

**ADDENDUM TO AGREEMENT FOR  
INSTALLATION OF PAINT STRIPES AND MARKINGS**

THIS ADDENDUM TO AGREEMENT ("Addendum") is made and entered into this 21<sup>st</sup> day of November, 2016, by and between the City of Maricopa, ARIZONA, an Arizona municipal corporation ("City"), and Franklin Striping, Inc., an Arizona Corporation, ("Contractor") for the installation of paint stripes and markings.

WHEREAS, City desires to retain a contractor to install paint stripes and markings and to make payment for the same in accordance with the terms and conditions set forth in the Agreement as modified by this Addendum, including all attachments, which are incorporated herein by mutual agreement of the parties; and

WHEREAS, in procuring these services City has complied with the cooperative purchasing procedures set forth in Section 3-223 of the City of Maricopa's City Code; and

WHEREAS, the parties now desire to amend the Agreement known as Installation of Paint Stripes and Marking Serial 14097-S entered into between Maricopa County and Contractor on January 21, 2015 ("Agreement").

NOW, THEREFORE, City agrees to retain and does hereby retain Contractor and Contractor agrees to provide the services required according to the terms and conditions and for the consideration hereinafter set forth in the Agreement which shall be amended as follows:

1. All reference to "County" in the Agreement shall refer to the City of Maricopa, Arizona, an Arizona municipal corporation.

2. The following provisions shall be added to the Agreement:

A. SCOPE OF WORK: Contractor shall perform all work, through qualified professionals employed by Contractor, and provide all material, equipment, tools and labor, necessary to complete the work described in and reasonably inferable from the Agreement and this Addendum. The services must be in accordance with all applicable codes, standards and requirements.

B. COMPENSATION: In no event shall the total compensation under the Agreement and this Addendum exceed One Hundred Twenty Five Thousand and 00/100 Dollars (\$125,000.00).

C. STANDARD OF PERFORMANCE: While performing the services, Contractor shall exercise the reasonable care and skill customarily exercised by reputable members of Contractor's profession practicing in the Phoenix Metropolitan Area, and shall use reasonable diligence and best judgment while exercising its skill and expertise. Contractor shall be responsible for all errors and omissions Contractor commits in the performance of the



Agreement and this Addendum that are a breach of this standard.

D. ARBITRATION: In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Contractor and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, Contractor and the City shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between Contractor and the City. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

E. GOVERNING LAW AND VENUE: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

F. INDEPENDENT CONTRACTOR: Contractor shall at all times retain Contractor's status as independent contractor. Contractor's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Contractor. Contractor shall not have any authority to bind or act on behalf of the City.

G. NO THIRD PARTY BENEFICIARIES: Only the parties may enforce this Agreement. The parties do not intend through this Agreement to confer enforceable rights on any non-party and do not intend to create any third party beneficiaries to this Agreement.

H. SEVERABILITY: If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

I. RIGHT OF CITY TO CONTRACT WITH OTHERS: Nothing in this Agreement shall imply City is obligated to obtain the services described herein with only this particular Contractor.



J. UNCONTROLLABLE FORCES: City and Contractor shall exert all efforts to perform their respective responsibilities under this Agreement. However, neither party shall hold the other party responsible for inability to render timely performance if such inability is a direct result of a force beyond its control, including but not limited to the following: strikes, lockouts, embargoes, failure of carriers, inability to obtain transportation facilities, acts of God or the public enemy, or other events beyond the control of the other or the other's employees and agents.

K. WAIVER OF TERMS AND CONDITIONS: The failure of City or Contractor to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

L. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between City and Contractor and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

M. AMERICANS WITH DISABILITIES ACT: This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFF Parts 35 and 36. (Non-Discrimination: Contractor shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans With Disabilities Act. Contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)


N. NO KICK-BACK CERTIFICATION: Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has an interest, financially or otherwise, in Contractor's company. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation to be paid Company hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

3. All other terms and conditions of the Agreement are to continue in full force and effect as stated and agreed to in the Agreement.

IN WITNESS WHEREOF, the parties have caused this Addendum to be signed by their duly authorized representatives as of the day and year first above written.

**CONTRACTOR:**

Franklin Striping, Inc.,

By:   
Title: Randy Franklin V.P.

**CITY OF MARICOPA**  
An Arizona municipal corporation

Christian Price  
Mayor

ATTEST:

Vanessa Bueras  
City Clerk

APPROVED AS TO FORM:

Denis M. Fitzgibbons  
City Attorney