual business relationship caused harm to injury and damage to the Plaintiff.

77 Defendant PH aided Gainer in committing tortious interference by altering bidding criteria affecting Plaintiff, at the behest of Gainer, with knowledge of Gainer's ill-will and intent to harm Plaintiff.

78 Defendant PH was generally aware of its role as part of the tortious activity at the time it provided assistance to Gainer.

79 Defendant PH knowingly or substantially assisted in the principal violation at issue in this matter, Gainer's tortious interference with a contractual business relationship.

80 Due to Defendant PH and LH employee Gainer's actions, the Plaintiff has been and continues to be damaged.

WHEREFORE, the Plaintiff prays that this Court will hear the causes brought forward this day, and take the following actions:

1. Award damages for the Defendant's Tortious Interference with a Business Relationship;
2. Award Damages for the Defendant's Tortious Interference with a Contractual Relationship;
3. Award Damages for Defendant's Civil Conspiracy with LH employee Vicki Gainer;
4. Award Damages for Defendant's actions to aid and abet LH employee Vicki Gainer;
5. The issuance of an injunction should the Court feel the same is necessary to prevent further tortious conduct;
6. Order the Defendant to disgorge any profits wrongfully obtained due to its actions against the Plaintiff;
7. Grant such other relief as is just and proper and award Plaintiff its costs in this proceeding, including reasonable attorney's fees, as provided by Florida Statutes 255.20(4).

Dated this 28th Day of November, 2023

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury in this action of all issues so triable.

WILLIAMS AND SYFRETT, PLLC,

/s/ Stephen Syfrett, Esq.

STEPHEN SYFRETT

Florida Bar No. 124536

JACK G. WILLIAMS, ESQ.

Florida Bar No. 159127

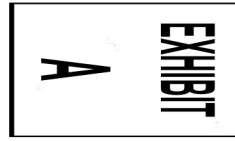
502 Harmon Avenue

Panama City, Florida 32401

Tel: 850.763.5368

E-mail: Stephen@wsgfirm.com

Attorneys for Petitioner



CITY OF LYNN HAVEN

½ CENT INFRASTRUCTURE SURTAX DESIGN/BUILD CONTRACT

This AGREEMENT is made this 9 day of August, 2017 by and between **THE CITY OF LYNN HAVEN, FLORIDA**, (hereinafter called "OWNER") and **PHOENIX CONSTRUCTION SERVICES, INC.**, doing business as a corporation, and having a business address of 1805 Tennessee Avenue, Lynn Haven Florida 32444 (hereinafter called "CONTRACTOR"), for the performance of the Work (as that terms is defined below) in connection with the construction of environmental and infrastructure improvements within the Owner's jurisdiction to include:

- All Infrastructure Improvements funded in whole or in part by the ½ Cent Infrastructure Surtax and other projects the City desires.
- Each Project is to be identified by a Task Order specifically describing Scope and Compensation of the Work.

The TERM of this AGREEMENT shall extend throughout the duration of the Infrastructure Surtax, as may be extended by the voters.

OWNER and CONTRACTOR, for the consideration herein set forth, agree as follows:

1. The CONTRACTOR shall furnish, at its sole expense, all supervision, labor, equipment, tools, material, and supplies to properly and efficiently perform all of the work required by the project and shall be solely responsible for the payment of all taxes, permits and license fees, labor fringe benefits, insurance and bond premiums, and all other expenses and costs required to complete such work in accordance with this Agreement (collectively the "Work"). CONTRACTOR'S employees and personnel shall be qualified and experienced to perform the portions of the Work to which they have been assigned. In performing the Work hereunder, CONTRACTOR shall be an independent contractor, maintaining control over and having sole responsibility for CONTRACTOR's employees and other personnel. Neither CONTRACTOR, nor any of CONTRACTOR'S sub-contractors or sub-contractors, if any, nor any of their respective employees or personnel, shall be deemed servants, employees, or agents of OWNER. The CONTRACTOR'S Design/Build Engineer of Record, PANHANDLE ENGINEERING, INC., shall maintain current registrations and licenses to perform Professional Engineering Services in Florida and shall maintain \$1,000,000 minimum professional liability insurance coverage.

