



Contract Number

23-491

SAP Number

San Bernardino County Flood Control District

Department Contract Representative	David Drake, P.E. Engineering Manager
Telephone Number	(909) 387-7963
Contractor	City of Twentynine Palms
Contractor Representative	Frank J. Luckino
Telephone Number	(760) 367-6799 ext 1004
Contract Term	05/23/23 – 12/13/28
Original Contract Amount	\$329,063
Amendment Amount	0
Total Contract Amount	\$329,063
Cost Center	1960002540 – F02749 – Zone 6

IT IS HEREBY AGREED AS FOLLOWS:

WITNESSETH

WHEREAS, the San Bernardino County Flood Control District (**DISTRICT**) and the City of Twentynine Palms (**CITY**) are signatories to this **AGREEMENT**, and may hereinafter be individually referred to as a "**PARTY**" and, collectively referred to as the "**PARTIES**"; and

WHEREAS, **DISTRICT** is developing, funding, and removing an existing culvert at the El Rey Avenue crossing and replacing it with a reinforced concrete box culvert, generally referred to as the El Rey Crossing Project (**PROJECT**), located within the incorporated area of the City of Twentynine Palms, running northerly from the road crossing at the Twentynine Palms Channel and El Rey Avenue that consists of removing the existing corrugated steel pipe (**CSP**) arch culvert; replacing the existing **CSP** arch culvert with reinforced concrete box culvert; reconstruction of the existing four street drainage inlets; and reconstruction of the El Rey Avenue roadway, sidewalk, installing handrails, and curb and gutter; and

WHEREAS, the **PROJECT** has been recognized as a Regional Flood Protection Facility, and the funding was recommended as part of **DISTRICT's** Zone 6 Priority Project List and Ten-Year Construction Funding Program; and

WHEREAS, **CITY** currently owns and maintains the roadway along El Rey Avenue from State Highway (SH) 62 north to Nicholson Drive; and

WHEREAS, **CITY** agrees to reimburse **DISTRICT** for one hundred percent (100%) of the costs (**CITY FACILITIES COSTS**) associated with the reconstruction of the existing four street drainage inlets, and reconstruction of the El Rey Avenue roadway, sidewalk, installation of handrails, and curb and gutter (collectively, the "**CITY FACILITIES**"); and

WHEREAS, reconstruction limits of the **CITY FACILITIES** on El Rey Avenue are from 0.05 miles north of SH 62 north 0.04 miles; and

WHEREAS, **DISTRICT** estimates that the **CITY FACILITIES COSTS** shall be approximately \$329,063, but may be subject to amendment as set forth herein; and

WHEREAS, the estimate for **CITY FACILITIES COSTS** is set forth in Section 2.2 herein; and

WHEREAS, **DISTRICT** is willing to advance the **CITY FACILITIES COSTS**, subject to reimbursement by **CITY** as set forth herein, which **CITY FACILITIES COSTS** shall include the reconstruction of the existing drainage inlets, reconstruction of the El Rey Avenue roadway, sidewalk, installation of handrails, curb and gutter, and inspection, materials testing, construction management, and contingency; and

WHEREAS, **DISTRICT** will act as the Lead Agency under the California Environmental Quality Act (**CEQA**) for the **PROJECT**, including the **CITY FACILITIES**; and

WHEREAS, upon completion of the **CITY FACILITIES**, as set forth in Section 1.13, **CITY** shall own, operate, and maintain the **CITY FACILITIES**; and

WHEREAS, the **PARTIES** desire to set forth their respective responsibilities and obligations regarding construction of the **CITY FACILITIES**.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION I

1.0 DISTRICT AGREES TO:

- 1.1 Act as the Lead Agency to prepare the required **CEQA** analyses and documents as well as (1) prepare all engineering plans, specifications, and engineer's estimates, and (2) conduct all construction administration, including advertisements for bids, bid reviews, contract awards, construction, and all other needed inspections of the **CITY FACILITIES**.
- 1.2 Submit to **CITY** engineering plans, specifications, and engineer's cost estimates, relating to the **CITY FACILITIES** to enable **CITY** to review and timely approve, which approval shall not unreasonably withhold, the **CITY FACILITIES** design in writing.
- 1.3 Process necessary environmental documents as required and obtain the required environmental agencies' clearances for the construction of the **CITY FACILITIES**.
- 1.4 Advertise, award, and administer construction of the **CITY FACILITIES**, in accordance with the provisions of the Public Contract Code applicable to **DISTRICT** and all other applicable state laws, including but not limited to, the Civil and Labor Codes.
- 1.5 Ensure the **CITY FACILITIES** are constructed in accordance with the plans and specifications approved by **CITY**. All changes to the approved plans pertaining to the **CITY FACILITIES** and specifications will be approved by **PARTIES** prior to construction, as follows: Any **DISTRICT** changes to the approved plans and specifications for the **CITY FACILITIES** may only be made if **CITY** has approved those changes in writing, provided that in the case of an emergency, **DISTRICT** must in good faith seek the approval of **CITY** for any changes and must provide **CITY** with after-the-fact notification of the change not more than 48 hours after any such change. Incidental changes to facilities being paid for by **DISTRICT** may be implemented without consulting and the change is not a change in the design.
- 1.6 Enter into construction contract(s) with contractor(s) for the **CITY FACILITIES**.
- 1.7 Require its **CITY FACILITIES** contractors to provide and maintain a labor and materials bond and a faithful performance bond, each in a penal sum equal to one hundred percent of the contract price. Bonds provided for the **CITY FACILITIES** shall include both **CITY** and **DISTRICT** as dual obligees. Such bonds shall be delivered to **CITY** prior to the commencement of any work on the **CITY FACILITIES**.

