

CITY OF WILLOUGHBY HILLS

CHANGE ORDER

PROJECT:	2013 Pavement Markings	DATE:	12/05/2013
	Various Locations Throughout Entire City		
	Willoughby Hills, Ohio 44094	CHANGE ORDER NO.:	01
CONTRACTOR:	Pat Flowers Inc.	ORDINANCE NO.:	2013-12
	6044 Whiteford Drive		
	Highland Heights, Ohio 44143	CONTRACT DATE:	04/10/2013

THE CONTRACT IS CHANGED AS FOLLOWS:

Original Contract Amount	\$ 28,535.10
Amount of Previously Authorized Change Orders	0
Contract Amount Prior to this Change Order	\$28,535.10
This Change Order Amount	\$5,682.73
Revised Contract Amount Including this Change Order	\$34,217.83
Change in Contract Time	N/A
Date of Substantial Completion	N/A

Description of this Change Order:

- Sixty percent (60%) of additional performed pavement markings (\$9,471.22 x 0.6): \$ 5,682.73
- See attached e-mail correspondence between Members of City Council and City Administration regarding the December 2, 2013 Service Committee discussion on this matter (3 pages).
- See additional correspondence that transpired before the December 2, 2013 Service Committee Meeting (29 pages).

Note: Acceptance of this change order acknowledges final settlement and relieves the Owner (City of Willoughby Hills) of all future related claims.

NOT VALID UNTIL SIGNED BY ALL BELOW:

CONTRACTOR		OWNER'S REPRESENTATIVE (A/E/CM)	
FIRM NAME	PAT FLOWERS INC	FIRM NAME	
ADDRESS	6044 WHITEFORD DR.	ADDRESS	
SIGNATURE	Pat Flowers	SIGNATURE	
NAME & TITLE	PAT FLOWERS (PRESIDENT)	NAME & TITLE	
DATE	12-5-13	DATE	
		OWNER	
		FIRM NAME	
		ADDRESS	
		SIGNATURE	
		NAME & TITLE	
		DATE	

Daniel J. Collins

From: Mayor Weger [robertweger@willoughbyhills-oh.gov]
Sent: Wednesday, December 04, 2013 6:58 AM
To: Chris Biro
Cc: Ray Somich; Fellows, Nancy [ASPUS]; Ray Somich; Pietro DiFranco; Kevin Malecek (council); Frank Germano; Chris Biro; David M. Fiebig; Thomas G. Lobe; Frank Brichacek
Subject: Re: Agreed Final Payment - 2014 Pavement Markings - Pat Flowers
Categories: Filed by Newforma

I concur with Ray and Chris, just work to have the Moral Claim legislation prepared.

Bob

Sent from my iPhone

On Dec 3, 2013, at 5:25 PM, Chris Biro <christopherbiro@yahoo.com> wrote:

Ray and Nancy,

I agree that this would be an acceptable compromise. Lessons learned. Chris

From: Ray Somich <ray@247spirit.com>
To: "Fellows, Nancy [ASPUS]" <nfellows@its.ini.com>; 'Ray Somich' <raysomich@willoughbyhills-oh.gov>; 'Pietro DiFranco' <PDiFranco@RLBA.com>; 'Kevin Malecek (council)' <KevinMalecek@WilloughbyHills-oh.gov>; 'Frank Germano' <frankgermano@willoughbyhills-oh.gov>; 'Chris Biro' <chrisbiro@willoughbyhills-oh.gov>; 'David M. Fiebig' <davidfiebig@willoughbyhills-oh.gov>
Cc: RobertWeger@WilloughbyHills-Oh.gov; 'Thomas G. Lobe' <tomlobe@yahoo.com>; 'Frank Brichacek' <frankbrichacek@willoughbyhills-oh.gov>
Sent: Tuesday, December 3, 2013 5:04 PM
Subject: RE: Agreed Final Payment - 2014 Pavement Markings - Pat Flowers

Nancy, I agree with your comments. Can we get some input from the administration and other council members on this?

Thanks.
ray

From: Fellows, Nancy [ASPUS] [mailto:nfellows@its.ini.com]
Sent: Tuesday, December 03, 2013 3:54 PM
To: Ray Somich; Pietro DiFranco; Kevin Malecek (council); 'Frank Germano'; 'Chris Biro'; 'David M. Fiebig'
Cc: RobertWeger@WilloughbyHills-Oh.gov; 'Thomas G. Lobe'; Frank Brichacek
Subject: RE: Agreed Final Payment - 2014 Pavement Markings - Pat Flowers

Ray,

Agree that this appears to be a fair compromise, however, this should be reviewed by Administration for acceptance/approval prior to any Ordinance being created. While ultimately Council has authority to amend the contract, working cooperatively with Administration, Law Director, and the Engineer this should be reviewed by them with Administration's input.

12/5/2013

Regards,
Nancy

From: Ray Somich [mailto:ray@247spirit.com]
Sent: Tuesday, December 03, 2013 1:34 PM
To: 'Pietro DiFranco'; 'Nancy E. Fellows'; 'David M. Fiebig'; 'Christopher L. Biro'; 'Frank A. Germano'; 'Kevin D. Malecek'
Cc: 'Robert Weger'; GloriaMajeski@WilloughbyHills-OH.gov; 'Thomas G. Lobe'; 'Frank J. Brichacek Jr.'; Finance@willoughbyhills-oh.gov; 'Nate Catania'; 'Daniel J. Collins'
Subject: RE: Agreed Final Payment - 2014 Pavement Markings - Pat Flowers

I think this is a fair compromise. do we need a motion or an ordinance to vote on this amount? Thank you. ray