2. The Contractor shall provide a two (2) year warranty on materials and workmanship from date of placement of final surface course.
3. The CONTRACTOR will commence the Work on each Project within ten (10) calendar days after the date of the NOTICE TO PROCEED for such Project is issued by OWNER in writing. The CONTRACTOR shall achieve Substantial Completion of the Work within the time allotted in the Task Order, if applicable, except to the extent the period for Substantial Completion is extended.
4. The CONTRACTOR agrees to perform all of the Work described in the Task Order and comply with the terms therein for the compensation agreed to as shown in the Task Order approved by the OWNER and CONTRACTOR, as said amount may be hereafter adjusted.
5. The term "Contract Documents" means and includes the following documents, all of which are incorporated into this Agreement by this reference:
 - PUBLIC NOTICE - RFQ
 - RESPONSE TO - RFQ
 - AGREEMENT
 - PERFORMANCE BOND
 - PAYMENT BOND
 - TASK ORDER(S)
 - NOTICE(S) TO PROCEED

The Contract Documents also includes any written amendments to any of the above signed by the party to be bound by such amendment. The Contract Documents are sometimes referred to herein as the "Agreement".

6. The OWNER will pay the Task Order compensation to the CONTRACTOR in an expeditious manner based on partial payment requests submitted to the Owner's representative. The Owner will have up to fifteen (15) calendar days to review and process the requests for payment.
7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
8. This Agreement shall be governed by the laws of the State of Florida.
9. All notices required or made pursuant to this Agreement shall be in writing and, unless otherwise required by the express terms of this Agreement, may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, or (iii) by hand delivery to the appropriate address as herein provided. Notices to OWNER required hereunder shall be directed to the following address:

If to Owner:

City of Lynn Haven
825 Ohio Avenue
Lynn Haven, FL 32444
ATTENTION: Michael White, City Manager
Email: CityManager@CityofLynnHaven.com

If to Contractor:

Phoenix Construction Services, Inc.
1805 Tennessee Avenue
Lynn Haven, FL 32444
ATTENTION: Ted Schoppe
Email: tschoppe@phoenix-fl.com

Either party may change its above note address by giving written notice to the other party in accordance with the requirements of this Section.

10. The failure of OWNER to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a continuing waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
11. Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by this Agreement.
12. Should any provision of the Agreement be determined by a court with jurisdiction to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.
13. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.

14. For each Project, OWNER shall designate a Project Representative to assist OWNER with respect to the administration of this Agreement. The Project Representative to be utilized by OWNER for each Project shall be in the TASK ORDER or NOTICE TO PROCEED. In the event that no Project Representative is named in those documents, Michael White, City Manager, shall be the Project Representative.
15. Contractor acknowledges and agrees that no interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which the OWNER, PROJECT, REPRESENTATIVE, or ENGINEER may be responsible, in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONTRACTOR expressly acknowledges and agrees that it shall receive no damages for delay. CONTRACTOR's sole remedy, if any, against OWNER will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This section shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of OWNER or anyone for whom OWNER is liable, and such delays have a cumulative total of more than 90 calendar days, CONTRACTOR may make a claim for its actual and direct delay damages accruing after said 90 calendar days as provided in Section 00805 Supplemental Conditions, Contract Claims and Changes. Except as expressly set forth in this section, in no event shall OWNER be liable to CONTRACTOR whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, special, indirect, incidental, or consequential damages of any kind or nature whatsoever.
16. **INSURANCE – BASIC COVERAGES REQUIRED**

The CONTRACTOR shall procure and maintain the following described insurance on policies and with insurers acceptable to OWNER. Current Insurance Service Office (ISO) policies, forms, and endorsements or equivalents, or broader, shall be used where applicable.

These insurance requirements shall not limit the liability of the CONTRACTOR. The insurance coverage and limits required of CONTRACTOR under this Agreement are designed to meet the minimum requirements of OWNER and the OWNER does not represent these types or amounts of insurance to be sufficient or adequate to protect the CONTRACTOR'S interest or liabilities. CONTRACTOR alone shall be responsible to the sufficiency of its own insurance program.

