

## SUPPLY AGREEMENT NO. 3138

### Thermoplastics Material for Street Department

THIS **Thermoplastics Material for Street Department Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Ennis-Flint, Inc ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide Thermoplastics Material for Street Department in response to Request for Bid No. **TxSmartbuy # 550-A2** ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Contractor's bid response are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

- 1. Scope.** Contractor will provide Thermoplastics Material for Street Department in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. "Goods," "products", and "supplies", as used in this Agreement, refer to and have the same meaning.
- 2. Term.** This Agreement is for three years. The parties may mutually extend the term of this Agreement for up to zero additional zero-year periods ("Option Period(s)"), provided, the parties do so by written amendment prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
- 3. Compensation and Payment.** This Agreement is for an amount not to exceed \$134,970.72, subject to approved extensions and changes. Payment will be made for goods delivered and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. Contractor shall invoice no more frequently than once per month. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next option period.

Invoices will be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi  
Attn: Accounts Payable  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

- 4. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name : Al Davila  
Department: Public Works  
Phone: 361-826-1962  
Email: adavila@cctexas.com

- 5. Insurance.** Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
- 6. Purchase Release Order.** For multiple-release purchases of products to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of products to be delivered in the following manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and products will remain with the Contractor until such time as the products are delivered and accepted by the City.
- 7. Inspection and Acceptance.** City may inspect all products supplied before acceptance. Any products that are delivered but not accepted by the City must be corrected or replaced immediately at no charge to the City. If immediate correction or replacement at no charge cannot be made by the Contractor, a replacement product may be bought by the City on the open market and any costs incurred, including additional costs over the item's bid price, must be paid by the Contractor within 30 days of receipt of City's invoice.

**8. Warranty.**

(A) The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

- 9. Quality/Quantity Adjustments.** Any quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator
- 10. Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30<sup>th</sup> annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
- 11. Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such products in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.
- 12. Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator unless the subcontractors were named in the bid or in an attachment to this Agreement. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the work.

13. **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
15. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

**IF TO CITY:**

City of Corpus Christi  
Attn: Al Davila  
Title: Work Coordinator  
Address: 2525 Hygeia St., Corpus Christi, TX. 78415  
Phone: 361-826-1962  
Fax: 361-826-1627

**IF TO CONTRACTOR:**

Ennis-Flint, Inc.  
Attn: Rhealynn Thigpen  
Title: Contract Administrator  
Address: 4161 Piedmont Pkwy, Suite 370, Greensboro, NC. 27410  
Phone: 336-308-3799  
Fax: 336-218-6746

17. **CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS**

**AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

**18. Termination.**

(A) The City Manager may terminate this Agreement for Contractor's failure to comply with any of the terms of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

**19. Owner's Manual and Preventative Maintenance.** Contractor agrees to provide a copy of the owner's manual and/or preventative maintenance guidelines or instructions if available for any equipment purchased by the City pursuant to this Agreement. Contractor must provide such documentation upon delivery of such equipment and prior to receipt of the final payment by the City.

**20. Limitation of Liability.** The City's maximum liability under this Agreement is limited to the total amount of compensation listed in Section 3 of this Agreement. In no event shall the City be liable for incidental, consequential or special damages.

**21. Assignment.** No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

- 22. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
- 23. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
- A. this Agreement (excluding attachments and exhibits);
  - B. its attachments;
  - C. the bid solicitation document including any addenda (Exhibit 1); then,
  - D. the Contractor's bid response (Exhibit 2).
- 24. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
- 25. Governing Law.** Contractor agrees to comply with all federal, Texas, and City laws in the performance of this Agreement. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- 26. Public Information Act Requirements.** This paragraph applies only to agreements that have a stated expenditure of at least \$1,000,000 or that result in the expenditure of at least \$1,000,000 by the City. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 27. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

**(SIGNATURE PAGE FOLLOWS)**

**CONTRACTOR**

Signature: 

Printed Name: Brian Robbins

Title: Director of Contract Administration

Date: 6-25-2020

**CITY OF CORPUS CHRISTI**

\_\_\_\_\_  
Kim Baker  
Director of Contracts and Procurement

Date: \_\_\_\_\_

**Attached and Incorporated by Reference:**

- Attachment A: Scope of Work
- Attachment B: Bid/Pricing Schedule
- Attachment C: Insurance Requirements
- Attachment D: Warranty Requirements

**Incorporated by Reference Only:**

- Exhibit 1: RFB No. TxSmartbuy # 550-A2
- Exhibit 2: Contractor's Bid Response



## ATTACHMENT A: SCOPE OF WORK

### Purchase of Thermoplastics Material for Street Department

The Supplier will provide thermoplastic materials in accordance with the specifications listed herein. These supplies will be utilized by the Corpus Christi Public Works Department. This term contract will provide unit pricing for specified items to be purchased on an "as needed" basis by the Public Works Department.

