

## 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 MVC ENTERPRISES, 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:

- (a) Change Orders or Work Change Directives
- (b) This General Construction Contract;
- (c) Faithful Performance Bond;
- (d) Laborers and Materialmens Bond;
- (e) Guaranty;
- (f) Addenda;
- (g) Bid Forms: Bid (Proposal) to the City of Merced; Bid Schedule; List of Subcontractors and Material Dealers; Public Contract Code; Signature of Bidder; Bidder's Bond;
- (h) Special Provisions for **PROJECT NUMBER 120010**;
- (i) State Specifications adopted by the contract (Caltrans Standard Specifications dated 2015;)
- (j) Notice Inviting Bids;
- (k) Project Plans;
- (l) Caltrans Standard Plans dated 2015;
- (m) City Standards;
- (n) The latest revisions to the General Prevailing Wage Rates;
- (o) Safety Provisions.

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 order of documents first listed above shall be the order of precedence, with the first item listed having the highest precedence.

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 NUMBER 120010**,

prepared by the City Engineer, and adopted by the Owner, which said Plans are entitled, **"PROJECT NUMBER 120010 - M STREET RESURFACING – 8<sup>TH</sup> STREET TO 13<sup>TH</sup> STREET,"** project plans for construction in Merced County in Merced, awarded \_\_\_\_\_. 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:

NO.	ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	ITEM TOTAL
1	Permits, Bonds & Licenses	LS	1	\$ 6,500.00	\$ 6,500.00
2	Public Convenience and Safety	LS	1	\$ 4,500.00	\$ 4,500.00
3	Water Pollution Control	LS	1	\$ 4,500.00	\$ 4,500.00
4	Street Sweeping	LS	1	\$ 3,500.00	\$ 3,500.00
5	Surveying Services	LS	1	\$ 11,000.00	\$ 11,000.00
6	Monumentation	LS	1	\$ 2,500.00	\$ 2,500.00
7	Project Identification Sign Install	EA	4	\$ 900.00	\$ 3,600.00
8	Portable Changeable Message Sign	EA	2	\$ 3,000.00	\$ 6,000.00
9	Grinding and Disposal (3")	SF	82277	\$ 0.42	\$ 34,556.34
10	Remove Asphalt Concrete and Base (1.2')	SF	1587	\$ 6.00	\$ 9,522.00
11	Remove Concrete Sidewalk	SF	5692	\$ 2.00	\$ 11,384.00
12	Remove Curb and Gutter	LF	524	\$ 10.00	\$ 5,240.00
13	Remove Concrete Driveway Approach	SF	3,370	\$ 2.00	\$ 6,740.00
14	Remove Concrete Valley Gutter	SF	671	\$ 10.00	\$ 6,710.00
15	Remove Tree	EA	2	\$ 1,200.00	\$ 2,400.00
16	Asphalt Concrete (3")	SF	82,277	\$ 1.45	\$ 119,301.65
17	Asphalt Concrete Pavement Patch	SF	1,587	\$ 4.00	\$ 6,348.00
18	Handicap Access Ramp	SF	1,154	\$ 18.00	\$ 20,772.00
19	Install 4" Concrete Sidewalk	SF	4,350	\$ 12.00	\$ 52,200.00
20	Concrete Curb and Gutter	LF	655	\$ 50.00	\$ 32,750.00
21	Concrete Alley Driveway Approach	SF	2,830	\$ 12.00	\$ 33,960.00
22	Concrete Commercial Driveway Approach	SF	1,220	\$ 15.00	\$ 18,300.00
23	Concrete Cross Gutter	SF	690	\$ 11.00	\$ 7,590.00
24	Traffic Stripes and Pavement Markings	LS	1	\$ 48,000.00	\$ 48,000.00
25	Pavement Markers	LS	1	\$ 4,500.00	\$ 4,500.00
26	Remove and Replace Signs	EA	3	\$ 450.00	\$ 1,350.00
27	Adjust Utility Boxes to Grade	EA	12	\$ 150.00	\$ 1,800.00
28	Restoration	LS	1	\$ 5,000.00	\$ 5,000.00
<b>CONSTRUCTION COST</b>					<b>\$ 470,523.99</b>

**TOTAL BID ITEMS 1 THROUGH 28: \$ 470,523.99**

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 **27250 VIA INDUSTRIA, TEMECULA, CA**, 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 by Section 7-1.06 of the State Specifications, as amended, 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 each person
	\$1,000,000 each occurrence
	\$1,000,000 aggregate products and completed operations
Property Damage	\$ 250,000 each occurrence
	\$ 500,000 aggregate

A combined single limit policy with aggregate limits in the amount of \$1,250,000 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 Contractor's 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 provided 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 any 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.