From: Pietro DiFranco [mailto:PDiFranco@RLBA.com]
Sent: Tuesday, December 03, 2013 1:26 PM
To: Nancy E. Fellows (nancyfellows@willoughbyhills-oh.gov); David M. Fiebig (DavidFiebig@WilloughbyHills-OH.gov); Christopher L. Biro (chrisbiro@willoughbyhills-oh.gov); Frank A. Germano (frankgermano@willoughbyhills-oh.gov); Kevin D. Malecek (kevinmalecek@willoughbyhills-oh.gov); Raymond C. Somich (raysomich@willoughbyhills-oh.gov)
Cc: Robert Weger (Mayor@WilloughbyHills-OH.gov); GloriaMajeski@WilloughbyHills-OH.gov; Thomas G. Lobe (tomlobe@yahoo.com); Frank J. Brichacek Jr. (frankbrichacek@willoughbyhills-oh.gov); Finance@willoughbyhills-oh.gov; Nate Catania (natecatania@willoughbyhills-oh.gov); Daniel J. Collins
Subject: Agreed Final Payment - 2014 Pavement Markings - Pat Flowers

All,

Based on the recommendation provided at yesterday's Service Committee meeting, Pat Flowers Inc. has agreed to accept 60% of the extra amount to cover labor and material expenses, at no profit. The extra amount of \$5,682.73 will result in a total payment of \$34,217.83, which is below the engineer's estimate of \$35,000 included in Ordinance 2013-12.

\$38,006.32	Final amount based on unit prices and actual quantities performed
- \$28,535.10	Contract amount
= \$ 9,471.22	Extra amount
\$5,682.73	60% of extra amount (labor & material)
\$34,217.83	Total payment (\$28,535.10 + \$5,682.73)
\$35,000.00	Engineer's Estimate as stated in Ordinance 2013-12

If acceptable, I assume the next step is approval at the next council meeting?

Please let me know if there are any questions, comments, or anything further is needed from me.

Thanks,
Pete

Pietro A. DiFranco PE SI LEED AP CPESC
 Director of Civil Engineering

RICHARD L. BOWEN + ASSOCIATES INC.
 13000 Shaker Blvd. | Cleveland OH 44120
 T: 216.377.3813 | F: 216.491.8053

12/5/2013

.....
Architecture | Engineering | Construction Services

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12/5/2013

Daniel Collins

From: Daniel J. Collins <DCollins@RLBA.com>
Sent: Thursday, December 05, 2013 2:09 PM
To: Daniel Collins
Subject: FW: Pavement Marking Project
Attachments: Pavement Marking Project.htm; Addl Pavt Mkgs Memo 131120 pad.pdf; Pat Flowers Contract Docs.pdf; _Bid Book-2013 Pavement Markings.pdf; memo to Council explaining denial of add'l funds.docx

From: Fellows, Nancy [ASPUS] [<mailto:nfellows@its.inj.com>]
Sent: Tuesday, November 26, 2013 9:46 PM
To: 'David M. Fiebig'; 'Chris Biro'; 'Frank Germano'; Kevin Malecek (council); Ray Somich
Cc: Council@WilloughbyHills-OH.gov; Fellows, Nancy [ASPUS]; Pietro DiFranco; RobertWeger@WilloughbyHills-Oh.gov; 'Thomas G. Lobe'
Subject: Pavement Marking Project

Good Evening Colleagues,

Attached are pertinent documents concerning the pavement marking project that finished \$9,471.22 over the approved contract amount of \$28,535.10. The Mayor has denied paying the extra amount because the contractor did not follow procedure, and has suggested the contractor make a moral claim for council to review. Our Engineer agrees that the contractor made a procedural error, however feels payment is justified. Service will meet after the Special Council meeting on Monday, December 2nd, certainly all are welcome to review the facts and opinions of the dilemma at hand and pose questions should they arise.

*Regards,
Nancy*

Nancy E. Fellows, MPA, MSN, RN, CNOR
Senior Clinical Education Consultant



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City of Willoughby Hills

Interoffice Memo

Date: Thursday, December 05, 2013

To: Council Members, Council Clerk

From: Mayor Robert M. Weger

Subject: Administrative Information regarding Pat Flowers, Inc. Contract for 2013 Pavement Markings Program and Request for Additional Funding

I wanted to make you aware of a memo written by Assistant City Engineer Daniel Collins to me requesting me to consider additional funds being paid to Pat Flowers, Inc. for the 2013 Pavement Markings Program as a result of "unanticipated overages in quantities." You may recall that Council awarded the bid to Pat Flowers, Inc. by Ordinance 2013-12 in the amount of \$28,535.10 as the lowest and best bid.

While this remains a strictly administrative matter, I feel compelled to share this information with you in the event that it would be discussed with you having no knowledge of what transpired since your passage of the Ordinance.

The additional amount that is being requested is \$9,471.23, which would then make the total amount of the project \$38,006.33. The request is a result of the actual pavement markings used versus the amount designated in the bid booklets. Apparently, the amounts listed in the bid booklets were based on previous years' totals, rather than actual measurements.

I reviewed the bid booklet and found several instances whereby the City of Willoughby Hills took precaution against something like this occurring. There were provisions that necessitated the contractor to verify the amounts prior to bid and after award of the contract. There were provisions that stated, if the contractor found a discrepancy once the job was underway, the contractor was to cease the job until the proper Change Order was completed and funding was allocated. None of these contracted items occurred and, for that reason, I informed our City Engineer that the City will not agree to the additional monies to Pat Flowers, Inc. In addition, I must stand by our bid procedure

and protect the other bidders who did not have the "lowest and best bid" but who may have had the most accurate bid in the long run.

Again, this is an administrative issue that I have handled after conferring with Law Director Lobe, but I wanted you to be aware of it. Please let me know if you have any questions. I have attached my response to the City Engineer for your reference.