- 1.8 Perform inspections of all items of work performed under the construction contract(s) with the contractors or subcontractors for the **CITY FACILITIES** and maintain adequate records of inspection and materials testing which shall be made available for review by **CITY** upon **CITY's** request. **DISTRICT** shall provide copies of all records of inspection including inspection notes and materials testing to **CITY** upon completion of construction.
- 1.9 Provide **CITY** the opportunity to inspect the **CITY FACILITIES** during construction at its own cost within 24 hours of notification by **DISTRICT**.
- 1.10 Provide **CITY** invoices on a quarterly basis for costs incurred by **DISTRICT** for the **CITY FACILITIES**, which invoices shall include, at minimum, the following information:
- a. Costs incurred by **DISTRICT** for **CITY FACILITIES** work performed during the period identified in the particular invoice.
 - b. Invoices submitted shall meet the following format requirements:
 - 1. Cover letter with signature from the responsible **DISTRICT** official.
 - 2. Invoice must contain date of invoice, time period covered by the invoice, and the total amount due.
 - 3. Invoices must be itemized.
 - 4. Sufficient backup documentation (e.g. daily inspection reports, progress payments, and vouchers) as reasonably requested by **CITY**.
 - c. Submit the original, signed, invoice to the following address:
- Frank J. Luckino, City Manager
City of Twentynine Palms
6136 Adobe Road
Twentynine Palms, CA 92277
- 1.11 Require all contractors and vendors working on the **CITY FACILITIES** to have appropriate and adequate insurance coverage for the mutual protection and benefit of the **PARTIES**. **CITY** shall be added as an additional insured by endorsement on all **CITY FACILITIES** contracts let by **DISTRICT**. **CITY** shall be named as a third-party beneficiary to the contract(s) let for the **CITY FACILITIES**.
- 1.12 Provide status reports regarding the **CITY FACILITIES** to **CITY** upon request by **CITY**.

- 1.13 Completion of the **CITY FACILITIES** shall be deemed to have occurred upon the provision of written notice from **DISTRICT** to **CITY** that the **CITY FACILITIES** have been completed and **CITY's** acceptance of the **CITY FACILITIES** as set forth in Section 2.6.
- 1.14 Provide to **CITY**, upon completion of the **CITY FACILITIES** one (1) set of "Record Drawings" Mylar drawings and one (1) electronic set of as-builts for the **CITY FACILITIES**.
- 1.15 Retain or cause to be retained for audit by **CITY** or other government auditors for a period of three (3) years from the date of the final payment, all records, and accounts relating to the **CITY FACILITIES**.

SECTION II

2.0 CITY AGREES TO:

- 2.1 Reimburse **DISTRICT** in an amount equal to one hundred percent (100%) of the actual cost of the design, construction, survey, and contract administration of the **CITY FACILITIES**. **PARTIES** acknowledge that the amounts set forth in Section 2.2 are a good faith estimate of the **CITY FACILITIES COSTS**. The actual cost will not be known until costs are incurred and completion of **CITY FACILITIES** and receipt of all invoices. The **PARTIES** recognize and agree that the **CITY FACILITIES COSTS** may be greater than estimated herein and additional costs may be warranted for a variety of reasons, including, but not limited to, unforeseen site conditions, emergency repairs, increased bid prices, increased quantities and/or change orders. Payment to **DISTRICT** shall be within sixty (60) calendar days of invoicing. All payments shall be made via electronic funds transfer (EFT) directly deposited into **DISTRICT'S** designated checking or another bank account. **CITY** shall promptly comply with directions and accurately complete forms provided to process EFT payments.
- 2.2 The total reimbursement cost is presently estimated to be \$329,063, fifteen percent (15%) of the estimated construction cost for administration and surveying, and ten percent (10%) construction contingency.

