



BOARD OF SUPERVISORS AGENDA ITEM REPORT **CONTRACTS / AWARDS / GRANTS**

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 11/02/2021

* = Mandatory, information must be provided

or Procurement Director Award ☐

***Contractor/Vendor Name/Grantor (DBA):**

Ennis-Flint, Inc. (Headquarters: Greensboro, NC)

***Project Title/Description:**

Pavement Marking Material & Traffic Paint

***Purpose:**

Award: Master Agreement No. MA-PO-22-047. This Master Agreement is for an initial term of one (1) year in the annual award amount of \$400,000.00 (including sales tax) and includes four (4) one-year renewal options.

Administering Department: Transportation.

***Procurement Method:**

Pursuant to Pima County Procurement Code 11.24.010, Cooperative procurement authorized, for Requisition No. 22-031, the Procurement Director approved the use of the City of Mesa Contract No. 2020047, which was awarded through competitive procedures reasonably similar to those set forth by Pima County Procurement Code.

PRCUID: 426377

Attachment: Cooperative Procurement Agreement.

***Program Goals/Predicted Outcomes:**

To provide County with pavement markings material and traffic paint essential to maintain and repair Pima County roadways.

***Public Benefit:**

Benefit by ease of travel, reduced energy costs, lower maintenance costs and more environmentally friendly County roads.

***Metrics Available to Measure Performance:**

Measured by quality of products received in a timely manner, billing correctly submitted and compliant with requirements per the specifications.

***Retroactive:**

No.

To CoB: 10-13-21 (1)

Ver: 1

Pgs. 19

Contract / Award Information

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 22-047
 Commencement Date: 10/27/21 Termination Date: 10/26/22 Prior Contract Number (Synergen/CMS): _____
☒ Expense Amount: \$* 400,000.00 ☐ Revenue Amount: \$ _____

*Funding Source(s) required: Transportation Ops

Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % 0

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
 Amendment No.: _____ AMS Version No.: _____
 Commencement Date: _____ New Termination Date: _____
 Prior Contract No. (Synergen/CMS): _____
☐ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ _____
 Is there revenue included? ☐ Yes ☐ No If Yes \$ _____

*Funding Source(s) required: _____

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____
 Commencement Date: _____ Termination Date: _____ Amendment Number: _____
☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

*All Funding Source(s) required: _____

*Match funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

*Match funding from other sources? ☐ Yes ☐ No If Yes \$ _____ % _____

*Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)? _____

Contact: Officer: Stephen M. Romero Digitally signed by Stephen M. Romero Date: 2021.10.12 08:03:01 -07'00' Manager: Ana Wilber Digitally signed by Ana Wilber Date: 2021.10.12 08:21:47 -07'00'

Department: Procurement Director: Terri Spencer Digitally signed by Terri Spencer Date: 2021.10.12 10:07:49 -07'00' Telephone: 520-724-3021

Department Director Signature/Date: Ana M. Olivares Digitally signed by Ana M. Olivares Date: 2021.10.12 10:07:49 -07'00'

Deputy County Administrator Signature/Date: [Signature] 10/13/2021

County Administrator Signature/Date: [Signature] 10/13/21
 (Required for Board Agenda/Addendum Items)

Pima County Procurement Department

Administering Department: Transportation

Project: Pavement Marking Material and Traffic Paint

Contractor: Ennis-Flint, Inc.
4161 Piedmont Parkway, Suite 370
Greensboro, NC 27410

Amount: \$400,000.00

Contract No.: MA-PO-22-047

Funding: Transportation Operation

COOPERATIVE PROCUREMENT AGREEMENT

1. Parties, Background and Purpose.

1.1. Parties. This Contract is between Pima County, a political subdivision of the State of Arizona ("County"), and Ennis-Flint, Inc. ("Contractor")

1.2. Purpose. The Pima County Transportation Department requires pavement marking materials and traffic paint essential to maintain and repair Pima County roadways.

1.3. Authority. County is authorized by Pima County Code § 11.24.010 and A.R.S. § 41-2632 to enter into cooperative purchasing arrangements. County has entered into such an agreement with the City of Mesa.

1.4. Contract.

1.4.1. The City of Mesa entered into a contract (Contract Number 2020047) for specified goods and services with Ennis-Flint, Inc., a worldwide leader in the traffic safety, access, rail, and road marking industries providing the most comprehensive lineup of pavement marking materials and electronic control products. ("Contractor"), which is currently in effect (the "City of Mesa Contract"). The City of Mesa Contract is incorporated into this Contract by this reference.

