

DISTRICT 08	COUNTY Riverside	ROUTE 215/Holland Rd	POST MILE 17.5	PROJECT ID EA 1F980
FEDERAL AID NUMBER N/A		EMWD's Work Order No. 13604		
FEDERAL PARTICIPATION/FEDERALLY ELIGIBLE/NEPA DOCUMENT				

On the Project ☐ YES ☒ NOOn the Utilities ☐ YES ☒ NOOwner Payee Data No. N/A or Form STD 204 is attached ☐**UTILITY AGREEMENT NO: 1 DATE: August 25, 2016**

This Utility Agreement ("Agreement") is entered into by and between **City of Menifee**, hereinafter called "**CITY**" and **Eastern Municipal Water District ("EMWD")** whose address is **2270 Trumble, Road Perris, CA 92570.**

The CITY proposes to construct a new 4-lane bridge over Interstate 215 at Holland Road in the City of Menifee, California, hereinafter referred to as "PROJECT". As part of this project, Holland Road will be realigned and improvements built in order to meet the proposed bridge abutments. The PROJECT is a cooperative project between the CITY and the State of California, Department of Transportation, hereinafter referred to as "STATE". CITY is the lead for the Project and is acting as an agent of the STATE, under the terms of a cooperative agreement between STATE and CITY, with oversight provided to CITY by STATE.

EMWD owns, operates, and maintains an 8" PVC sewer pipeline, 12" CML&C water pipeline, and fire hydrants along Holland Road between Haun Road and Hanover Lane with related appurtenances ("FACILITIES") located within non-exclusive easements to EMWD recorded as document number 1966 108275, 1967 23986, 1967 23988 ("EASEMENTS"). Said FACILITIES and EASEMENTS are in conflict with the PROJECT, which requires relocation of FACILITIES and relocation of the EASEMENTS. EMWD's rights for the water FACILITIES are prior and superior to the CITY improvements and right of way proposed as a part of the PROJECT.

In addition, EMWD proposes to construct dual 18" water transmission pipelines within the new bridge over Interstate 215 on Holland Road from Haun Road to Hanover Lane.

Therefore, it is hereby mutually agreed between CITY and EMWD that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 1 dated 02/20/2015:

- 1) CITY shall relocate a 12" CML&C water pipeline on Holland Road between Haun Road and Interstate 215.
- 2) CITY shall abandon and relocate existing fire hydrants on Holland Rd between Interstate 215 and Hanover Lane.
- 3) EMWD shall relocate an 8" PVC sewer pipeline on Holland Road between Willowood Way to Hanover Lane.
- 4) EMWD shall prepare plans for the 18" water transmission pipeline on Holland Road for the CITY to construct as part of the PROJECT.
- 5) EMWD will design the relocation of the existing and proposed FACILITIES, prepare construction plans, and specifications.

All work shall be performed substantially in accordance with EMWD's Work Order No. 13604 dated 07/28/2015, which is included in CITY's Contract Plans for the PROJECT, EA 1F980 and which, by this reference, is made a part hereof. EMWD hereby acknowledges review of CITY's plans for work and agrees to the construction in the manner approved.

Deviations from the work described above, initiated by either the CITY or the EMWD, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the CITY and agreed to/acknowledged by the EMWD, will constitute an approved revision of the EMWD's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by EMWD of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to

the Revised Notice to Owner.

EMWD shall have the right to inspect the work by CITY's contractor during construction of the 12" CML&C water pipeline relocation, fire hydrant relocation, and proposed water transmission on Holland Road. CITY shall have the right to inspect the work by EMWD's contractor during construction of the 8" PVC sewer pipeline relocation. Upon completion of work by the CITY, EMWD agrees to accept ownership and maintenance of the constructed facilities, which include the 12" CML&C water pipeline, fire hydrant, and 18" water transmission pipeline, with related appurtenances, all located within a non-exclusive easement and relinquishes to CITY ownership of the abandon FACILITIES and easement.

II. LIABILITY FOR WORK

The existing 12" CML&C water pipeline and fire hydrants are located in their present location pursuant to rights superior to those of the CITY and will be relocated at CITY's expense.

Costs for relocation by the CITY are to include, but are not limited to, all elements of planning, design, construction, inspection, and project closeout and shall include all EMWD staff, consultant, inspection, and contractor costs. CITY will acquire new rights of way for the relocation of EMWD's FACILITIES at no expense to EMWD.

The existing 8" PVC sewer pipeline is located in its present location pursuant to rights superior to those of EMWD and will be relocated at EMWD's expense.

The proposed 18" water transmission pipelines will be located pursuant to rights superior to those of EMWD and will be constructed at CITY's expense and reimbursed by EMWD determined by the actual bid amount and after final acceptance of the construction.

III. PERFORMANCE OF WORK

EMWD will design the relocation of the existing and proposed FACILITIES, prepare construction plans and specifications. EMWD will administer the construction contract to relocate the 8" PVC sewer pipeline as well as provide construction management and inspection. CITY will administer the construction contract to relocate the 12" CML&C water pipeline, fire hydrants, and installation of the dual 18" water transmission pipelines on Holland Road per relocation plan (Exhibit A) as well as provide construction management and inspection. CITY will acquire new rights of way for the relocation of the 12" CML&C water pipeline at no expense to EMWD.

EMWD shall have access to all phases of the FACILITIES relocation work to be performed by CITY, as described in Section I above, for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the PROJECT Construction Contract; however, all questions regarding the work being performed by the CITY will be directed to CITY's Resident Engineer for their evaluation and reply to the question. EMWD shall retain the right to make final decisions that impact the proposed and relocated FACILITIES.

Engineering services for locating, making of surveys, preparation of plans, specifications, estimates, supervision, and inspection are to be furnished by the consulting engineering firm of T.Y.Lin International on a fee basis previously approved by CITY. Cost principles for determining the reasonableness and allowability of consultant costs shall be determined in accordance with 48 CFR, Chapter 1, Part 31; 23 CFR, Chapter 1, Part 645; and 18 CFR, Chapter 1, Parts 101, 201 and OMB Circular A-87, as applicable.

Use of out-of-state personnel (or personnel requiring lodging and meal "per diem" expenses) will not be allowed without prior written authorization by CITY's representative. Requests for such authorization must be contained in EMWD's estimate of actual and necessary relocation costs. Accounting Form FA-1301 is to be completed and submitted for all non-State personnel travel per diem. EMWD shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per Diem expenses shall not exceed the per diem expense

amounts allowed under the State's Department of Personnel Administration travel expense guidelines.

Pursuant to Public Works Case No. 2001-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by the CITY's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirement. EMWD shall verify compliance with this requirement in the administration of any contracts executed by EMWD that are to be reimbursed by the CITY.

Work performed directly by EMWD's employees falls within the exception of Labor Code Section 1720(a)(1) and does not constitute a public work under Section 1720(a)(2) and is not subject to prevailing wages.

IV. PAYMENT FOR WORK

EMWD shall be solely responsible for costs associated with the relocation and construction related costs of the 8" PVC sewer pipeline. In the event additional work becomes necessary to complete the 8" PVC sewer relocation work, EMWD shall bear full financial responsibility for all costs associated with the additional work.

The CITY shall be solely responsible for costs associated with the relocation and construction related costs of the relocation of the 12' CML&C water pipeline and fire hydrants. In the event additional work becomes necessary to complete the 12" CML&C water pipeline and fire hydrants relocation work, the CITY shall bear full financial responsibility for all costs associated with the additional work.

EMWD shall be solely responsible for costs associated with the construction and construction related costs of the proposed 18" water transmission pipelines on Holland Road. In the event additional work becomes necessary to complete the work, EMWD shall bear full financial responsibility for all costs associated with the additional work. Determination of final costs will be based on actual costs for all CITY's work. EMWD will make additional payment or refund, as appropriate within 30 days following CITY's notification of the actual costs and after acceptance for such work by EMWD.

As indicated under Section III. Performance Of Work, EMWD will perform plan check and construction inspection activities of FACILITIES. The actual costs incurred by EMWD in its performance of said work will be paid by the CITY through the following provisions:

The CITY shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of five (5) copies of EMWD's itemized bill, signed by a responsible official of EMWD's organization and prepared on EMWD's letterhead, compiled on the basis of the actual and necessary cost and expense. EMWD shall maintain records of the actual costs incurred and charged or allocated to the project in accordance with recognized accounting principles.

It is understood and agreed that CITY will not pay for any betterment or increase in capacity of EMWD's facilities in the new location.

EMWD shall submit a final bill to CITY within 360 days after the completion of the work described in Section I above. If CITY has not received a final bill within 360 days after notification of completion of EMWD's work described in Section I of this Agreement, and CITY has delivered to EMWD fully executed Easement Deeds, Consents to Common Use or Joint Use Agreements for EMWD's facilities (if required), CITY will provide written notification to EMWD of its intent to close its file within 30 days. EMWD hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If CITY processes a final bill for payment more than 360 days after notification of completion of EMWD's work, payment of the late bill may be subject to allocation and/or approval by the City Council.

The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, CITY shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost

from EMWD and approval of documentation by CITY. Except, if the final bill exceeds the EMWD's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation. In either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the City of Menifee's City Council.

In any event, if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement shall be executed by the parties to this Agreement prior to the payment of the EMWD'S final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement shall have the prior concurrence of CITY.

Detailed records from which the billing is compiled shall be retained by EMWD for a period of three years from the date of the final payment and will be available for audit by CITY and/or Federal auditors. EMWD agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645. If a subsequent CITY and/or Federal audit determines payments to be unallowable, EMWD agrees to reimburse CITY upon receipt of CITY billing.

As indicated under Section III. Performance of Work, the CITY will design, prepare plans and specifications, and oversee and inspect FACILITIES relocations. The CITY shall perform the work at no expense to EMWD except as described herein.

V. GENERAL CONDITION

All costs accrued by EMWD as a result of CITY's request of 2/6/2015 to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.

If CITY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by EMWD, CITY will notify EMWD in writing and CITY reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement and reconciling outstanding costs/reimbursements due EMWD.

EMWD shall submit a Notice of Completion to the CITY within 30 days of the completion of the work described herein.

CITY will acquire new rights of way in the name of either the CITY or EMWD through negotiation or condemnation. The CITY shall obtain all rights of way for EMWD in the new alignment of the relocated FACILITIES by Easement Deed, Joint Use Agreement or Consent to Common Use Agreement dedicated to EMWD.

Where EMWD has prior rights in areas which will be within the highway right of way and where EMWD's facilities will remain on or be relocated on CITY right of way, a Joint Use Agreement or Consent to Common Use Agreement shall be executed by the parties.

CITY shall prepare all documentation and obtain any and all environmental clearances as necessary for the relocated FACILITIES, including but not limited to compliance with requirements imposed under the National Environmental Protection Act (NEPA) and the California Environmental Quality Act (CEQA).

CITY represents and warrants that this Utility Agreement is not subject to 23 CFR 635.410, the Buy America provisions.

EMWD and the CITY each hereby agree to indemnify, defend, and hold harmless the other Party and their respective directors, officials, officers, employees and agents from and against any claims, actions, damages and liabilities arising out of or in any manner connected with the activities governed by this Agreement due to any negligent acts, errors or omissions or willful misconduct of the indemnifying Party performed in connection with such Party's duties and obligations hereunder.

Reimbursement Agreement

	Description	EMWD	CITY
Design	18" Water Transmission Pipelines	EMWD's responsibility	
	12" CML&C Water Pipeline and Fire Hydrants Relocation		CITY's responsibility. CITY to reimburse EMWD \$25,084.00 for design
	8" PVC Sewer Pipeline Relocation	EMWD's responsibility	
Construction	18" Water Transmission Pipelines	EMWD's responsibility. EMWD to reimburse CITY \$750,000*** (Estimate)	
	12" CML&C Water Pipeline Relocation		CITY's responsibility
	Fire Hydrant Relocation		CITY's responsibility. CITY to reimburse EMWD for hot tap connection, valve removal, and installation of blind flanges* \$7,700*** (Estimate)
	8" PVC Sewer Pipeline Relocation	EMWD's responsibility	
TOTAL		\$750,000.00 ***	\$32,784.00 ***

Agency Estimate Costs:

	Description	EMWD	CITY
Design Review	18" Water Transmission	EMWD's responsibility	
	12" CML&C Water Relocation		CITY's cost to EMWD Waive
	8" PVC Sewer Relocation	EMWD's responsibility	
Encroachment Permit	18" Water Transmission		
	12" CML&C Water Relocation		CITY's responsibility
	8" PVC Sewer Relocation	EMWD's cost to CITY Waive	
Inspection Fees	18" Water Transmission	EMWD's cost to CITY (CM and Inspection) Waive	
	12" CML&C Water Relocation		CITY's cost to EMWD (CM and Inspection)Waive
	8" PVC Sewer Relocation	EMWD's cost to CITY Waive	
TOTAL		\$ Waive**	\$ Waive**

*EMWD will hot tap the existing pipeline, valve removals, and installation of blind flanges, but the CITY will be responsible for all other work including but not limited to traffic control, trenching, backfill, install fire hydrant with related appurtenances, abandon existing fire hydrants, and replace existing condition in kind.

**EMWD and City agree to waive all design reviews, encroachment permits, and inspection fees.

***THE ACTUAL REIMBURSEMENT COST TO EMWD BY THE CITY FOR ITS SHARE OF THE ABOVE-DESCRIBED WORK SHALL BE DETERMINED AT COMPLETION OF WORK.

***THE ACTUAL REIMBURSEMENT COST TO CITY BY EMWD FOR ITS SHARE OF THE ABOVE-DESCRIBED WORK SHALL BE DETERMINED AT COMPLETION OF WORK.

IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

CITY OF MENIFEE:

By [Signature] 11/15/16
 Name Robert Johnson Date
 Title City Manager

EASTERN MUNICIPAL WATER DISTRICT:

By [Signature] 10/6/16
 Name PAUL D. JONES II Date
 Title General Manager

APPROVAL RECOMMENDED:

By _____
 Name _____ Date _____
 Title _____

By _____
 Name _____ Date _____
 Title _____