

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



ITEM: 11.2
(ID # 25022)

MEETING DATE:

Tuesday, June 04, 2024

FROM : FLOOD CONTROL DISTRICT

SUBJECT: FLOOD CONTROL DISTRICT: Approval of Funding Agreement Between the Riverside County Flood Control and Water Conservation District and the City of Banning for Banning Water Canyon Storm Water Percolation Basins Emergency Repair, Project No. 5-0-10001, CEQA Exempt, District 5. [\$750,000 Not-to-Exceed Costs – District Funds 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Funding Agreement ("Agreement") is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3), the "Common Sense" exemption;
2. Approve the Agreement between the Riverside County Flood Control and Water Conservation District ("District") and the City of Banning ("City");
3. Authorize the Chair of the District's Board of Supervisors to execute the Agreement documents on behalf of the District;
4. Authorize the General Manager-Chief Engineer or designee to approve, sign and execute any future non-substantive amendments to the Agreement that do not increase the cost to the District and do not materially change the scope of services, subject to approval as to form by County Counsel; and
5. Direct the Clerk of the Board to return two (2) copies of the executed Agreement to the District.


ACTION:Policy


Jason Uhley, GENERAL MGR-CHIEF FLD CNTRL ENG 5/22/2024

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Spiegel, Washington, Perez and Gutierrez
Nays: None
Absent: None
Date: June 4, 2024
xc: Flood

Kimberly A. Rector
Clerk of the Board
By: 
Deputy

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| FINANCIAL DATA | Current Fiscal Year: | Next Fiscal Year: | Total Cost: | Ongoing Cost |
|--|-----------------------------|--------------------------|-------------------------------|---------------------|
| COST | \$ 0 | \$ 750,000 | \$ 750,000 | \$ 0 |
| NET COUNTY COST | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| SOURCE OF FUNDS: 25150 -947480-536200 Contribution to Non-County Agency – Zone 5 (100%) | | | Budget Adjustment: No | |
| | | | For Fiscal Year: 24/25 | |

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This Agreement sets forth the terms and conditions by which the District will contribute funding to the City for its Banning Water Canyon Storm Water Percolation Basins Emergency Repair project as part of a City administered public works construction contract. Said facility is to be inspected, operated, and maintained by the City.

Tropical Storm Hilary and debris from the Apple Fire impacted the Banning Water Canyon Storm Water Percolation Basins, therefore, the City intends to dredge several of these basins to reduce debris and sediment buildup. The project is essential because it reduces the demand for imported water, represents a potential new local water source and supports water conservation programs in the area.

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

Environmental Findings

The Agreement is exempt from CEQA pursuant to the CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption), which provides, "The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The Agreement does not authorize to any extent whatsoever actual physical development of the underlying property. Such development, if it occurs at all, will be the result of subsequent actions subject to CEQA review by the City prior to construction. The Agreement merely establishes the terms by which the District will contribute funding to the City the construction of the referenced facilities, should they occur at all. It can be seen with certainty that there is no possibility the Agreement will have a significant effect on the environment. Therefore, nothing further is required under CEQA.

Impact on Residents and Businesses

The District's financial contribution toward the City's project will be funded by ad valorem property tax revenue and entails no new fees, taxes nor bonded indebtedness to residents and businesses. Upon construction completion, the facilities (i) provide flood protection for the area

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and future developments and (ii) allow the collected storm runoff to recharge the local groundwater system.

Additional Fiscal Information

The District is providing up to \$750,000 in funding to the City. Sufficient funding is available in the District's Zone 5 budget for FY 2024-2025 and will be included in the proposed budget in future years as appropriate and necessary.

ATTACHMENTS:

1. Vicinity Map
2. Funding Agreement

AMR:bjj
P8/256188



Jason Farin, Principal Management Analyst 5/28/2024



Aaron Gettis, Chief of Deputy County Counsel 5/22/2024

FUNDING AGREEMENT

Banning Water Canyon Storm Water
Percolation Basins Emergency Repair
Project No. 5-0-10001

This Funding Agreement ("Agreement"), dated as of June 04, 2024, is entered into by and between the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a body corporate and politic ("DISTRICT") and the CITY OF BANNING, a municipal corporation ("CITY"). DISTRICT and CITY are collectively referred to herein as "Parties" and individually as "Party". Parties hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for, and CITY has prepared a scope of work for, the construction, operation and maintenance of Banning Water Canyon Storm Water Percolation Basins ("PROJECT"); and