The CONTRACTOR and the CONTRACTOR'S subcontractors and sub-subcontractors shall be solely responsible for all of their property, including but not limited to any materials, temporary facilities, equipment and vehicles, and for obtaining adequate and appropriate insurance covering any damage or loss to such property. The CONTRACTOR and the CONTRACTOR'S sub-contractors and sub-subcontractors expressly waive any claim against OWNER arising out of or relating to any damage or loss of such property, even if such damage or loss is responsible. The CONTRACTOR is obligated to include, or cause to be included, provisions similar to this paragraph in all of the CONTRACTOR'S subcontracts and its subcontractors' contracts with their sub-subcontractors.

The CONTRACTOR'S deductibles/self-insured retention's shall be disclosed to OWNER and are subject to OWNER'S approval. They may be reduced or eliminated at the option of OWNER. The CONTRACTOR is responsible for the amount of any deductible or self-insured retention. Any deductible or retention applicable to any claim or loss shall be the responsibility of CONTRACTOR and shall not be greater than \$25,000, unless otherwise agreed to, in writing, by OWNER.

Insurance required of the CONTRACTOR or any other insurance of the CONTRACTOR shall be considered primary, and insurance of OWNER shall be considered excess, as may be applicable to claims or losses which arise out of the Hold Harmless, Payment on Behalf of OWNER, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract or lease.

Except with respect to the workers' compensation insurance, CONTRACTOR shall name the OWNER as an additional insured on all required insurance using Additional Insured Endorsement ISO Form CG 20 10 11 85 or if not available, ISO Forms CG 20 10 10 01 and CG 20 37 10 01 or if not available, their equivalent acceptable to OWNER. In the event CONTRACTOR's insurance policy(ies) provide greater coverage and/or greater limits than the minimum requirements set forth herein, then the OWNER and the other additional insureds shall be entitled to the full coverage and limits of such policy(ies), and these insurance requirements will be deemed to require such greater coverage and/or greater limits.

WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

The CONTRACTOR shall purchase and maintain workers' compensation and employers' liability insurance for all employees engaged in the Work, in accordance with the laws of the State of Florida, and, if applicable to the Work, shall purchase and maintain Federal Longshoremen's and Harbor Workers' Compensation Act Coverage. Limits of coverage shall not be less than:

\$1,000,000	Limit Each Accident
\$1,000,000	Limit Disease Aggregate
\$1,000,000	Limit Disease Each Employee

The CONTRACTOR shall also purchase any other coverage required by law for the benefit of employees.

The CONTRACTOR shall provide to OWNER an Affidavit stating that it meets all the requirements of Florida Statute 440.02 (15) (d).

COMMERCIAL GENERAL LIABILITY COVERAGE

CONTRACTOR shall purchase and maintain Commercial General Liability Insurance on a full occurrence form. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage, Projects and Completed Operation Liability Coverages and shall not exclude coverage for the "X" (Explosion), "C" (Collapse) and "U" (Underground) Property Damage Liability exposures. Limits of coverage shall not be less than:

Bodily Injury, Property Damage & Personal Injury Liability	\$1,000,000 Combined Single Limit Each Occurrence, and
	\$2,000,000 Aggregate Limit

The General Aggregate Limit shall be specifically applicable to this Project. The Completed Operations Liability Coverages must be maintained for a period of not less than ten (10) years following OWNER'S final acceptance of the project.

BUSINESS AUTOMOBILE LIABILITY COVERAGE

The CONTRACTOR shall purchase and maintain Business Automobile Liability Insurance as to ownership, maintenance, use, loading and unloading of all of CONTRACTOR'S owned, non-owned, leased, rented or hired vehicles with limits not less than:

Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit Each Accident
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EXCESS OR UMBRELLA LIABILITY COVERAGE

CONTRACTOR shall purchase and maintain Excess Umbrella Liability Insurance or Excess Liability Insurance on a full occurrence form providing the same continuous coverages as required for the underlying Commercial General, Business Automobile and Employers' Liability Coverages with no gaps in continuity of coverages or limits with OWNER added by endorsement to the policy as an additional insured in the same manner as is required under the primary policies, and shall not be less than \$10,000,000, each occurrence and aggregate as required by OWNER.



IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in two (2) copies each of which shall be deemed an original on the date first written above.

(SEAL)

OWNER:

CITY OF LYNN HAVEN, FLORIDA

BY: 

NAME: Margo Anderson

(Please type)

TITLE: Mayor

ATTEST:



Michael White, City Manager

ATTEST:

**CONTRACTOR:
PHOENIX CONSTRUCTION
SERVICES, INC.**

BY: 

NAME: Ron Golinowsky

TITLE: President

ADDRESS: 1805 Tennessee Ave
Lynn Haven, Florida 32444



NAME: Ted Schoppe IV



TASK ORDER 1

CITY OF LYNN HAVEN INFRASTRUCTURE SURTAX DESIGN/BUILD CONTRACT C & D RATED ROADWAY REHABILITATION & PAVING

PHOENIX CONSTRUCTION SERVICES, INC., is hereby notified to commence work on **TASK ORDER 1** in accordance with the ½ Cent Infrastructure Sales Tax Design/Build Contract between **PHOENIX CONSTRUCTION SERVICES, INC.** and **THE CITY OF LYNN HAVEN, FLORIDA**.

THE CITY OF LYNN HAVEN, FLORIDA has designated Michael White as the OWNER'S representative to coordinate communications between **PHOENIX CONSTRUCTION SERVICES, INC** and **THE CITY OF LYNN HAVEN, FLORIDA**, and to act on decisions on behalf of **THE CITY OF LYNN HAVEN, FLORIDA**.

DESCRIPTION OF WORK FOR C & D RATED ROADWAY REHABILITATION & PAVING

SCOPE OF SERVICES

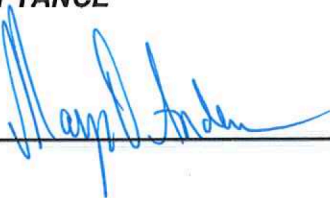
1. Undertake expedited schedule to rehabilitate and pave up to 11 miles of City roadways designated level C & D that have been evaluated and determined to not be in eminent need of significant utility and/or drainage repairs that would adversely affect the proposed paving improvements. Current costs for Phase 1 are estimated at \$3.8 MM.
 - a) Prepare rehabilitation plans and specifications by Engineer of Record (EOR). Roadway Plans will be released in groups of 2 to 5+/- to the City's representative for 90% review and comment.
 - b) Rehabilitation plans will include specific items as deemed required to address existing deterioration and failures as recommended by the Engineer.
 - c) Following receipt of City's comments, plans will be updated and resubmitted to City for 100% approval.
 - d) Construction rehabilitation and paving activities will commence within ten (10) calendar days following receipt of City approved plans.
 - e) Compensation for this work will be based on the attached Schedule of Values as it may apply to a specific roadway segment.
 - f) Contractor will submit partial payment requests on a bi-weekly or monthly basis, depending on intensity of work. Partial payment submittals will include a certified statement from the Engineer of Record (EOR) stating that the work submitted was substantially performed and in compliance with the approved plans, unless field modifications are approved by City.
 - g) A retainage allowance pursuant to FDOT standards will be withheld by the City, as applicable, until each road segment is fully completed.

2. Undertake initial activities for the remaining ½ cent infrastructure projects with needs for significant, but not major, utility and/or drainage improvements to be undertaken in sequence and concurrently with the roadway rehabilitation and paving activities. Other available and applicable sources of funding are available to support the utility and drainage improvements, including grants, transportation/stormwater/utility Impact fees, annual budget, State Revolving Fund (SRF), etc.
 - a) **The Engineer of Record** will meet with City Staff to develop initial design and during 60% & 90% review milestones.
 - b) Develop roadway segment priorities based on magnitude of work, complexity, funding and need. Release complete and permitted, as applicable, construction plans to Contractor for pricing under separate Task Order submittals.
 - c) Prepare complete construction plans and specifications by Engineer of Record (EOR).
 - d) Permitting, if applicable
 - e) **Compensation is 6% of total construction costs. Surveying, geotech & environmental services**, as may be required are recoverable at cost.
 - f) Contractor will submit applicable priced Task Orders for Construction to be approved by the City Commission.

Those remaining ½ cent infrastructure projects with needs for major or complex utility and/or drainage improvements will be submitted under separate Task Order submittals to be approved by the City Commission.

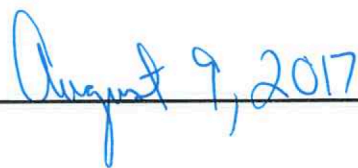
ACCEPTANCE

By: _____



Honorable Mayor Margo Anderson

Date: _____



SCHEDULE OF VALUES - 8 AUGUST 2017
LYNN HAVEN 1/2 CENT INFRASTRUCTURE TAX PROJECTS

DESCRIPTION	UNIT	UNIT PRICE	REMARKS
EARTHWORK			
INSTALL SILT FENCING	LF	\$3.00	INCLUDES MAINTENANCE
REGRADE ROADSIDE SWALE	LF	\$75.00	10' - 15' X 8" - 12" DEEP
INSTALL SOD	SY	\$4.00	CENTPEDE, RALIEGH, ZOYSIA TO MATCH
CLEAN SAND FILL	CY	\$20.00	TRUCK MEASURE - DELIVERED & PLACED
ROW CLEARING	SY	\$3.00	TREES, ROOTS, LANDSCAPING, ETC
PAVEMENT FAILURE REPAIRS			ROOTS, SUBSIDENCE, ETC
REMOVE AND REPLACE	SY	\$125.00	INCLUDES HMAC, BASE & SG
REMOVE AND REPLACE	SY	\$105.00	INCLUDES HMAC, BASE
PAVEMENT REHABILITATION			
ENGINEERING, QA/QC	%	3.5%	PERCENT OF TOTAL CONSTRUCTION COST
EDGE MILLING - 4'	SY	\$4.00	2" - 3"
MILLING - 22'	SY	\$4.00	2" - 3"
CRACK RELIEF	SY	\$7.50	EMULSIFIED ASPHALT
LEVELING COURSE	TON	\$125.00	GRADE & COMPACT
SURFACE COURSE - SP 9.5 - 1"	SY	\$12.50	FDOT SUPERPAVE MIX
SURFACE COURSE - SP 12.5 - 1"	SY	\$12.90	FDOT SUPERPAVE MIX
SURFACE COURSE - SP 9.5 - 2"	SY	\$16.70	FDOT SUPERPAVE MIX
SURFACE COURSE - SP 12.5 - 2"	SY	\$17.10	FDOT SUPERPAVE MIX
LBR 40 SUBGRADE-12"	SY	\$5.50	GRADE & COMPACT
FDOT OPTIONAL BASE GROUP 4	SY	\$13.00	GRADE & COMPACT
MIXING AND COMPACTION OF SAHM -8" MIN	SY	\$7.50	GRADE & COMPACT
MISCELLANEOUS ASPHALT	TON	\$200.00	
SURVEY & CLEANUP	SY	\$4.00	
PAVEMENT MARKINGS AND SIGNAGE			
STOP BAR	EACH	\$150.00	24" THERMOPLASTIC
DOUBLE SOLID YELLOW	LF	\$10.80	THERMOPLASTIC
SINGLE SOLID YELLOW	LF	\$2.00	THERMOPLASTIC
DOUBLE SKIP YELLOW	LF	\$3.00	THERMOPLASTIC
SINGLE SKIP YELLOW	LF	\$1.50	THERMOPLASTIC
SINGLE SOLID WHITE	LF	\$2.00	THERMOPLASTIC
SINGLE TURN ARROW WHITE	EACH	\$150.00	THERMOPLASTIC
DOUBLE TURN ARROW WHITE	EACH	\$250.00	THERMOPLASTIC
CROSSWALK-STANDARD	EACH	\$300.00	THERMOPLASTIC - 2 LANE ROADWAY
CROSSWALK- HIGH VISIBILITY	EACH	\$350.00	THERMOPLASTIC - 2 LANE ROADWAY
SCHOOL	EACH	\$250.00	THERMOPLASTIC
REFLECTIVE MARKERS (RPM)	EACH	\$5.50	RED/WHITE, BLUE, YELLOW/YELLOW,WHITE
STOP SIGNS	EACH	\$200.00	INSTALL ONLY- SIGN & POST BY CITY
SCHOOL, CROSSWALK, SPEED LIMIT, ETC SIGNS	EACH	\$200.00	INSTALL ONLY- SIGN & POST BY CITY