DESCRIPTION	PHASE OF WORK	TOTAL COST OF CITY FACILITIES	SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT (DISTRICT) SHARE	CITY SHARE
EL REY AVENUE RECONSTRUCTION	CONSTRUCTION	\$263,250	\$0	\$263,250
	CONSTRUCTION ADMINISTRATION & SURVEY (15%)	\$39,488	\$0	\$39,488
	CONSTRUCTION CONTINGENCIES (10%)	\$26,325	\$0	\$26,325
TOTAL		\$329,063	\$0	\$329,063

- 2.3 Promptly review and comment on contract plans, specifications, and engineer's estimates and respond to construction-related questions submitted by **DISTRICT** to **CITY**. Upon the receipt of the plans, and any subsequent revisions, **CITY** shall review and provide comments and approvals to **DISTRICT** within ten (10) business days.
- 2.4 Provide a qualified **CITY** representative to perform inspections of **CITY FACILITIES** at **CITY** costs within 24 hours' notice by **DISTRICT**. Said inspections will not delay **CITY FACILITIES**.
- 2.5 **CITY** representative must be able to resolve issues in a timely manner to avoid delay claims.
- 2.6 After notice that the **CITY FACILITIES** are complete from **DISTRICT**, promptly inspect the **CITY FACILITIES** and either note any deficiencies in writing to **DISTRICT** or accept the **CITY FACILITIES** in writing to be submitted to **DISTRICT**. If **CITY** does not accept the **CITY FACILITIES** in writing or note any deficiencies for correction within thirty (30) calendar days following notice from **DISTRICT** that the **CITY FACILITIES** are complete, the **CITY FACILITIES** shall be deemed to have been accepted and responsibility for operation and maintenance for such **CITY FACILITIES** shall shift to **CITY** as set forth in Section 2.7.
- 2.7 After **CITY** acceptance of **CITY FACILITIES**, **CITY** shall be deemed to assume title to the **CITY FACILITIES** and shall be solely responsible for the **CITY FACILITIES**, including, but not limited to, the operation, protection, and lifetime maintenance of the **CITY FACILITIES**.

SECTION III

3.0 IT IS FURTHER UNDERSTOOD AND AGREED:

3.1 The Effective Date of the **AGREEMENT** shall be the last date upon which both **CITY** and **DISTRICT** governing boards have approved the **AGREEMENT**. Except with respect to the **PARTIES'** operation, maintenance, and indemnification obligations contained herein, this **AGREEMENT** shall terminate upon the earlier of (1) December 13, 2028, or (2) final completion of the **PROJECT** and final payment by **CITY** to **FCD**. This **AGREEMENT** may be terminated in accordance with the provisions of this **AGREEMENT**. The **AGREEMENT** term may be extended for two additional one-year periods by mutual agreement of the **PARTIES**.

3.2 Indemnification and Insurance.

- i) **DISTRICT** agrees to indemnify, defend (with counsel approved by the **CITY**) and hold harmless the **CITY**, its officers, agents, volunteers from any and all claims, actions or losses,

damages, and/or liability resulting from the **DISTRICT'S** negligent acts or omissions which arise from the **DISTRICT'S** performance of its obligations under the **AGREEMENT**.

- ii) **CITY** agrees to indemnify, defend (with counsel approved by the **DISTRICT**) and hold harmless the **DISTRICT**, the San Bernardino County, their officers, agents, volunteers from any and all claims, actions or losses, damages, and/or liability resulting from the **CITY's** negligent acts or omissions which arise from the **CITY's** performance of its obligations under the **AGREEMENT**.

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- iii) In the event, **DISTRICT** and/or **CITY** is found to be comparatively at fault for any claim action, loss or damage which results from their respective obligations under the **AGREEMENT**, **District** and/or **CITY** shall indemnify the other to the extent of its comparative fault.

- iv) Waiver of Subrogation Rights – **DISTRICT** shall require the carriers of required coverage to waive all rights of subrogation against **CITY**, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit **DISTRICT** and District's employees or agents from waiving the right of subrogation prior to a loss or claim. **DISTRICT** hereby waives all rights of subrogation against **CITY**.

- v) Self-Insurance – The **PARTIES** are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability, and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this **AGREEMENT**.

3.3 Since the **PARTIES** or their agents have participated fully in the preparation of this **AGREEMENT**, the language of this **AGREEMENT** shall be construed simply, according to its fair meaning, and not strictly for any or against any party. Any term referencing time, days, or period for performance shall be deemed workdays. The captions of the various articles and paragraphs are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this **AGREEMENT**.

3.4 No supplement, modification, or amendment of this **AGREEMENT** shall be binding unless executed in writing and signed by all **PARTIES**.