1.4.2. Section 38 of Exhibit C to the City of Mesa Contract provides that another governmental entity with which City of Mesa has a cooperative purchasing agreement may, with Contractor's approval, purchase products and services at the same prices and under the same terms as in the City of Mesa Contract.

2. Term.

2.1. Initial Term. The term of this Contract commences on October 27, 2021 and will terminate on October 26, 2022 ("Initial Term"). "Term," when used in this Contract, means the Initial Term plus any exercised extension options under Section 2.2. If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.

- 2.2. Extension Options. County may renew this Contract for up to four (4) additional periods of up to 1 year each (each an "Extension Option"). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.
3. **Scope of Services**. Contractor will provide County with the services described in **Exhibit A: Pavement Marking, Traffic Paint and Preformed Thermoplastic Scope of Work** (6 pages), under the terms and conditions of the City of Mesa Contract. The terms and conditions set forth in this Contract control over any inconsistent provisions in the City of Mesa Contract. Services must comply with all requirements and specifications in the Solicitation.
4. **Compensation and Payment**.
- 4.1. Rates; Adjustment. County will pay Contractor at the rates set forth in **Exhibit B: Traffic Paint Pricing (1 page)**. Those rates will remain in effect during an Extension Option period unless Contractor, at least 90 days before the end of the then-existing Term, or at the time the County informs Contractor that the County intends to extend the Term, if that is earlier, notifies County in writing of any adjustments to those rates, and the reasons for the adjustments.
- 4.2. Not-To-Exceed (NTE) Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$400,000.00 [per year] (the "NTE Amount"). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.
- 4.3. Sales Taxes. The payment amounts or rates in **Exhibit B** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay under this Contract. Contractor will show sales taxes as a separate line item on invoices.
- 4.4. Timing of Invoices. Ennis-Flint, Inc. will invoice County on a monthly basis. County must receive invoices no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Contractor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.
- 4.5. Content of Invoices. Contractor invoices will include the contract price, unit of measure and Delivery Order (DO), or Delivery Order Maximo (DOM) to be paid. Detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.
- 4.6. Invoice Submittal. Invoices are to be sent to:
- Pima County Finance & Risk Management – Accounts Payable
P.O. Box 791
Tucson, AZ 85701
- 4.7. Invoice Adjustments. County may, at any time during the Term and during the retention period set forth in Section 23 below, question any payment under this Contract. If County raises a question about the propriety of a past payment, Contractor will cooperate with

County in reviewing the payment. County may set-off any overpayment against amounts due to Contractor under this or any other contract between County and Contractor. Contractor will promptly pay to County any overpayment that County cannot recover by set-off.

- 5. Insurance.** The Insurance Requirements herein are minimum requirements for this Contract and in no way limit, the indemnity covenants contained in this Contract. Contractor's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII. Pima County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

5.1. Insurance Coverages and Limits. Contractor shall procure and maintain, until all of its obligations have been discharged, the insurance coverage with limits of liability not less than those stated below. Pima County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

5.1.1. Commercial General Liability (CGL). Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.

5.1.2. Business Automobile Liability. Bodily injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 Each Accident.

5.1.3. Workers' Compensation and Employers' Liability. Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employers Liability coverage- \$1,000,000 each accident and each person – disease.

Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.

Coverage shall include or shall not exclude settlement and/or defense of claims involving intellectual property, including but not limited to patent or copyright infringement.

Certification of Insurance shall identify if the Tech E&O insurance required by this Contract is a claims-made policy. Contractor shall warrant that continuous coverage will be maintained as outlined in Required Insurance. A Claims-Made policy is acceptable.

5.2. Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.