B. PROJECT was affected by Tropical Storm Hilary in 2023 and the debris from the Apple Fire has worsened the impact on the basins. PROJECT is essential because it reduces the demand for imported water, represents a potential new local water source and water conservation initiatives for the area; and

C. PROJECT has the potential to also serve as water quality basin sites that will benefit DISTRICT's Watershed Protection and Stormwater Quality Program; and

D. CITY plans to dredge out several stormwater percolation basins to reduce debris and sediment for PROJECT and DISTRICT is willing to contribute funding toward the construction of PROJECT; and

E. DISTRICT's financial contribution to PROJECT shall be as follows, subject to the not to exceed amount provided herein. Up to seventy-five percent (75%) of all costs associated with the lowest responsible bid contract price for construction of PROJECT

("CONSTRUCTION CONTRIBUTION"). CONSTRUCTION CONTRIBUTION for PROJECT shall not exceed a total of Seven Hundred Fifty Thousand Dollars (\$750,000); and

F. DISTRICT wishes to provide only financial assistance to CITY and have no other role; and

G. The purpose of this Agreement is to memorialize the mutual understandings by and between CITY and DISTRICT with respect to the construction, ownership, operation and maintenance of PROJECT and the payment of CONSTRUCTION CONTRIBUTION.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, Parties hereto mutually agree that the above recitals are true and correct and incorporated into the terms of this Agreement and as follows:

SECTION I

CITY shall:

1. Pursuant to the California Environmental Quality Act ("CEQA"), as Lead Agency and assume responsibility for preparation, circulation and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation and maintenance of PROJECT.
2. Prior to advertising PROJECT for public works construction contract, obtain all necessary permits, licenses, agreements, approvals, rights of way, rights of entry, encroachment permits, and temporary construction easements as may be needed to construct, operate and maintain PROJECT.
3. Upon execution of this Agreement, advertise, award and administer PROJECT pursuant to the applicable provisions of the California Public Contract Code and CITY's procurement policies and procedures (Policy No. B-30). At the time of advertising for bids, provide DISTRICT with a copy of PROJECT's scope of work, bid documents and any subsequent addenda thereto.

4. Provide DISTRICT with written notice (Attention: Special Projects Section) that CITY has awarded a public works construction contract for PROJECT. The written notice shall include the Contractor's actual bid amounts for PROJECT, setting forth the CONSTRUCTION CONTRIBUTION amount.

5. At the time of providing written notice of the award of a construction contract for PROJECT, invoice DISTRICT (Attention: Special Projects Section) for CONSTRUCTION CONTRIBUTION, subject to and provided that, CONSTRUCTION CONTRIBUTION does not exceed a total sum of Seven Hundred Fifty Thousand Dollars (\$750,000) for PROJECT. The lowest responsible bid contract amount shall be supported by a copy of CITY's bid abstracts for PROJECT.

6. Procure or cause to be procured insurance coverages during the term of this Agreement. CITY shall require its PROJECT construction contractor(s) to furnish original certificate(s) of insurance and original certified copies of endorsements and, if requested, certified original policies of insurance including all endorsements and any and all other attachments. Prior to CITY issuing a Notice to Proceed to its construction contractor(s) to begin construction of PROJECT, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT. The procured insurance coverages shall name DISTRICT, County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as additional insured. CITY shall notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

7. Construct or cause to be constructed PROJECT pursuant to a CITY administered public works contract.

8. Inspect PROJECT construction or cause PROJECT's construction to be inspected by its construction manager.

9. 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 CITY and DISTRICT employees on the site.

10. Upon completion of PROJECT construction and CITY's acceptance thereof, accept ownership and sole responsibility for the design, inspection, operation and maintenance of PROJECT.

11. Upon completion of PROJECT construction, provide DISTRICT with a copy of CITY's Notice of Completion.

SECTION II

DISTRICT shall:

1. Within thirty (30) days after receipt of CITY's invoices (i) pay all approved CITY invoices and (ii) review and approve associated documents as described in the RECITALS and SECTION I herein this Agreement, subject to and provided that CONSTRUCTION CONTRIBUTION shall not exceed, Seven Hundred Fifty Thousand Dollars (\$750,000) for PROJECT.

2. Not be responsible to pay any amounts that exceed the CONSTRUCTION CONTRIBUTION for PROJECT.

SECTION III

It is further mutually agreed:

1. Notwithstanding any other provision herein this Agreement, CONSTRUCTION CONTRIBUTION shall not exceed a total sum of Seven Hundred Fifty Thousand Dollars (\$750,000) and shall be used by CITY solely for the purpose of constructing

PROJECT as set forth herein. No additional funding whatsoever shall be provided by DISTRICT for any subsequent PROJECT modifications, extensions or repairs.