City of Willoughby Hills

Interoffice Memo

Date: Wednesday, November 20, 2013

To: Mayor Robert M. Weger

Cc: Frank Brichacek, Finance Director
Thomas G. Lobe, Law Director
Daniel J. Collins, P.E., Assistant City Engineer

From: Pietro A. DiFranco, P.E., City Engineer

Subject: 2013 City of Willoughby Hills Pavement Markings Program
Contractor: Pat Flowers, Inc. (Ordinance 2013-12 of 3/28/13)
Request for Add'l Funds Due to Unanticipated Overages in Quantities

We understand the concerns expressed in your memo dated November 12, 2013, and appreciate the opportunity to offer the clarifications below. While the contractor did not follow the procedures defined in the contract documents, by exceeding the contract amounts without prior written authorization, we feel the additional work met the intent of the project, was performed satisfactorily, and provided added value for the city, therefore additional payment is justified. The following clarifications correspond to the items listed in your memo.

1. Correct, the contractor is responsible for providing all labor, material, equipment, etc... necessary to perform the work, however the contract is based on unit pricing, therefore the contractor is compensated based on the actual work quantities performed, not a lump sum. So in other words, if the quantities listed in the bid documents were not all performed, the contractor would not be paid the full amount of the contract.
2. These six (6) items all reference the 'Instructions to Bidders', which establish the owner's procedures, expectations, and disclaimers to bidders in striving to achieve complete and competitive bidding. The 'Instructions to Bidders' require the candidate to be familiar with the scope and assure they are capable of completing the intended scope of work. However as stated above, this contract is based on quantities and unit pricing, not a lump sum.

Bidders were given a list of ***all*** streets in the city to be marked, and an estimate of total quantities for bidding purposes, based on past years. However an itemized list of

quantities per street was not available, therefore could not be checked. Consequently, a requirement of the contractor in this year's project was to itemize the pavement marking quantities for each street in the city so the city would have this information for future projects. Surveying all streets to verify quantities was not in our scope of work for preparing bid documents, and would have added additional consulting fees to the project. Having the contractor maintain a tally of quantities during the project was an efficient and cost effective method of creating an itemized summary for future use.

All bidders submitted competitive bids for the same quantities, based on equal information. Pat Flowers, Inc. was the successful best and lowest bidder based on qualifications, experience, and lowest unit pricing, resulting in a lower total contract amount.

There were three (3) bids received for this project. None of the bidders had any questions, comments, or requests for information during the bidding process. Since pavement marking projects are typically based on unit pricing, rather than lump sum, contractors would not typically verify quantities before bidding, and again before the start of construction, as this takes significant effort thereby resulting in significantly higher bids. However this can be incorporated into future projects, if the city desires, by adding a specific line item to the bid form requiring contractors to verify quantities prior to construction. This would identify the additional cost associated with verifying quantities before construction, however would not account for unforeseen conditions and circumstances encountered during construction.

3. Correct, as stated in the contract documents, the contractor should have stopped work upon realizing the bid quantities were insufficient, and waited for written authorization to proceed. However, this may have resulted in even more additional cost to the city for the resulting demobilization and remobilization. The contractor performed satisfactory work, and was very accommodating by delaying completion of the job while waiting for the Service Department to apply crack sealant to several streets. While the bid documents required the project to be complete by June 21, 2013, the contractor was given an initial Notice to Proceed date of May 20, 2013 and he delayed completion of work until September 2013.

4. Correct. See response No. 3 above.

5. Correct. See response No. 3 above.

6. Correct. See response No. 3 above.

In conclusion, we offer the following additional items for consideration:

A. While quantities itemized per street were not available, we did find historical bid tabulations from 2003-08 where bids ranged from \$24,454 to \$59,330. The same quantities were used for bidding each year, even though streets have been widened

(Bishop) or added since 2003 thereby actually increasing quantities. In addition, it's our understanding not all streets were marked each year (Maplegrove). So, it is unclear if past projects accounted for all streets each year, or if contractors simply stopped marking once the budget was reached.

B. After the contract award, Pat Flowers Inc. was asked to add edge lines to Rockefeller Road, which were not previously present, therefore not included in past projects, and therefore not included in the original bid quantities.

C. While the contractor's original bid was \$28,535.10, the requested final amount of \$38,006.32 is just \$3,006.32 above the engineer's estimate (budget) of \$35,000 as stated in Ordinance 2013-12. Other roadway projects performed this year, such as Maplegrove, Dodd's Landing, & Gatsby-Kristen finished under budget, which can hopefully help resolve the extra amount.

D. The work performed by Pat Flowers, Inc. was verified, is satisfactory, and provided added value to the city, therefore we recommend approval of the additional costs. We hope Pat Flowers, Inc., and other contractors, continues to bid and compete for work in Willoughby Hills, therefore hope for a beneficial resolution for all.

E. We view our Bowen consulting agreement with the city as a long-term partnership. It is designed with a standard fee schedule that allows us to focus on production, rather than administrative tasks such as marketing, estimating labor hours, and negotiating. So while some projects result in profits, others result in losses, but in the long run the average should be positive for both parties. Our fee for this project was budgeted to be \$3,600 based on the anticipated \$30,000 construction costs. If the final construction cost of \$38,006.32 is approved, the consulting fee per our agreement with the city would become \$4,560.76, however we will forfeit the additional amount of \$960.76 in an effort to show our commitment to the city. It should also be noted that the road projects listed in item (C.) above that finished under budget, also resulted in lower consulting fees. As further example of our commitment, following are several other tasks performed at no charge:

- 1) Rogers Rd Slope Stabilization Close-out
- 2) Veteran's Memorial Park & Gazebo
- 3) Lamplight Lane Culvert Project Planning & Analysis
- 4) Dunkin Donuts Site Plan & Traffic Impact Study Review
- 5) Ujcich-2926 Bishop Rd Basement Flooding
- 6) Pleasant Valley Bridge Improvements
- 7) Gale's Garden Center Irrigation Deduct Meter Review
- 8) Marvaldi/Tomjenovic-36431-36451 Eddy Rd Flooding
- 9) Gatsby Lane Cul-De-Sac Flooding Improvements
- 10) Stratford Place Flooding

Hopefully your concerns have been addressed satisfactorily, however please feel free to contact me any time with questions, comments, or concerns.

