

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



ITEM
11.2
(ID # 8063)

MEETING DATE:
Tuesday, October 2, 2018

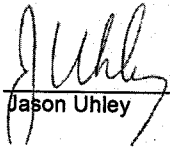
FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of Cooperative Agreement between the Riverside County Flood Control and Water Conservation District and the City of Banning for Banning Master Drainage Plan – Line H, Stage 1, Project No. 5-0-00177, Nothing Further is Required under CEQA, District 5. [Total Estimated Project Cost: \$2,364,132 – District Zone 5 Funds 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that approval of the Cooperative Agreement and acceptance of the flood control facilities will not have a significant effect on the environment pursuant to the provisions of California Environmental Quality Act (CEQA), nothing further is required because all potentially significant effects have been adequately analyzed in an earlier adopted Mitigated Negative Declaration and have been mitigated to less than significant in the adopted Mitigation Monitoring and Reporting Program;
2. Approve the Cooperative Agreement between the Riverside County Flood Control and Water Conservation District (District) and the City of Banning (City);
3. Authorize the Chairman to execute the Cooperative Agreement documents on behalf of the District; and
4. Direct the Clerk of the Board to return two (2) copies of the executed Agreement to the District.

ACTION: Policy


Jason Uhley

9/20/2018

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: October 2, 2018
xc: Flood

Kecia Harper-Ihem
Clerk of the Board

By: 
Deputy

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$472,832	\$1,891,330	\$2,364,162	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: 25150-947480-548200 Infrastructure (Zone 5 Construction – 100%)			Budget Adjustment: No	
			For Fiscal Year: 18/19 – 21/22	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This Cooperative Agreement (Agreement) sets forth the terms and conditions by which the District will design and construct certain flood control facilities within the Banning Master Drainage Plan.

The Agreement is necessary for the City to grant the District the necessary rights to access, construct, operate and maintain the project within City's rights of way. Upon completion of construction, the District will assume ownership and responsibility for the operation and maintenance of the mainline storm drain facilities. The City will assume ownership and responsibility for the operation and maintenance of street paving and the project's associated catch basins, connector pipes and storm drains that are 36 inches or less in diameter located within City's rights of way.

California Environmental Quality Act (CEQA) Findings

An Initial Study/Mitigated Negative Declaration and Mitigation Monitoring Reporting Program (MND/MMRP) was prepared by the District and adopted for the project by the Board of Supervisors on December 15, 2015 (Agenda Item No. 11.3). Nothing further is required because this proposed action was adequately analyzed in the earlier adopted MND/MMRP by this Board.

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

Prev. Agn. Ref.: 11.3 of 12/15/15

Impact on Residents and Businesses

This project is funded by ad valorem property tax revenue and entails no new fees, taxes or bonded indebtedness to residents and businesses. Upon construction completion, this project will (i) provide an outlet for adjacent development; (ii) provide immediate flood relief for adjacent areas; (iii) improve traffic safety during periods of flooding; and (iv) help reduce the floodplain limits along the mainline storm drain.

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Additional Fiscal Information

The District is funding all design, construction and construction inspection costs for the project which is estimated to be \$2,364,162. The City will reimburse the District for all costs related to the street paving. Sufficient funding is available in the District's Zone 5 budget and will be included in the proposed budget in future years as appropriate. Future operations and maintenance costs associated with the mainline storm drain will accrue to the District.

Project Funding Summary

\$ 472,832	Fiscal Year 18/19 Project Appropriation
\$1,891,330	Fiscal Years 19/20 – 21/22 Estimated Project Appropriation
<hr/>	<hr/>
\$2,364,162	Total Estimated Project Cost

ATTACHMENTS:

1. Vicinity Map
2. Cooperative Agreement

AMR:blm
P8/222618



Gregory V. Priaplos, Director County Counsel 9/20/2018

COOPERATIVE AGREEMENT
 Banning Master Drainage Plan Line H, Stage 1
 Project No. 5-0-00177

The Riverside County Flood Control and Water Conservation District, a body politic, ("DISTRICT") and the City of Banning, a municipal corporation, ("CITY"), hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for and plans to design and construct Banning Master Drainage Plan Line H, Stage 1 ("LINE H STAGE 1"), to provide necessary flood control and drainage improvements for the immediate adjacent areas within the city of Banning; and

