

# GENERAL CONSTRUCTION CONTRACT

THIS CONTRACT made on \_\_\_\_\_ by and between the CITY OF MERCED, a municipal corporation of the State of California, hereinafter called the Owner, and FBD VANGUARD CONSTRUCTION INC., hereinafter called the Contractor:

## WITNESSETH:

That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

1. THE CONTRACT DOCUMENTS. The complete CONTRACT consists of the following documents, to wit:

- (1) This Contract;
- (2) Plans for **PROJECT NO. 117007**;
- (3) Special Provisions for **PROJECT NO. 117007**;
- (4) Notice to Contractors;
- (5) Proposal to the City of Merced;
- (6) Caltrans Standard Specifications, dated 2015;
- (7) Caltrans Standard Plans, dated 2015;
- (8) The latest revisions to the General Prevailing Wage Rates;
- (9) The Federal Wage Rates dated 09/08/2017; and,
- (10) Federal Requirements for Federal-Aid Construction Projects (FHWA-1273).

Any and all obligations of the Owner and the Contractor are fully set forth and described therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete contract are sometimes hereinafter referred to as the Contract Documents. In case of conflict between any of the documents, the documents first listed above shall prevail.

2. THE WORK. Said Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner all work of improvement in accordance with Contract Documents as called for, and in the manner designated in, and in strict conformity with, the Project Plans for **PROJECT NO. 117007**, prepared by the City Engineer, and adopted by the Owner, which said Plans are entitled, "**PROJECT NO. 117007 - CDBG SOUTH MERCED ADA RAMPS PROJECT**," project plans for construction in Merced County in Merced, awarded \_\_\_\_\_, 2017.

It is understood and agreed that said tools, equipment, apparatus, facilities, labor, transportation, and material shall be furnished and said work performed and completed as required in said Project Plans under the sole direction and control of the Contractor, and subject to inspection and approval of the Owner or its representative. The Owner hereby designates the City Engineer as its representative for the purpose of this Contract.

3. CONTRACT PRICE. The Owner agrees to pay, and the Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and doing all work contemplated and embraced in this agreement to wit:

**BASE BID: Sites 1 through 8**

| ITEM NO. | ITEM                                  | UNIT OF MEASURE | ESTIMATED QUANTITY | UNIT PRICE (IN FIGURE) | ITEM TOTAL (IN FIGURES) |
|----------|---------------------------------------|-----------------|--------------------|------------------------|-------------------------|
| 1        | Permits, Bonds & Licenses             | LS              | 1                  | \$ 159.00              | \$ 159.00               |
| 2        | Public Convenience and Safety         | LS              | 1                  | \$ 4,400.00            | \$ 4,400.00             |
| 3        | Clearing and Grubbing                 | LS              | 1                  | \$ 4,000.00            | \$ 4,000.00             |
| 4        | Earthwork                             | LS              | 1                  | \$ 9,560.00            | \$ 9,560.00             |
| 5        | Remove Concrete Sidewalk              | SF              | 2,315              | \$ 6.00                | \$ 13,890.00            |
| 6        | Remove Curb and Gutter                | SF              | 280                | \$ 20.00               | \$ 5,600.00             |
| 7        | Remove Concrete Cross Gutter          | SF              | 640                | \$ 6.00                | \$ 3,840.00             |
| 8        | Remove AC Pavement                    | SF              | 900                | \$ 6.00                | \$ 5,400.00             |
| 9        | Concrete Sidewalk                     | SF              | 830                | \$ 8.00                | \$ 6,640.00             |
| 10       | Concrete Curb and Gutter              | LF              | 115                | \$ 45.00               | \$ 5,175.00             |
| 11       | Concrete Cross Gutter                 | SF              | 600                | \$ 10.00               | \$ 6,000.00             |
| 12       | Concrete 6" Retaining Curb            | LF              | 155                | \$ 20.00               | \$ 3,100.00             |
| 13       | Handicap Access Ramp                  | SF              | 1,800              | \$ 12.60               | \$ 22,680.00            |
| 14       | Detectable Warning Device             | EA              | 8                  | \$ 755.00              | \$ 6,040.00             |
| 15       | Aggregate Base                        | TN              | 17.90              | \$ 60.00               | \$ 1,074.00             |
| 16       | Hot Mix Asphalt                       | TN              | 21.26              | \$ 538.00              | \$ 11,437.88            |
| 17       | Traffic Stripes and Pavement Markings | LS              | 1                  | \$ 3,633.00            | \$ 3,633.00             |
| 18       | Restoration                           | LS              | 1                  | \$ 2,000.00            | \$ 2,000.00             |

**TOTAL BASE BID:** \$114,628.88

4. **TERMINATION.** If the Contractor should be adjudged as bankrupt or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he or any of his subcontractors should violate any of the provisions of the Contract Documents, the Owner may serve written notice upon him and his surety of its intention to terminate the Contract; such notice to contain the reasons for such intention to terminate the Contract, and, unless within ten (10) days after serving of such notice such violation shall cease and satisfactory arrangements for correction thereof be made, the Contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract; provided however, that if the surety within fifteen (15) days after the serving upon it of notice of termination does not give the Owner written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty (30) days from the date of the serving of such notice, the Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary therefore.

5. NOTICE AND SERVICE THEREOF. Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by the party giving such notice, or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner; namely, (a) if the notice is given to the Owner, per personal delivery thereof to the Director of Public Works of said Owner, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to the Owner, postage prepaid and registered; (b) if the notice is given to the Contractor, by personal delivery thereof to said Contractor or to his duly authorized representative at the site of the project, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to said Contractor at **651 ENTERPRISE COURT, LIVERMORE, CA 94550**, postage prepaid and registered; and (c) if the notice is given to the surety or any other person, by personal delivery to such surety or other person, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to such surety or person, as the case may be, at the address of such surety or person last communicated by him to the party giving the notice, postage prepaid and registered.

6. ASSIGNMENT OF CONTRACT. Neither the Contract nor any part thereof, nor moneys due, or to become due thereunder, may be assigned by the Contractor without the prior written approval of the Owner.

7. CONTRACT SECURITY. The Contractor shall furnish a surety bond in an amount at least equal to 100 percent of the contract price as security for the faithful performance of this Contract. The Contractor shall also furnish a separate surety bond in an amount at least equal to 100 percent of the contract price as security for the payment of all persons for furnishing materials, provisions, provender, or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for performing any work or labor thereon of any kind, and for the payment of amounts due under the Unemployment Insurance Code with respect to such work or labor in connection with this Contract, and for the payment of a reasonable attorney's fee to be fixed by the court in case suit is brought upon the bond.

8. INSURANCE. The Contractor shall not commence work under this Contract until he has obtained all insurance required and such insurance has been approved by the City Attorney of Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Contractor shall furnish the Owner with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract, and particularly paragraph 9 hereof. Said insurance obtained by the Contractor shall be primary and noncontributory as to any insurance maintained by owner. **Endorsement for additional insured shall be submitted on standard form CG 20101185. Endorsement forms CG 20101001 and CG 20371001, when used together, are acceptable in lieu of CG 20101185 for Public Works projects.** Any policy of insurance required of the Contractor under this Contract shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to the Owner of any pending change in the limits of liability or of any cancellation or modification of the policy.

The Contractor shall furnish the City a policy or certificate of liability insurance in which the City is the named insured or is named as an additional insured with the Contractor. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached thereto, the City shall be the insured or named as an additional insured covering the work, whether liability is attributable to the Contractor or the City. The policy shall insure the City, its officers, employees and agents while acting within the scope of their duties on the work, against all claims arising out of or in connection with the work.

The Contractor may file insurance acceptable to the City covering more than one project. The coverage shall provide the following minimum limits:

|                    |                |                                             |
|--------------------|----------------|---------------------------------------------|
| Bodily Injury...   | \$500,000.00   | each person                                 |
|                    | \$1,000,000.00 | each occurrence                             |
|                    | \$1,000,000.00 | aggregate products and completed operations |
| Property Damage... | \$250,000.00   | each occurrence                             |
|                    | \$500,000.00   | aggregate                                   |

A combined single limit policy with aggregate limits in the amount of \$1,250,000.00 will be considered equivalent to the required minimum limits.

The Contractor will require all subcontractors to take out and maintain bodily injury liability and property damage liability in the amounts stated above.

The Contractor and subcontractors shall save, keep and hold harmless the City, its officers and agents from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damages to property, or of personal injury received by reason of or in the course of performing work, which may be caused by any willful or negligent act or omission by the Contractor, any of the Contractors employees, or any subcontractor. The City will not be liable for any accident, loss or damage to the work prior to its completion and acceptance.

All liability insurance policies shall bear an endorsement or shall have attached a rider whereby it is provide that, in the event of expiration or proposed cancellation of such policies for any reason whatsoever, the Agency shall be notified by registered mail, return receipt requested, giving sufficient time before the date thereof to comply with the applicable law or statute, but in no event less than thirty (30) days before expiration or cancellation is effective.

All insurance required by this section shall be from a California admitted insurance company.

The cost of this insurance shall be included in the Contractor's bid.

### **CANCELLATION CLAUSE**

**NOTE:** The standard form used by insurance carriers will not be acceptable unless the word "endeavor" is crossed out where the paragraph states, "The issuing company will (endeavor to) mail . . ." A portion of the last paragraph should be crossed out, which states, "but failure to mail such notice shall impose no obligation or liability of any kind upon the company."

9. **HOLD HARMLESS.** The contractor will indemnify, defend with counsel selected by the Owner, save, keep, and hold harmless, the Owner and all officers, employees, and agents thereof from all damages, costs, or expenses, in law or in equity, that may at any time arise or be set up because of personal injury or damage to property sustained by any person or persons by reason of, or in the course of the performance of said work, or by reason of any infringement or alleged infringement of the patent rights of any person or persons, firm or corporation, in consequence of the use in, on, or about said work, of any article or material supplied or installed under this Contract. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Notwithstanding the above, the Contractor shall, wherever it is necessary, keep and maintain at his sole cost and expense during the course of his operations under this Contract such warnings, signs, and barriers as may be required to

protect the public. The provisions of the preceding sentence shall not impose any liability upon the Owner and are for the express benefit of the general public.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

It is expressly understood that Contractor is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Contractor shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should contractor desire any insurance protection, the Contractor is to acquire such protection at its expense.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

10. ACCIDENT PREVENTION. Precaution shall be exercised at all times for protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.

11. PAYMENT. The Owner will make partial and final payment to the Contractor except that the Owner will retain the five percent (5%) of the final payment amount until the expiration of thirty-five (35) days from the date of recording by Owner of notice of acceptance of completion of all work covered by this Contract, if such notice be recorded within ten (10) days after the acceptance of completion of such Contract; or, if such notice be not so recorded within ten (10) days, until the expiration of ninety-five (95) days after the acceptance of completion of such work of improvement, at which time and not before, Owner shall pay to Contractor the whole of the remaining five percent (5%) of said contract price so held back as provided.

The closure date for the purpose of making monthly progress payment will be the last calendar day of that month. The Contractor may request in writing that such monthly closure date be changed. The Engineer may approve such request when it is compatible with the Agency's payment procedure.

Each month, the Contractor will submit its own invoice for work performed to the closure date and the Engineer will make an approximate measurement of the work performed to the closure date and as a basis for making monthly payments, estimate its value based on the contract unit prices or as the Engineer deems appropriate. The owner will endeavor to, not later than twenty (20) working days after receipt of the Contractor's invoice, make partial payment to the Contractor, based on work performed and material incorporated in the project as of the closure date of the particular calendar month, providing that the Contractor's invoice for the work performed agrees with the Engineer's determination. If the Engineer's determination differs from the Contractor's invoice, the Owner will make payment to the Contractor for those items or portions of items not in dispute not later than payment would have been made had no dispute occurred. Within ten (10) calendar days after agreement on disputed work is achieved between the Owner

and the Contractor, the Owner shall pay the Contractor for any additional monies due as a result of settling any dispute. When the work has been satisfactorily completed, the Engineer will determine the quantity of work performed and prepare the final estimate.

The payment of progress payments by the Owner shall not be construed as an absolute acceptance of the work done up to the time of such payments, but the entire work is to be subjected to the inspection and approval of the Owner and subject to whatever inspection and approval may be required by law.

12. The statement of prevailing wages appearing in the General Prevailing Wage Rates is hereby specifically referred to and by this reference is made a part of this contract. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

13. ARTICLE VI. -- The improvements contemplated in the performance of this contract is a Federal-Aid improvement over which the State of California shall exercise general supervision. The State of California therefore shall have the right to assume full and direct control over this contract whenever the State of California, at its sole discretion, shall determine that its responsibility to the United States so requires. In such cases, the State Contract Act will govern.

14. By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

IN WITNESS WHEREOF, three (3) identical counterparts of this Contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the day and year first herein written.

ATTEST:

CITY OF MERCED, a Municipal Corporation  
(Herein called Owner)

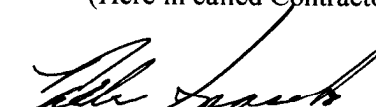
By: \_\_\_\_\_  
Deputy City Clerk

By: \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

FBD VANGUARD CONSTRUCTION, INC.  
(Here in called Contractor)

By:  \_\_\_\_\_  
City Attorney

By:  \_\_\_\_\_  
Contractor licensed in accordance with an act  
providing for the registration of contractors.

~~300465~~ PO# ~~plp~~  
ACCOUNT DATA:

PROJECT NO. 117007

LICENSE NO.: 833032

TAXPAYER I.D. NO. 90-0249076

Contract No. 300465 PO# 128503

VENDOR NO. \_\_\_\_\_

Project Account No./Amount:  
Funds available 10/19/17 plp

ADDRESS: 651 ENTERPRISE COURT  
LIVERMORE, CA 94550

450-1104-637.65-00-117007 ~~\$:114,628.88~~ 100,830.88  
028 - 1145-43765.00 - 117007 13,798.00  
114,428.88  
FL 10/23/17

PHONE: (925) 245-1300

FAX: (925) 245-1244

EMAIL: eclutter@vc-inc.net

By:  \_\_\_\_\_  
Finance Officer Verification

(SEAL)