2. Under the provisions of this Agreement, DISTRICT shall bear no responsibility whatsoever for the design, construction, ownership, operation or maintenance of PROJECT.

3. CITY shall indemnify, defend and hold harmless and require its construction contractor(s) to indemnify, defend and hold harmless DISTRICT and the County of Riverside (its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives (individually and collectively hereinafter referred to as "Indemnitees")) from any liability whatsoever, based or asserted upon any acts, omissions or services of CITY and CITY's construction contractor(s), (including their officers, employees, subcontractors, agents or representatives ("Indemnitors") arising out of or in any way relating to this Agreement, including, but not limited to, property damage, bodily injury or death, or any other element of any kind or nature whatsoever arising from the performance of Indemnitors from this Agreement. CITY or CITY's construction contractor(s) shall defend, at its sole expense, all costs and fees, including, but not limited, to attorney fees, cost of investigation, defense, and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

4. 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.

5. This Agreement is to be construed in accordance with the laws of the State of California. Any action at law or in equity brought by any of Parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and Parties hereto waive all provisions

of law providing for a change of venue in such proceedings to any other county. Neither CITY nor DISTRICT shall assign this Agreement without the written consent of the other Party.

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

7. Any and all notices sent or required to be sent to 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: Planning Division

CITY OF BANNING
99 E. Ramsey Street
Banning, CA 92220
Attn: Director of Public Works

8. This Agreement is the result of negotiations between 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 importance or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

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

10. The obligations of DISTRICT are limited by and contingent upon the availability of DISTRICT funds for DISTRICT's financial contribution toward PROJECT as set forth herein. In the event such funds are not forth coming for any reason, DISTRICT shall

immediately notify CITY in writing. The Agreement shall be deemed terminated and have no further force and effect immediately upon receipt of DISTRICT's notification by CITY.

11. This Agreement is intended by 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 or written, in connection therewith. This Agreement may be changed or modified only upon the written consent of Parties hereto.

12. No alternation or variation of the terms of this Agreement shall be valid unless made in writing and signed by both Parties and no oral understanding or agreement not incorporated herein shall be binding on either Party hereto.

13. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not Parties to this Agreement.

14. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Each Party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. Parties further agree that the electronic signatures of Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to CUETA as amended from time to time. CUETA authorizes use of an electronic signature for transactions and contracts among Parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by Party using it to have the same force and effect as the use of a manual signature, and

shall be reasonably relied upon by Parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

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

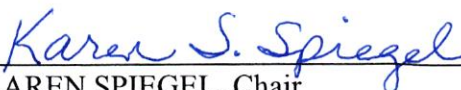
June 04, 2024

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT,**
a body corporate and politic

By 
JASON E. UHLEY
General Manager-Chief Engineer


By 
KAREN SPIEGEL, Chair
Riverside County Flood Control and Water
Conservation District Board of Supervisors

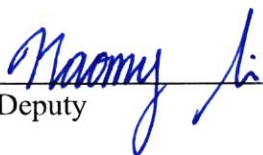
APPROVED AS TO FORM:

ATTEST:

MINH C. TRAN
County Counsel

KIMBERLY RECTOR
Clerk of the Board

By 
KRISTINE BELL-VALDEZ
Supervising Deputy County Counsel

By 
Deputy

(SEAL)

Funding Agreement with City of Banning
Banning Water Canyon Storm Water
Percolation Basins Emergency Repair
Project No. 5-0-10001
04/18/24
AMR:blj

RECOMMENDED FOR APPROVAL:

CITY OF BANNING,
a municipal corporation

By _____
ALBERTO SANCHEZ
Mayor

APPROVED AS TO FORM:

ATTEST:

By _____
SERITA R. YOUNG
City Attorney

By _____
CAROLINE PATTON
Administrative City Clerk

(SEAL)

Funding Agreement with City of Banning
Banning Water Canyon Storm Water
Percolation Basins Emergency Repair
Project No. 5-0-10001
04/18/24
AMR:blm



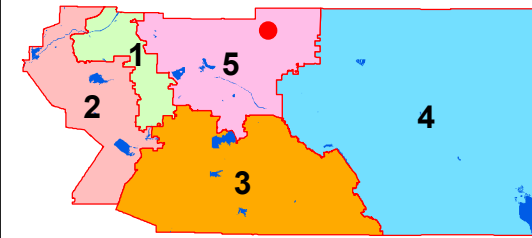
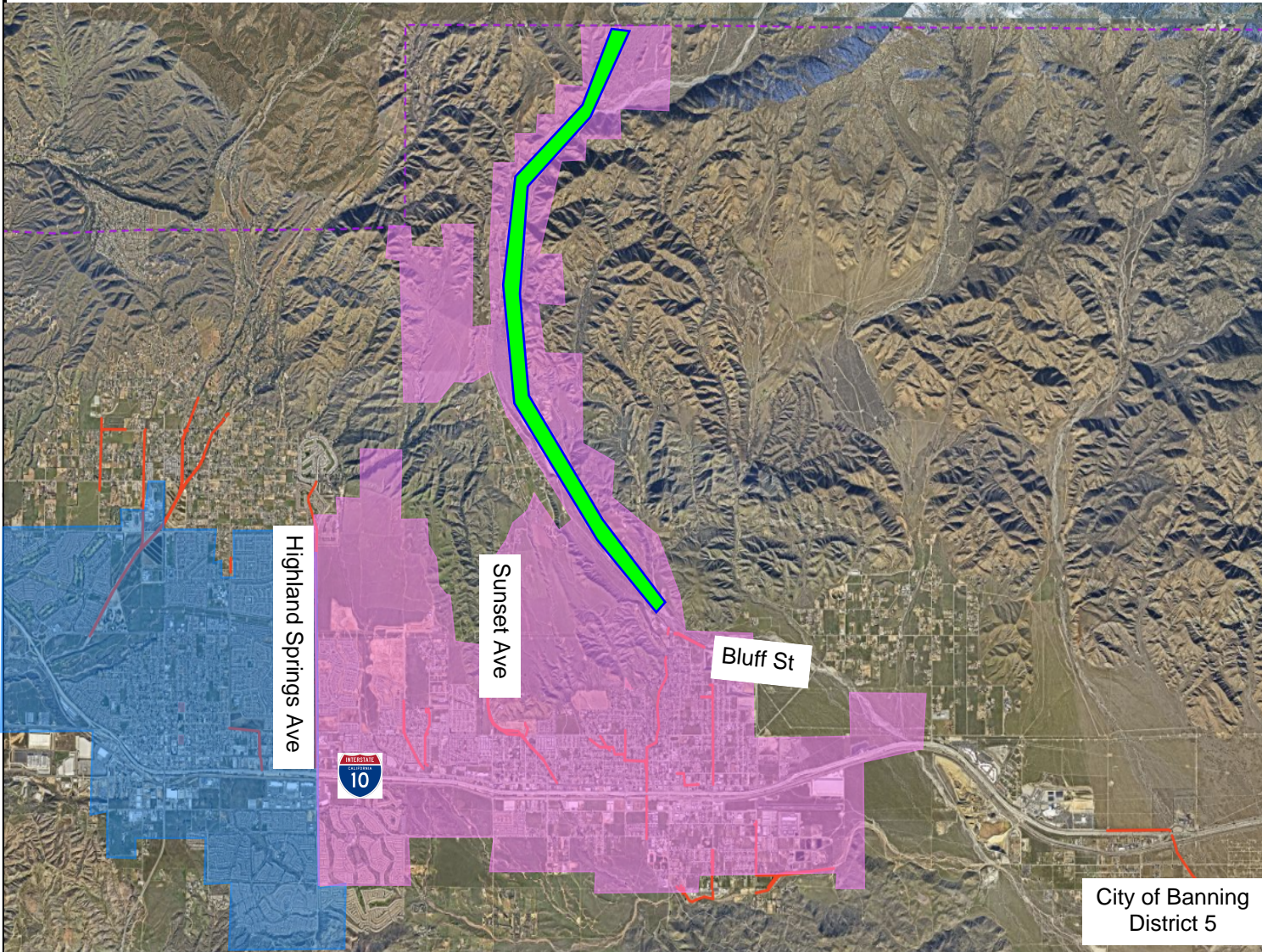
1" = 3365 ft

Banning Water Canyon Storm
Water Percolation Basins
Emergency Repair





02/05/2024



This map may represent a visual display of related geographic information. Data provided here on is not guarantee of actual field conditions. To be sure of complete accuracy, please contact the responsible staff for most up-to-date information.



Legend

-  Project Vicinity
-  Existing Facilities
-  Supervisorial District
-  City of Banning
-  City of Beaumont

Description

Banning Water Canyon Storm Water Percolation Basins Emergency Repair Project No. 5-0-10001

City of Banning
District 5



VICINITY MAP

