

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

113 B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
September 15, 2009

SUBJECT: County Bridge Construction
Project 4-0-00030, Bautista Creek Channel
License Agreement, County of Riverside Transportation

RECOMMENDED MOTION:

Approve the License Agreement (Agreement) between the District and the County of Riverside (County); and authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

The County currently operates and maintains the Mayberry Avenue Bridge which spans the District's Bautista Creek Channel in the Hemet area. The District is providing the County an easement to facilitate the widening of the bridge. The bridge widening will not conflict with the channel's primary function or with the District's continuing operation and maintenance of the channel.

(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
BY:
Alex Gann

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY:
NEAL R. KIPNIS DATE

- Dept'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**

SUBJECT: County Bridge Construction
Project 4-0-00030, Bautista Creek Channel
License Agreement, County of Riverside Transportation

SUBMITTAL DATE: Sep 15, 2009
Page 2

BACKGROUND (continued):

County Counsel has approved the Agreement as to legal form and the Transportation Department has this item on a concurrent agenda.

KEC:blj

LICENSE AGREEMENT

Bautista Creek Channel, (Project 4-0-00030)
Mayberry Avenue Bridge, (MS-3357)

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

RECITALS

A. DISTRICT operates and maintains Bautista Creek Channel, Project No. 4-0-00030 , hereinafter called "CHANNEL", located near the city of Hemet, Riverside County; and

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

C. DISTRICT owns fee title to CHANNEL, a portion of which is identi as Parcel Number 4030-1D located directly north of Mayberry Avenue as shown in recor survey book 31, page 54; and

D. COUNTY desires to construct, operate and maintain certain street improvements consisting of a sidewalk, pedestrian bridge and ancillary structures, hereinafter called "BRIDGE" and as shown in concept outlined in green on Exhibit "A". BRIDGE is to be constructed along the north side of Mayberry Avenue which requires additional property than is currently available and overlaps said DISTRICT parcel. Such overlap, hereinafter called "DISTRICT PROPERTY" as shown in concept cross-hatched in red on Exhibit "B" attached hereto and made a part hereof; and

1 E. In conjunction with the construction of said improvements, COUNTY will
2 act as the sole Lead Agency pursuant to the California Environmental Quality Act (CEQA). As
3 such, COUNTY will have the corresponding responsibility to fulfill the obligations of CEQA
4 lead agency with respect to the PROJECT; and

5 F. CHANNEL'S principal function is flood control. Construction within
6 DISTRICT PROPERTY will not unreasonably interfere with CHANNEL'S principal function or
7 DISTRICT'S ability to operate and maintain CHANNEL; and

8 G. DISTRICT is willing to (i) allow COUNTY to construct, operate and
9 maintain BRIDGE on DISTRICT PROPERTY, and (ii) allow the public to utilize DISTRICT
10 PROPERTY for public conveyance, provided COUNTY complies with the provisions of this
11 License Agreement; and

12 H. Subject to the provisions of this License Agreement, COUNTY is willing
13 to (i) construct, operate and maintain BRIDGE, and (ii) allow the public to utilize the BRIDGE
14 for public conveyance; and
15

16 I. It is in the public interest to proceed with this License Agreement.
17

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

19 SECTION I

20 COUNTY shall:

21 1. Prepare plans and specifications for BRIDGE in accordance with
22 COUNTY standards.

23 2. Submit BRIDGE improvement plans and specifications to DISTRICT and
24 prior to constructing BRIDGE or performing any physical modifications within
25 DISTRICT PROPERTY, obtain an encroachment permit from DISTRICT, pursuant to
26 its rules and regulations.
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1 3. Not permit any change to or modification of plans and specifications for
2 BRIDGE without the prior written permission and consent of DISTRICT.

3 4. Construct BRIDGE or cause BRIDGE to be constructed, and pay for
4 construction, construction inspection, and any other costs of BRIDGE construction.

5 5. Not install any improvements and/or equipment or allow use of
6 DISTRICT PROPERTY in a manner which, in the opinion of the General Manager-Chief
7 Engineer of the DISTRICT, would be detrimental to the operation of CHANNEL, COUNTY
8 shall, upon written request of the General Manager-Chief Engineer of the DISTRICT,
9 immediately remove said improvements and/or equipment or cease said use.
10

11 6. With regard to BRIDGE and/or equipment situated within DISTRICT
12 PROPERTY, COUNTY hereby waives any claim against DISTRICT for damages resulting
13 from DISTRICT'S customary use of DISTRICT PROPERTY for operation and maintenance of
14 CHANNEL or its appurtenant works.

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

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

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

13 11. Within DISTRICT PROPERTY or otherwise associated with this
14 Agreement, indemnify and hold DISTRICT, its officers, agents, employees and independent
15 contractors free and harmless from any liability whatsoever, based or asserted upon any act or
16 omission of COUNTY, its officers, agents, employees, subcontractors, independent contractors,
17 guests and invitees for property damage, bodily injury or death (COUNTY employees included)
18 or any other element of damage of any kind or nature, related to or in any manner connected
19 with or arising from COUNTY'S use and responsibilities in connection therewith of DISTRICT
20 PROPERTY or the condition thereof, and COUNTY shall defend, at its expense, including
21 attorneys' fees, DISTRICT, its Board of Supervisors, officers, agents, employees and
22 independent contractors, in any legal action based upon such alleged acts or omissions.
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SECTION II

1 DISTRICT shall:

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3 1. Pursuant to CEQA, act as Responsible Agency and, as such, will have the
4 corresponding responsibility to fulfill the obligations of a CEQA Responsible Agency with
5 respect to PROJECT.

6 2. By execution of this Agreement, grant COUNTY a license to utilize
7 DISTRICT PROPERTY for public conveyance purposes which are not incompatible with
8 CHANNEL'S primary flood control purpose and which do not interfere with or impair
9 DISTRICT'S ability to operate and maintain CHANNEL or any of its appurtenant works. Said
10 license shall remain in effect indefinitely, unless terminated by DISTRICT, so long as
11 COUNTY'S use of DISTRICT PROPERTY is so limited.

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13 3. Give written notice to COUNTY of any non-compatible use of DISTRICT
14 PROPERTY that is not in conformity with the provisions of this License Agreement or which
15 may adversely affect CHANNEL'S flood control function and grant COUNTY thirty (30) days
16 from and after such notice to correct any such nonconforming use.

17
18 4. Continue to maintain CHANNEL'S structural integrity, including but not
19 limited to lines and grades, inlets, fencing, ramps and access roads to such an extent that
20 CHANNEL continues to function as a flood control facility at its design level.

21 5. Assume no responsibility, obligation or liability whatsoever, for the
22 operation and maintenance of COUNTY'S constructed BRIDGE improvements.

23 6. By execution of this Agreement, grant COUNTY and its contractor(s) all
24 rights necessary to construct BRIDGE.

25
26 7. Review BRIDGE plans and specifications prepared by COUNTY for
27 BRIDGE prior to the start of BRIDGE construction.

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1 8. Observe and make periodic inspections of BRIDGE construction to assure
2 general compliance with the approved BRIDGE plans.

3 SECTION III

4 It is further mutually agreed:

5 1. All construction work associated with BRIDGE shall be inspected by
6 COUNTY and shall not be deemed complete until approved and accepted as complete by
7 COUNTY.

8 2. DISTRICT personnel may observe and inspect all work being done on
9 BRIDGE. It is further mutually agreed by the parties hereto that any quality control comments
10 shall be provided to COUNTY personnel who, as the BRIDGE construction contract
11 administrator, shall be solely responsible for all official communications with its construction
12 contractor(s).

13 3. Either party, as to any claim or liability arising out of any act or omission
14 with reference to any work to be performed by or authority delegated to such party as a result of
15 this Agreement, shall save, defend, indemnify and hold harmless the other party, their respective
16 officers and employees from all liability for death or injury to person or damage to property or
17 claim therefor.

18 4. DISTRICT reserves the right to terminate this License Agreement, if for
19 any reason whatsoever, DISTRICT determines that COUNTY'S use of DISTRICT PROPERTY
20 is not compatible with CHANNEL'S primary purpose.

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

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

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

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

11 RIVERSIDE COUNTY FLOOD CONTROL	COUNTY OF RIVERSIDE
12 AND WATER CONSERVATION DISTRICT	Transportation Department
13 1995 Market Street	Post Office Box 1090
Riverside, CA 92501	Riverside, CA 92502-1090

14 9. 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.

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

24 11. This Agreement is intended by the parties hereto as a final expression of
25 their understanding with respect to the subject matter hereof and as a complete and exclusive
26 statement of the terms and conditions thereof and supersedes any and all prior and
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contemporaneous agreements and understandings, oral or written, in connection therewith. This

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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

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

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

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

(SEAL)

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

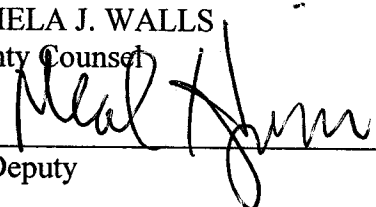
By 
JUAN C. PEREZ
Director of Transportation

By _____
JEFF STONE, Chairman
County of Riverside Board of Supervisors

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

APPROVED AS TO FORM

PAMELA J. WALLS
County Counsel
By 
Deputy

By _____
Deputy

(SEAL)

License Agreement – Bautista Creek Channel/Mayberry Avenue Bridge
7/8/09
KEC:blj

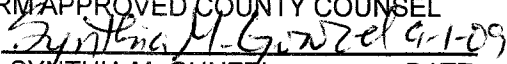
FOR COUNTY OF RIVERSIDE:
FORM APPROVED COUNTY COUNSEL
BY:  9-1-09
SYNTHIA M. GUNZEL DATE

Exhibit A

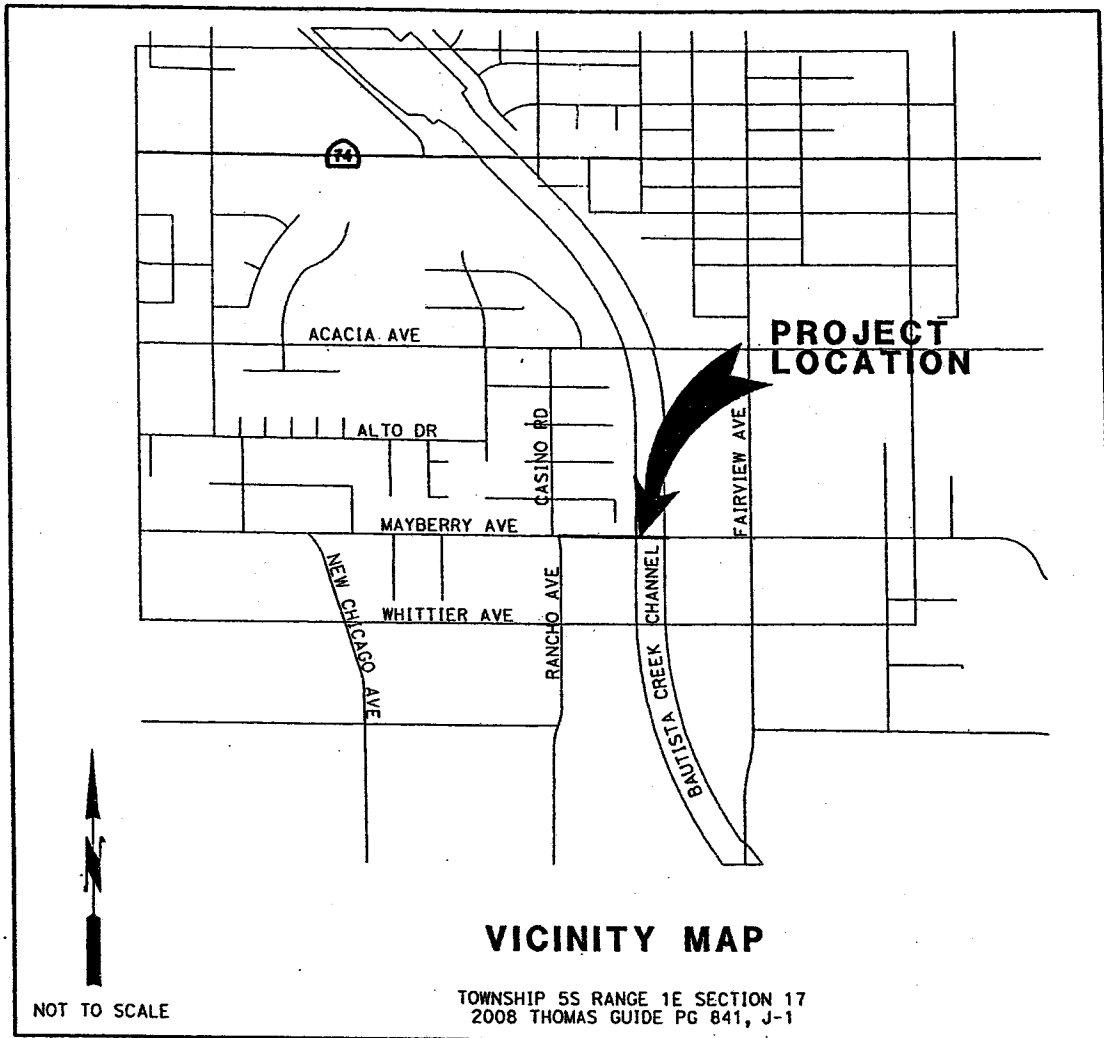
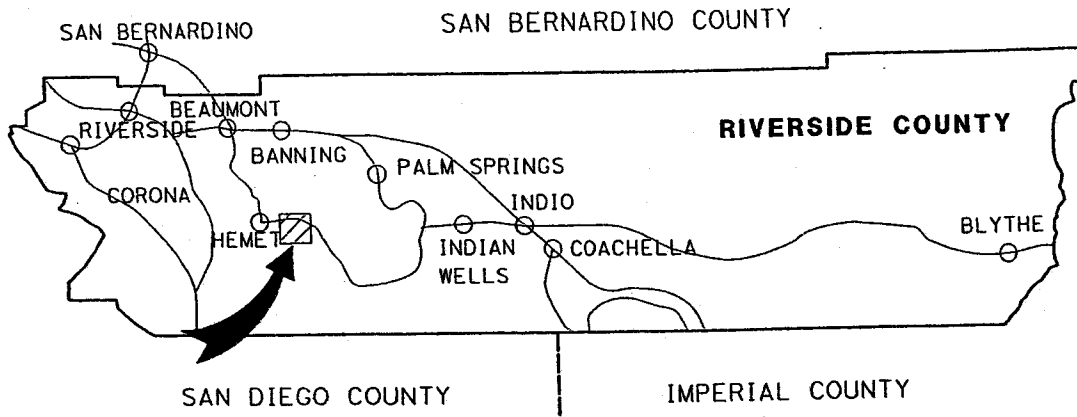


Exhibit A