B. LINE H STAGE 1 as identified in DISTRICT's Banning Master Drainage Plan ("MDP") and as shown on District Drawing No. 5-0224 consists of approximately 3,900 lineal feet of underground storm drain system located within Hathaway Street between Barbour Street and Wesley Street then easterly along Wesley Street to Smith Creek Channel, in the city of Banning, as shown in concept on Exhibit "A" attached hereto and made a part hereof. At its downstream terminus, LINE H STAGE 1 will outlet into DISTRICT's existing Smith Creek Channel; and

C. Associated with the construction of LINE H STAGE 1 is the construction of various catch basins, connector pipes and storm drains that are thirty-six inches (36") or less in diameter ("APPURTENANCES"); and

D. CITY desires DISTRICT to include certain street improvements such as street paving ("STREET PAVING"), as shown in concept on Exhibit "B" attached hereto and made a part hereof, as a part of its construction contract; and

E. CITY is willing to reimburse DISTRICT for one hundred percent (100%) of the lowest responsible construction contract bid price for STREET PAVING ("CITY INITIAL

PAYMENT"), plus any cost associated with STREET PAVING items resulting from contract change orders ("STREET PAVING CHANGE ORDERS"). Together, CITY INITIAL PAYMENT and STREET PAVING CHANGE ORDERS are collectively referred to as "CITY CONTRIBUTION". CITY CONTRIBUTION shall not exceed a total sum of one hundred thousand dollars (\$100,000); and

F. DISTRICT is willing to include STREET PAVING as part of its public works construction contract. Therefore, DISTRICT has also budgeted for and is willing to prepare or cause to be prepared, and have CITY review for approval the necessary restoration plans and specifications for STREET PAVING ("STREET PAVING PLANS") located within CITY rights of way; and

G. CITY is willing to review and approve DISTRICT's plans and specifications for STREET PAVING PLANS; and

H. Together, APPURTENANCES and STREET PAVING are hereinafter called "CITY FACILITIES"; and

I. Altogether LINE H STAGE 1 and CITY FACILITIES are called "PROJECT"; and

J. DISTRICT and CITY acknowledge it is in the best interest of the public to proceed with the construction of PROJECT at the earliest possible date; and

K. The purpose of this Agreement is to memorialize the mutual understandings by and between DISTRICT and CITY with respect to design, construction, inspection, ownership, operation, and maintenance of PROJECT.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree as follows:

SECTION I

DISTRICT shall:

1. Pursuant to the California Environmental Quality Act (CEQA), act as the Lead Agency and assume responsibility for the preparation, circulation, and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation, and maintenance of PROJECT.
2. Prepare, at its sole cost and expense, construction plans and specification documents for PROJECT ("IMPROVEMENT PLANS"), including STREET PAVING PLANS, in accordance with applicable DISTRICT and CITY standards.
3. Obtain, at its sole cost and expense, all necessary rights of way, rights of entry and temporary construction easements necessary to construct, inspect, operate and maintain PROJECT located within its rights of way.
4. Secure, at its sole cost and expense, all necessary permits, approvals, licenses or agreements required by any federal, state or local resource or regulatory agencies pertaining to the construction, operation and maintenance of PROJECT.
5. Prior to advertising PROJECT for public works construction contract bids, submit IMPROVEMENT PLANS and STREET PAVING PLANS to CITY for its review and approval, as appropriate.
6. Advertise, award and administer a public works construction contract for PROJECT, including STREET PAVING PLANS.
7. Provide CITY with written notice that DISTRICT has awarded a public works construction contract for PROJECT. The written notice to CITY shall include the Contractor's actual bid amounts for STREET PAVING PLANS.
8. Within thirty (30) days of awarding PROJECT construction contract, pay the

Western Riverside County Regional Conservation Agency the costs associated with the Multiple Species Habitat Conservation Plan, which is either the lesser of three percent (3%) of the lowest bid price or three percent (3%) of the contract bid price, less the value of the applicable project specific mitigation.

9. Prior to commencing PROJECT construction, schedule and conduct a pre-construction meeting between DISTRICT, CITY and other affected entities. DISTRICT shall notify CITY at least twenty (20) days prior to conducting the pre-construction meeting.

10. Furnish CITY, at the time of providing written notice for the pre-construction meeting as set forth in Section I.9., with a construction schedule which shall show the order and dates in which DISTRICT or DISTRICT's contractor proposes to carry out the various parts of work, including estimated start and completion dates.

11. Not permit any change to, or modification of, CITY and DISTRICT approved STREET PAVING PLANS without the prior written permission and consent of CITY.

12. Grant CITY, by execution of this Agreement, the right to enter upon DISTRICT's property where necessary and convenient for the purpose of gaining access to, and performing inspection service for the construction of PROJECT as set forth herein.

13. Construct or cause to be constructed, PROJECT pursuant to a DISTRICT administered public works construction contract, in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS and STREET PAVING PLANS.

14. Inspect or cause to be inspected, construction of PROJECT.

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

16. Require its construction contractor(s) to include CITY as an additional

insured under the liability insurance coverage for PROJECT, and also require its construction contractor(s) to include CITY as a third party beneficiary of any and all warranties of the contractor's work with regard to CITY FACILITIES.

17. Accept ownership and sole responsibility for the operation and maintenance of PROJECT until such time as CITY accepts ownership and responsibility for operation and maintenance of CITY FACILITIES.

18. Within two (2) weeks of completing PROJECT construction, provide CITY with written notice that PROJECT construction is substantially complete and requesting that CITY conduct a final inspection of CITY FACILITIES and subsequently assume ownership and responsibility for operation and maintenance of CITY FACILITIES.

19. Keep an accurate accounting of all PROJECT construction costs and include this final accounting when invoicing CITY for STREET PAVING and if applicable, STREET PAVING CHANGE ORDERS. The final accounting of construction costs shall include a detailed breakdown of all costs, including but not limited to DISTRICT'S costs associated with administering the construction contract, payment vouchers, CITY-approved change orders and other such construction contract documents as may be necessary, to establish the actual cost of construction.

20. Upon completion and acceptance of STREET PAVING construction by CITY, invoice CITY for CITY CONTRIBUTION as set forth in Section II.10, provided that CITY CONTRIBUTION shall not exceed one hundred thousand dollars (\$100,000).

21. Upon DISTRICT's acceptance of PROJECT construction as complete, provide CITY with a copy of DISTRICT's Notice of Completion.

22. Upon DISTRICT's acceptance of PROJECT construction as complete, provide CITY with (i) a reproducible duplicate set of "record drawings" of PROJECT plans; and

(ii) a reproducible copy of "record drawings" of STREET PAVING PLANS.

23. Ensure that all work performed pursuant to this Agreement by DISTRICT, its agents or contractors is done in accordance with all applicable laws and regulations, including but not limited to prevailing wage laws, all applicable provisions of the Labor Code, Business and Professions Code, and Water Code. DISTRICT shall be solely responsible for all costs associated with compliance with applicable laws and regulations.

SECTION II

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, IMPROVEMENT PLANS and STREET PAVING PLANS prior to DISTRICT's advertising PROJECT for construction bids.
3. Grant DISTRICT, by execution of this Agreement, all rights necessary to construct, inspect, operate and maintain PROJECT within CITY rights of way or easements, upon reasonable prior notice to CITY before such activities.
4. Issue, at no cost to DISTRICT or DISTRICT's contractor, the necessary encroachment permit(s) required to construct PROJECT within CITY rights of way.
5. Obtain, at its sole cost and expense, all necessary rights of way, rights of entry and temporary construction easements necessary to construct, inspect, operate and maintain PROJECT located within its rights of way.
6. 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.
7. Order the relocation of all CITY owned utilities within CITY rights of way

which conflict with the construction of PROJECT and which must be relocated at the CITY's expense.

8. Inspect the construction of CITY FACILITIES 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 with DISTRICT's contractor(s) during the construction of PROJECT.

9. Upon receipt of DISTRICT's written notice that PROJECT construction is substantially complete as set forth in Section I.21, conduct a final inspection of CITY FACILITIES.

10. Pay DISTRICT, within thirty (30) days after receipt of DISTRICT'S appropriate invoice, for CITY CONTRIBUTION as set forth in Section I.20.

11. Accept ownership and sole responsibility for the operation and maintenance of CITY FACILITIES upon (i) receipt of DISTRICT's Notice of Completion as set forth in Section I.21; and (ii) receipt of a reproducible duplicate set of "record drawings" of PROJECT plans and STREET PAVING PLANS as set forth in Section I.22.

