

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

418B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
August 20, 2013

SUBJECT: Gilman Home Channel Lateral A, Stage 3 and Improvements to Existing Gilman Home Channel, Stage 4
Project Nos. 5-0-00171-03 and 5-0-00170-90
Cooperative Agreement
District 5/District 5

RECOMMENDED MOTION:

1. Approve the Cooperative Agreement (Agreement) between the District and the City of Banning (City); and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

The Agreement sets forth the terms and conditions by which District will design, construct, operate and maintain certain flood control facilities.

Continued on Page 2

Steve Thomas
FOR **WARREN D. WILLIAMS**
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE
BY: *Steven C. Horn*
Steven C. Horn, MPA

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: *Neal R. Kipnis* DATE: *8/20/13*

Policy
 Policy
 Consent
 Consent
 Dept't Recomm.:
 Per Exec. Ofc.:

8019 AVE 13 PM 3:30
COUNTY OF RIVERSIDE
SECRETARY'S OFFICE

Prev. Agn. Ref: ATTACHMENTS FILED | District: 5th/5th | Agenda Number:

WITH THE CLERK OF THE BOARD

11-6

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Gilman Home Channel Lateral A, Stage 3 and Improvements to Existing Gilman Home Channel, Stage 4
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Page 2

BACKGROUND (continued):

The Agreement is also necessary to define responsibilities between the District and City for the relocation of certain interfering portions of City-owned waterlines as required by the District's proposed project.

Under this Agreement, City will grant District the necessary rights to construct, operate and maintain project within City rights of way. The City will also convey certain City-owned easements to the District for the operation and maintenance of a segment of the District's facility upon construction completion.

Upon completion of project construction, the District will assume ownership and responsibility of the operation and maintenance of the mainline storm drain system and the City will assume ownership and responsibility of the operation and maintenance of the project's associated appurtenances located within its rights of way. The City will also continue to operate and maintain waterlines upon completion of District project.

The District is funding all construction and construction inspection costs for the project. The City is funding all costs associated with design, construction, operation and maintenance of the waterlines relocation.

County Counsel has approved the Agreement as to legal form and the City has executed the Agreement.

AMR:blj

COOPERATIVE AGREEMENT

Gilman Home Channel Lateral A, Stage 3 and Improvements to Existing Gilman Home Channel, Stage 4
Project Nos. 5-0-00171-03 and 5-0-00170-90

The Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT", and the City of Banning, hereinafter called "CITY", hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for and plans to design and construct Gilman Home Channel Lateral A, Stage 3 facility, hereinafter called "GILMAN HOME CHANNEL LATERAL A, STAGE 3", located within the city of Banning; and

B. DISTRICT has also budgeted for and plans to replace a segment of the DISTRICT'S existing Gilman Home Channel, Stage 4 that is undersized with a larger underground storm drain facility, hereinafter called "IMPROVEMENTS TO EXISTING GILMAN HOME CHANNEL, STAGE 4", as shown in concept in orange on Exhibit "A" attached hereto and made a part hereof; and

C. GILMAN HOME CHANNEL LATERAL A, STAGE 3 consists of the construction of approximately 1,900 lineal feet of underground storm drain facility and an inlet/transition structure, as shown in concept in orange on Exhibit "B" attached hereto and made a part hereof. Associated with the construction of GILMAN HOME CHANNEL LATERAL A, STAGE 3 is the removal of all interfering portions of CITY'S existing storm drain facility and a segment of the DISTRICT'S existing Gilman Home Channel Stage 1 facility, as shown on DISTRICT'S Drawing No. 5-216; and

D. Together, GILMAN HOME CHANNEL LATERAL A, STAGE 3 and IMPROVEMENTS TO EXISTING GILMAN HOME CHANNEL, STAGE 4 are hereinafter

1 called "DISTRICT DRAINAGE FACILITIES". Associated with the construction of
2 DISTRICT DRAINAGE FACILITIES is the construction of various curb and gutter, catch
3 basins, laterals and connector pipes that are thirty-six inches (36") or less in diameter located
4 within CITY rights of way, hereinafter called "APPURTENANCES". DISTRICT DRAINAGE
5 FACILITIES and APPURTENANCES are hereinafter together called "PROJECT"; and

6
7 E. CITY owns, operates and maintains all waterlines located within public or
8 private rights of way, hereinafter called "CITY WATERLINES". Certain portions of the
9 existing CITY WATERLINES interfere with the proposed PROJECT alignment; therefore,
10 those interfering portions of CITY WATERLINES must be relocated; and

11 F. CITY is willing to prepare, or cause to be prepared, the necessary plans
12 and specifications for the relocation of CITY WATERLINES, hereinafter called
13 "RELOCATION PLANS"; and

14
15 G. DISTRICT is willing to incorporate RELOCATION PLANS as part of its
16 construction contract for PROJECT provided that CITY pays DISTRICT for the actual costs
17 for constructing RELOCATION PLANS as follows:

18 (i) One hundred percent (100%) of the lowest responsible bid contract
19 price for RELOCATION PLANS, hereinafter called "INITIAL PAYMENT";

20 (ii) One hundred percent (100%) of CITY approved construction
21 contract change orders in the event of changed or unforeseen field conditions during
22 construction that resulted in construction costs increase above the lowest responsible bid
23 contract price for RELOCATION PLANS, hereinafter called "FINAL PAYMENT"; and

24 H. DISTRICT and CITY acknowledge it is in the best interest of the public to
25 proceed with construction of PROJECT at the earliest possible date.
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1 NOW, THEREFORE, in consideration of the preceding recitals and the mutual
2 covenants hereinafter contained, the parties hereto mutually agree as follows:

3 SECTION I

4 DISTRICT shall:

5 1. Pursuant to the California Environmental Quality Act (CEQA), act as Lead
6 Agency and assume responsibility for preparation, circulation and adoption of all necessary and
7 appropriate CEQA documents pertaining to the construction, operation and maintenance of
8 PROJECT.
9

10 2. Prepare or cause to be prepared, plans and specifications for PROJECT,
11 hereinafter called "PROJECT IMPROVEMENT PLANS", in accordance with applicable
12 DISTRICT and CITY standards.

13 3. Obtain all necessary rights of way, rights of entry and temporary
14 construction easements necessary to construct, inspect, operate and maintain PROJECT except
15 as otherwise provided herein.
16

17 4. Secure, at its sole cost and expense, all necessary permits, approvals,
18 licenses or agreements required by any Federal or State resource or regulatory agencies
19 pertaining to the construction, operation and maintenance of PROJECT and submit to CITY for
20 their review prior to awarding a public works construction contract for PROJECT.
21

22 5. Include CITY prepared RELOCATION PLANS as part of the construction
23 contract for PROJECT.

24 6. Prior to advertising PROJECT for public works construction contract bids,
25 submit PROJECT IMPROVEMENT PLANS to CITY for its review and approval, as
26 appropriate.
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1 7. Advertise, award and administer a public works construction contract for
2 PROJECT at its sole cost and expense.

3 8. Provide CITY with written notice that DISTRICT has awarded a
4 construction contract for PROJECT. The written notice shall include the Contractor's actual
5 bid amounts for RELOCATION PLANS, setting forth the lowest responsible bid contract price
6 for CITY WATERLINES relocation as set forth herein.

7 9. Invoice CITY for INITIAL PAYMENT at the time of providing written
8 notice to CITY of the award of contract for PROJECT construction as set forth in Section I.8.

9 10. Notify CITY in writing at least twenty (20) days prior to the start of
10 construction of PROJECT.

11 11. Furnish CITY, at the time of providing written notice for the start of
12 construction as set forth in Section I.10., with a construction schedule which shall show the
13 order and dates in which DISTRICT or DISTRICT'S contractor proposes to carry on the
14 various parts of work, including estimated start and completion dates.

15 12. Construct or cause to be constructed, PROJECT, including relocation of
16 CITY WATERLINES, pursuant to a DISTRICT administered public works construction
17 contract, in accordance with PROJECT IMPROVEMENT PLANS and RELOCATION
18 PLANS approved by DISTRICT and CITY.

19 13. Inspect or cause to be inspected, construction of PROJECT.

20 14. Require its construction contractor(s) to comply with all Cal/OSHA safety
21 regulations including regulations concerning confined space and maintain a safe working
22 environment for all DISTRICT and CITY employees on the site.

23 15. Require its construction contractor(s) to include CITY as an additional
24 insured under the liability insurance coverage for PROJECT, and also require its construction
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1 contractor(s) to include CITY as a third party beneficiary of any and all warranties of the
2 contractor's work with regard to RELOCATION PLANS.

3 16. Keep an accurate accounting of all DISTRICT costs associated with the
4 construction of CITY WATERLINES relocation pursuant to RELOCATION PLANS, plus any
5 additional work requested by CITY pursuant to Section III.3., and include this accounting when
6 invoicing CITY for FINAL PAYMENT as set forth in Section I.19.
7

8 17. Within two (2) weeks of completing construction, provide CITY with
9 written notice that PROJECT construction is substantially complete and requesting that CITY
10 conduct a final inspection of PROJECT and CITY WATERLINES.

11 18. Upon DISTRICT'S acceptance of PROJECT construction as complete,
12 provide CITY with a copy of DISTRICT'S Notice of Completion.
13

14 19. Within thirty (30) days after DISTRICT'S acceptance of PROJECT as
15 being complete, submit an invoice to CITY for FINAL PAYMENT. The invoice shall include
16 a detailed breakdown of all costs, including but not limited to payment vouchers, CITY
17 approved change orders and other such documents as may be necessary, to establish the actual
18 construction costs for CITY WATERLINES relocation.

19 20. Upon DISTRICT'S acceptance of PROJECT construction as complete,
20 assume ownership and sole responsibility for the operation and maintenance of PROJECT until
21 such time as CITY accepts ownership and responsibility for the operation and maintenance of
22 APPURTENANCES.
23

24 21. Upon receipt of CITY'S payment for invoice as set forth in Section I.19.
25 and CITY acceptance of APPURTENANCES and CITY WATERLINES for ownership and
26 responsibilities for operation and maintenance, provide CITY with a reproducible copy of
27 "RECORD DRAWINGS" of PROJECT and CITY WATERLINES relocation plans.
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SECTION II

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CITY shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA.
2. Review and approve, as appropriate, PROJECT IMPROVEMENT PLANS prior to DISTRICT'S advertising PROJECT for construction bids.
3. Prepare or cause to be prepared, RELOCATION PLANS and pay all costs associated therewith.
4. Grant DISTRICT, by execution of this Agreement, all rights necessary to construct, inspect, operate and maintain PROJECT within CITY rights of way or easements.
5. Issue, at no cost to DISTRICT or DISTRICT'S contractor, the necessary encroachment permit(s) required to construct PROJECT.
6. Upon execution of this Agreement, convey, or cause to be conveyed to DISTRICT drainage and flood control easement(s), including ingress and egress, in a form approved by DISTRICT, for the rights of way as shown in concept in yellow on Exhibit "C"; attached hereto and made a part hereof.
7. Order the relocation of all utilities installed by permit or franchise within CITY rights of way which conflict with the construction of PROJECT and which must be relocated at the utility owner's expense.
8. Pay DISTRICT for INITIAL PAYMENT, within thirty (30) days following receipt of DISTRICT'S invoice as set forth in Section I.9.
9. Inspect PROJECT construction, including relocation of CITY WATERLINES, for quality control purposes at its sole cost, and provide any comments to DISTRICT personnel who shall be solely responsible for all quality control communications

1 with DISTRICT'S contractor(s) during the construction of PROJECT and relocation of CITY
2 WATERLINES.

3 10. Upon receipt of DISTRICT'S written notice that PROJECT construction is
4 substantially complete, conduct a final inspection of PROJECT.

5 11. Pay DISTRICT, within thirty (30) days after receipt of appropriate invoice,
6 for FINAL PAYMENT as set forth in Section I.19.

7 12. Accept ownership and sole responsibility for the operation and
8 maintenance of APPURTENANCES and relocated CITY WATERLINES upon (i) receipt of
9 DISTRICT'S written Notice of Completion as set forth in Section I.18, and (ii) receipt of
10 reproducible duplicate set of RECORD DRAWINGS as set forth in Section I.21.

11 13. Upon CITY acceptance of APPURTENANCES construction as being
12 complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and
13 covers located within CITY rights of way and jurisdiction which must be performed at such
14 time(s) that the finished grade along and above the underground portions of PROJECT are
15 improved, repaired, replaced or changed. It being further understood and agreed that any such
16 adjustments shall be performed at no cost to DISTRICT.

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19 SECTION III

20 It is further mutually agreed:

21 1. CITY WATERLINES shall, at all times, remain sole ownership and
22 exclusive responsibility of CITY. Nothing herein shall be construed as creating any obligation
23 or responsibility on the part of DISTRICT to operate or maintain CITY WATERLINES.

24 2. Except as otherwise provided herein, all construction work involved with
25 PROJECT or relocation of CITY WATERLINES shall be inspected by DISTRICT, and shall
26 not be deemed complete until approved and accepted as complete by DISTRICT.
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1 3. In the event CITY desires to include any additional work as part of the
2 relocation of CITY WATERLINES, CITY shall submit a written request to DISTRICT
3 describing the additional work desired and agree to pay DISTRICT for any agreed upon work
4 requested. Payment for CITY requested additional work shall be based upon actual quantities
5 of materials installed at the contract unit prices bid or at the negotiated change order prices.
6

7 4. DISTRICT and CITY each pledge to cooperate in regard to the operation
8 and maintenance of their respective facilities as set forth herein and to discharge their
9 respective maintenance responsibilities in an expeditious fashion so as to avoid the creation of
10 any nuisance condition or undue maintenance impact upon the others' facilities.

11 5. DISTRICT shall indemnify, defend, save and hold harmless CITY
12 (including their respective officers, districts, special districts and departments, their respective
13 directors, officers, Board of Supervisors, elected and appointed officials, employees, agents,
14 representatives, independent contractors, and subcontractors) from any liabilities, claim,
15 damage, proceeding or action, present or future, based upon, arising out of or in any way
16 relating to DISTRICT'S (including its officers, employees, agents, representatives, independent
17 contractors, and subcontractors) actual or alleged acts or omissions related to this Agreement,
18 performance under this Agreement, or failure to comply with the requirements of this
19 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)
20 payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.
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22 6. CITY shall indemnify, defend, save and hold harmless DISTRICT
23 (including its officers, employees, agents, representatives, independent contractors, and
24 subcontractors) from any liabilities, claim, damage, proceeding or action, present or future,
25 based upon, arising out of or in any way relating to CITY'S (including its officers, Board of
26 Supervisors, elected and appointed officials, employees, agents, representatives, independent
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1 contractors, and subcontractors) actual or alleged acts or omissions related to this Agreement,
2 performance under this Agreement, or failure to comply with the requirements of this
3 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)
4 payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.

5 7. Any waiver by DISTRICT or by CITY of any breach of any one or more
6 of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other
7 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to
8 require exact, full and complete compliance with any terms of this Agreement shall not be
9 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from
10 enforcement hereof.

11 8. This Agreement is to be construed in accordance with the laws of the State
12 of California.

13 9. Any and all notices sent or required to be sent to the parties of this
14 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

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17 RIVERSIDE COUNTY FLOOD CONTROL
18 AND WATER CONSERVATION DISTRICT
19 1995 Market Street
Riverside, CA 92501
Attn: Engineering Services Section

CITY OF BANNING
99 East Ramsey Street
Banning, CA 92220
Attn: Kahono Oei

20 10. If any provision in this Agreement is held by a court of competent
21 jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless
22 continue in full force without being impaired or invalidated in any way.

23
24 11. This Agreement is the result of negotiations between the parties hereto,
25 and the advice and assistance of their respective counsel. The fact that this Agreement was
26 prepared as a matter of convenience by DISTRICT shall have no import or significance. Any
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1 uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because
2 DISTRICT prepared this Agreement in its final form.

3 12. This Agreement is made and entered into for the sole protection and
4 benefit of the parties hereto. No other person or entity shall have any right or action based
5 upon the provisions of this Agreement.

6 13. This Agreement is intended by the parties hereto as a final expression of
7 their understanding with respect to the subject matter hereof and as a complete and exclusive
8 statement of the terms and conditions thereof and supersedes any and all prior and
9 contemporaneous agreements and understandings, oral and written, in connection therewith.
10 This Agreement may be changed or modified only upon the written consent of the parties
11 hereto.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By Steve Thomas
WARREN D. WILLIAMS
General Manager-Chief Engineer

By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel
By [Signature]
NEAL R. KIPNIS
Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By _____
Deputy

(SEAL)

Cooperative Agreement: Gilman Home Channel Lateral A, Stage 3 and Improvements to
Existing Gilman Home Channel, Stage 4
Project Nos. 5-0-00171-03 and 5-0-00170-90
06/24/13
AMR:blj

CITY OF BANNING

By *Deborah Franklin*
DEBORAH FRANKLIN
Mayor

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Cooperative Agreement: Gilman Home Channel Lateral A, Stage 3 and Improvements to Existing Gilman Home Channel, Stage 4
Project Nos. 5-0-00171-03 and 5-0-00170-90
06/24/13
AMR:blj

Exhibit A

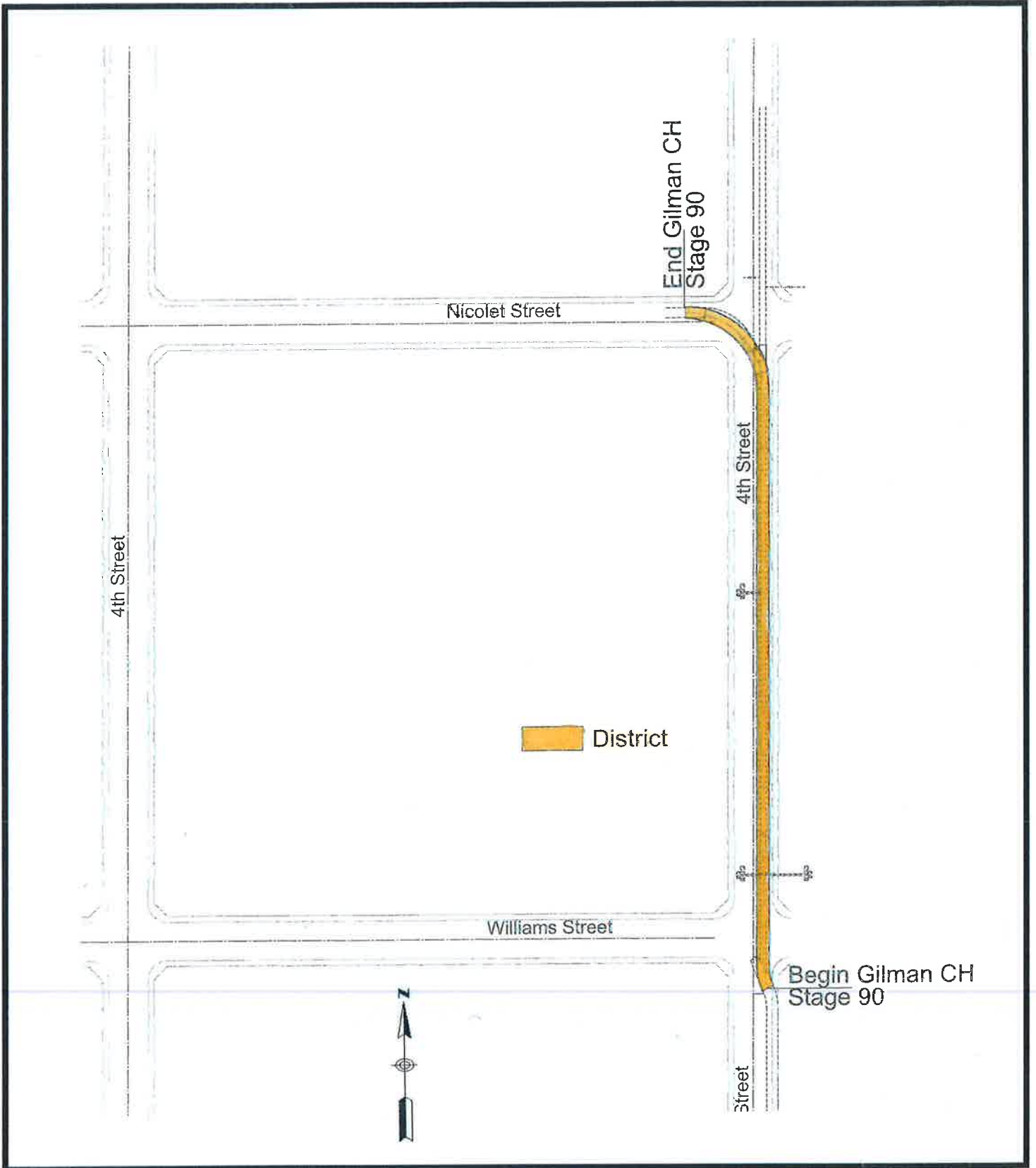


Exhibit B

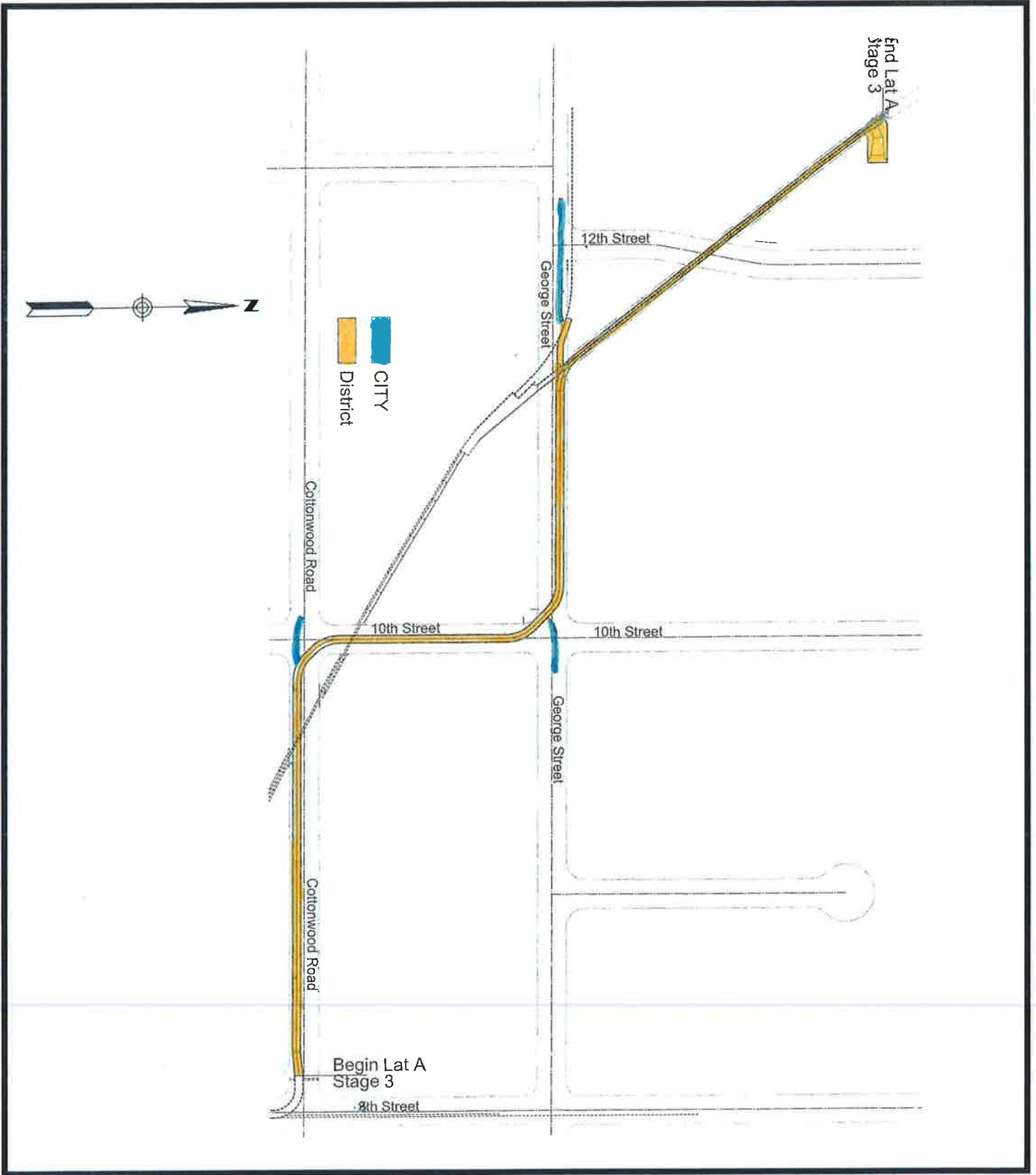


Exhibit C