UTILITY ADJUSTMENTS			
MANHOLE RIM ADJUSTMENT	EACH	\$1,000.00	INCLUDES PCC COLLAR
VALVE COVER ADJUSTMENT	EACH	\$850.00	INCLUDES PCC COLLAR
SANITARY LATERAL EXCAVATION & BACKFILL	EACH	\$650.00	REPAIR OR REPLACEMENT BY CITY UTILITY
SANITARY LATERAL EXCAVATION, REPAIR & BACKFILL	EACH	\$825.00	LATERAL REPAIRS INCLUDED
SANITARY LATERAL EXCAVATION, REPLACEMENT & BACKFILL	EACH	\$1,200.00	LATERAL REPLACEMENT INCLUDED
INSTALL WATER SERVICE TUBING	EACH	\$175.00	30 LF - RECONNECTIONS BY CITY UTILITY
UTILITY CHASE 4"	EACH	\$650.00	24 LF HDPE
DRAINAGE			
CROSSDRAINS - REMOVE EXISTING AND REPLACE 18" RCP	LF	\$125.00	INCLUDES BASE REPLACEMENT
CROSSDRAINS - REMOVE EXISTING AND REPLACE 24" RCP	LF	\$140.00	INCLUDES BASE REPLACEMENT
CROSSDRAINS - REMOVE EXISTING AND REPLACE 36" RCP	LF	\$200.00	INCLUDES BASE REPLACEMENT
SIDEDRAINS - REMOVE AND REPLACE 12" ACMP	LF	\$75.00	INCLUDES BASE REPLACEMENT
SIDEDRAINS - REMOVE AND REPLACE 18" ACMP	LF	\$100.00	INCLUDES BASE REPLACEMENT
MITERED END - 2:1 -12"	EACH	\$900.00	CAST IN PLACE
MITERED END - 2:1 -18"	EACH	\$1,000.00	CAST IN PLACE
MITERED END - 2:1 -24"	EACH	\$1,500.00	CAST IN PLACE
INLET - FDOT C	EACH	\$5,000.00	PRECAST
INLET - FDOT E	EACH	\$7,000.00	PRECAST
CURB & GUTTER - MODIFIED "E" OR "F"	LF	\$24.00	4" PCC-3000 PSI FIBER MESH
CURBED FLUMES - 2'	EACH	\$2,500.00	4" PCC-3000 PSI FIBER MESH
LIMEROCK BEDDING	CY	\$35.00	DELIVERED & PLACED
CAMERA INSPECTION OF 6" - 12" STORM LINES	LF	\$1.65	CERTIFIED VIDEOS AND AS-BUILTS PROVIDED
JET AND VAC OBSTRUCTED LINES, 6" - 12"	LF	\$2.10	UP TO 3 TIMES
PEDESTRIAN SAFETY			
CONSTRUCT 6' SIDEWALK	LF	\$35.00	4" PCC-3000 PSI FIBER MESH
REWORK DRIVEWAY TRANSITIONS	EACH	\$1,500.00	PCC OR HMAC TO MATCH
ADA DETECTABLE WARNING STRIPS	EACH	\$600.00	CAST IN PLACE TYPE - COLOR BY CITY
HANDRAIL	LF	\$120.00	ALUMINUM - FDOT
GUARDRAIL	LF	\$35.00	INCLUDES END TREATMENTS AND REFLECTORS
GUARDRAIL END FLARED	EACH	\$2,500.00	
GENERAL			
PROJECT SIGNAGE - 4' X 8'	EACH	\$700.00	INSTALLED
		\$0.00	
MOVE-IN	EACH	\$3,000.00	
NOTES:			
UNIT COSTS ABOVE INCLUDE ALL BONDS & INSURANCE, TAXES, LAYOUT, TESTING, EROSION CONTROL, NPDES, MAINTENANCE OF TRAFFIC, CONSTRUCTION DEBRIS REMOVAL & DISPOSAL.			
ITEMS NOT ANTICIPATED AND SPECIFICALLY NOT NOTED WILL BE ADDRESSED BY OWNER'S REPRESENTATIVE AND CONTRACTOR, IF THEY OCCUR.			

memo

To: Mayor and Commissioners
From: Michael White
CC: Bobby Baker
Date: 8/4/2017
Re: ½ Cent Infrastructure Sales Tax RFQ

At the last Commission Meeting, it was unanimously voted to start negotiations with the top ranked design build team Phoenix Construction Services, Inc. and Panhandle Engineering, Inc. Staff has met at length with the design build team and we developed a plan to streamline the first phase of infrastructure improvements, which includes roads that require paving only with minor storm water improvements of the C & D rated roads.

