

**CITY COUNCIL SPECIAL MEETING
MONDAY
JUNE 12, 2020
10:00 A.M.**

PRAYER

PLEDGE OF ALLEGIANCE

1. AGENDA
2. Resolution authorizing settlement of lawsuit by the City of Greenwood against Max Foote Construction Company, LLC, Neel – Schaffer Inc., and Forterra Pipe and Precast, LLC
3. ADJOURNMENT

*SUBJECT TO CHANGE WITHOUT PRIOR NOTICE. Please call 453-2246 (ext. 109) to inquire about possible changes to agenda before meeting.

JUNE 12, 2020, CITY COUNCIL SPECIAL MEETING

**RESOLUTION AUTHORIZING SETTLEMENT OF LAWSUIT
BY THE CITY OF GREENWOOD AGAINST
MAX FOOTE CONSTRUCTION COMPANY, LLC,
NEEL-SCHAFFER, INC., AND FORTERRA PIPE AND PRECAST, LLC**

WHEREAS, the City of Greenwood, Mississippi previously contracted with Max Foote Construction Company, LLC (hereinafter “Max Foote”) for the construction of a new wastewater treatment plant (hereinafter “WWTP”) and retained Neel-Schaffer, Inc. to provide engineering services in connection with the construction of that plant which was completed in 2015; and

WHEREAS, a manhole near the entry gate to the plant failed in April of 2018, only three (3) years after the completion of construction; and

WHEREAS, the City of Greenwood, Mississippi retained the law firm of Upshaw, Williams, Biggers & Beckham, LLP (hereinafter “UWBB”) to investigate the failure and the rights of the City of Greenwood with regard to a possible assertion of claims against parties responsible for this failure; and

WHEREAS, the investigation of UWBB revealed the identity of responsible parties against whom claims were asserted for the excavation, replacement, and repair of the failed manhole and its intersecting pipes; and

WHEREAS, demands were made upon responsible parties Neel-Schaffer, Inc. and Max Foote, who denied any and all financial responsibility or liability for the failure of the manhole and its intersecting pipes; and

WHEREAS, UWBB filed a Complaint for the City of Greenwood on April 26, 2019 against Max Foote, Neel-Schaffer and Forterra Pipe and Precast, LLC (the manufacturer of the pre-cast manhole) in the Circuit Court of Leflore County, Mississippi (Ex. “A”); and

WHEREAS, following the filing of the Complaint, UWBB proceeded to litigate the claims of the City of Greenwood for the failure of this manhole and its intersecting pipes against these parties through an extended discovery process beginning in April of 2019, with that process including the production of thousands of documents, numerous depositions, and production of expert reports on behalf of all parties; and

WHEREAS, based upon the investigation of UWBB, the City of Greenwood incurred excavation, repair, and replacement costs of approximately \$1,100,000.00 due to the failure of this manhole and its intersecting pipes, but did replace the manhole with a better, more expensive manhole than the failed manhole in the original design; and

WHEREAS, all parties agreed to mediate the claims of the City of Greenwood on Tuesday, June 9, 2020, and the Defendants, through their attorneys, signed a Mediation Settlement Agreement whereby the Defendants Max Foote, Neel-Schaffer, and Forterra collectively agreed to pay the City of Greenwood the total sum of \$775,000.00 within thirty (30) days in exchange for a complete and final settlement of all claims of the City of Greenwood encompassed by the Complaint against these Defendants, and in further exchange for a dismissal of the lawsuit and execution of appropriate Releases applicable to each of the Defendants; and

WHEREAS, due to the uncertainties of litigation, the existence of factual and legal issues that are inherent in any litigation, the facts developed during the discovery of this case, and the consideration of expenses that would be incurred through the continuance of this litigation, it is the advice of UWBB that this Settlement Agreement be affirmed by the City Council on behalf of the City of Greenwood, and that the City of Greenwood through its attorneys be authorized to execute all documents necessary to effectuate this settlement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENWOOD THAT THE STATEMENTS CONTAINED IN THE FOREGOING PREAMBLE ARE HEREBY ADOPTED, RATIFIED, AND INCORPORATED HEREIN, AND THAT:

SECTION 1: The City of Greenwood, Mississippi hereby approves the Settlement Agreement.

SECTION 2: Upon receipt of the total sum of \$775,000.00 payable to the City of Greenwood from Max Foote, Neel-Schaffer, and Forterra, UWBB is hereby authorized to execute a formal Settlement Agreement in accord with the above representations, the Mayor is authorized to execute appropriate Releases of Max Foote, Neel-Schaffer, and Forterra, and that UWBB is authorized upon such payment to dismiss with prejudice the lawsuit filed on behalf of the City of Greenwood, Mississippi.

SECTION 3: That this Resolution shall take effect immediately upon approval.

