

K20-1159

BOND NO. 30075594

BID CONTRACT
BETWEEN
THE CITY OF NEW ORLEANS
AND
PAVEMENT MARKINGS, L.L.C.
THERMOPLASTIC PAVEMENT MARKINGS
BID PROPOSAL NO. 807

THIS CONTRACT (the “**Contract**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”) and Pavement Markings, L.L.C., represented by Kelly Dalehite, authorized agent (the “**Contractor**”). The City and the Contractor may sometimes be referred to as the “**Parties**”. This Contract is effective as of January 14, 2020 (the “**Effective Date**”).

RECITALS

WHEREAS, the City issued an Invitation to Bid No. 807 on September 30, 2020 and its Addenda No. 1 dated October 12, 2020 and No. 2 dated October 27, 2020 (collectively, the “**ITB**”) seeking a contractor to provide the City with thermoplastic pavement markings on roadways on an as-needed basis at the City’s request in accordance with the ITB;

WHEREAS, the Contractor submitted the lowest responsive and responsible bid in response to the City’s ITB, and the City desires to award the Contract to the Contractor; and

NOW THEREFORE, the City grants and confirms to the Contractor the Contract to provide thermoplastic pavement markings on roadways in accordance with the ITB, and the City and the Contractor, for good and valuable consideration, agree as follows:

I. THE CONTRACTOR’S OBLIGATIONS

The Contractor will perform all obligations of the Contract, and be subject to all terms and conditions set forth, in the Contract and in the following documents that are incorporated fully into this Contract by reference: the ITB; the Contractor’s Bid dated November 4, 2020 (the “**Contractor’s Bid**”); all documents, drawings, and specifications incorporated or referenced in the ITB and/or the Contractor’s Bid, including, but not limited to, any and all terms, conditions, documents, drawings, and/or specifications contained in the City’s General Contract Terms and Conditions and the City’s General Specifications for Street Paving (2015 ed.).

II. THE CITY'S OBLIGATIONS

The City will pay the Contractor at the rates set forth in the Contractor's Bid for the satisfactory performance of this Contract and will perform all obligations of the City, and be subject to all terms and conditions set forth in this Contract and any incorporated documents.

III. COMPENSATION

This is a price protected requirements contract and is not binding as to any specific quantity or minimum amount. The City will pay the Contractor in accordance with the rates provided in the Contractor's Bid dated November 4, 2020.

IV. CONTRACT DURATION

A. **Initial Duration.** The initial duration of this Contract is ONE (1) YEAR from January 14, 2021 through January 13, 2022.

B. **Extensions.** This Contract may be extended at the option of the City, provided that funds are allocated by the Council of the City and the extension of the Contract facilitates the continuity of services provided herein. This Contract may be extended by the City for 4 additional one-year terms.

V. THE SURETY'S OBLIGATIONS

A. **Performance and Payment Bonds.** The Western Surety Company (the "Surety") intervenes in this Contract and binds itself as surety for:

1. The faithful performance of all work required of the Contractor by this Contract in the full sum of **\$3,623,500.00**; and
2. The full payment by the Contractor of all payments to be made by the Contractor under this Contract in the full sum of **\$3,623,500.00**.

Each of these bonds is to be considered separate and distinct, and no payment made by the Surety under either bond shall in any way reduce the obligations of the Surety under the other.

B. **Acknowledgement of Contract.** The Surety represents and warrants that it has fully read and understands the terms of this Contract, including all incorporated documents.

C. **Survival and Validity of Bonds.** The Surety's bonds shall remain in full force and effect, and shall survive the termination of this Contract, but shall become null and void if the Contractor: (1) well and faithfully performs all and singular obligations assumed by the Contractor in this Contract; (2) promptly pays all wages of laborers, workmen, or mechanics to be employed by the Contractor for all work done or labor performed by the Contractor or by any

subcontractors; or furnished to subcontractors, and used in the construction, erection, alteration, performance or repairs of the work required by the Contract; (3) promptly pays for all materials or supplies furnished to the Contractor, or by any subcontractor, or to any subcontractor, for the use in machines used in the construction, erection, alteration, performance, or repair of the work required by the Contract; (4) fully secures and protects the City, its legal successor and representatives, from all loss or expenses of any kind, including premises, including all costs of Court and attorneys' fees, made necessary or arising from the failure, refusal, or neglect of the Contractor to comply with all of the obligations assumed by it; and (5) promptly delivers all the work required by the Contract to the City, free from any and all claims, liens, and expenses. The obligations of the Surety will not be affected in any way by any modifications, omissions, or additions in or to the terms of this Contract, the plans or specifications, or in the manner and mode payment.