#### 1. Scope of work

Specification for Thermoplastic Pavement Markings

- A. A durable, retroreflective pavement marking material suitable for use as roadway, intersection, commercial or private pavement delineation and markings.
- B. The markings must be a resilient white or yellow thermoplastic product with uniformly distributed glass beads throughout the entire cross sectional area. The markings must be resistant to the detrimental effects of motor fuels, lubricants, hydraulic fluids, antifreeze, etc. Lines, legends, and symbols are capable of being affixed to bituminous and/or Portland cement concrete pavements by the use of the normal heat of a propane torch. Other colors shall be available as required.
- C. The markings must be capable of conforming to pavement contours, breaks and faults through the action of traffic at normal pavement temperatures. The markings shall have resealing characteristics, such that it is capable of fusing with itself and previously applied thermoplastic when heated with the torch.
- D. The markings shall not have minimum ambient and road temperature requirements for application, storage, or handling.
- E. **MANUFACTURING CONTROL AND ISO CERTIFICATION:** The manufacturer must be ISO 9001:2008 certified and provide proof of current certification. The scope of the certification shall include manufacture of preformed thermoplastic marking materials.
  1. organization to provide copy of registration certificate. This certificate is issued by an authorized registration agency. It will identify the standard used as the basis for the registration, the scope of the registration, the organization and locations registered, and the time frame during which the registration is current.
- F. **MATERIAL:** Must be composed of an ester modified rosin resistant to degradation by motor fuels, lubricants etc. in conjunction with aggregates, pigments, binders and glass beads which have been factory produced as a finished product, and meets the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways. The thermoplastic material conforms to



AASHTO designation M249, with the exception of the relevant differences due to the material being supplied in a preformed state.

G. Graded Glass Beads:

1. The material must contain a minimum of thirty percent (30%) intermixed graded glass beads by weight. The intermixed beads shall be conforming to AASHTO designation M247, with minimum 80% true spheres and minimum refractive index of 1.50.
2. The material must have factory applied coated surface beads in addition to the intermixed beads at a rate of 1 lb. ( $\pm$  10%) per 10 sq. ft. The factory applied coated surface beads shall have a minimum of 90% true spheres, minimum refractive index of 1.50, and meet the following gradation:

Size Gradation		Retained, %	Passing, %
US Mesh	$\mu$ m		
12	1700	0 - 2%	98 - 100%
14	1400	0 - 3.5%	96.5 - 100%
16	1180	2 - 25%	75 - 98%
18	1000	28 - 63%	37 - 72%
20	850	63 - 72%	28 - 37%
30	600	67 - 77%	23 - 33%
50	300	89 - 95%	5 - 11%
80	200	97-100%	0 - 3%

A. Delivery

Supplier will make inside delivery to City locations within five calendar days to the addresses specified. All prices will be quoted F.O.B. destination, inside delivery to City of Corpus Christi facility, freight prepaid. Expedited forty-eight hour delivery services may be required in some instances; therefore, Supplier must be able to provide such service. Additional freight will be paid only when the City has made a request for expedited delivery.

Delivery, as used in this section, means the products have been ordered and received by the City. Receipt of products that do not conform to specifications will not be accepted by the City. Supplier understands and agrees that the City may, at its discretion, cancel any backorders due to the Supplier's inability to deliver the product within the five calendar day stipulation. Cancellations shall be in writing and sent to Vendor by email, fax, or mail. **No restocking fee or payment of any kind shall be owed for orders canceled due to Contractor's inability to meet the five day delivery deadline. Returns to Contractor of late orders received after the cancellation notice has been sent shall be at Contractor's expense.** The City may seek the products from another party if Supplier fails to deliver on time.

Delivery must be made during normal working hours, Monday through Friday, 8:00 a.m. to 5:00 p.m. C.T.

B. Defective Goods

Supplier will pay for return shipment on any products that arrive in a defective, unusable, or inoperable condition. Contractor must arrange for the return shipment of damaged products.

C. Product Expiration

Supplier will provide supplies with a minimum expiration date of 12 months after the delivery date. Any materials delivered with an expiration date of less than 12 months will be returned to Supplier for credit or replacement at Supplier's expense.

D. Discontinued Items

In the event that a manufacturer discontinues particular product(s), the City may allow Contractor to provide a substitute for the discontinued product(s) or delete the product(s) from the contract altogether. These provisions related to product discontinuance apply only to products specifically listed in this solicitation document. If Contractor request permission to substitute a new product, Contractor shall provide the following to the City:

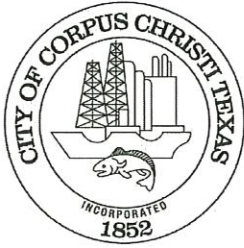
- a. Documentation from the manufacturer that product has been discontinued.
- b. Documentation that names the replacement product.
- c. Documentation that provides clear and convincing evidence that the replacement product meets or exceeds all specifications of the original product.
- d. Documentation that provides clear and convincing evidence that the replacement product will be compatible with all the functions or uses of the discontinued product.
- e. Documentation confirming that the price for the replacement is the same as or less than the discontinued product.
- f. These provisions related to product discontinuance apply only to products specifically listed in this solicitation document.

**2. Special Instructions**

All supplies will be shipped to:

2525 Hygeia Street, Building 021  
Corpus Christi, TX 78415

Before deliveries are made, please call Al Davila (361) 815-7069



## Attachment B: Bid / Pricing Schedule

# CITY OF CORPUS CHRISTI CONTRACTS AND PROCUREMENT DEPARTMENT BID FORM

RFB No. 3138

Thermoplastics Material for Street Department

PAGE 1 OF 1

Date: 6-25-2020

Bidder: Brian Robbins, Dir of Contract  
Admin

Authorized  
Signature:

1. Refer to "Instructions to Bidders" and Contract Terms and Conditions before completing bid.
2. Quote your best price for each item.
3. In submitting this bid, Bidder certifies that:
  - a. the prices in this bid have been arrived at independently, without consultation, communication, or agreement with any other Bidder or competitor, for the purpose of restricting competition with regard to prices.
  - b. Bidder is an Equal Opportunity Employer, and the Disclosure of Interest information on file with City's Contracts and Procurement office, pursuant to the Code of Ordinances, is current and true.
  - c. Bidder is current with all taxes due and company is in good standing with all applicable governmental agencies.
  - d. Bidder acknowledges receipt and review of all addenda for this RFB.

Item	Description	UNIT	Qty	Unit Price	Total Price
1	PM 125WH Q1 BD 8' ONLY thermoplastic (1/box)	EA	90	\$116.29	\$10,466.10
2	PM125WH Q2 BD 8' LEFT TURN ARROW	EA	80	\$162.45	\$12,996.00
3	PM125WH Q2 BD 8' RIGHT TURN ARROW	EA	80	\$162.45	\$12,996.00
4	PM125WH Q2 BD 9'10" STRIGHT ARROW	EA	60	\$140.10	\$8,406.00
5	PM125WH Q30' BD 12" WHITE LINE	EA	360	\$77.62	\$27,943.20
6	PM125WH Q30' BD 16" WHITE LINE	EA	240	\$104.02	\$24,964.80
7	PM125WH Q15' BD 24" WHITE LINE	EA	420	\$77.62	\$32,600.40
8	PM WH Q36'/36' 4" RUMBLE BAR KIT	EA	18	\$118.73	\$2,137.14
9	PM90WH Q5 VG 6'x3'4" LFT BIKE RIDER	EA	1	\$352.40	\$352.40
10	PM90WH Q5 VG 6'x3'4" RGT BIKE SYMBOL	EA	1	\$352.40	\$352.40
11	PM90WH Q5 VG 4'x2' LFT BIKE LN SYM	EA	1	\$241.74	\$241.74

12	PM90WH Q5 VG 4'x2' RGT BIKE LN SYM	EA	1	\$241.74	\$241.74
13	PM90WH Q2 40"x112" LFT BIKE/CHEVRON	EA	1	\$181.19	\$181.19
14	PM90WH Q2 40"x112" RGT BIKE/CHEVRON	EA	1	\$181.19	\$181.19
15	PM90WH Q2 VG 6'x 2' STR. ARROW	EA	1	\$60.28	\$60.28
16	PM125WH Q25 BD 12"x18" SHARKS TEETH	EA	1	\$131.08	\$131.08
17	PM125WH Q10 BD 2'x3' SHARKS TEETH	EA	1	\$99.84	\$99.84
18	PM125WH Q1 BD 8' "AHEAD" FHWA	EA	1	\$161.44	\$161.44
19	PM125WH Q1 BD 8' "SCHOOL" FHWA	EA	1	\$181.02	\$181.02
20	PM125WH Q1 BD 8' "SIGNAL" FHWA	EA	1	\$161.44	\$161.44
21	PM125WH Q1 BD 8' "STOP" FHWA	EA	1	\$115.32	\$115.32
22	Three-5 gal. buckets of concrete primer for thermo (No Charge)	EA	1	\$ -	\$ -
<b>Total</b>					\$134,970.72

## **Attachment C: Insurance and Bond Requirements**

No insurance is required for this Supply Agreement No. TxSmqrtbuy # 550-A2,  
therefore, Section 5 Insurance; Bonds is hereby void.

**No Bond is required for this agreement.**

## **ATTACHMENT D: WARRANTY REQUIREMENTS**

No product warranty applies to this Supply Agreement therefore, Section 8 Warranty Subsections 8(A) and 8(B) are void.