9. **HOLD HARMLESS.** Contractor shall indemnify and hold harmless City, its officers, employees, agents and volunteers from and against all liability, loss, damage, expense, and cost (including, without limitation, reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's negligence, recklessness, or willful misconduct in the performance of work hereunder, or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage caused by the active negligence, sole negligence or willful misconduct of the City. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement. 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 payments to the Contractor in accordance with Section 9-3.2 of the State Specifications, as amended, 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 provided for in Subsection 9-2. The Owner will endeavor to, not later than twenty (20) working days after receipt of Contractor's invoice, make partial payment to the Contractor, based on work performed and materials incorporated in the project as of the closure date of that particular calendar month, providing that the Contractor's invoices for the work performed agrees with the Engineer's determination. If the Engineer's determination differs from the Contractor's invoices, 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. From each progress estimate, five (5) percent will be deducted and retained by the Agency, and remainder less the amount of all previous payments will be paid to the Contractor.

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. 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 herein above named, on the day and year first herein written.

ATTEST:

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

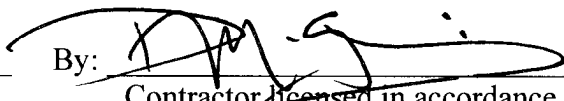
By: \_\_\_\_\_  
Deputy City Clerk

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

APPROVED AS TO FORM:

MVC Enterprises, Inc.

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

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

ACCOUNT DATA:

TAXPAYER I.D. NO.: 33-0824793

**PROJECT NUMBER: 120010**

VENDOR NUMBER: \_\_\_\_\_

Project Account Number:

ADDRESS: 27250 Via Industria  
Temecula, CA 92590

**075-1145-637.65-00**

**078-1145-637.65-00**

**450-1104-637.65-00**

PHONE: (951) 697-6888

FAX: (951) 697-6886

Amount: **\$ 470,523.99**

EMAIL: fred@mvc-inc.com

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

(SEAL)



**PROJECT NUMBER 120010**  
**M STREET RESURFACING – 8<sup>TH</sup> STREET TO 13<sup>TH</sup> STREET**

**FAITHFUL PERFORMANCE BOND**  
(Contract)

WHEREAS, the City of Merced, State of California, and \_\_\_\_\_, the Contractor, have entered into a contract to perform certain work as set forth in the contract for PROJECT NUMBER; and,

WHEREAS, \_\_\_\_\_ hereinafter designated as Principal, has agreed to install and complete said work.

NOW, THEREFORE, we the Principal and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Merced, hereinafter called "City" in the penal sum of \$ \_\_\_\_\_, lawful money of the United States, for payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns shall in all things stand to and abide by and well and truly keep and perform the covenants, conditions and provisions of said improvement requirements, and any lawful modification thereof, on their part; and such work is performed at the time and in the manner specified by the City, and shall indemnify and save harmless the City, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect. As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered. The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed, or to the specifications accompanying such work shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named on \_\_\_\_\_, 2020.

By: \_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_  
SURETY

**PROJECT NUMBER 120010**  
**M STREET RESURFACING – 8<sup>TH</sup> STREET TO 13<sup>TH</sup> STREET**

**LABORERS AND MATERIALMENS BOND**  
(Contract)

WHEREAS, the City of Merced, State of California, and \_\_\_\_\_, the Contractor, have entered into a contract to perform certain work as set forth in the contract for PROJECT NUMBER 120010; and,

WHEREAS, \_\_\_\_\_, hereinafter designated as Principal, has agreed to install and complete said work; and,

WHEREAS, said Principal is required under the terms of the Contract Specifications to furnish a bond to secure the claims to which reference is made in Title 15 commencing with Section 3082 of Part 4 of Division 3 of the Civil Code of the State of California. Now, said Principal and the undersigned as Surety are held and firmly bound unto the City of Merced, hereinafter called the City, and all Contractors, subcontractors, laborers, materialsmen and other persons employed in the performance of the work and referred to in the aforesaid Code of Civil Procedure in the sum of \$ \_\_\_\_\_, lawful money of the United States, for materials furnished or labor thereon-of any kind or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that Surety will pay the same in an amount not exceeding the amount hereinabove set forth and also in case suit is brought upon this bond, will pay in addition to the face amount thereof costs and reasonable expenses and fees, including reasonable attorneys' fees incurred by the City in successfully enforcing such obligation, to be awarded and fixed by the court and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 commencing with Section 3082 of Part 4 of Division 3 of the Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void. Otherwise, it shall be and remain in full force and effect. The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said conditions or work shall in any manner affect its obligation on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above named on \_\_\_\_\_, 2020.

By: \_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_  
SURETY