VI. ADDITIONAL PROVISIONS

A. **Convicted Felon Statement.** The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, falsification, or destruction of public records.

B. **Non-Solicitation Statement.** The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Contract. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Contract.

C. **Non – Waiver.** The failure of either party to insist upon strict compliance with any provision of this Contract, to enforce any right or to seek any remedy upon the discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default, or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right, or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

D. **Entire Agreement.** This Contract, including all incorporated documents, constitutes the final and complete agreement and understanding between the Parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this effect to vary or alter any terms or conditions of this Contract.

(Signatures on the following page)

IN WITNESS WHEREOF, the City, the Contractor, and the Surety, through their duly authorized representatives, execute this Contract.

THE CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL,
MAYOR

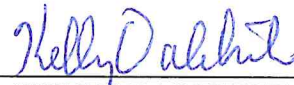
Executed on this 8th of January, 2021.

FORM AND LEGALITY APPROVED:
Law Department

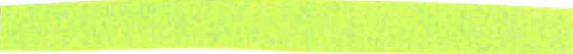
By: 

Printed Name: Tracy Tyler

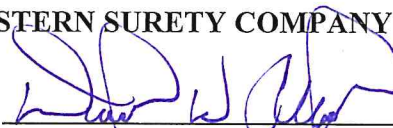
PAVEMENT MARKINGS, L.L.C.

BY: 

KELLY DALEHITE,
AUTHORIZED AGENT

FEDERAL 

WESTERN SURETY COMPANY

BY: 

DAVID W. ALLIGOOD,
ATTORNEY-IN-FACT

[ORIGINAL BOND AND POWER OF ATTORNEY MUST BE ATTACHED TO CONTRACT]

PERFORMANCE BOND

Bond Number: 30075594

KNOW ALL PERSONS BY THESE PRESENTS, That we Pavement Markings, LLC
_____, of
Covington, LA, hereinafter
referred to as the Principal, and Western Surety Company,
as Surety, are held and firmly bound unto City of New Orleans
of New Orleans, LA, hereinafter
referred to as the Oblige, in the sum of Three million six hundred twenty three thousand five hundred dollars
Dollars (\$ 3,623,500.00), for the payment of which we bind ourselves, our legal representatives, successors
and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a contract with Oblige, dated the _____ day of _____,
_____, for Thermoplastic Pavement Markings Bid Proposal No. 807

NOW, THEREFORE, if the Principal shall faithfully perform such contract or shall indemnify and save harmless
the Oblige from all cost and damage by reason of Principal's failure so to do, then this obligation shall be null and
void; otherwise it shall remain in full force and effect.

ANY PROCEEDING, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in
the location in which the work or part of the work is located and shall be instituted within two years after Contractor
Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails
to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or
prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit
shall be applicable.

NO RIGHT OF ACTION shall accrue on this Bond to or for the use of any person or corporation other than the
Oblige named herein or the heirs, executors, administrators or successors of the Oblige.

SIGNED, SEALED AND DATED this 22nd day of December, 2020.

Pavement Markings, LLC

(Principal)

By

Kelly Dabbs

(Seal)

Western Surety Company

(Surety)

By

David W. Alligood

(Seal)
Attorney-in-Fact

PAYMENT BOND

Bond Number: 30075594

KNOW ALL PERSONS BY THESE PRESENTS, That we Pavement Markings, LLC
_____ of
Covington, LA _____, hereinafter
referred to as the Principal, and Western Surety Company _____,
as Surety, are held and firmly bound unto City of New Orleans
of New Orleans, LA _____, hereinafter
referred to as the Oblige, in the sum of Three million six hundred twenty three thousand five hundred dollars
Dollars (\$ 3,623,500.00), for the payment of which we bind ourselves, our legal representatives, successors
and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a contract with Oblige, dated _____ day of _____,
_____, for Thermoplastic Pavement Markings Bid Proposal No. 807

_____ copy of which contract is by reference made a part hereof.

NOW, THEREFORE, if Principal shall, in accordance with applicable Statutes, promptly make payment to all
persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all
duly authorized modifications of said contract that may hereafter be made, notice of which modifications to Surety
being waived, then this obligation to be void; otherwise to remain in full force and effect.

No suit or action shall be commenced hereunder

- (a) After the expiration of one (1) year following the date on which Principal ceased work on said contract it
being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling
the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum
period of limitation permitted by such law.
- (b) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of
the state in which the project, or any part thereof, is situated, or in the United States District Court for the
district in which the project, or any part thereof, is situated, and not elsewhere.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith
hereunder.

SIGNED, SEALED AND DATED this 22nd day of December, 2020.

Pavement Markings, LLC

(Principal)

By Kelly Cahill (Seal)

Western Surety Company

(Surety)

By David W. Alligood (Seal)
Attorney-in-Fact

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Henry Luckett Marye Jr, Brenda Ann Riddle, David W Alligood, Thomas A LaPorte Jr, James J Tassin, Individually

of Baton Rouge, LA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 23rd day of February, 2016.



WESTERN SURETY COMPANY

Paul T. Brufat
Paul T. Brufat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 23rd day of February, 2016, before me personally came Paul T. Brufat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

June 23, 2021



J. Mohr

J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 22nd day of December, 2020



WESTERN SURETY COMPANY

L. Nelson
L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/22/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Southwest 3850 N. Causeway Blvd., Suite 1200 Metairie, LA 70002 504 355-5000		CONTACT NAME: Andrea Crowe PHONE (A/C, No, Ext): 504-355-5004 FAX (A/C, No): 484-652-5084 E-MAIL ADDRESS: andrea.crowe@usi.com	
INSURED Pavement Markings, LLC. 70393 Bravo Street Covington, LA 70433		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Executive Risk Specialty Insurance Co. NAIC # 44792	
		INSURER B: Scottsdale Insurance Company 41297	
		INSURER C: CNA Casualty of California 20435	
		INSURER D: Great American Alliance Insurance Co. 26832	
		INSURER E: Federal Insurance Company 20281	
INSURER F:			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:		54310308	10/01/2020	10/01/2021	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
E	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY		54310307	10/01/2020	10/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE		XLS0114691	10/01/2020	10/01/2021	EACH OCCURRENCE \$2,000,000 AGGREGATE \$2,000,000
C	☐ DED ☐ RETENTION \$		7011534721	10/01/2020	10/01/2021	2nd Excess \$ \$13M xs \$2M
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	WC407444205	10/01/2020	10/01/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Leased/Rented Equipment		7011553026	12/01/2020	12/01/2021	\$300,000 Per Item

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Thermoplastic Pavement Markings K20 1159; BRASS No. 2193

(See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

City of New Orleans
 Bureau of Accounting, Room 3x02
 City Hall
 New Orleans, LA 70112

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Chris Cook

DESCRIPTIONS (Continued from Page 1)

GENERAL LIABILITY: Contractual Liability - Railroads

Additional Insured Owners, Lessees or contractors - Completed Operations CG 20 37 04 13 - Blanket per written contract

Additional Insured Owners, Lessees or Contractors - Ongoing Operations CG 20 10 04 13 - Blanket per written contract

Cancellation or Non-Renewal to Specified Persons or Organizations 30 days, 10 days non- payment Waiver of Transfer of Rights of Recovery Against Others to Us - Blanket per written contract General Aggregate Limit - Per Project

Primary Insurance for Scheduled Additional Insureds - Blanket per written contract

AUTO

Motor Carrier Policies of Insurance for Public Liability - MCS 90

Broad Form Endorsement

Blanket Additional Insured & Loss Payee Endorsements as required by written contract

Blanket Waiver of Subrogation Endorsement as required by written contract

Primary Coverage wording

30 Days NOC, except 10 for non-pay

WORKERS COMPENSATION: (All other States and Florida) Includes Mandatory State Endorsements

30 Days NOC

Blanket Waiver of Subrogation Endorsement as required by written contract

Blanket Alternate Employer Endorsement Voluntary Compensation Endorsement USL&H Endorsement

EXCESS LIABILITY (\$2,000,000 xs Primary) Follows Form

Underlying Insurance: General Liability, Auto Liability, Employee Benefits Liability, and Employers Liability

EXCESS LIABILITY (\$13,000,000 xs \$2,000,000) Follows Form

Underlying Insurance: Excess (\$2M xs Primary), General Liability, Auto Liability, Employee Benefits Liability, and Employers Liability

CONTRACTORS EQUIPMENT:

Equipment Leased, Rented, or Borrowed from Others ...

\$300,000 Per Item / \$300,000 Per Occurrence

\$5,000 Deductible; except \$10,000 as respects Theft

The General Liability, Auto Liability, and Excess Policies (Both)(s) include an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder, only when there is a written contract or written agreement between the named insured and the certificate holder and with regard to work performed on behalf of the named insured.

The General Liability, Auto Liability, Excess Policies (Both), and Employers Liability policy(s) provide a Blanket Waiver of Subrogation in favor of the same, when required by written contract.