

FORM APPROVED COUNTY COUNSEL  
 BY: *[Signature]* 6/4/15  
 DATE: GREGORY P. PRIAMOS

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

906B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
 July 7, 2015

**SUBJECT:** Approval of a Cooperative Agreement for Banning Master Drainage Plan Line D-2, Stages 1 and 2 and Banning Master Drainage Plan Lateral D-2A, Stage 1; Project Nos. 5-0-00169 and 5-0-00172; 5th District; [\$N/A]

**RECOMMENDED MOTION:** That the Board of Supervisors:

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

**BACKGROUND:**

**Summary**

This Cooperative Agreement (Agreement) sets forth the terms and conditions by which District will design and construct the Banning Master Drainage Plan (MDP) Line D-2, Stages 1 and 2 and Banning MDP Lateral D-2A, Stage 1 project.

Departmental Concurrence

LMD:bad  
 P8/170127

*for* *Mark H. Williams*  
 WARREN D. WILLIAMS  
 General Manager-Chief Engineer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	

**SOURCE OF FUNDS:**

Budget Adjustment: No  
 For Fiscal Year: N/A

**C.E.O. RECOMMENDATION:**

APPROVE  
 BY: *[Signature]*  
 Steven C. Horn

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.:

District: 5th

Agenda Number:

11-5

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

**FORM 11:** Approval of a Cooperative Agreement for Banning Master Drainage Plan Line D-2, Stages 1 and 2 and Banning Master Drainage Plan Lateral D-2A, Stage 1; Project Nos. 5-0-00169 and 5-0-00172; 5th District; [\$/N/A]

**DATE:** July 7, 2015

**PAGE:** Page 2 of 2

**BACKGROUND:**

**Summary (continued)**

The City is granting the District the necessary rights to construct, operate and maintain the project, which is located within City street rights of way.

Upon completion of project construction, the District will assume ownership and responsibility for the operation and maintenance of Banning MDP Line D-2, Stages 1 and 2. The City will, upon construction completion, assume ownership and responsibility for the operation and maintenance of Banning MDP Lateral D-2A, Stage 1 and the associated catch basins, inlets and connector pipes that are 36 inches or less in diameter and located within City street rights of way.

The District is funding all design, construction and construction inspection costs for the project. The City is paying for all necessary waterline relocations.

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

**Impact on Residents and Businesses**

Upon construction completion, this project will provide improved flood protection to the community of Banning and reduce traffic hazards caused by flooding at the intersection of Ramsey Street and Hargrave Street. This project is funded by ad valorem property tax revenue and entails no new fees, taxes or bonded indebtedness.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

Future operations and maintenance costs associated with Banning MDP Line D-2, Stages 1 and 2 will accrue to the District.

**ATTACHMENTS:**

1. Vicinity Map
2. Cooperative Agreement



Theodore Street

Wilson Street

San Geronimo Avenue

Ramsey Street

Hargrave Street

City of Banning

Interstate



BANNING MDP LINE D-2,  
LATERAL D-2A



1 COOPERATIVE AGREEMENT

2 Banning Master Drainage Plan Line D-2, Stages 1 and 2 and  
3 Banning Master Drainage Plan Lateral D-2A, Stage 1  
(Project Nos. 5-0-00169 and 5-0-00172)

4 The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION  
5 DISTRICT, hereinafter called "DISTRICT", and the CITY OF BANNING, hereinafter called  
6 "CITY", hereby agree as follows:  
7

8 RECITALS

9 A. DISTRICT has budgeted for and plans to construct certain flood control facilities  
10 in order to provide improved flood protection and drainage to the intersection of Ramsey Street  
11 and Hargrave Street, located within the City of Banning; and

12 B. The flood control facilities, all as shown on DISTRICT Drawing Nos. 5-223 and  
13 5-225, respectively, consist of the following:

14 (i) approximately 600 lineal feet of underground storm drain system  
15 extending from Hargrave Street to Williams Street, hereinafter called  
16 "LINE D-2 STAGE 1", as shown in concept in blue on Exhibit "A",  
17 attached hereto and made a part hereof; and  
18