3.5 All notices, approvals, consents, or other documents required or permitted under this **AGREEMENT** shall be in writing and, except as otherwise provided herein, shall be effective upon personal

delivery or three days after deposit in the United States mail, certified, with first-class postage fully prepaid, addressed as follows:

City of Twentynine Palms
6136 Adobe Road
Twentynine Palms, CA 92277
Attn: Frank Luckino, City Manager

San Bernardino County
Flood Control District
825 East Third Street
San Bernardino, CA 92415-0835
Attn: David Drake, Engineering Manager

- 3.6 No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a **PARTY** shall give the other **PARTY** any contractual rights by custom, estoppel, or otherwise.
- 3.7 This **AGREEMENT** shall be governed by the laws of the State of California. If a court of competent jurisdiction declares any portion of this **AGREEMENT** invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purpose of this **AGREEMENT** is frustrated. Any dispute or action to enforce any obligation under this **AGREEMENT** shall be filed and resolved in the appropriate Superior Court in the County of San Bernardino, California. In the event of litigation arising from this **AGREEMENT**, each **PARTY** to the **AGREEMENT** shall bear its own costs, including attorney's fees. This provision concerning costs shall not apply to costs or attorney's fees relative to Section 3.2 of this **AGREEMENT**.
- 3.8 This **AGREEMENT** contains the entire **AGREEMENT** of the **PARTIES** with respect to subject matter hereof, and supersedes all other prior negotiations, understandings, or contracts. This **AGREEMENT** may only be modified in writing, signed by all **PARTIES**.
- 3.9 The Recitals preceding the terms of this **AGREEMENT** are incorporated into the terms hereof by this reference and constitute constructive terms of this **AGREEMENT**.
- 3.10 This **AGREEMENT** shall inure to the benefit of and be binding upon the successors and assigns of the **PARTIES**.
- 3.11 The **PARTIES** shall be excused from strict performance hereunder, to the extent that such performance is impeded or prevented by occurrence of force majeure, which shall be deemed to include, without limitation, floods, earthquakes, other natural disasters, war, civil insurrection, riots,

epidemics, acts of any government (including judicial action), and other similar catastrophic events or acts of God which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

3.12 The **PARTIES** agree that this **AGREEMENT** may be executed in counterparts, each of which shall be deemed to be an original, but both of which together shall constitute one and the same instrument, and that a photocopy or facsimile may serve as an original. If this **AGREEMENT** is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this **AGREEMENT**. The **PARTIES** shall be entitled to sign and transmit an electronic signature of this **AGREEMENT** (whether by facsimile, PDF, or other email transmission), which signature shall be binding on the party whose name is contained therein. Each **PARTY** providing an electronic signature agrees to promptly execute and deliver to the other party an original signed **AGREEMENT** upon request.

IN WITNESS WHEREOF, this AGREEMENT has been fully executed on behalf of the DISTRICT and the CITY by their duly authorized officers, effective as of the date hereunder written.

SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT

►

Dawn Rowe

Dawn Rowe, Chair, *Board of Supervisors*
MAY 23 2023

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

By



Lynna Monell, Clerk of the Board

City of Twentynine Palms

(Print or type name of corporation, company, contractor, etc.)

By ►

[Signature]

(Authorized signature - sign in blue ink)

Name Frank Luckino

(Print or type name of person signing contract)

Title City Manager

(Print or Type)

Dated: February 15, 2023

Address 6136 Adobe Road
Twentynine Palms, CA 92277

FOR COUNTY USE ONLY

Approved as to Legal Form

► **SEE ATTACHED**

Sophie A. Curtis, County Counsel

Date _____

Reviewed for Contract Compliance

►

Andy Silao
Andy Silao, P.E.

Date 5/11/2023

Reviewed/Approved by District

►

Brendon Biggs
Brendon Biggs, Chief Flood Control Engineer

Date 5/16/23

IN WITNESS WHEREOF, this AGREEMENT has been fully executed on behalf of the DISTRICT and the CITY by their duly authorized officers, effective as of the date hereunder written.

**SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT**

►

Dawn Rowe, Chair, *Board of Supervisors*

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell, Clerk of the Board

By _____

Deputy

City of Twentynine Palms

(Print or type name of corporation, company, contractor, etc.)

By ►

(Authorized signature - sign in blue ink)

Name Frank Luckino

(Print or type name of person signing contract)

Title City Manager

(Print or Type)

Dated: February 15, 2023

6136 Adobe Road

Address Twentynine Palms, CA 92277

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Sophie Curtis*
Sophie A. Curtis, County Counsel

Date May 10, 2023

Reviewed for Contract Compliance

► Andy Silao, P.E.

Date _____

Reviewed/Approved by District

► Brandon Biggs, Chief Flood Control Engineer

Date _____