

## ROADWAY OVERLAY CONSTRUCTION FUNDING AGREEMENT

This Roadway Overlay Construction Funding Agreement, hereinafter "Agreement," is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 by and between the City of Merced, a California charter municipal corporation, hereinafter "City," and the County of Merced, a subdivision of the State of California, hereinafter "County."

### RECITALS

WHEREAS, The project is located along Gerard Avenue, bounded by Tyler Road to the Union Pacific Railroad Right-of-Way, in the County of Merced; and,

WHEREAS, The City has an existing project to replace the sewer main along the aforementioned portion of Gerard Avenue; and,

WHEREAS, As part of the project, the City will be repaving trench work within the roadway; and,

WHEREAS, The County and the City have agreed it would be appropriate to perform a full roadway overlay concurrent with the City's sewer main replacement project.

### WITNESSETH

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the Parties hereto do hereby agree as follows:

1. Construction of the Roadway Overlay. The City agrees to incorporate the roadway overlay into the "Gerard Avenue Sewer Main Replacement Phase 3" project and oversee construction.
2. Funding. The County agrees to pay for an equal share of the roadway overlay change order, a cost estimated not to exceed \$37,135 for roadway overlay along a portion of Gerard Avenue as identified in Exhibits A (Location Map) and B (Price Proposal). It is understood that once construction is complete, the County agrees to pay one-half (1/2) of the actual cost of the roadway overlay as evidenced by invoices paid to the City's contractor.
3. City as Lead. The City will serve as the lead for the Project and will supervise and superintend the same.
4. Notice. Any notices which either Party may desire to give to the other Party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the Party as set forth below or at any other address as that Party may later designate by

Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Merced  
678 West 18th Street  
Merced, California 95340  
Attn: City Clerk

To County: Merced County  
Department of Public Works  
715 Martin Luther King Jr. Way  
Merced, CA 95340  
Attn: Director

5. Litigation. Neither Party may commence litigation until such time as a notice of default has been properly served on the other Party and the Party fails to cure within twenty (20) days from the service of the notice of default. If either Party commences litigation against the other for the purposes of determining or enforcing its rights under this Agreement, the prevailing Party shall be entitled to receive its reasonable attorney fees and costs incurred in the prosecution or defense of the action.
6. General.
  - A. This Agreement contains the complete, final, entire, and fully integrated understanding and agreement between the Parties hereto. All prior negotiations, understandings, writings, and oral agreements pertaining to the subject matter hereof are superseded by this Agreement. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party hereto, except as specifically set forth in this Agreement. All prior discussions, negotiations, and understandings have been and are merged and integrated into, and are superseded by, this Agreement.
  - B. Each Party is entering into this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such Party deems material.
  - C. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.
  - D. This Agreement may be amended only in writing, signed by the Parties.
  - E. The Parties understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the Parties to this Agreement and also govern the interpretation of this Agreement without regard to any applicable conflicts of law, including all matters of construction, validity, and performance.

The City has hired a General Contractor ("Contractor") to perform the work described in RECITALS. The Contractor's duty to indemnify COUNTY shall arise from County of Merced Encroachment Permit # EP2017-0008 which COUNTY issued to Contractor on January 13, 2017.

CITY shall indemnify, defend and hold harmless COUNTY, its officers, elected officials, employees and agents, from and against any claims, damages, costs, expenses, including any amount equal to reasonable attorney's fees, or liabilities arising of or in any way connected with this Agreement, including, without limitation, claims damages, expenses, or liabilities for loss or damage to any property, or for death or injury to any person or persons, but only in proportion to and to the extent such claims, damages, costs, expenses, attorney's fees, or liabilities are caused by the CITY's negligence, whether by action or omission, or willful misconduct.

COUNTY shall indemnify, defend and hold harmless CITY, its officers, employees and agents, from and against any claims, damages, costs, expenses, including any amount equal to reasonable attorney's fees, or liabilities arising out of or in any way connected with this Agreement, including, without limitation, claims, damages, expenses, or liabilities for loss or damage to any property, or for death or injury to any person or persons, but only in proportion to and to the extent such claims, damages, costs, expenses, attorney's fees, or liabilities are caused by the COUNTY's negligence, whether by action or omission, or willful misconduct.

The obligations set forth above shall survive expiration or termination of this Agreement.

- F. The Parties agree that jurisdiction and venue for any legal challenge to the provisions of this Agreement or the enforcement of the rights or obligations hereunder shall be brought in the Superior Court serving the County of Merced.
- G. The Parties agree to cooperate in taking any further actions or executing documents reasonably necessary to effectuate the provisions of this Agreement.
- H. Failure of either Party to insist upon strict observance of, or compliance with, all of the terms of this Agreement in one or more instances shall not be deemed a waiver of that Party's right to insist upon such observance or compliance with the other terms of the Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Agreement.
- I. Each Party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent or employee of any of the other Party in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners, joint ventures, employee/employer or any other association of any kind or nature between the Parties, jointly or severally.