19 (ii) approximately 4,700 lineal feet of underground storm drain system  
20 extending from Williams Street to Indian School Lane and along a  
21 portion of Indian School Lane, hereinafter called "LINE D-2 STAGE 2",  
22 as shown in concept in red on Exhibit "A".  
23

24 Together, LINE D-2 STAGE 1 and LINE D-2 STAGE 2 are hereinafter called  
25 "DISTRICT DRAINAGE FACILITIES"; and

26 C. Associated with the construction of DISTRICT DRAINAGE FACILITIES is the  
27 construction of:  
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- (i) approximately 700 lineal feet of underground storm drain system located in Theodore Street between Florida Street and Hargrave Street, hereinafter called "LATERAL D-2A", as shown in concept in green on Exhibit "A"; and
- (ii) certain catch basins, connector pipes and storm drains that are thirty-six inches (36") or less in diameter located within CITY held easements or rights of way, hereinafter called "APPURTENANCES".

Together, LATERAL D-2A and APPURTENANCES are hereinafter called "CITY DRAINAGE FACILITIES". Together, DISTRICT DRAINAGE FACILITIES and CITY DRAINAGE FACILITIES are hereinafter called "PROJECT"; and

D. Within the project footprint, CITY owns, operates and maintains existing waterlines and related appurtenances that are located within CITY-held easements or rights of way, hereinafter called "CITY WATERLINES"; and

E. DISTRICT is willing to (i) prepare plans and specifications for PROJECT in accordance with applicable DISTRICT and CITY standards, (ii) advertise, award and administer a public works construction contract for PROJECT, (iii) inspect the construction of PROJECT, (iv) fund all costs for the design, construction and inspection of PROJECT as set forth herein, and (v) upon completion of PROJECT construction, assume ownership, operation and maintenance responsibility of DISTRICT DRAINAGE FACILITIES; and

F. CITY is willing to (i) review and approve plans and specifications for PROJECT, (ii) grant DISTRICT the right to construct PROJECT within CITY rights of way, (iii) plan, design and carry out the relocation of all interfering and affected portions of CITY WATERLINES at CITY's sole cost and expense, (iv) inspect construction of PROJECT, and

1 (v) upon completion of PROJECT construction, assume ownership, operation and maintenance  
2 responsibility of CITY DRAINAGE FACILITIES; and

3 G. It is in the best interest of the public to proceed with the construction of PROJECT  
4 at the earliest possible date; and

5 H. The purpose of this Agreement is to memorialize the understandings by and  
6 among CITY and DISTRICT with respect to the funding, construction, inspection, ownership,  
7 operation and maintenance of PROJECT.  
8

9 NOW, THEREFORE, the parties hereto mutually agree as follows:

10 SECTION I

11 DISTRICT shall:

12 1. Pursuant to the California Environmental Quality Act (CEQA), act as the Lead  
13 Agency and assume responsibility for the preparation, circulation and adoption of all necessary  
14 and appropriate CEQA documents pertaining to the construction, operation and maintenance of  
15 PROJECT.  
16

17 2. Prepare, at its sole cost and expense, construction plans and specification  
18 documents for PROJECT in accordance with applicable DISTRICT and CITY standards and  
19 submit to CITY for review and approval prior to advertising a public works construction  
20 contract for PROJECT.  
21

22 3. Obtain all necessary rights of way, rights of entry and temporary construction  
23 easements necessary to construct, inspect, operate and maintain PROJECT.

24 4. Secure, at its sole cost and expense, all necessary permits, approvals, licenses or  
25 agreements required by any federal or state resource or regulatory agencies pertaining to the  
26 construction, operation and maintenance of PROJECT.  
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1           5. Advertise, award and administer a public works contract for the construction of  
2 PROJECT.

3           6. Provide CITY with written notice that DISTRICT has awarded a construction  
4 contract for PROJECT.