5.2.1. Additional Insured. The General Liability, Business Automobile Liability Policies shall each be endorsed to include Pima County, its departments, districts, boards,

commissions, officers, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

- 5.2.2. Subrogation. The General Liability, Business Automobile Liability, Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- 5.2.3. Primary Insurance. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, or its agents, officials, or employees, shall be excess and not contributory insurance.
- 5.2.4. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- 5.3. Notice of Cancellation. Each Required Insurance policy must provide, and certificates specify, that County will receive not less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium.
- 5.4. Verification of Coverage.
 - 5.4.1. Contractor shall furnish Pima County with a certificate of insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.
 - 5.4.2. All certificates and endorsements, as required by this written agreement, are to be received and approved by Pima County before work commences. Each Insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of this Contract.
 - 5.4.3. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the Pima County project or contract number and project description on the certificate. Pima County reserves the right to require complete copies of all insurance policies required by this Contract at any time.
- 5.5. Approval and Modifications. The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Contract amendment, but the approval must be in writing. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.
- 6. **Indemnification**. To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnitee") from and against any and all claims, actions, liabilities,

losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnatee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.

7. Laws and Regulations.

7.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.

7.2. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.

7.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

8. Independent Contractor. Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under County's Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.

9. Subcontractors. Contractor is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts any of them may be liable, to the same extent that the Contractor is responsible for the acts and omissions of its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

10. Assignment. Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion.

11. Non-Discrimination. Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

12. Americans with Disabilities Act. Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).

13. Authority to Contract. Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.

14. Full and Complete Performance. The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Contract, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Contract, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

15. Cancellation for Conflict of Interest. This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

16. Termination by County.

16.1. Without Cause. County may terminate this Contract at any time, without cause, by serving a written notice upon Contractor at least 30 days before the effective date of the termination. In the event of such termination, County's only obligation to Contractor will be payment for services rendered prior to the date of termination.

16.2. With Cause. County may terminate this Contract at any time without advance notice and without further obligation to County when County finds Contractor to be in default of any provision of this Contract.

16.3. Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

17. Notice. Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:

Terri Spencer, Procurement Director
Pima County Procurement
150 W. Congress, 5th floor, Tucson,
AZ 85701
520-724-3722,
Terri.spencer@pima.gov

Ennis-Flint, Inc.:

Randy Cary, Regional Sales Manager
Contractor Sales
4161 Piedmont Parkway
Greensboro, NC 27410
480-466-2919,
rcary@ennisflint.com

- 18. Non-Exclusive Contract.** Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.
- 19. Remedies.** Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.
- 20. Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.
- 21. Use of County Data.** Unless it receives County's prior written consent, Contractor: (a) shall not access, process, or otherwise use County Data other than as necessary to provide contracted services or products; and (b) shall not intentionally grant any third party access to County Data, including without limitation Contractor's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Contractor may disclose County Data as required by applicable law or by proper legal or governmental authority. Contractor shall give County prompt notice of any such legal or governmental demand and reasonably cooperate with County in any effort to seek a protective order or otherwise to contest such required disclosure, at County's expense. Upon termination or completion of the Contract, Contractor will, within 60 calendar days, either return all County Data to County or will destroy County Data and confirm destruction to County in writing. As between the parties, County retains ownership of County Data. "County Data" means data in electronic or paper form provided to Contractor by County, including without limitation personal identifying information as defined in A.R.S. § 13-2001(10).
- 22. Books and Records.** Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.
- 23. Public Records.**
- 23.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., all documents related to this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.
- 23.2. Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of its records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL" before submitting them to County. In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction in Arizona, enjoining the release of the records. County will not, under any circumstances, be

responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

24. Legal Arizona Workers Act Compliance.

- 24.1. Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- 24.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 24.3. Remedies for Breach of Warranty. Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.
- 24.4. Subcontractors. Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 25 by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

25. Grant Compliance. Not applicable to this Agreement.

26. Written Orders. County will order products or services under this Contract by issuing a Delivery Order (DO) document. Order documents will be furnished to Contractor via e-mail or telephone.

Contractor must not supply materials or services pursuant to the contract that are not documented or authorized by a Delivery Order (DO) at the time of provision. County accepts no responsibility for control of or payment for materials or services not documented by a County Delivery Order (DO).

Contractor will establish, monitor, and manage an effective contract administration process that assures compliance with all requirements of this Contract. In particular, Contractor will not provide goods or services other than those described in this Contract, in excess of the Maximum Payment Amount, or after the Term of the Contract has ended, without a Contract amendment properly executed and issued by County, as provided below. Any items provided in excess of that stated in this Contract are at Contractor's own risk.

27. **Counterparts.** The parties may execute the Contract that County awards pursuant to the solicitation in any number of counterparts, each counterpart is considered an original, and together such counterparts constitute one and the same instrument.
28. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
29. **Amendment.** The parties may extend or revise this Contract by notifying Contractor in writing of the change, which notice will be in the form of a revised "Master Agreement". If Contractor does not object in writing to the proposed changes within ten (10) calendar days after receipt of the notice, Contractor will be deemed to have accepted the changes, and the revision will be binding on the parties, effective as of the date the notice was issued. If Contractor objects to one or more of the changes, then the proposed changes will be deemed ineffective.
30. **Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

This Contract will become effective when all parties have signed it. The effective date of the Contract will be the date this Contract is signed by the last party (as indicated by the date associated with that party's signature).

IN WITNESS WHEREOF, the parties have approved this Cooperative Procurement Agreement and agree to be bound by the terms and conditions of the Contract on the dates written below.

PIMA COUNTY

Chairman, Board of Supervisors

Date

Ennis-Flint, Inc.



Authorized Officer Signature

Laura Greer, Corporate Secretary

Printed Name and Title

10-11-21

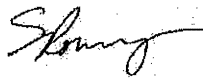
Date

ATTEST

Clerk of the Board

Date

APPROVED AS TO FORM



Stacey Roseberry, Deputy County
Attorney

10/5/2021

Date

Exhibit A: Pavement Marking, Traffic Paint and Preformed Thermoplastic Scope of Work

Intent: Ennis-Flint, Inc. to provide Thermoplastic Pavement Marking Materials and Waterborne Traffic Paint for Pima County Transportation Department (PCDOT).

1. General Specifications

1.1. Contractor must provide Pima County Transportation Department (PCDOT) with Thermoplastic Pavement Marking Materials and Waterborne Traffic Paint as described on the bid item list.

- a) Contractor shall have specific knowledge and experience in the areas related to traffic paints.
- b) The exact composition of the paint shall be determined by the Contractor within the applicable requirements of this specification.
- c) Contractor is responsible to produce a pigmented waterborne low VOC fast dry traffic paint. Pavement Marking material must meet or exceed specifications.
- d) Contractor must provide "No Heat" preformed thermoplastic pavement marking materials.
- e) Acknowledgement of orders is requested within 2 days of receipt of Delivery Order (DO), or Delivery Order Maximo (DOM).

1.2. Material Requirements

- a) Performed pavement markings must be a resilient white and yellow product with uniformly distributed glass beads throughout the entire cross-sectional area. Lines, legends, and symbols are to be capable of being affixed to asphalt and concrete pavements by the use of normal heat from a propane type of torch.
- b) The markings must be capable of conforming to pavement contours, breaks, and faults through the action of traffic at normal pavement temperatures. The markings will have resealing characteristics, including the capability of fusing with itself and previously applied thermoplastic when heated with torch.
- c) Markings must be able to be applied with no minimum ambient or surface temperature requirements.
- d) Materials must be composed of a modified ester rosin, aggregates, pigments, binders, and glass beads which have been factory produced as a finish product, which will be designed to meet the requirements of the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) <http://mutcd.fhwa.dot.gov/>. The thermoplastic material will also conform to American Association of State Highway and Transportation Officials (AASHTO) <http://www.transportation.org>, designation M249 Specifications for White and Yellow Reflective Thermoplastic – Solid form, with the exception of the relevant differences for the material being supplied in a performed state.
- e) New pavement markings will have a uniform adequate nighttime retro-reflectivity when installed. The pavement markings will have an average minimum retro-reflectivity of three hundred fifty (350) millicandelas for white and two hundred (200) millicandelas for yellow with an 88.76-degree entrance angle and a 1.05-degree observation angle.

1.3. Pigments

- a) White: Sufficient titanium dioxide pigment will be used to ensure a color equivalent to Federal Highway White, Docket No. FHWA-99-6190 Table 5 and Table 6 as revised and corrected. <http://mutcd.fhwa.dot.gov/kno-colorspec.htm>.
- b) Yellow: Sufficient yellow pigment will be used to ensure a color equivalent to Federal Highway Yellow, Docket No. FHWA-99-6190 Table 5 and Table 6 as revised and corrected. The yellow pigment must be of organic origin only and contain no lead chromate.
- c) Other Colors: Must use organic pigments and be heavy metal free.

1.4. Skid Resistance

- a) The surface of the material must provide a minimum resistance value of forty-five (45) British Pendulum (Tester) Number (PBN) with properly applied and embedded surface beads when tested according to ASTM E-303 Standard Test Method for Measuring Surface Frictional Properties.

