

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

402B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
May 3, 2011

SUBJECT: Santa Gertrudis Creek Channel
Project No. 7-0-00060
License Agreement

RECOMMENDED MOTION:

Approve the License Agreement (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 City wishes to construct, operate and maintain a pedestrian bridge spanning the District's Santa Gertrudis Creek Channel. The bridge will not conflict with the channel's primary function or the District's continuing operation and maintenance of the channel.

Continued on Page 2

KEC:blj

FOR WARREN D. WILLIAMS *STEVE THOMAS*
General Manager-Chief Engineer *Asst. G.M. - Asst. 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: Michael R Shetler
Michael R. Shetler

County Executive Office Signature

FOR APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS DATE: 5/12/11

Policy

Consent

Dept Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.:

District: 3rd

Agenda Number:

11.1

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

SUBJECT: Santa Gertrudis Creek Channel
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License Agreement

SUBMITTAL DATE: May 3, 2011
Page 2

BACKGROUND (continued):

All construction, operation and maintenance costs associated with the pedestrian bridge will be borne by the City of Temecula. The operation and maintenance of the existing channel will continue to be a District responsibility. The District, in accordance with the terms of the Agreement, will license the 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

Santa Gertrudis Creek Channel
Concurrent with Encroachment Permit No. 3275
Project 7-0-00060

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 owns, operates and maintains the Santa Gertrudis Creek Channel (Project No. 7-0-00060), 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 construct, operate and maintain a certain pedestrian bridge and ancillary structures spanning CHANNEL, hereinafter collectively called "BRIDGE" as shown in concept outlined in green on Exhibit "A"; and

D. CHANNEL'S flood control function is sporadic in nature and thus, construction and operation of BRIDGE 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 BRIDGE within CHANNEL right of way, (ii) allow CITY to

1 operate and maintain said BRIDGE; and

2 F. In accordance with the provisions of this License Agreement, CITY is
3 willing to (i) construct BRIDGE, (ii) operate and maintain CITY constructed BRIDGE, (iii)
4 conduct periodic safety inspections of BRIDGE, and (iv) indemnify and hold DISTRICT
5 harmless against any claims resulting from the public's use of BRIDGE; and
6

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

10 H. CITY will act as the sole Lead Agency pursuant to the California
11 Environmental Quality Act (CEQA). As such, CITY will have the corresponding responsibility
12 to fulfill the obligations of a CEQA Lead Agency with respect to the BRIDGE; and
13

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

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

16 SECTION I

17 DISTRICT shall:

18 1. Pursuant to CEQA, act as Responsible Agency and, as such, will have the
19 corresponding responsibility to fulfill the obligations of a CEQA Responsible Agency with
20 respect to BRIDGE.
21

22 2. Grant to CITY a revocable license to utilize CHANNEL right of way for
23 public access purposes which do not, in any way whatsoever, impair CHANNEL'S primary
24 flood control purpose and function or otherwise interfere with or adversely affect DISTRICT'S
25 ability to operate, maintain, repair or reconstruct CHANNEL or any of its appurtenant works.
26 Said license shall remain in effect indefinitely so long as CITY'S use of BRIDGE is so limited.
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1 3. Furnish DISTRICT with copies of all permits, approvals or agreements
2 required by any Federal or State resource and/or regulatory agency for the construction,
3 operation and maintenance of BRIDGE. Such documents include but are not limited to those
4 issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control
5 Board, California State Department of Fish and Game and State Water Resources Control
6 Board.
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8 4. Immediately remove, upon written request by DISTRICT'S General
9 Manager-Chief Engineer, any improvements and/or equipment which, in the sole opinion of the
10 DISTRICT'S General Manager-Chief Engineer, would be detrimental to the operation of
11 CHANNEL.
12

13 5. With regard to BRIDGE or any other CITY constructed improvements
14 and/or equipment situated within CHANNEL right of way, CITY hereby waives any claim
15 against DISTRICT for damages resulting from DISTRICT'S customary use of CHANNEL
16 right of way for operation and maintenance of CHANNEL or its appurtenant works, save and
17 except damages resulting from DISTRICT'S sole active negligence or willful misconduct.
18

19 6. Assume sole responsibility for the construction, operation and maintenance
20 of BRIDGE, including all necessary modifications, corrections or temporary removal as
21 deemed necessary by DISTRICT for the continuing function, reconstruction, repair or
22 operation and maintenance of CHANNEL.
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24 7. Within CHANNEL right of way, (i) assume sole responsibility for the
25 operation and maintenance of all CITY constructed improvements, including but not limited to,
26 performing all necessary repairs and the routine removal of trash and debris associated with
27 CITY'S use of CHANNEL right of way and (ii) assume all liability associated with the public
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1 use of BRIDGE and CHANNEL right of way as granted herein, including claims of third
2 persons for injury or death or damage to property. Said obligation shall not include any inverse
3 condemnation liability of DISTRICT by reason of the location of CHANNEL or BRIDGE
4 improvements thereto unless such liability is the result of CITY'S operations or use of the
5 property by the public pursuant to CITY'S actual or tacit consent.
6

7 8. Ensure the safety of the public who may utilize property within
8 CHANNEL right of way by conducting periodic safety inspections and promptly making such
9 repairs as are necessary to safeguard the public and its use thereof.

10 9. In its use of CHANNEL right of way under the rights herein granted,
11 agree to promptly repair any damage to DISTRICT'S CHANNEL improvements, unless such
12 damage is caused by flooding or is the result of DISTRICT'S customary operation, maintenance
13 or improvements to its facilities located therein.
14

15 SECTION III

16 It is further mutually agreed:

17 1. CITY shall indemnify, defend save and hold harmless DISTRICT
18 (including its officers, Board of Supervisors, elected and appointed officials, agents,
19 employees, representatives, independent contractors, and subcontractors) from any liabilities,
20 claim, damage, proceeding or action, present or future, based upon, arising out of or in any way
21 relating to CITY (including its officers, agents, employees, representatives, subcontractors,
22 independent contractors, public, guests and invitees) actual or alleged acts or omissions related
23 to this Agreement, performance under this Agreement, or failure to comply with the
24 requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily
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1 injury or death; (c) payment of attorney's fees; or (d) any other element of any kind or nature
2 whatsoever.

3 2. Each party, as to any claim or liability arising out of any act or omission
4 with reference to any work to be performed by or authority delegated to such party as a result
5 of this Agreement, shall save, defend, indemnify and hold harmless the other party, their
6 respective officers and employees from all liability for death or injury to person or damage to
7 property or claim therefore.
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9 3. If, in the sole opinion of the General Manager-Chief Engineer, the
10 CITY'S use of CHANNEL right of way may cause or contribute to a public health and safety
11 hazard, or any other matter of substantial concern to the DISTRICT, DISTRICT reserves the
12 right to terminate this License Agreement.
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14 4. Any waiver by DISTRICT or by CITY of any breach of any one or more
15 of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other
16 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to
17 require exact, full and complete compliance with any terms of this Agreement shall not be
18 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from
19 enforcement hereof.
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21 5. This Agreement is to be construed in accordance with the laws of the
22 State of California. If any provision of this Agreement is held by a court of competent
23 jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be declared
24 severable and shall be given full force and effect to the fullest extent possible.

25 6. Any legal action, in law or in equity related to the performance or
26 interpretation of this Agreement shall be filed only in the Superior Court of the State of
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1 California located in Riverside, California, and the parties waive any provisions of law
2 providing for a change of venue to another location. Prior to the filing of any legal action, the
3 parties shall be obligated to attend a mediation session with a neutral mediator or try to resolve
4 the dispute.

5
6 7. Any and all notices sent or required to be sent to the parties of this
7 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

8 RIVERSIDE COUNTY FLOOD CONTROL	CITY OF TEMECULA
9 AND WATER CONSERVATION DISTRICT	Post Office Box 9033
10 1995 Market Street	Temecula, CA 92589-9033
Riverside, CA 92501	Attn: Director of Public Works/City Engineer
Attn: Encroachment Permit Section	

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

17 9. This Agreement is intended by the parties hereto as a final expression of
18 their understanding with respect to the subject matter hereof and as a complete and exclusive
19 statement of the terms and conditions thereof and supersedes any and all prior and
20 contemporaneous agreements and understandings, oral or written, in connection therewith.
21 This Agreement may only be changed or modified by a written Amendment to this Agreement
22 signed by both parties.

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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**

Steve Thomas

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 *Neal R. Kipnis*
NEAL R. KIPNIS
Deputy County Counsel

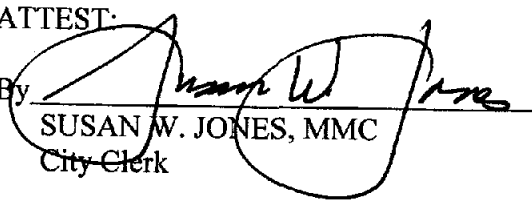
By _____
Deputy

(SEAL)

License Agreement – Santa Gertrudis Creek Channel
4/7/11
KEC:blj


1 CITY OF TEMECULA

2
3 By 
4 RON ROBERTS
5 Mayor

6 ATTEST:
7
8 By 
9 SUSAN W. JONES, MMC
City Clerk

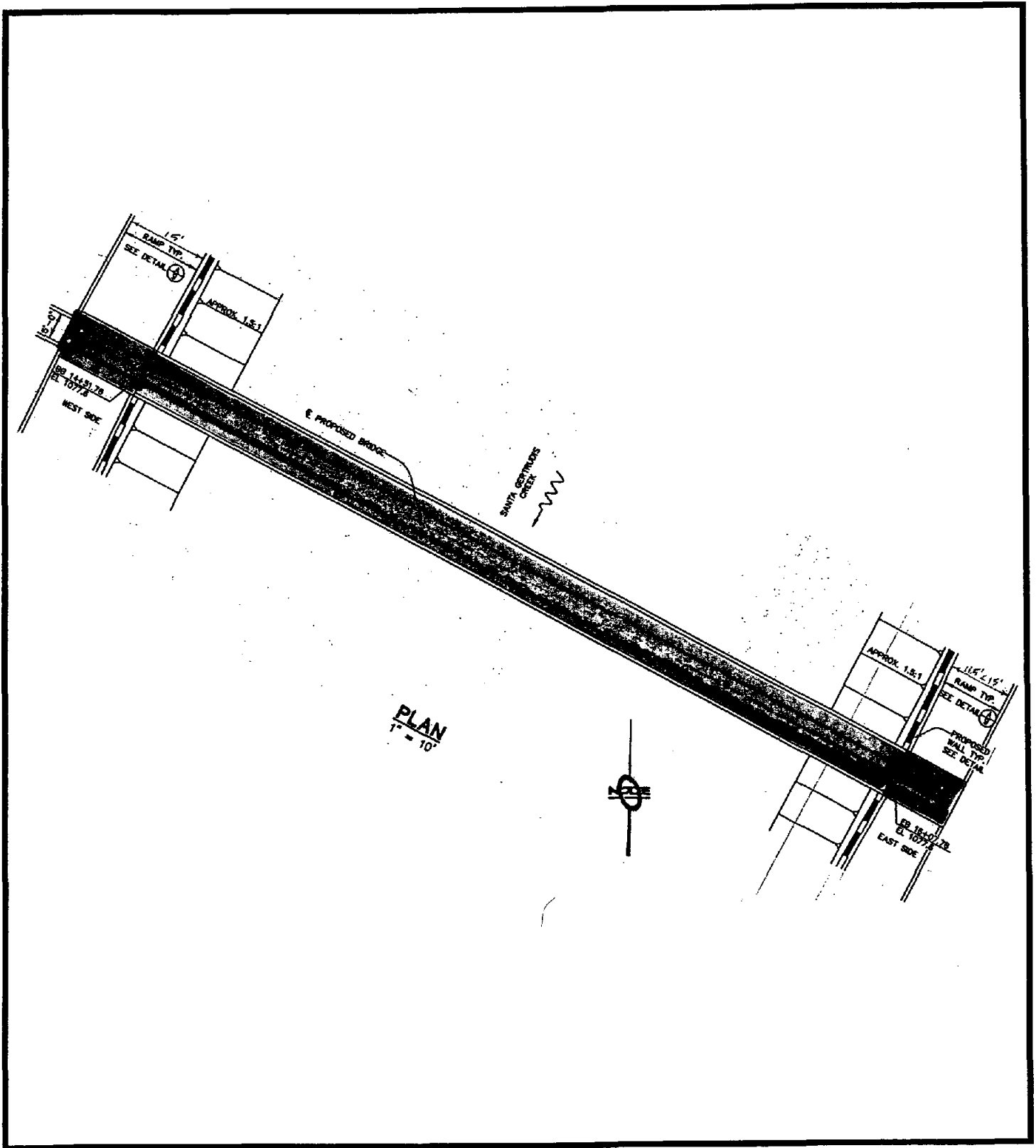
10 (SEAL)

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12
13 APPROVED AS TO FORM:

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16 By 
17 PETER M. THORSON
18 City Attorney

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26 License Agreement -- Santa Gertrudis Creek Channel
27 4/7/11
28 KEC:blj

Exhibit A



License Agreement
Santa Gertrudis Creek Channel
Project No. 6-0-00060
Encroachment Permit 3275
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