5           7. Notify CITY in writing at least twenty (20) days prior to the start of construction  
6 of PROJECT.

7           8. Construct, or cause to be constructed, PROJECT pursuant to a DISTRICT  
8 administered public works contract in accordance with DISTRICT and CITY approved plans  
9 and specifications and pay all costs associated therewith.

10           9. Inspect the construction of PROJECT.

11           10. [THIS SECTION INTENTIONALLY LEFT BLANK]

12           11. Not permit any change to or modification of CITY approved PROJECT plans and  
13 specifications that would result in change of function or maintainability of CITY DRAINAGE  
14 FACILITIES without the prior written permission and consent of CITY.

15           12. Within two (2) weeks of completing PROJECT construction, provide CITY with  
16 written notice that PROJECT construction is substantially complete and request CITY to  
17 conduct a final inspection of PROJECT.

18           13. Provide CITY with a copy of the Notice of Completion upon completion of  
19 PROJECT construction and settlement of any outstanding claims.

20           14. Provide CITY with a duplicate copy of 'Record Drawing' plans for PROJECT  
21 following DISTRICT'S acceptance of PROJECT construction as being complete.  
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SECTION II

CITY shall:

- 1. Act as a Responsible Agency under CEQA and take all necessary and appropriate action to comply with CEQA.
- 2. Review and approve PROJECT plans and specifications at its sole cost and expense prior to DISTRICT advertising PROJECT for construction bids.
- 3. Grant DISTRICT, by execution of this Agreement, all rights to construct, inspect operate and maintain PROJECT within CITY rights of way.
- 4. Issue a no fee encroachment permit to DISTRICT'S contractor(s) to construct PROJECT within CITY rights of way.
- 5. Plan, design and carry out the relocation of any interfering or affected portions of CITY WATERLINES at its sole cost and expense, to be completed prior to the start of construction of LINE D-2, STAGE 2 and no later than March 31, 2016.
- 6. Inspect construction of PROJECT at its sole cost and expense, as set forth in Section III.1.
- 7. Upon receipt of DISTRICT'S written notice that PROJECT construction is substantially complete, as set forth in Section I.12, conduct a final inspection of PROJECT.
- 8. Accept ownership and sole responsibility for the operation and maintenance of CITY DRAINAGE FACILITIES upon (i) receipt of DISTRICT'S Notice of Completion, as set forth in Section I.13, and (ii) receipt of a duplicate copy of 'Record Drawing' plans for PROJECT, as set forth in Section I.14.
- 9. Upon DISTRICT acceptance of PROJECT construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way, which must be performed at such time(s) that the finished grade along and



1 above the underground portions of DISTRICT DRAINAGE FACILITIES are improved,  
2 repaired, replaced or changed. It being further understood and agreed that any such  
3 adjustments shall be performed at no cost to DISTRICT.

### 4 SECTION III

5 It is further mutually agreed:

6  
7 1. CITY DRAINAGE FACILITIES shall, at all times, remain sole ownership  
8 and exclusive responsibility of CITY. Nothing herein shall be construed as creating any  
9 obligation or responsibility on the part of DISTRICT to operate, maintain or warranty CITY  
10 DRAINAGE FACILITIES.

11 2. Except as otherwise provided herein, all construction work involved with  
12 PROJECT shall be inspected by DISTRICT and shall not be deemed complete until approved  
13 and accepted as complete by DISTRICT.

14 3. Except as otherwise provided herein, DISTRICT shall not be responsible  
15 for any additional street repairs or improvements not shown in IMPROVEMENT PLANS and  
16 not as a result of PROJECT construction.

17 4. DISTRICT shall indemnify, defend, save and hold harmless CITY  
18 (including its officers, employees, agents, representatives, independent contractors and  
19 subcontractors) from any liabilities, claim, damage, proceeding or action, present or future,  
20 based upon, arising out of or in any way relating to DISTRICT'S (including its officers, Board  
21 of Supervisors, elected and appointed officials, employees, agents, representatives, independent  
22 contractors and subcontractors) actual or alleged acts or omissions related to this Agreement,  
23 performance under this Agreement or failure to comply with the requirements of this  
24 Agreement including but not limited to (i) property damage, (ii) bodily injury or death, (iii)  
25 payment of attorney's fees, or (iv) any other element of any kind or nature whatsoever.  
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5. CITY shall indemnify, defend, save and hold harmless DISTRICT and County of Riverside (including their respective officers, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CITY'S (including its officers, employees, agents, representatives, independent contractors and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement or failure to comply with the requirements of this Agreement including but not limited to (i) property damage, (ii) bodily injury or death, (iii) payment of attorney's fees, or (iv) any other element of any kind or nature whatsoever.

6. [THIS SECTION INTENTIONALLY LEFT BLANK]

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

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

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

3	RIVERSIDE COUNTY FLOOD CONTROL	CITY OF BANNING
4	AND WATER CONSERVATION DISTRICT	99 East Ramsey Street
5	1995 Market Street	Banning, CA 92220
6	Riverside, CA 92501	Attn: Art Vela
	Attn: Engineering Services Section	

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

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

12           12. The parties hereto shall not assign this Agreement without the written  
13 consent of the other parties.

14           13. Any action at law or in equity brought by any of the parties hereto for the  
15 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of  
16 competent jurisdiction in the County of Riverside, State of California, and the parties hereto  
17 waive all provisions of law providing for a change of venue in such proceedings to any other  
18 county.  
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20           14. This Agreement is the result of negotiations between the parties hereto and  
21 the advice and assistance of their respective counsel. The fact that this Agreement was  
22 prepared as a matter of convenience by DISTRICT shall have no import or significance. Any  
23 uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because  
24 DISTRICT prepared this Agreement in its final form.  
25

26           15. Any waiver by DISTRICT or by CITY of any breach of any one or more  
27 of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other  
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1 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to  
2 require exact, full and complete compliance with any terms of this Agreement shall not be  
3 construed as in any manner changing the terms hereof or estopping DISTRICT or CITY from  
4 enforcement hereof.

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6 16. 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.

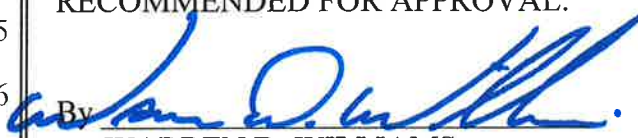
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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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(to be filled in by the Clerk of the Board)

4 RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**


5  
6 By  By \_\_\_\_\_  
7 WARREN D. WILLIAMS MARION ASHLEY, Chairman  
8 General Manager-Chief Engineer Riverside County Flood Control and Water  
Conservation District Board of Supervisors

9  
10 APPROVED AS TO FORM:

ATTEST:

11 GREGORY P. PRIAMOS  
12 County Counsel

KECIA HARPER-IHEM  
Clerk of the Board

13 By  \_\_\_\_\_  
14 NEAL R. KIPNIS  
15 Deputy County Counsel


By \_\_\_\_\_  
Deputy

(SEAL)

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25 Cooperative Agreement  
26 Banning MDP Line D-2, Stage 1 and 2; Lateral D-2A, Stage 1  
27 Project Nos. 5-0-00169 and 5-0-00172  
06/01/15  
28 LMD:bad