12. 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 and jurisdiction which must be performed at such time(s) that the finished grade along and above the underground portions of PROJECT are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.

SECTION III

It is further mutually agreed:

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

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

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

4. DISTRICT and CITY 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.

5. DISTRICT shall indemnify, defend, save and hold harmless CITY (including its officers, 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 DISTRICT's (including its officers, Board of Supervisors, elected and appointed officials, 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: (a) property damage; (b) bodily injury or death; (c) payment of reasonable attorney's fees; or (d) any other element of any kind or nature whatsoever.

6. CITY shall indemnify, defend, save and hold harmless DISTRICT and the County of Riverside (including its agencies, 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, elected and appointed officials, 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: (a) property damage; (b) bodily injury or death; (c) payment of reasonable attorney's fees; or (d) any other element of any kind or nature whatsoever.

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

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

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

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

CITY OF BANNING
99 E. Ramsey Street
Banning, CA 92220
Attn: Kevin Sin

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

11. Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

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

13. 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.

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

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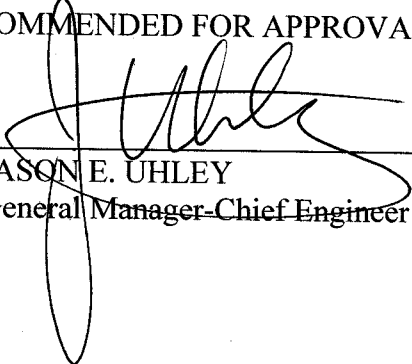
IN WITNESS WHEREOF, the parties hereto have executed this Cooperative Agreement on

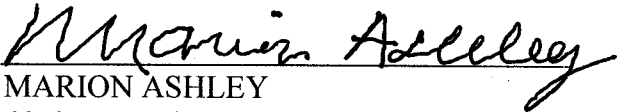
OCT 02 2018

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By 
JASON E. UHLEY
General Manager-Chief Engineer

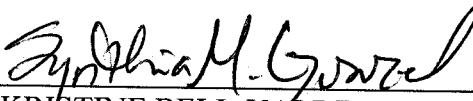
By 
MARION ASHLEY
Chairman, Riverside County Flood Control
and Water Conservation District Board of
Supervisors

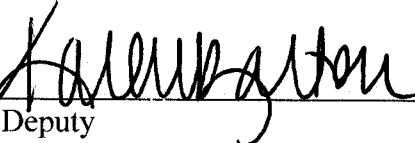
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By 
for KRISTINE BELL-VALDEZ
Supervising Deputy County Counsel

By 
Deputy

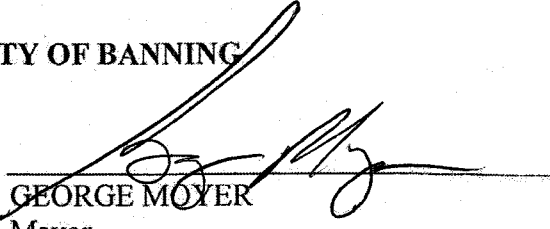
(SEAL)

Cooperative Agreement w/City of Banning
Banning Master Drainage Plan Line H, Stage 1
Project No. 5-0-00177
08/02/18
AMR:blm

RECOMMENDED FOR APPROVAL:

CITY OF BANNING


By


GEORGE MOYER
Mayor

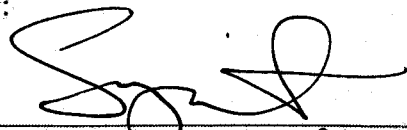
APPROVED AS TO FORM:

ATTEST:

By


KEVIN G. ENNIS
City Attorney



By


MARIE CALDERON *Sonja DeLaFuente*
Deputy City Clerk

(SEAL)

Cooperative Agreement w/City of Banning
Banning Master Drainage Plan Line H, Stage 1
Project No. 5-0-00177
08/02/18
AMR:blm



Legend:
 Proposed Facility
 Existing Open Channel Facility




Banning MDP Line H, Stage 1
Project No. 5-0-00177



EXHIBIT A



Legend

 City Paving Limits

**Banning MDP Line H, Stage 1
Project No. 5-0-00177**

EXHIBIT B

CITY PAVING LIMITS