The above and foregoing Resolution having been first reduced to writing was considered section by section and then as a whole, having been introduced by _____, was duly seconded for adoption by Councilperson _____, and upon a vote being called, received the following vote:

COUNCIL PERSON

YEA

NAY

Johnny Jennings

Lisa Cookston

Ronnie Stevenson (President)

Charles E. McCoy, Sr.

Andrew Powell

David Jordan

Carl Palmer

The President of the Council then declared the motion passed and adopted on this the 12th day of June, 2020.

APPROVED BY:

CAROLYN MCADAMS, MAYOR

RONNIE STEVENSON,
PRESIDENT OF
THE CITY COUNCIL

ATTEST:

KIM WILLIAMS, CITY CLERK

IN THE CIRCUIT COURT OF LEFLORE COUNTY, MISSISSIPPI

CITY OF GREENWOOD, MISSISSIPPI

PLAINTIFF

V.

CIVIL ACTION NO.: 2019-0036-CICI

MAX FOOTE CONSTRUCTION
COMPANY, LLC; NEEL-SCHAFFER,
ENGINEERS AND PLANNERS, INC.; AND
FORTERRA PIPE AND PRECAST, LLC

DEFENDANTS

COMPLAINT

COMES NOW the Plaintiff, City of Greenwood, Mississippi, by counsel, and files this Complaint against Defendants Max Foote Construction Company, LLC; Neel-Schaffer, Engineers and Planners, Inc., and Forterra Pipe and Precast, LLC, and would show unto the Court:

I.

PARTIES

1. Plaintiff City of Greenwood, Mississippi (hereinafter "Greenwood"), is an incorporated municipality within the State of Mississippi.

2. Defendant Max Foote Construction Company, LLC (hereinafter "Max Foote") is a Louisiana corporation which conducts business in Mississippi as a licensed contractor and whose principal place of business is 225 Antibes Street West, Mandeville, Louisiana 70448. Max Foote may be served with process through its registered agent, CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232.

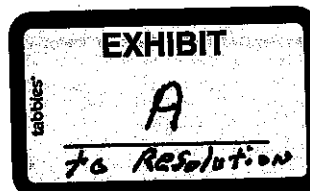
3. Defendant Neel Schaffer Engineers and Planners, Inc. (hereinafter "Neel Schaffer") is a Mississippi corporation which conducts business in Mississippi whose principal place of business is in Mississippi. Neel Schaffer may be served with process

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FILED

APR 26 2019

ELMUS STOCKSTILL, CIRCUIT CLERK
BY: Lisa Roberts D.C.



through its registered agent, Corporation Service Company, 7716 Old Canton Road, Suite C, Madison, Mississippi 39110.

4. Defendant Forterra Pipe and Precast, LLC (hereinafter "Forterra") is a successor to Hanson Pipe and Precast, LLC. Forterra is a Delaware corporation which conducts business in Mississippi from business locations in Como and Prentiss, Mississippi. Its principal place of business is 511 East John Carpenter Freeway, Suite 600, Irving, Texas 75062. Forterra may be served with process by serving its registered agent Corporation Service Company, 7716 Old Canton Road, Suite C, Madison, Mississippi 39110.

II.

JURISDICTION AND VENUE

5. Venue is proper in this Court pursuant to § 11-11-3, Miss. Code Ann. The subject contracts, performance under the subject contracts, failure to perform under the subject contracts, acts of negligence and breach of warranty described hereafter all occurred in Leflore County, Mississippi.

6. This Court has subject matter jurisdiction over this matter.

III.

FACTS

7. On or about July, 2012, Greenwood contracted with Max Foote for the construction of a new Wastewater Treatment Plant (hereinafter "the Plant") at a cost of over \$34,000,000.00, not including subsequently approved change orders. Prior to that time, Greenwood contracted with Neel Schaffer to provide engineering and associated architectural skills to design all aspects of the Plant and to assure proper construction of this plant.

8. A portion of the Plant required the construction and installation of a manhole and associated entry and exit points for two 24 inch pipes to and from the manhole. This manhole was located underneath a road leading to the plant offices and was the nearest manhole to the influent pumping station at the Plant. The particular manhole that is the subject of this Complaint was manufactured by Hanson Pipe and Precast, LLC, a company which became known as Forterra Pipe and Precast, LLC. The manhole and its associated pipes were installed by Max Foote under the supervision of Neel Schaffer.

9. The facility was intended to be designed and constructed such that no significant repairs would be necessary for decades other than those for normal wear and tear. Following the design and construction efforts by Max Foote and Neel Schaffer, the Plant was substantially complete in 2015. However, in the Spring of 2018, after the facility had been in operation for only approximately three (3) years, a sinkhole suddenly appeared around the subject manhole which destroyed the paved road leading to the facility in the area around the manhole. Two photographs of this sinkhole are attached to this Complaint as Ex. A.

10. An investigation of the interior of the subject manhole revealed that it had failed in that groundwater was pouring into the manhole around the exteriors of the 24 inch diameter influent pipes. Subsequent to the discovery of this failure, Max Foote undertook an effort to modify the interior of the manhole in order to make it operational, but such efforts failed. Thereafter, Max Foote advised by letter that the manhole had failed because of inadequate foundational design as shown by the content of the letter at Ex. B.

11. All storm and wastewater from the City of Greenwood flowed through this particular manhole and then to the influent pumping station at the Plant. Due to its

importance to Plant and the operations of the Plant, an emergency bypass plan was implemented to transport storm and wastewater around the failed manhole to the influent pumping station while a new manhole and its associated pipes could be constructed. The City of Greenwood hired Malouf Construction Company and Willis Engineering to develop repair and replacement plans and to conduct repair and replacement construction so that Greenwood would have the complete and functional Wastewater Treatment Plant that it purchased for over \$34,000,000.00.

12. With the exception of repairing the paved road leading to the facility, the repair and construction efforts have been completed by Malouf. The cost to Greenwood for repair and replacement of the failed manhole and its associated pipes and the other consequential costs will exceed \$1,000,000.00.

13. Greenwood was not guilty of any negligence, fault, or want of care which in any way led to the sinkhole and failure of the subject manhole and its associated pipes.

IV.

CAUSES OF ACTION

A. COUNT 1 - BREACH OF CONSTRUCTION CONTRACT - MAX FOOTE

14. Greenwood entered into a Construction Contract with Max Foote to construct the facility. Max Foote breached the Construction Contract by failing to adequately perform, specifically by installing a faulty and inadequate manhole with its associated pipes. As a result, for over \$34,000,000.00 which was paid to Max Foote, Greenwood did not receive its reasonable expectations and benefits of the bargain under that contract - a new defect-free Plant constructed in accordance with plans, specifications, and industry standards.

B. COUNT 2 - BREACH OF ARCHITECT AND ENGINEERING CONTRACT - NEEL SCHAFFER

15. Greenwood entered into a contract with Neel Schaffer to design all aspects of the Plant, to provide plans and specifications, and to supervise the construction work performed by Max Foote in order to insure that the construction was performed in accordance with plans, specifications, and industry standards. Neel Schaffer breached this contract by failing to adequately supervise the construction work of Max Foote which resulted in a faulty and defective manhole and associated pipes. As a result, Greenwood did not receive its reasonable expectations and benefit of the contract and bargain - a new defect-free Plant constructed in accordance with the plans, specifications, and industry standards.

C. COUNT 3 - BREACH OF WARRANTY OF WORKMANSHIP - MAX FOOTE

16. Mississippi imposes a duty to construct all projects in a workmanlike manner, free from defects, and consistent with the degree of workmanship normally possessed in the industry. Max Foote breached this duty by failing to construct the subject manhole with its associated pipes with the degree of workmanship consistent with industry standards. Max Foote's breach of the warranty of workmanship directly and proximately resulted in the faulty and inadequate manhole with its associated pipes.

D. COUNT 5 - NEGLIGENCE - MAX FOOTE

17. Max Foote owed Greenwood a duty to construct and/or provide the subject manhole and its associated pipes consistent with industry standards. Max Foote breached this duty by providing a manhole with its associated pipes that were defective and substandard and which deteriorated after their installation. Max Foote was negligent in the

installation and construction of the subject manhole and its associated pipes. As a direct and proximate result of Max Foote's negligent acts, Greenwood has suffered damages, include repair costs, construction costs and consequential costs due to this substandard work.

E. COUNT 6 - NEGLIGENCE - NEEL SCHAFFER

18. Neel Schaffer owed Greenwood a duty to supervise and insure that Max Foote's construction of the subject manhole and its associated pipes would be completed in accordance with the plans, specifications, and industry standards. Neel Schaffer breached this duty by failing to supervise and insure that Max Foote installed the subject manhole and its associated pipes in accordance with the plans, specifications, and industry standards. As a direct and proximate result of Neel Schaffer's breach of such duty, Neel Schaffer provided Greenwood with a faulty and defective manhole along with its associated pipes that was not constructed in accordance with the plans, specifications, industry standards, thereby causing Greenwood to suffer damages, including substantial repair costs, construction costs and other consequential expenses.

F. COUNT 7 - NEGLIGENT SUPERVISOR OF CONSTRUCTION.

19. Neel Schaffer, by agreeing to supervise construction of the facility, including the subject manhole, was obligated to exercise reasonable skill and care and performance of those supervisory functions. Neel Schaffer, in breach of its duty to exercise reasonable skill and care in providing architectural and engineering services to Greenwood, negligently failed to properly supervise the construction of the subject manhole and its associated pipes to insure that they were completed and installed in accordance with plans, specifications, and industry standards. During the time the subject manhole and its

associated pipes were being installed, Greenwood was led to believe, and did believe that Neel Schaffer was properly supervising the construction to insure that it was being done in accordance with plans and specifications developed by Neel Schaffer and in compliance with industry standards. As a direct and proximate result of Neel Schaffer's negligence in failing to properly supervise construction, the subject manhole and its associated pipes contained defects and deviation from the plans, specifications, and industry standards, causing Greenwood to suffer substantial repair costs, construction costs and other consequential damages.

G. COUNT 8 - NEGLIGENT DESIGN - NEEL SCHAFFER

20. Neel Schaffer owed the City of Greenwood a duty to provide proper architectural plans and specifications and to properly design the facility, including the subject manhole and its associated pipes according to industry standards such that the Plant and the subject manhole would function as intended for decades. Neel Schaffer breached this duty by improperly designing the subject manhole and its associated pipes in that the manhole as designed was inadequate to serve its intended purpose. As alleged by Max Foote (see Ex. B to this Complaint), Neel Schaffer also failed to adequately design a proper foundation for the subject manhole and its associated pipes. As a direct and proximate result of Neel Schaffer's breach of those duties, Greenwood was provided with a faulty and defective manhole with its associated pipes that was inadequate to carry out its intended function as part of the Plant purchased by Greenwood, and as a result therefrom, Greenwood incurred extensive repair costs, construction costs and other consequential damages.

H. COUNT 9 - NEGLIGENT CONSTRUCTION AND DESIGN AND BREACH OF WARRANTY

21. Through its predecessor Hanson, Forterra was in the business of constructing and selling prefabricated manholes. Hanson designed and sold the subject manhole for installation by Max Foote as part of the Plant. Forterra negligently constructed the manhole. At the time of the sale the manhole Forterra knew or should have known of the intended location and use of the subject manhole, and knew or should have known that it was negligently constructed and was of inadequate design and strength to serve its intended purpose at its installation location. Because of its negligent construction and inadequate design and because the manhole was unfit for its intended purpose, Forterra's actions constitute a breach of its implied warranty, and because of such negligence and breach of warranty, the manhole and its associated pipes failed, causing Greenwood to incur extensive repair costs, construction costs, and other consequential damages.

22. In the absence of negligence in the construction and design of the manhole, negligent workmanship, negligent construction, negligent supervision, negligent design of the Plant as a whole, the City of Greenwood would not have incurred the costs and expenses for which it seeks recovery in this suit.

23. Greenwood demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff City of Greenwood demands a jury trial of this matter and judgment of and from and against the Defendants in an amount in excess of the jurisdictional limits of this Court and in an amount to be determined by the jury.

CITY OF GREENWOOD, MISSISSIPPI

BY: 
GLENN F. BECKHAM, MBN: 2309

OF COUNSEL:

UPSHAW, WILLIAMS, BIGGERS
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ELMUS STOCKSTILL, CIRCUIT CLERK

BY:  D.C.



MAX FOOTE
CONSTRUCTION CO., LLC

GENERAL CONTRACTORS

May 25, 2018

Mayor Carolyn McAdams
P.O. Box 1046
Greenwood, MS 38930

Dear Mayor McAdams,

FILED

APR 26 2019

ELMUS STOCKSTILL, CIRCUIT CLERK
BY: *Lisa Roberts* D.C.

Please accept this letter as our professional opinion of your manhole problem.

Our initial observation was that the boot and/or manhole base/riser had failed allowing the migration of silt into the manhole causing a void around the structure.

While working on the manhole we observed that there has been vertical movement of the structure which would have been caused by a failure of the subgrade beneath the manhole base. Migration of silt through the cracking above the base or through the boot would have been horizontal and not have affected the subgrade below the structure.

While not completely ruling out the boot/base failure causing the problem we should look at the settlement as a possible culprit.

Somehow the subbase beneath the manhole has failed probably due to the liquification of the sensitive silts present in the area.

One possibility is the road traffic vibration has been transmitted to the silt below by the rigid manhole structure causing the liquification of the subsoil and subsequent failure of the subgrade.

Despite the fact that we over excavated beneath the manhole and filled with gravel to help stabilize the silt it appears not to have been enough.

Since the original soil report recommended addressing these sensitive silts and over eight hundred thousand dollars were spent doing so under the plant, it is only logical that the manhole outside of the plant footprint should have been addressed.

A simple solution such as piling under the manhole could be a reasonable precaution to insure not having the problem recur.

Therefore, we recommend that you consult with a geotechnical engineer before replacing the existing manhole in like kind that could be destined to fail again.


Max E. Foote

POST OFFICE BOX 1208 MANDEVILLE, LOUISIANA 70470-1208 (985) 624-8589
FAX (985) 624-8580