City of Willoughby Hills

Interoffice Memo

Date: Tuesday, November 12, 2013

To: Pietro A. DiFranco, P.E. City Engineer

Cc: Daniel J. Collins, P.E., Assistant City Engineer
Frank Brichacek, Finance Director
Thomas G. Lobe, Law Director

From: Mayor Robert M. Weger

Subject: 2013 City of Willoughby Hills Pavement Markings Program
Contractor: Pat Flowers, Inc. (Ordinance 2013-12 of 3/28/13)
Request for Add'l Funds Due to Unanticipated Overages in Quantities

I received Assistant City Engineer Daniel Collins's memo dated November 7, 2013, in which he addressed contractor Pat Flowers, Inc.'s request for additional funds due to unanticipated overages of quantities in our 2013 Pavement Markings Program. The original awarded bid was \$28,535.10 and the additional amount now being requested is \$9,471.23, bringing the project total to \$38,006.33.

I have some concerns about this request and wanted to direct my response to you as our City Engineer.

After conferring with Law Director Lobe, I offer the following reasons why additional funding should not be approved:

The Bid Specifications & Contract Documents contract contains the following language that should negate any future funds being disbursed:

- 1) Page SW-1: Scope of Work
First Paragraph – "The Contractor shall furnish all labor, materials, equipment, machinery, apparatus and tools and perform all operations necessary to install, equip, adjust and put into satisfactory operation the work specified and

shown on the drawings, and shall so connect the various items or sections of the work to form a complete and properly operating whole. Any labor, material, equipment or apparatus not specifically mentioned herein which may be found necessary to complete any portion of the work in a substantial manner in compliance with the requirements stated or implied by the specifications, such as relocation and subsequent repair of mailboxes, shall be furnished by the Contractor without additional compensation."

2) Pages IB-1 through IB-11: Instructions to Bidders

a) Page IB-1 – Item 2.2: Copies of Bidding Documents

"Neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents by Bidders and their sub-bidders. Bidders and sub-bidders are both responsible for checking that their bidding documents contain every specification section and drawing listed in the table of contents and index of drawings, respectively..."

b) Page IB-2 – Item 5.1: Examination of Contract Documents & Site

"It is the responsibility of each Bidder, before submitting a Bid to (a) examine the Contract Documents thoroughly; (b) visit the site to become familiar with local conditions that may be in any manner affect cost, progress, performance, or furnishing of the work.....(d) study and carefully correlate Bidder's observations with the Contract Documents; and € notify Engineer of all conflicts, errors, or discrepancies in the Contract Documents."

Page IB-3 – Item 5.5: "Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, test and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and underground facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing the Work and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents."

Page IB-Item 5.6: "On request in advance, Owner will provide each Bidder access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid."

Page IB-Item 5.7: "The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 5, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences, or

procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of performance and furnishing the Work.”

Item IB-11-Item 25:

“The Contractor agrees that the estimated quantities are only for the purpose of comparing on a uniform basis, the bids offered for the work under this Contract, and he further agrees that he is satisfied with and will at no time dispute the said estimated quantities as a means of comparing the bids as aforesaid; that he will make no claim for anticipated profits or loss of profits because of a difference between the quantities of the various classes of work actually furnished and the said estimated quantities; and he agrees that the Owner shall not be held responsible if, in the construction of the Work, any of the said estimated quantities should be found to vary from the quantities shown...”

3) Pages 8 and 9 – Item 3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. “ Contractor’s Review of Contract Documents Before Starting Work: Before undertaking each part of the Work, Contractor shall carefully study and compare the contract Document and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.”
2. “Contractor’s Review of Contract Documents During Performance of Work: If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency, as required by Paragraph 6.16A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.”

B. Resolving Discrepancies

1. “Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take

precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents..."

4) Article 10 – Changes in the Work: Claims

A) 10.01 – Authorized Changes in the Work

"Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions or revisions in the Work by a Change order....."

B) 10.02 – Unauthorized Changes in the Work

"Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04..."

C) 10.03 – Execution of Change Orders

"A1: Owner and Contractor shall execute appropriate Change Orders Recommended by Engineer covering:

- 1) Changes in the Work which are(iii) agreed to by the parties"
- 2) Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for work..."
- 3) Changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by the Engineer..."

5). Article 12 – Change of Contract Price

12.01 Change of Contract Price

A."The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05."

6) Article 18 – City Supplementary General Conditions

19. Lines and Measurements

a) "The Contractor shall verify all grades, lines, levels and dimensions as indicated on the drawings and specifications, and he shall report any errors or inconsistencies in the above to the City's Representative before commencing work or ordering any material."

25. " In giving instructions, the City's Representative shall have authority to make minor changes in work, not involving extra cost, and not inconsistent with the purpose of the project, but otherwise, except in an emergency in pursuance of a written order from the City signed or countersigned by the City's Representative stating that the City has authorized the extra work or Change, and no claim for an addition to the Contract sum shall be valid

unless so ordered.”

I have outlined many reasons above, Pete, as to why I cannot, in good conscience, approve any additional funds. Pat Flowers, Inc. should have measured everything out before bidding, and again after the bid was accepted. Measuring for accuracy would have avoided any need for additional funds and may have resulted in a higher bid initially. Another point is that after they realized they had exceeded their initial award amount and there was still pavement marking to be done, they should have followed the contract rules to document the overage with the necessary paperwork to get permission to proceed if they expected to be paid. This job was not emergency in nature, which means there could have been a work stoppage while arranging for additional funds.

You can understand with the bid process especially that it would be unfair to the other bidders to accept a 35% increase in what was originally bid. In addition, the engineering fee would increase for this project, which also was not in the budget for this project.