- J. This Agreement is made and entered into for the sole benefit of the Parties and their successors in interest. No other person shall have any right of action based upon any provision of this Agreement.
- K. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by each Party hereto are in the physical possession of the Party seeking enforcement thereof.
- L. The person or persons executing this Agreement on behalf of the Parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their Party to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

COUNTY OF MERCED

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Public Works

ATTEST:  
CITY CLERK

BY: \_\_\_\_\_  
Deputy City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

BY:  6-7-2017  
City Attorney Date

BY: \_\_\_\_\_  
County Counsel Date

ACCOUNT DATA:

***[To be entered by Requesting Department]:***

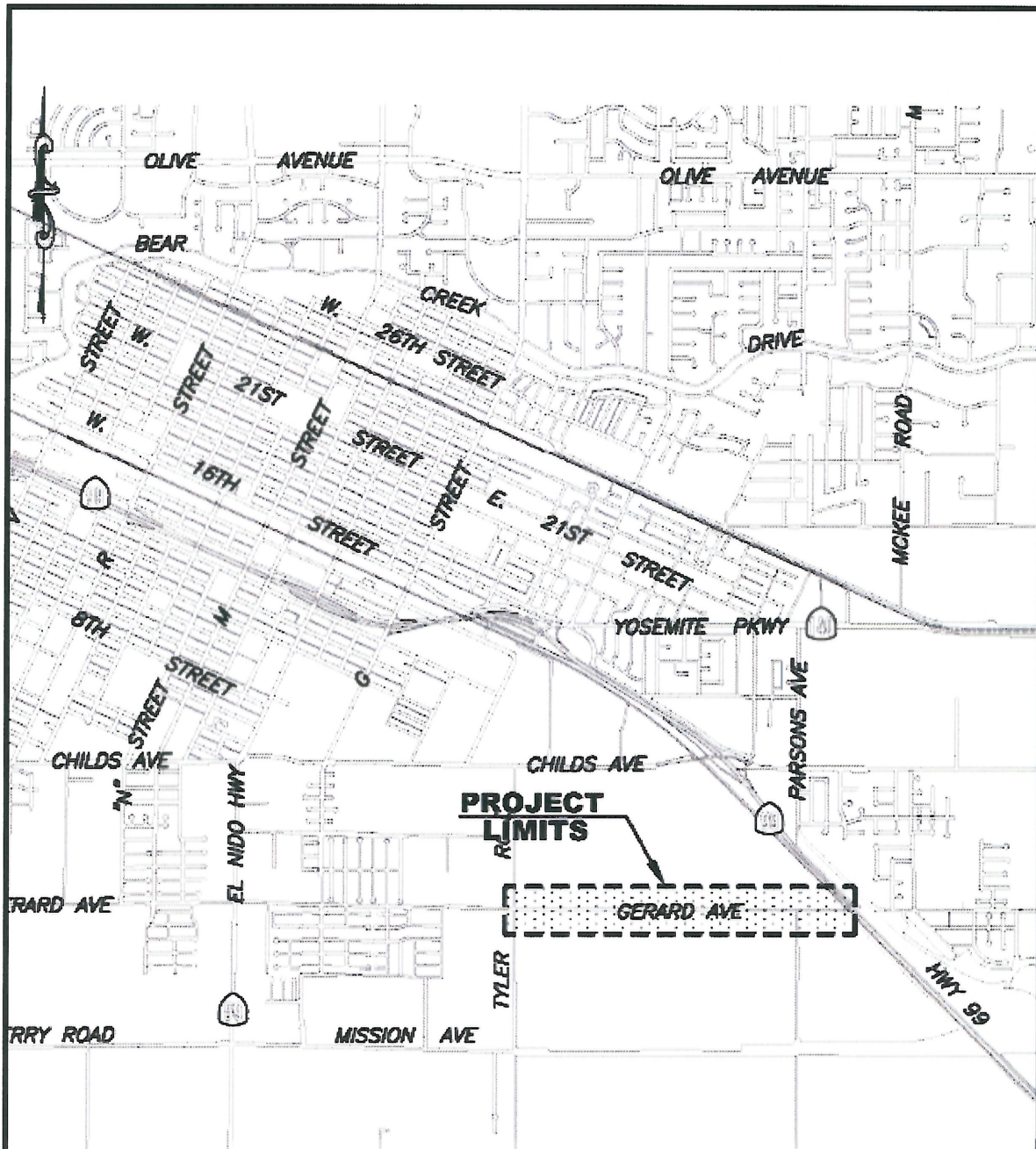
Account No.: \_\_\_\_\_

Amount \$ \_\_\_\_\_

VERIFIED:

BY: \_\_\_\_\_  
Finance Officer

# EXHIBIT A



## LOCATION MAP

NOT TO SCALE



**City of Merced**  
*"Gateway to Yosemite"*  
 DEVELOPMENT SERVICES  
 ENGINEERING PROJECTS AND STANDARDS  
 678 W. 15th Street (202) 365-8848

**PROJECT NO. 116014**  
**GERARD AVENUE SEWER MAIN**  
**REPLACEMENT - PHASE 3**

DR BY: DRG
DATE: 10/21/15
CHK BY: JR
DATE: 10/21/15
File No. 0048
SCALE: AS SHOWN



Exhibit B



## PROPOSAL

March 21, 2017

City of Merced  
678 West 18<sup>th</sup> Street  
Merced, CA 95340

Attn: Kenneth G. Elliott

PROJECT: Gerard Avenue Sewer Main Replacement Phase 3  
City Number: 116014  
Mozingo Number: 1646

We are pleased to submit the following proposal to perform work on the above-referenced project. The following information was used in preparing our proposal:

- ❖ Plans titled "Gerard Avenue Sewer Main Replacement – Phase 3
- ❖ City of Merced Standard Drawings and Specifications
- ❖ Various emails regarding street repair

### Proposal:

- See attached for included items and pricing.
  - Pulverize existing roadway up to four inches and overlay with two tenths of asphalt

### Conditions & Scope:

Furnish all labor, materials, tools, equipment, transportation, and incidentals necessary for the items listed on our proposal and further defined as follows:

- Sequence of Work
  - ❖ Grading and paving to be completed in one mobilization
  - ❖ No phasing
  - ❖ Final payment shall be per units quoted in this proposal and attached General Provisions.
  - ❖ Item quantity adjustments per Caltrans Standard Specifications also apply.
  - ❖ Purposed roadway section is per City design,

License No. 702625-A  
751 Wakefield Court • Oakdale, California 95361  
Phone: (209) 848-0160 • Fax: (209) 848-0161 • email: [info@mozingoconstruction.com](mailto:info@mozingoconstruction.com)

**MOZINGO CONSTRUCTION, INC.**

751 Wakefield Court

Oakdale, CA 95361

Phone: (209) 848-0160 • Fax (209) 848-0161

LIC. NO. 702625-A

**CHANGE ORDER REQUEST**TO: Ken Elliott  
City of Merced

DATE: 03/21/17

PROJECT: Gerard avenue Sewer Main Replacement  
Project Number 116014

JOB NO.: 1646

RE: Pulverize existing roadway and overlay with 0.2'

MOZINGO CHANGE ORDER # 2  
CONTRACT CHANGE ORDER #

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL AMOUNT
1	GRI - Pulverize Existing Roadway (4"Max)	122516	SF	\$ 0.40	\$ 49,006.40
2	GRI - 0.2' AC Overlay/Paving, Full Roadway	1975	TN	\$ 97.00	\$ 191,575.00
3	GRI - Mobilization (Paving)	1	EA	\$ 6,550.00	\$ 6,550.00
4	GRI -Mobilization (Grading)	1	EA	\$ 8,550.00	\$ 8,550.00
5	Traffic Control (Mozingo)	9	DA	\$ 2,500.00	\$ 22,500.00
6	Bid Item 13 Hot Mix Asphalt	250	TN	\$ (300.00)	\$ (75,000.00)
7	Bid Item 15 Conform Paving at Driveway	3360	SF	\$ (12.00)	\$ (40,320.00)
8	Bid Item 11 Roadway Excavation	800	CY	\$ (35.00)	\$ (28,000.00)
9	Bid Item 12 Aggregate Base	660	CY	\$ (98.00)	\$ (64,680.00)
10	Bid Item 16 Paving	743	TN	\$ (40.00)	\$ (29,720.00)
11	Bid Item 16 Fabric	22000	SF	\$ (0.05)	\$ (1,100.00)
12	GRI mark-up at 5% Item 1,2,3,4	\$ 255,681.40	LS	\$ 0.05	\$ 12,784.07
13	Striping	1	LS	\$ 9,000.00	\$ 9,000.00
14	Shoulder backing South side	1	LS	\$ 13,125.00	\$ 13,125.00
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
TOTAL CHANGE ORDER REQUEST					\$ 74,270.47

**CONTRACT TIME EXTENSION REQUEST 18**

(WORKING DAYS)

**CONDITIONS/SCOPE:**

Work to be completed in one mobilization and phase

Bid Item 15 is included in item 1 and 2 - overlay existing

Item 14 includes shoulder backing and grading graveled driveways  
on the South side per section 10-1.21

SIGNED:

  
 MOZINGO CONSTRUCTION, INC.

DATE:

03/21/17

SIGNED:

OWNER / CONTRACTOR

DATE: