

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

206B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
April 14, 2009

SUBJECT: Murrieta Creek Public Use of Right of Way
Project No. 7-0-00020
License Agreement

RECOMMENDED MOTION:

Approve the License Agreement between the District and the City of Temecula; and authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

The Agreement sets forth the terms and conditions by which the District's existing right of way along Murrieta Creek channel will be configured, at the expense of the City of Temecula as a dual use facility, providing public trail access on the District right of way.

Continued on Page 2

KEC:blj

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

C.E.O. RECOMMENDATION:

APPROVE

County Executive Office Signature

BY:
Alex Gann

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS
DATE

- Dep't Recomm.: Consent Policy
- Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: District: 3rd Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

11.3

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

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BACKGROUND (continued):

All construction and operations costs of the public use components will be borne by the City of Temecula. The operation and maintenance of the existing flood control facility will continue to be a District responsibility. The District, in accordance with the terms of the agreement, will license the dual use of the right of way to the City

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

KEC:blj

LICENSE AGREEMENT

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the CITY OF TEMECULA, hereinafter called "CITY", hereby agree as follows:

RECITALS

A. DISTRICT operates and maintains the Murrieta Creek Channel (Project No. 7-0-00020), hereinafter called "CHANNEL", principally located in western Riverside County; and

B. CHANNEL is an essential and integral part of DISTRICT'S regional system of stormwater management infrastructure that provides critical flood control and drainage within the area; and

C. CITY desires to utilize portions of DISTRICT'S existing CHANNEL right of way, hereinafter called "CHANNEL RIGHT OF WAY", for public recreation purposes including the construction of trail improvements and certain ancillary uses associated therewith, including walking, jogging and bicycling, between Rancho California Road and Winchester Road, hereinafter called "TRAIL" as shown in red on Exhibit A, attached hereto and made a part hereof; and

D. CHANNEL'S flood control function is sporadic in nature and thus, appropriate non-motorized public recreation may be accommodated within DISTRICT'S CHANNEL RIGHT OF WAY to the extent that such uses do not unreasonably interfere with CHANNEL'S principal function or DISTRICT'S ability to operate and maintain CHANNEL; and

E. Subject to the provisions of this License Agreement, DISTRICT is willing to (i) allow CITY to construct TRAIL within CHANNEL RIGHT OF WAY, (ii) allow CITY to

1 operate and maintain said TRAIL and (iii) allow the public to utilize the TRAIL for compatible
2 non-motorized recreational uses as determined by DISTRICT; and

3
4 F. In accordance with the provisions of this License Agreement, CITY is
5 willing to (i) construct TRAIL, (ii) operate and maintain CITY constructed TRAIL, (iii)
6 conduct periodic safety inspections of TRAIL and (iv) indemnify and hold DISTRICT harmless
7 against any claims resulting from the public's use of DISTRICT'S CHANNEL RIGHT OF
8 WAY for recreational purposes; and

9
10 G. CITY is willing to (i) prepare plans and specifications for TRAIL, (ii)
11 submit said plans and specifications to DISTRICT for review and approval and (iii) construct
12 TRAIL at its sole cost and expense; and

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14 H. After TRAIL is constructed by CITY, portion(s) of TRAIL may be
15 removed during the U.S. Army Corps of Engineers' construction of Phase 2 of the Murrieta
16 Creek Flood Control, Environmental Restoration and Recreation Project. Any portion(s) of
17 TRAIL that are removed during said construction will be reconstructed at the sole cost and
18 expense of CITY; and

19 I. It is in the public interest to proceed with this License Agreement.

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

21 SECTION I

22 DISTRICT shall:

23 1. Grant to CITY a license to utilize CHANNEL RIGHT OF WAY for
24 public recreation purposes which are not incompatible with CHANNEL'S primary flood control
25 purpose and which do not interfere with or impair DISTRICT'S ability to operate and maintain
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1 DISTRICT, pursuant to its rules and regulations and comply with all provisions set forth
2 therein.

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4 3. In the event CITY installs any improvements and/or equipment or CITY
5 uses or allows use of CHANNEL RIGHT OF WAY in a manner which, in the opinion of the
6 DISTRICT'S General Manager-Chief Engineer, would be detrimental to the operation of
7 CHANNEL, CITY shall, upon written request of the General Manager-Chief Engineer,
8 immediately remove said improvements and/or equipment or cease said use.

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10 4. With regard to TRAIL or any other CITY constructed improvements
11 and/or equipment situated within CHANNEL RIGHT OF WAY, CITY hereby waives any
12 claim against DISTRICT for damages resulting from DISTRICT'S customary use of
13 CHANNEL RIGHT OF WAY for operation and maintenance of CHANNEL or its
14 appurtenant works, save and except damages resulting from DISTRICT'S sole active
15 negligence or willful misconduct.

16 5. Within CHANNEL RIGHT OF WAY, (i) assume sole responsibility for
17 the operation and maintenance of all CITY constructed improvements, including but not
18 limited to, performing all necessary repairs and the routine removal of trash and debris
19 associated with CITY'S use of CHANNEL RIGHT OF WAY and (ii) assume all liability
20 associated with the recreational use of CHANNEL RIGHT OF WAY including claims of third
21 persons for injury or death or damage to property. Said obligation shall not include any inverse
22 condemnation liability of DISTRICT by reason of the location of CHANNEL or DISTRICT'S
23 improvements thereto unless such liability is the result of CITY'S operations or use of the
24 property by the public pursuant to CITY'S actual or tacit consent.
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1 6. Within CHANNEL RIGHT OF WAY, ensure the safety of the public who
2 may utilize CHANNEL RIGHT OF WAY by conducting periodic safety inspections and
3 promptly making such repairs as are necessary to safeguard the public and its use thereof.
4

5 7. In its use of CHANNEL RIGHT OF WAY under the rights herein
6 granted, CITY agrees to promptly repair any damage to DISTRICT'S CHANNEL
7 improvements, unless such damage is caused by flooding or is the result of DISTRICT'S
8 customary operation, maintenance or improvements to its facilities located therein.

9 8. If in the opinion of the General Manager-Chief Engineer, the public's use
10 of CHANNEL RIGHT OF WAY may cause or contribute to a public hazard, a public nuisance,
11 degradation of water quality or any other matter of substantial concern to the DISTRICT, the
12 DISTRICT reserves the right to require remediation and, if remediation is unsuccessful, to
13 terminate this License Agreement.
14

15 9. Within CHANNEL RIGHT OF WAY or otherwise associated with this
16 Agreement, indemnify and hold DISTRICT, its officers, agents, employees and independent
17 contractors free and harmless from any liability whatsoever, based or asserted upon any act or
18 omission of CITY, its officers, agents, employees, subcontractors, independent contractors,
19 guests and invitees for property damage, bodily injury or death (CITY employees included) or
20 any other element of damage of any kind or nature, related to or in any manner connected with
21 or arising from CITY'S use and responsibilities in connection therewith of CHANNEL or the
22 condition thereof, and CITY shall defend, at its expense, including attorneys' fees, DISTRICT,
23 its Board of Supervisors, officers, agents, employees and independent contractors, in any legal
24 action based upon such alleged acts or omissions.
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5. This Agreement is to be construed in accordance with the laws of the State of California.

6. 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	CITY OF TEMECULA Post Office Box 9033 Temecula, CA 92589-9033 Attn: Director of Community Services
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7. 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.

8. 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.

9. 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 or written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the parties hereto.

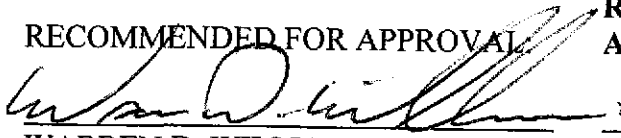
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL

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



WARREN D. WILLIAMS
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

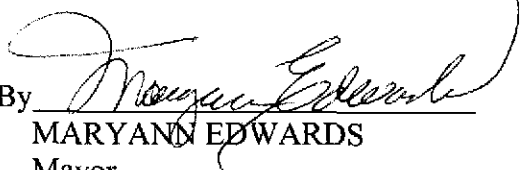
By 
Deputy County Counsel

By _____
Deputy

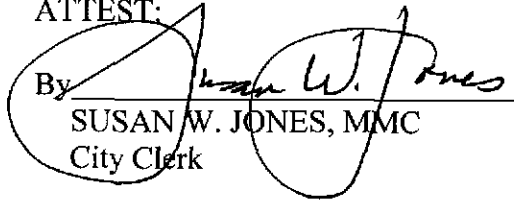
(SEAL)

License Agreement – Murrieta Creek Channel
KEC:blj
3/17/09

CITY OF TEMECULA

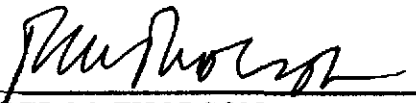
By 
MARYANN EDWARDS
Mayor

ATTEST:

By 
SUSAN W. JONES, MMC
City Clerk

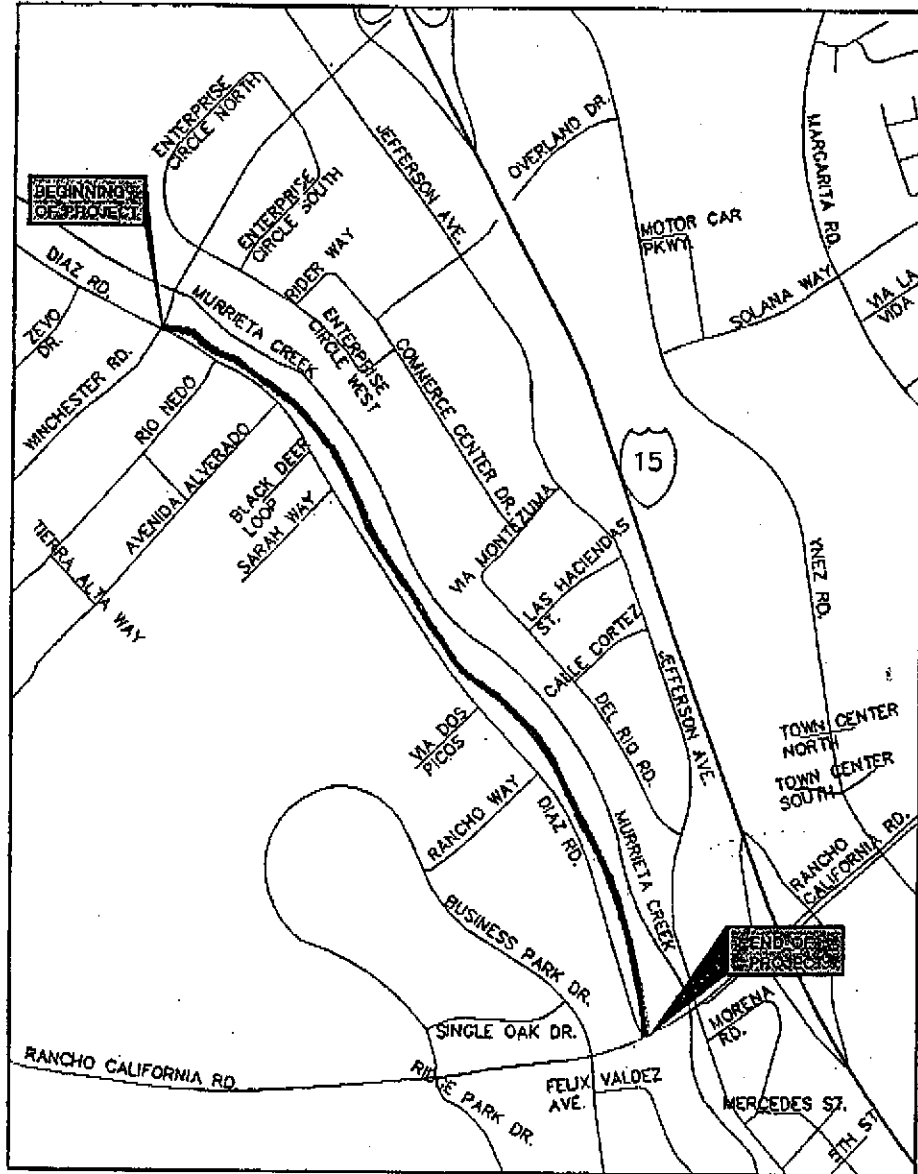
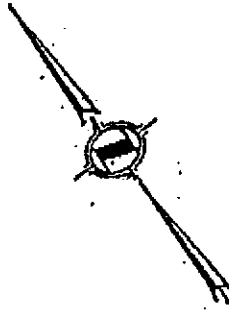
(SEAL)

APPROVED AS TO FORM:

By 
PETER M. THORSON
City Attorney

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License Agreement – Murrieta Creek Channel
KEC:blj
3/17/09



PROJECT LOCATION MAP

EXHIBIT "A"