In summary, I cannot approve additional funds and appreciate your communicating this fact to Pat Flowers, Inc. If you have any questions, please do not hesitate to contact me.

Law Director
THOMAS LOBE, I.P.A.
Director of Finance
FRANK J. BRICHACEK, JR.
Assistant Finance Director
DEBBIE DOLES
Engineer
PIETRO A. DI FRANCO, P.E., SI,
LEED AP, CPRSC
Building Commissioner
FREDRIC WYSS, JR.
Safety Director
ROBERT M. WEGER

City of Willoughby Hills

35405 Chardon Road, Willoughby Hills, Ohio 44094-9195
Phone (440) 946-1234 FAX 975-3535

Robert M. Weger, Mayor

Council
CHRISTOPHER L. BIRO
NANCY E. FELLOWS
DAVID M. FIEBIG
FRANK A. GERMANO
KEVIN D. MALECEK
DAVID A. REICHEL
RAYMOND C. SOMICH
Council Clerk
VICTORIA A. SAVAGE, CMC

Memorandum

TO: Mayor Robert M. Weger
FROM: Daniel J. Collins, P.E., Assistant City Engineer 
DATE: November 7, 2013
CC: Frank Brichacek, Finance Director
Pietro A. DiFranco, P.E., City Engineer
RE: 2013 City of Willoughby Hills Pavement Markings Program
Contractor: Pat Flowers, Inc. (March 28, 2013 Ordinance No. 2013-12, March 28, 2013)
Request for Additional Funds Due to Unanticipated Overages of Quantities

As you may have been aware or have seen during your travels through the City, this year's City pavement markings program is now complete.

When the Project Bid Booklet was prepared, the previous years' bid booklets were used as reference. There was not a Summary of Pavement Markings Quantities that "Item-ized" each and every pavement marking. Instead, the previous bid booklets contained a bid tab page that had an "accumulated" quantity for each of the ten (10) types of pavement markings. The same quantities were used for this year's Pavement Markings Program.

For this year's Pavement Markings Program, so the City has an accurate inventory of all pavement markings, it was decided between the Engineering Department and the Streets Department to include a blank spreadsheet in the Contract Documents serving as a Pavement Marking Quantity spreadsheet that itemizes each and every pavement marking for every street in the City. Per the Contract, the Contractor was required to maintain, update, and provide the City with each Payment Request the completed spreadsheet of the quantities performed (the final spreadsheet of quantities is attached).

The original awarded bid (Contract amount) to Pat Flowers, Inc. is \$28,535.10 (Ord. No. 2013-12, PO# CT000287).

There are two (2) Payment Requests submitted for the following amounts:

- 1.) \$23,703.18 (approved for payment on June 17, 2013 and already paid),
- 2.) \$14,303.14 (reviewed and revised on November 7, 2013).

As you can see the total amount of 1.) and 2.) equals \$38,006.32 which is \$9,471.22 over the awarded contract amount. The Engineering Department, with some assistance from the Streets Department, has thoroughly reviewed the quantities submitted by Pat Flowers, Inc. and has had Pat Flowers provide support back-up information regarding his quantities (correspondence is attached). At this time, the Engineering Department accepts the final quantities submitted by Pat Flowers, Inc. for the Project's total cost of \$38,006.32.

Please advise on how the City desires to proceed in order to close out the 2013 City of Willoughby Hills Pavement Markings Program (i.e. City Council approval for additional funds, etc...).

Attachments (10 pages)

REC'D 11/07/13
via e-mail (DTC)

PAT FLOWERS INC.
6044 WHITEFORD DR.
HIGHLAND HTS., OH 44143

INVOICE [2ND + FINAL]

DATE 11/6/13 ORDER NO CT000287

(440) 473-2057

TO City of Willoughby Hills C/O finance dept.
35405 Chardon Rd.
Willoughby Hills Oh 44094

SHIP TO same

TERMS: UPON RECEIPT

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
	2013 pavement marking program		
✓ 114,333	white edge line	\$0.055 ✓	\$6,288.31
✓ 2,378	white lane line	\$0.035 ✓	\$83.23
✓ 51,942	yellow center line	\$0.10 ✓	\$5,194.20
✓ 1,681	channel line	\$0.20 ✓	\$336.20
✓ 257'	stop bar	\$0.90 ✓	\$231.30
✓ 308'	crosswalk line	\$0.75 ✓	\$231.00
✓ 707'	transverse marking	\$0.70 ✓	\$494.90
✓ 52	arrows	\$22.00 ✓	\$1,144.00
✓ 10	word only	\$30.00 ✓	\$300.00

Second billing

[FINAL]

Quantities are verified + approved
- See supporting documentation from
Pat Flowers of 10/28/13, 2 pages

TOTAL \$14,303.44

Thank You

PAT FLOWERS INC.
PAVEMENT MARKING CONTRACTOR
6044 WHITEFORD DR. HIGHLAND HTS., OH 44143
PHONE [440] 473-2057

October 28, 2013

CITY OF WILLOUGHBY HILLS
C/O DAN COLLINS
35405 CHARDON RD.
WILLOUGHBY HILLS, OH 44094

Dear Mr. Collins:

The following is my breakdown of the streets in question pertaining to the street striping contract as per your request.

✓ Bishop Rd:

Center line: 6,864 linear ft. with an additional 1,294 linear ft. because of the dual left turn lane and transverse island outline.

Edge line: 4,344 linear ft. times 2 for both sides of street = 8,688 linear ft.

✓ Chardon Rd:

Center line: 27,456 linear ft. with an additional 4,984 linear ft. due to sections of dual left turn lanes and transverse island outlines.

Edge line: 27,456 times 2 for both sides of street = {54,912*}

✓ Eagle Rd:

Center line: 4,224 ft.

Edge line: 1,660 linear ft. times 2 for both sides of street = 3,320 ft.

✓ Riviera Ridge:

Center line: {1,286 linear ft.*}

Edge line: 1,354 linear ft. times 2 for both sides of street = 2,708 ft.