1.5. Dimensions

- a) The material must be supplied at a minimum thickness of ninety (90) mils or one hundred twenty-five (125) mils, as ordered. The thickness measurement will exclude the top surface beads.
- b) The material must be as sized in the Federal Highway Administration (FHWA) <https://www.fhwa.dot.gov/>, Standard sizes as shown in the Manual on Uniform Traffic Control Devices (MUTCD).

1.6. Environmental Resistance

- a) The material must be designed for use in heavy traffic locations where maximum wear and tear is present and resistant to deterioration due to exposure to sunlight, water, oil, gasoline, salt or adverse weather conditions.

1.7. Application

- a) **Asphalt**: The materials will be applied using a propane torch method recommended by the manufacturer. The material must be able to be applied with no preheating of the pavement to a specific temperature. The pavement will be clean, dry and free of debris. Supplier must enclose application instructions with each box/ package shipped.
- b) **Portland Cement Concrete**: The material will be applied using the same procedure as stated above using a compatible primer sealer before material is installed to ensure proper adhesion. Compatible primer sealer will be available through the Contractor.

1.8. Warranty

- a) There will be a minimum two (2) year guarantee/non-prorated warranty on workmanship, material and durability under normal urban traffic conditions from date of delivery. Product will have a one (1) year shelf life with no degradation in performance from date of delivery.

1.9. Satisfactory Performance Life

- a) All supplied performed, heat-fused thermoplastic material will be considered as providing satisfactory performance life if they do not deteriorate due to natural or environmental causes within their material warranty period as herein specified. Unsatisfactory performance conditions will be cause for immediate material rejections and replacement at no cost to Pima County. Consistent unsatisfactory performance may be grounds for nonuse or cancellation of all or a portion of the contract. Unsatisfactory performance conditions include, but are not limited to, the display of the following:
 - Bubbles, wrinkles, ripples, peeling, cracks or breaks on any portion of the applied material greater than 1" x 1" inches in dimension. This requirement does not apply regarding minor defects around edges or other imperfection in the material due to failure of the asphalt or concrete substrate.
 - Any shrinkage.
 - Significant visible delamination from the substrate.
 - Significant discoloration, including clouding or chalking of the surface.
 - Loss of nighttime retro-reflectivity as observed at night under headlights and/or objective measures as based on this specification and other nationally accepted standards and practices (including FHWA's minimum retro-reflective guidelines) will be used by the Pima County to judge satisfactory performance.

2. Material Testing Submittals (Waterborne Traffic Paint)

- 2.1. Contractor may be required to submit, as requested, verified testing results of materials. At Pima County's request, Contractor may also be required to supply batch samples of materials to Pima County to perform independent testing at its own expense. Pima County elects to

perform independent testing; the Department or its representative may perform any or all of the following verification steps:

- a) Sample raw materials and finished paint in accordance with these specifications.
- b) Test raw materials and finished paint in accordance.
- c) Inspect the manufacturing process.
- d) Take samples after the manufacturer makes final adjustments to the batch to establish or verify performance.

In case of variance to Contractor supplied testing, Pima County tests will govern.

3. Quality Control and Production Procedures

3.1. The producer is responsible for ensuring that the proposed raw materials and manufacturing procedure produce a product meeting the specification requirements. Contractor is required to maintain and may be required to submit evidence of the following plant-specific written quality control and production procedures to ensure product compliance with these specifications:

- a) Procedures for verification of raw material quality.
- b) Batching procedures for ensuring mixing/batching operations are producing homogenous traffic paint in accordance with the material specification.
- c) Quality control procedures for verification of Departmental material requirements.
- d) Procedures for handling material failing to meet specification requirements.
- e) Procedures for handling, storage, and shipment of finished traffic paint.
- f) List of designated on-site quality control personnel with copies of their qualifications and a detailed description of their quality control-related experience as related to the inspection duties listed above.

4. Documentation

4.1. Contractor will maintain the following documentation, with a minimum of one (1) year retention, available upon request to the Department.

- a) All quality control data for the raw materials used in the manufacture of supplied traffic paint.
- b) All quality control data for each batch produced.
- c) Shipping invoices for delivery of traffic paint.

5. Raw Materials

5.1. Substitutions: The exact brands and types of raw materials used in the Standard are listed to facilitate the selection of materials equal in quality, composition, and physical and chemical behavior after aging in the finished product.

5.2. Specifications: All materials required to meet Federal, ASTM, or Department Specifications must meet the latest specifications in effect on the date.

5.3. Approved Pigments:

- Titanium Dioxide- ASTM D 476, Type II V, VI, VII
- Yellow Pigment—As specified in Table 1
- Calcium Carbonate—ASTM D 1199, Type GC, Grade I, with minimum 95% CaCO₃
- Type PC, minimum 98% CaCO₃

Table 1

Yellow Pigment Requirements Yellow Pigment CI 65 (Reddish Yellow)

Specific Gravity	1.40 to 1.76
Oil Absorption	20 to 30%
Moisture	0.5% Max
Pigment Retained on #325 Sieve	0.1% Max
C.I. Number	11740
Heat Stability	266°F Min

5.4. Approved Acrylic Resin Emulsions:

- Dow Fastrack HD-21
- Arkema DT-400

Acrylic resin emulsions must meet the requirements listed in the table below:

Table 2

Acrylic Resin Emulsions Requirement

Solids Content, %	48.5-51.5
Viscosity, #2 Spindle, 60 RPM, 25°C, cps	250 Max
pH	10.0-10.6
Film Appearance, 3 mil dry	Smooth, clear, continuous

5.5. Finished Paint:

- Total Percent Solids- 77% +/- 2%
- Total White Pigment per Gallon- 7.4 to 8.7 pounds
- Total Yellow Pigment per Gallon- 7.4 to 8.1 pounds
- Grind ASTM D 1210, Standard Test Method for Fineness of Dispersion of Pigment-Vehicle Systems by Hegman- Type Gage- 3 minimum, 5 maximum
- Viscosity- 80-90 KU 77 +/- 1, ASTM D 562, Standard Test Method for Consistency of Paints Measuring Krebs Unit (KU) Viscosity Using a Stormer-Type Viscometer
- pH-9.6 minimum
- Skinning- none within 48 hrs.
- Dry Time to No-Pick-Up, per ASTM D 711, Standard Test Method for No-Pick-Up Time of Traffic Paint (no Beads)- 10 min. max.
- Film Appearance- a 15 mil drawdown must exhibit a uniform film appearance with no apparent cracking
- Directional Reflectance, ASTM E1347 Standard Test Method for Color and Color-Difference Measurement by Tristimulus Colorimetry Reflectance, for the white paint will be a Minimum of 85. Reflectance for the yellow paint may range from 42 to 59, inclusive.
- V.O.C. Less than 150 grams/liter
- Dry Time to a no-track condition in five (5) minutes or less when the line is crossed over in a passing maneuver with a standard-sized automobile when applied at a 15 mils wet film thickness in the field at ambient temperatures of 50 to 100 degrees F with a paint spray temperature of 150 degrees F, maximum, and six to eight pounds of post-applied glass beads per gallon of paint.
- Non-High Build Traffic Paint in white, red and black (as listed in the line items), will be capable of meeting Arizona specifications as well as Federal specification TT-P-1952E type 1 and 2.
- The remainder of the paint composition will be determined by the manufacturer- within the constraints of the requirements above. No glass beads or sand will be permitted in the paint formulations. In addition to being essentially lead and chromium-free, the paint will not contain any hazardous materials at levels that would cause the paint (when dry) to be classified as a hazardous waste.

1.5.2 Filling Instructions:

- Buckets must be filled at 4.95 gal., by weight, with a water float of 0.05 gal.
- Bulk containers must be filled to the proper target weight of the tote. The target weight is determined by the following formula: (Final Fill Volume - Float) X (Weight per Gallon of the specific paint being packaged). The pH of the float water must be between 10.0 and 10.5.

5.6. Shipped Products:

It will be the manufacturer's responsibility to produce a pigmented waterborne traffic paint containing the necessary: co-solvents, dispersants, preservatives, wetting agents and all other additives so that the paint will retain its viscosity, stability and all other properties as specified herein.

The finished product must maintain a minimum shelf life of one (1) year from date of receipt, provided the product is stored in a shelter or out of direct sunlight and freezing temperatures. Ordered paint will be no more than ninety (90) days old (based on date of manufacture) upon delivery.