We have negotiated unit prices for specific work anticipated for the first phase. If approved, the plan would be to initiate design on the first two or three roads chosen by staff and then it is anticipated there would be three or five groups of roads designed and approved by staff. It will be staff's responsibility to quantify units of these groups based on the Commission approved unit prices. This process allows the contractor to start work immediately on the first two or three roads while the Engineer is working on the other three or five groups of roads. By utilizing this process, we anticipate that all C & D roads requiring paving only (approximate 11 miles) will be completed by the end of this calendar year (2017). The City recently secured a \$3.8M low interest loan for this initial effort. In January 2018, we can secure additional funding for future work.

To facilitate this process, we have provided a Master-Design Build Contract (Shell Contract), which is an agreement between the City and the Design Build Team. This Contract allows specific Task Orders to be issued by the City for any portion of infrastructure work. The Contract is attached for your review with the negotiated unit pricing. The attached Task Order No.1 outlines the first tasks described above and includes design. Task Order No. 1 will also give Panhandle Engineering the approval to begin design of the more complicated areas with paving, water, storm water and sewer so they can provide 60% plans for City Staff review and approval. Based upon the Commission approval of Task Order No. 1, the contractor will provide a guaranteed maximum price (GMP) for these more complicated projects.

The initial Task Order is slightly different from the RFQ by providing unit prices and streamlining the design process for roads that need paving only. However, it meets the

intent of the RFQ, which is a negotiated process for the entire project. Staff feels comfortable with the proposed process and has confidence based on past work history with the chosen team that the process will be smooth and successful for the citizens of Lynn Haven. This process will expedite utilizing the approved ½ Cents sales tax for the citizens. Staff was also successful in working out a deal with the design build team to guarantee the materials and workmanship for two years as compared to the standard one year. This will give the City a tremendous added security that the roads will be taken care of in case of unforeseen circumstances.

All work directives outlined in Task Order No. 1 will be handled by the City Manager based upon the Commission approved unit pricing and will not exceed the \$3.8M loan amount. The next proposal will be presented to the Commission at the end of this calendar year or early 2018. The staff respectfully requests that the Commission approve the recommended Design/Build Contract and Task Order No. 1 as provided.



1805 TENNESSEE AVENUE
LYNN HAVEN, FLORIDA 32444-5428

(850) 265-4210
FAX (850) 265-4196

August 2, 2017

Mr. **Michael White**, City Manager
City of Lynn Haven
825 Ohio Avenue
Lynn Haven, FL 32444

RE: Master Contract and Task Order #1
Lynn Haven Infrastructure Surtax Improvements
Lynn Haven, Florida
PE File #14403-D

Dear Mr. White:

In response to the City Commission's selection of Phoenix Construction Services, we have attached a Master Contract similar to the Environmental and Infrastructure Contract, circa 2014. The City utilized this form of Master Contract to address basic contract requirements and task orders to identify specific project scopes and proposed compensation.

Task Order No.1, the first project specific task order is attached. This Task Order provides for an expedited method to start roadway construction activities for C & D ranked roadways. The C & D ranked roadways are the most deteriorated and distressed roadways in need of rehabilitation.

The proposed **expedited approach** has several attributes, including providing for a continuous flow of paving projects over the next several months rather starting construction in late fall & winter. **Interest costs on the City's Surtax loan is reduced** and residents can quickly see the benefits of the Surtax throughout the City.

We are ready to commence work upon the City's authorization.

Sincerely,

Ron Golinowsky
President

Cc:

P:\14403-D LH 1 Paving Improve Half Cent Surtax\2 Correspondence - Month Year\2017 Aug\TO No.1 Ltr
M.White.docx