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**CITY OF BANNING**

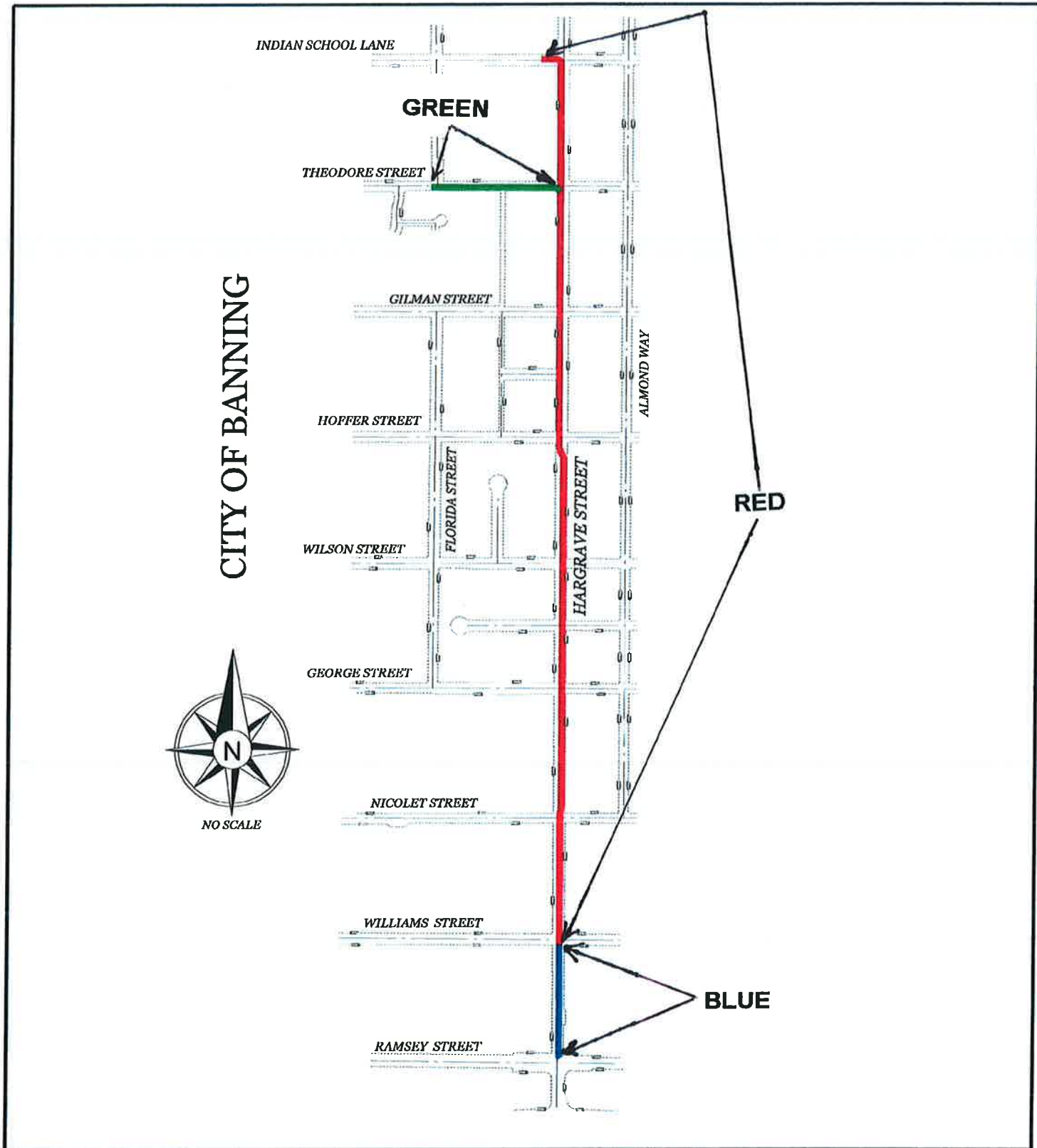
By   
DEBORAH FRANKLIN  
Mayor

APPROVED AS TO FORM:

By   
DAVID ALESHIRE  
City Attorney

Cooperative Agreement  
Banning MDP Line D-2, Stage 1 and 2; Lateral D-2A, Stage 1  
Project Nos. 5-0-00169 and 5-0-00172  
06/01/15  
LMD:bad

# EXHIBIT A



COOPERATIVE AGREEMENT  
Banning Master Drainage Plan  
Line D-2 (stage 1), Line D-2 (stage 2), Line D-2A (stage 1)  
Project Nos. 5-0-00169 and 5-0-00172