The paint, as received, will show no evidence of biological growth, corrosion of the container, or hard setting. The paint will be returned to a smooth and homogenous consistency, which is free from: gel structures, persistent foam or air bubbles – using only hand mixing. Settled pigment will be easily re-dispersed, with a minimum of resistance to the sideways manual motion of the paddle across the bottom of the container. If the paint cannot be easily re-dispersed, due to excessive pigment settlement or any other cause, then the paint will be considered unfit for use. Contractor will be responsible for all costs and transportation charges incurred in replacing paint that is unfit for use.

5.7. Containers and Markings

Contractor will ship the finish products in suitable, strong, well-sealed containers that meet specifications and federal requirements and are sufficiently sturdy to withstand normal shipping and handling. All shipping containers must comply with Code of Federal Regulations, Title 49 and all other applicable Federal and State Regulations governing their use.

5.7.1. The containers and lids must be lined with a suitable coating so as to prevent attack by the paint or agents in the airspace above the paint. The lining must not come off the container or lid as skins. Lids with bungholes will not be used. All containers will be properly sealed with suitable gaskets and will show no evidence of leakage and will remain in a satisfactory condition for a period of twelve (12) months after delivery. Contractor will be held responsible for replacing containers unfit for use and will be responsible for all costs and transportation charges incurred in replacing paint and containers.

5.7.2. All containers will be palletized, banded for shipment and packaged so that all items can be safely handled by a forklift truck for the ease of unloading the containers. Supplier will accept return of empty barrels and totes at the County's facility with no additional charge to Pima County. A tote deposit may not be charged.

5.8. Bucket Requirements

5.8.1. Contractor will provide new non-leaking five (5) gallon high-density polyethylene (HDPE) buckets conforming to UN 1H2.

5.9. Bulk Container Requirements

5.9.1. When 946-liter (250-gal.) bulk containers are specified, they will be an industry standard type bulk paint container that meets all of the following requirements:

- Tank volumes are estimated, and Contractor will allow a 19-liter headspace for expansion of the paint.
- Top Openings: 46cm diameter manhole and 15cm diameter fill cap/viewpoint.
- Bottom Outlet: 5cm I.D. full flow non-restrictive valve with outlet guard.
- Outlet to have 'Ever-Tite' or compatible quick coupler.
- Capable of being stacked two (2) high when full.
- Capable of being lifted by forklift when full.
- Top of tank will be equipped with one (1) vacuum relief valve and one (1) pressure relief valve.

5.9.2. Markings- Contractor will label the finished product containers and cases with a durable label, legibly printed with the following:

- Name and Designation of the product.
- Batch Number.
- Manufacturing Date (Month and Year).
- Gross Weight.
- Manufacturer's Name.

Contractor will label the sides of containers and cases. Labels must be sufficiently moisture resistant to withstand outdoor storage for a minimum of one (1) year.

After palletizing the finished product, Contractor will place the containers with the labels facing to the outside for easy identification. Once properly labeled, do not modify or change the label in any manner without specific approval.

5.10. Hazardous Materials- For all items that involve hazardous materials;

- 5.10.1. Contractor will furnish updated Material Safety Data Sheets on all chemicals and hazardous materials, specifying the generic and trade name of product, product specification, and full hazard information, including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.
- 5.10.2. The MSDS, instruction and information required must be included with each shipment under the contract and will comply with OSHA's Hazard Communication Standard 29 CFR § 1910.1200.
- 5.10.3. All products are to conform to the Federal Clean Air Act Amendment of 1990, Volatile Organic Content will be below 150 grams per liter. All products are free of lead, chrome and other heavy or toxic metals. Consult MSDS for additional safety and regulatory information.

6.1. Delivery Requirements

"On-Time" delivery is an essential part of the consideration that Contractor is to provide to County under the contract. Contractor will make delivery in accordance with the Instructions to Offerors, Standard Terms and Conditions and to the location(s) on the DO or DOM document.

- Pima County Department of Transportation- 1313 W. Mission Rd-Building 13, Paint Dock (next to Sign Shop-Building 14) Tucson, AZ 85713
- Monday through Thursday, 6:00AM to 3:00PM. Deliveries will not be accepted on Pima County observed holidays.
- Delivery will be made to the location within thirty (30) days after receipt of an order.
- All materials will be packaged and palletized, as necessary to prevent damage in transit or storage. Contract will include updated Safety Data Sheets with the Shipped Product(s).
- Contractor must acquire a signed receipt document. Materials that are not received in good order will be replaced by the Contractor at no additional cost to Pima County.

Exhibit B: Traffic Paint Pricing

Line No.	Item/Name & Description	Manufacture Part Number/ EID Number	Estimated Annual Usage	Unit of Measure (UOM)	Current Unit Price	Estimated Extended Total Usage x Price
1	Traffic Paint, HI BUILD, White 250 gallon tote	985221-PMD250 / 19507	80	tote	\$ 2,000.00	\$ 160,000.00
2	Traffic Paint, HI BUILD, Yellow 250 gallon tote	985222-PMD250 / 19508	70	tote	\$ 2,010.00	\$ 140,700.00
3	Traffic Paint, HI BUILD, White 5 gallon can	985221-5P / 19506	300	pail	\$ 61.25	\$ 18,375.00
4	Traffic Paint, HI BUILD, Yellow 5 gallon can	985222-5P / 33536	32	pail	\$ 75.50	\$ 2,416.00
5	Traffic Paint, HI BUILD, Black 5 gallon can	985203-5P / 33538	2	pail	\$ 53.75	\$ 107.50
6	Traffic Paint, HI BUILD, Blue 5 gallon can	985225-5P / 33537	2	pail	\$ 75.50	\$ 151.00
7	4" Wide Yellow Tape (125 MIL) (1pk=90LF)	PM600101 / 34605	1	pack	\$ 81.00	\$ 81.00
8	12" Wide White Tape (125 MIL) (1pk=90LF)	8431064 / 34606	200	pack	\$ 75.90	\$ 15,180.00
9	12" Wide Yellow Tape (125 MIL) (1pk=90LF)	8431064Y / 34607	25	pack	\$ 79.80	\$ 1,995.00
10	18" Wide White Tape (125 MIL) (1pk=90LF)	8431067 / 34608	1	pack	\$ 114.30	\$ 114.30
11	Arrow, Left 8'2" x 6'3", FHWA Std., (125 MIL)	8330241L / 34609	40	pack	\$ 160.30	\$ 6,412.00
12	Arrow, Right, 8'2" x 6'3", FHWA Std., (125 MIL)	8330241R / 34610	20	pack	\$ 160.30	\$ 3,206.00
13	Arrow, Straight, 9'10" x 3'3", FHWA Std., (125 MIL)	8330240 / 34611	1	pack	\$ 136.92	\$ 136.92
14	Arrow, Combi Left, 13'1" x 7'4", FHWA Std., (125 MIL)	8330142L / 34612	1	pack	\$ 71.79	\$ 71.79
15	Arrow, Combi Right, 13'1" x 7'4", FHWA Std., (125 MIL)	8330142R / 34613	1	pack	\$ 71.79	\$ 71.79
16	Arrow, Lane Reduction, Left or Right, 18' x 5'8", FHWA Std., (125 MIL)	8330155NB / 34614	6	pack	\$ 204.85	\$ 1,229.10
17	4ft Bike Rider Symbol FHWA Std., (90 MIL)	89230525LHS / 34615	10	pack	\$ 47.25	\$ 472.50
18	Shared Lane Bike Symbol, White 9'4" x 3'4", FHWA Stds., (90 MIL)	PM600833L / 34616	1	pack	\$ 177.08	\$ 177.08
19	"ONLY" Marking, 8' Letter Height, FHWA Std., (125 MIL)	8130102 / 34617	40	pack	\$ 113.65	\$ 4,546.00
20	SPEED HUMP Marking, 6' x 6', FHWA Std., (125 MIL)	8230126HS / 34618	40	pack	\$ 162.70	\$ 6,508.00
21	RAILROAD CROSSING KIT, 20' x 8', FHWA Std., (125 MIL)	PMK8130103A / 34619	4	pack	\$ 139.79	\$ 559.16
22	Blackout Material, 4" x 3', (125 MIL) (1pk=20sqft)	8452060BKQ / 34620	1	pack	\$ 51.40	\$ 51.40
23	Yield Line (Shark's Teeth), 24" x 36", FHWA Std., (125 MIL)	8231002 / 34621	4	pack	\$ 97.60	\$ 390.40
ESTIMATED ANNUAL TOTAL*						\$ 362,951.94

91462 / 00941926 / v 1 Contract
No.: MA-PO-22-047 Exhibit B

Revised 06/12/20