

**UTILITY RELOCATION AGREEMENT
BETWEEN THE CITY OF MENIFEE AND EASTERN MUNICIPAL WATER DISTRICT
FOR THE CIP 22-06 MENIFEE ROAD RESURFACING**

This Utility Relocation Agreement (“Agreement”) is entered into by and between City of Menifee (“CITY”) and Eastern Municipal Water District (“EMWD”) whose address is 2270 Trumble, Road Perris, CA 92570

CITY proposes to improve existing Menifee Road from Holland Road to the south and Diamond Road (Fire Station No. 76 Entrance) to the north. All in the City of Menifee, California, hereinafter referred to as “PROJECT”. As part of this PROJECT, the existing street will be improved. EMWD owns, operates, and maintains sewer and water pipelines, located within PROJECT limits. The existing sewer manholes and water valve covers will need to be adjusted vertically.

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

I. WORK TO BE DONE

- A. CITY shall prepare plans for vertical adjustment of sewer manholes, and water valve covers.
- B. CITY shall adjust manholes, clean out covers, and water valve covers to proposed grade.
- C. All work shall be performed substantially in accordance with EMWD’s water and sewer standard. EMWD hereby acknowledges review of CITY’s plans for work and agrees to the construction in the manner approved.
- D. Deviations from the work described above, initiated by either CITY or EMWD, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by CITY and agreed to/acknowledged by EMWD, will constitute an approved revision, 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.
- E. EMWD shall have the right to inspect the work by CITY’s contractor during the adjustment to grade of the manholes, clean out covers, and water valve covers. Upon completion of work by CITY, EMWD agrees to accept ownership and maintenance of the relocated facilities.
- F. EMWD shall provide inspections of adjustment to grade of the manholes, clean out covers, and water valve covers work performed within the contract.
- G. EMWD shall be responsible for all communication between CITY’s contractor performing the work and EMWD Inspector.
- H. EMWD shall provide in writing any corrective work to the CITY’s contractor. No work on EMWD facilities will be allowed to be performed by the CITY’s contractor without an EMWD Inspector on site.
- I. EMWD shall perform inspections in a timely manner to avoid project delays.

II. LIABILITY FOR WORK

- A. Costs for relocation by CITY are to include, but are not limited to, all elements of planning, design, construction, inspection, and project closeout.
- B. The adjustment of manholes, adjustments of clean out covers, and adjustment of water valve covers will be relocated at EMWD's expense and shall include all EMWD staff, consultant, inspection, and contractor costs.

III. PERFORMANCE OF WORK

- A. CITY will administer the construction contract to adjust the manholes, clean out covers, and water valve covers to grade on CIP 22-06 Menifee Road Improvement plans. CITY will provide construction management and inspection as well.
- B. EMWD shall have access to all phases of the facilities being adjusted by the 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 CITY will be directed to CITY's Engineer for their evaluation and reply to the question. EMWD shall retain the right to make final decisions that impact their facilities.
- C. Engineering services for locating, making of surveys, preparation of plans, specifications, estimates, supervision, and inspection are to be furnished by CITY.
- D. 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.
- E. 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

- A. EMWD shall be solely responsible for costs associated with adjustment of manholes, clean out covers, and water valve covers. In the event additional work becomes necessary to complete this work, EMWD shall bear full financial responsibility for all costs associated with the additional work.
- B. 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 EMWD.
- C. 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.
- D. 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 CITY'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 EMWD.

- E. Detailed records from which the billing is compiled shall be retained by CITY 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.
- F. As indicated under Section III, Performance of Work, CITY will: design, prepare plans, prepare specifications, oversee, and inspect all work. CITY shall perform the work at EMWD expense.
- G. 90% of the reimbursements will be paid by EMWD to the CITY within the first 60 days after start of construction.

V. GENERAL CONDITIONS

- A. If CITY's PROJECT which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work described herein, 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 this Agreement and reconciling outstanding costs/reimbursements due.
- B. 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).
- C. CITY represents and warrants that this Agreement is not subject to 23 CFR 635.410, the Buy America provisions.
- D. EMWD and 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.
- E. The undersigned individuals hereby warrant and represent that they each have full legal authority to sign this Agreement and bind the respective party hereto.
- F. This Agreement will be construed and interpreted under and governed and enforced according to the laws of the State of California.
- G. This Agreement contains the entire agreement between the parties regarding the subject matter of this Agreement. No subsequent agreement, representation, or promise made by either party hereto, or by or to any employee, officer, agent, or representative of either party, will be of any effect unless it is in writing and executed by the party to be bound thereby. No person is authorized to make, and by execution hereof each of the parties acknowledges that no person has made, any representation, warranty, guaranty, or promise except as set forth herein; and no such agreement, statement, representation, or promise that is not contained herein will be valid or binding on any of the parties.
- H. This Agreement may be executed simultaneously in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. For purposes of this Agreement, facsimile and electronic signatures will be deemed to be original signatures.

- I. Each of the parties has reviewed this Agreement and each has had the opportunity to have its respective counsel review and revise this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Agreement or any amendments or exhibits thereto. In this Agreement the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words “person” and “party” include corporation, partnership, firm, trust, or association wherever the context so requires. The recitals and captions of the sections and subsections of this Agreement are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Agreement.
- J. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid.

VI. COST ESTIMATES AND WAIVERS

Please refer to Attachment A for quantities and reimbursement fees.
Reimbursement Agreement

	Description	EMWD	CITY
Design	Adjust manholes and water valves to grade.		CITY's responsibility. City's cost to EMWD Waived
Construction	Adjust sewer manholes to grade.	Quantity = 17 EA (\$630 each = \$10,710) **	CITY's responsibility. EMWD to reimburse CITY for Construction
	Install sewer manhole false bottoms	Quantity = 17 EA (\$300 each = \$5,100) **	CITY's responsibility. EMWD to reimburse CITY for Construction
	Adjust water valve covers to grade (Main & Recycled).	Quantity = 62 EA (\$520 each = \$32,240) **	CITY's responsibility. EMWD to reimburse CITY for Construction
	Paint water valve covers: Blue & Purple.	Quantity = 62 EA (\$49.50 each = \$3,069) **	CITY's responsibility. EMWD to reimburse CITY for Construction
TOTAL		(TOTAL \$51,119) **	

Agency Estimate Costs:

	Description	EMWD	CITY
Design Review	Adjust manholes, clean outs, and water valves to grade.	EMWD's responsibility EMWD's cost to City Waived	
Inspection Fees	Adjust manholes, clean outs, and water valves to grade.	EMWD's responsibility EMWD's cost to City Waived	
TOTAL		\$ Waive*	\$ Waive*

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

**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 _____
Name _____ Date _____
Title _____

EASTERN MUNICIPAL WATER DISTRICT:

By _____
Name Joe Mouawad Date _____
Title General Manager _____

APPROVAL RECOMMENDED:

By _____
Name _____ Date _____
Title _____

By _____
Name Sheilia Zeleya Date _____
Title Board Secretary _____