✓ Rogers Rd:

Center line: 8,976 linear ft.

Edge line: 825 linear ft. times 2 for both sides of street = 1,650 ft.

✓ S.O.M.:

Center line: 12,782 linear ft. times 2 due to dual left turn lane = 25,564 linear ft.

✓ White Rd:

Center line: 13,728 linear ft. with an additional 310 ft. of transverse island outline

Edge line: 12,928 linear ft. times 2 for both sides of street = 25,856 ft.

✓ Worrell:

Center line: {5,808 linear ft.*}

Edge line: 5,808 linear ft. times 2 for both sides of street =

{11,616*}

Numbers with a * and in parenthesis are an adjustment from the totals.

O.K. w/ all explanations
AJC 11/07/13

Comparison of BID Quantities Vs. ACTUAL PERFORMED Quantities
 9/30/2013, rev. 11/07/13

ITEM No.	ODOT No.	Description	Unit	ORIGINAL BID Quant.	Pat Flowers, Inc. ORIGINAL BID	
					Unit Pt.	Total
1	642	4" White Edge Line, Item No. 642, Type 1	MI.	21	\$290.40	\$6,098.40
2	642	4" White Lane Line, Item No. 642, Type 1	MI.	5.25	\$184.80	\$970.20
3	642	4" Yellow Center Line, Item No. 642, Type 1	MI.	27	\$528.00	\$14,256.00
4	642	8" White Channeled Line, Item No. 642, Type 1	L.F.	3,500	50.20	\$700.00
5	642	24" White Stop Line, Item No. 642, Type 1	L.F.	1,350	50.90	\$1,215.00
6	642	12" White Crosswalk Line, Item No. 642, Type 1	L.F.	1,950	50.75	\$1,462.50
7	642	24" White Transverse Line, Item No. 642, Type 1	L.F.	500	50.70	\$350.00
8	642	Yellow Island Marking, Item No. 642, Type 1	S.F.	270	50.90	\$243.00
9	642	Lane Arrow, Item No. 642, Type 1	EA.	120	\$22.00	\$2,640.00
10	642	Word on Pavement, 72 inch, Item No. 642, Type 1	EA.	20	\$30.00	\$600.00
BID TOTAL:						\$28,535.10

Quantity Difference	Cost Difference
12.86	\$3,733.18
0.94	\$174.09
3.39	\$1,791.10
1,547	\$309.40
920	\$828.00
1,549	\$1,161.75
751	\$525.70
-160	-\$144.00
51	\$1,122.00
-1	-\$30.00
	\$9,471.22 (overage)

ACTUAL PERFORMED Quant.
33.86
6.19
30.39
5,047
2,270
3,499
1,251
110
171
19

DTZ
 11/07/13

538,006.32

ACTUAL TOTAL AMOUNT (based off performed work/quantities):

2013 City of Willoughby Hills Pavement Markings Program
 (Verification of Quantities for Draw No. 1)

Unit Price	QTY.	TOTAL
1 \$0.055	64,423 LF	\$3,543.27
2 \$0.035	30,316 LF	\$1,061.06
3 \$0.100	108,529 LF	\$10,852.90
4 \$0.200	3,366 LF	\$673.20
5 \$0.900	2,013 LF	\$1,811.70
6 \$0.750	3,191 LF	\$2,393.25
7 \$0.700	544 LF	\$380.80
8 \$0.900	110 S.F.	\$99.00
9 \$22.000	119 EA.	\$2,618.00
10 \$30.000	9 EA.	\$270.00
TOTAL DRAW #1		\$23,703.18

(Verification of REV. Quantities for Draw No. 2)

Unit Price	QTY.	TOTAL
1 \$0.055	114,333 LF	\$6,288.31
2 \$0.035	2,378 LF	\$83.23
3 \$0.100	51,942 LF	\$5,194.20
4 \$0.200	1,681 LF	\$336.20
5 \$0.900	257 LF	\$231.30
6 \$0.750	308 LF	\$231.00
7 \$0.700	707 LF	\$494.90
8 \$0.900	0 S.F.	\$0.00
9 \$22.000	52 EA.	\$1,144.00
10 \$30.000	10 EA.	\$300.00
TOTAL DRAW #2		\$14,303.14

ACTUAL GRAND TOTAL = \$38,006.32

DJC
 11/07/13

GRAND TOTALS - Verification

ITEM No.	ODOT No.	Unit Price	TOTAL QTY.	UNIT	TOTAL
1	642	\$0.055	178,756	LF	\$9,831.58
2	642	\$0.035	32,694	LF	\$1,144.29
3	642	\$0.100	160,471	LF	\$16,047.10
4	642	\$0.200	5,047	LF	\$1,009.40
5	642	\$0.900	2,270	LF	\$2,043.00
6	642	\$0.750	3,499	LF	\$2,624.25
7	642	\$0.700	1,251	LF	\$875.70
8	642	\$0.900	110	S.F.	\$99.00
9	642	\$22.000	171	EA.	\$3,762.00
10	642	\$30.000	19	EA.	\$570.00
					\$38,006.32

UNIT CONVERSIONS

ITEM No.	TOTAL QTY.	UNIT
1	88,855.30	MI.
2	6.19205	MI.
3	30.39223	MI.
4	5,047	LF
5	2,270	LF
6	3,499	LF
7	1,251	LF
8	110	S.F.
9	171	EA.
10	19	EA.

City of Willoughby Hills
 2013 City of Willoughby Hills Pavement Markings Program

[1 mile = 5,280 ft]

ITEM No.	ODOT No.	Description	Unit	Quant.	Pat Flowers, Inc.	
					Unit Pr.	Total
1	642	4" White Edge Line, Item No. 642, Type 1	MI.	21	\$ 290.40	\$ 6,098.40
2	642	4" White Lane Line, Item No. 642, Type 1	MI.	5.25	\$ 184.80	\$ 970.20
3	642	4" Yellow Center Line, Item No. 642, Type 1	MI.	27	\$ 628.00	\$ 14,256.00
4	642	0" White Channelizing Line, Item No. 642, Type 1	L.F.	3,500	\$ 0.20	\$ 700.00
5	642	24" White Stop Line, Item No. 642, Type 1	L.F.	1,350	\$ 0.90	\$ 1,216.00
6	642	12" White Crosswalk Line, Item No. 642, Type 1	L.F.	1,950	\$ 0.75	\$ 1,462.50
7	642	24" White Transverse Line, Item No. 642, Type 1	L.F.	500	\$ 0.70	\$ 350.00
8	642	Yellow Island Marking, Item No. 642, Type 1	S.F.	270	\$ 0.90	\$ 243.00
9	642	Lane Arrow, Item No. 642, Type 1	LA.	120	\$ 22.00	\$ 2,640.00
10	642	Word on Pavement, 72 Inch, Item No. 642, Type 1	EA.	20	\$ 30.00	\$ 600.00
BID TOTALS:						\$ 28,636.10

(110,880 L.F.)
 (27,720 L.F.)
 (142,560 L.F.)

① Conversions (2)

Item 1 } \$ 6,098.40
 110,880 L.F. @ \$ 0.055 / L.F.

Item 2 } \$ 970.20
 27,720 L.F. @ \$ 0.035 / L.F.

Item 3 } \$ 14,256.00
 142,560 L.F. @ \$ 0.10 / L.F.

CITY ENGINEER COPY

BID SET NO. 2

SPECIFICATIONS AND CONTRACT DOCUMENTS

FOR

2013 City of Willoughby Hills Pavement Markings Program

FOR

THE CITY OF WILLOUGHBY HILLS, OHIO

Submitted By: PAT FLOWERS INC.

Address: 6044 WHITEFORD DR.

City: HIGHLAND HTS State: OH Zip: 44143

Phone: (440) 473-2057

Fax: (440) 473-2057

Email: PFLINE@ADL.COM

Bid Opening Date: Thursday, March 14, 2013 at 11:00 AM -- City Hall

BIDS ARE TO BE SUBMITTED TO:

Robert M. Weger, Mayor

AT:

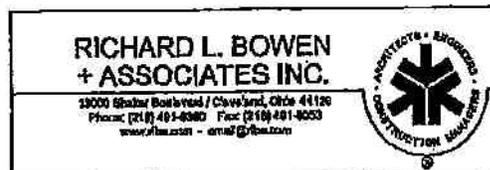
City of Willoughby Hills City Hall

35405 Chardon Road

Willoughby Hills, Ohio 44094-9195

Phone: (440) 946-1234, Fax: (440) 975-3535

Specifications and Contract Documents Prepared By:



RLB+A No. 7986.03

(RETURN THIS WITH COMPLETE SPECIFICATION BOOK)

CITY OF WILLOUGHBY HILLS

BID PROPOSAL

FOR THE

**2013 CITY OF WILLOUGHBY HILLS PAVEMENT MARKINGS
PROGRAM**

IN THE CITY OF WILLOUGHBY HILLS, COUNTY OF LAKE, STATE OF OHIO

Upon acceptance of this Proposal it shall become part of the Contract.

The **UNDERSIGNED**, as Bidder, declares, that he has or they have carefully examined the site of Work and the Form of Contract, together with the Specifications, Plans and Profiles for the above named improvement, and that he or they will contract to provide all necessary labor, machinery, tools and appliances and other means for the construction, and do all work called for by said contract and said specifications, plans and profiles and furnish all materials called for in the bill of quantities, contract, plans and specifications in the manner therein prescribed and according to the requirements of the City Engineer as therein provided or to furnish material only or labor and equipment only, or both, as the City Engineer may decide, and to complete the Work in its entirety within sixty (60) calendar days after receipt of written notice from the Engineer to begin work, upon the following terms and for the following prices:

TOTAL BID PRICE:

\$ 28,535.10

BID FROM OSAL (Continued)

- A. Any additional work or changes to the work of this contract shall be paid for as stated in item entitled "Changes in the Work" paragraph 31 of the General Conditions. Contractor hereby states that if additional work is paid for as outlined under paragraph 31-c-3, his percentage of cost to cover profit and general overhead expenses will be as outlined in the General Conditions.
- B. It is understood and agreed that work embodied in this Contract, together with the Alternate thereto, if any, shall be completed within sixty (60) consecutive calendar days from the date of entering into the Contract thereto, or no later June 21, 2013.
- C. The undersigned agrees that if he be awarded the Contract, he will within five (5) days after being notified thereof, enter into a written contract with the City of Willoughby Hills, Ohio to furnish the labor and materials all as specified for the prices provided for in said proposal.
- D. The bidder, by submitting his bid, accepts the understanding that the City of Willoughby Hills reserves the right to reject any or all bids and to waive any or all irregularities and formalities. The bidder also agrees that the bid may not be withdrawn for a period of fifty (50) days after opening of bids.
- E. Any combination of the various Alternates may be incorporated by the City.
- F. The undersigned shall furnish a Guaranty Bond in an amount equal to ten percent (10%) for the final total contract amount in place. Such bond paid for by the undersigned shall be on a form equal to the one included as attached.

BID PROPOSAL (Continued...)

The undersigned Bidder deposits with this Proposal a certified check on a solvent bank in Lake County, Ohio or Bid Bond in an amount of \$ _____ the same being payable to the City of Willoughby Hills.

Bidder acknowledges the following Addendum Numbers: _____ dated, respectively: _____

Executed at _____ (City) (State)

this _____ day of _____, 2013.

By _____ (Signature)

Title _____ (Indicate: Owner, Partner, Corporation Officer, Etc.)

For: _____ (Company Name)

(Address)

(City) (State) (Zip)

(Telephone Number)

Note: On any accompanying bid bond, the Bidder must show the full mailing address for the company acting as surety, and the full name, mailing address, and telephone number of the office, business, or agency actually issuing the bond.

BID FORM

To: City of Winton Hills, Lake County, Ohio
 For: **REPAIRS TO CURBS AND SIDEWALKS**
 (2013-00-017) (Amendment #1)

Page No. 1 of 3

Schedule of Quantities

Item No.	Description	Quantity	Unit	Proposed Price	Unit Price	Total Price
1	2" x 4" x 8" Concrete Ledge, Item No. 642, Item 1	27.00	LF	66.96	2.27	609.70
2	2" x 4" x 8" Concrete Ledge, Item No. 642, Item 1	52.00	LF	80.00	1.54	790.80
3	2" x 4" x 8" Concrete Ledge, Item No. 642, Item 1	27.00	LF	80.00	1.54	414.80
4	2" x 4" x 8" Concrete Ledge, Item No. 642, Item 1	3,500.00	LF	69.11	.20	700.00
5	2" x 4" x 8" Concrete Ledge, Item No. 642, Item 1	1,350.00	LF	99.41	.90	1,215.00
6	2" x 4" x 8" Concrete Ledge, Item No. 642, Item 1	1,500.00	LF	51.34	.75	1,140.00
7	2" x 4" x 8" Concrete Ledge, Item No. 642, Item 1	500.00	LF	41.89	.70	350.00
8	2" x 4" x 8" Concrete Ledge, Item No. 642, Item 1	270.00	LF	50.40	.90	243.00
9	2" x 4" x 8" Concrete Ledge, Item No. 642, Item 1	120	EA	13.00	0.10	12.00
10	2" x 4" x 8" Concrete Ledge, Item No. 642, Item 1	20	EA	15.30	0.30	30.60

2013 City of Winton Hills

814

GRAND TOTAL CONSTRUCTION COST: \$ 28,535.10
(ITEM NUMBERS 1 THRU 10)

EARLIEST CALENDAR STARTING DATE: 5-1-13

NUMBER OF CONSECUTIVE CALENDAR DAYS TO COMPLETE PROJECT: 60

REQUIRED SIGNATURE AND INFORMATION:

Signature of Bidder: PAT FLOWERS Date: 3-5-13

Name: PAT FLOWERS Title: PRESIDENT

Address: 6044 WHITEFORD DR. Phone: (440) 473-2057

HIGHLAND HTS. OH 44143 Email: PFLINE@ADL.COM

NOTE: The Contractor shall submit the complete book of specifications and contract documents properly completed.

FORM OF CONTRACT

THIS CONTRACT MADE THIS 10th DAY OF April A.D. 2013,

by and between Pat Flowers, Inc.

hereinafter called the "CONTRACTOR" and the CITY OF WILLOUGHBY HILLS, OHIO, hereinafter called the "MUNICIPALITY". WITNESSETH, That the Contractor and the Municipality for the consideration stated herein agree as follows:

ARTICLE I, SCOPE OF WORK

The Contractor shall perform everything required to be performed and shall provide and furnish all of the labor, materials, necessary tools, expendable equipment, and all utility and transportation services required to perform and complete in a workmanlike manner all the work required in connection with the

2013 CITY OF WILLOUGHBY HILLS PAVEMENT MARKINGS PROGRAM

, 35405 Chardon Road, in Willoughby Hills, Ohio for the Municipality all in strict accordance with Plans and Specifications, including any and all addenda, prepared by Richard L. Bowen + Associates, Inc. (City Engineer) which specifications are made a part of this Contract; and in strict compliance with the Contractor's proposal and the other Contract Documents herein mentioned which are a part of this Contract; and the Contractor shall do everything required by this Contract and the other documents constituting a part hereof.

ARTICLE II, THE CONTRACT PRICE

The Municipality shall pay to the Contractor for the performance of this Contract, in current funds, the Unit Prices bid times the actual quantity of the various items completed and accepted by the Municipality as measured by the City Engineer in the presence of the Contractor.

ARTICLE III, PAYMENT

Payments are to be made to the Contractor in accordance with and subject to the provisions of General Conditions Article 29 embodied in the documents made a part of this Contract.

ARTICLE IV, TIME OF COMPLETION

Work under this Contract shall commence within five (5) days after a written notice from the Municipality to the Contractor who shall diligently prosecute and complete all work under his contract by July 2, 2013.

The date of completion of work determined as provided herein shall be hereinafter referred to as the "Contract Completion Date".

ARTICLE V, COMPONENT PARTS OF THIS CONTRACT

This Contract consists of the following component parts all of which are fully a part of this Contract as if herein set out verbatim or, if not attached, as if hereto attached:

1. City Supplemental General Conditions
2. Supplemental General Conditions
3. Advertisement for Bids
4. Instruction to Bidders
5. General Conditions
6. Contractor's Proposal
7. This Instrument (Form of Contract)
8. Finance Director's Certificate of Funds
9. Contractor's Performance Bond
10. Non-Collusion Affidavit
11. Guaranty Bond
12. Delinquent Personal Property Tax Affidavit
13. No Delinquent Personal Property Tax Affidavit
14. Shop and working drawing submitted by the Contractor when approved by the Municipality or the Engineer
15. Law Director's Certificate
16. Special Conditions
17. Scope of Work

In the event that any provision in any of the above component parts of this Contract conflicts with any provisions in any other of the component parts, the provision in the component part first enumerated above shall govern over any other component part which follows it numerically, except as may be otherwise specifically stated.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in three original counterparts the day and year first above written.

Pat Flowers, Inc.
Contractor Name

(SEAL) By: PAT FLOWERS
By: Pat Flowers

ATTEST:

City of Willoughby Hills

(SEAL) By: Robert M. Weger
Mayor
By: Victoria A. Saly
Clerk of Council

ATTEST: