

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

503B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

May 10, 2011

SUBJECT: Day Creek Channel, Stage 6 Phase 2 Project
Project No. 1-0-00250
Cooperative Agreement

RECOMMENDED MOTION:

1. Approve the Cooperative Agreement between the District and County of Riverside Transportation Department; and
2. 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 is to construct the Day Creek Channel, Stage 6 Phase 2 project. The District is going to design and construct the project.

Continued on Page 2

WARREN D. WILLIAMS
General Manager-Chief Engineer

TT:TLC:bjp

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

Prev. Agn. Ref.:

District: 2nd

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

11.3

FOR APPROVED COUNTY COUNSEL
BY: Neal R. Kipnis 5/23/11
DATE

Departmental Concurrence

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

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

SUBJECT: Day Creek Channel, Stage 6 Phase 2 Project
Project No. 1-0-00250
Cooperative Agreement

SUBMITTAL DATE: May 10, 2011
Page 2

BACKGROUND:

The County of Riverside Transportation Department is granting the District the necessary rights to construct, operate and maintain the project within County road rights of way and, upon completion of project construction, will assume ownership, operation and maintenance responsibilities of all street crossing improvements.

County Counsel has approved the Agreement as to legal form. A companion item appears on the County of Riverside Transportation Department's agenda this same date.

COOPERATIVE AGREEMENT
Day Creek Channel, Stage 6 Phase 2
(Project No. 1-0-00250)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT" and the COUNTY of RIVERSIDE, hereinafter called "COUNTY" on behalf of its Transportation Department, hereinafter called "TRANSPORTATION", hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for and plans to design and construct Day Creek Channel, Stage 6 Phase 2 project. This project will provide improved drainage and flood control in the unincorporated Mira Loma area of northwestern Riverside County; and

B. The project consists of the construction of approximately 3,800 lineal feet of channel, hereinafter called "CHANNEL IMPROVEMENTS" as shown in concept in red on Exhibit "A" attached hereto and made a part hereof; and

C. Associated with the construction of CHANNEL IMPROVEMENTS is the construction of certain street crossing improvements at Lucretia Avenue, hereinafter called "STREET CROSSING IMPROVEMENTS" as shown in concept in green on Exhibit "A". Together, CHANNEL IMPROVEMENTS and STREET CROSSING IMPROVEMENTS are hereinafter called "PROJECT"; and

D. DISTRICT desires TRANSPORTATION to accept ownership and responsibility for the operation and maintenance of STREET CROSSING IMPROVEMENTS upon completion. Therefore, TRANSPORTATION must review and approve DISTRICT'S plans and specifications for PROJECT and subsequently inspect the construction of PROJECT; and

1 E. The purpose of this Agreement is to memorialize the mutual understandings
2 by and between DISTRICT and TRANSPORTATION in regards to its respective roles and
3 responsibilities associated with PROJECT.

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

5 **SECTION I**

6 DISTRICT shall:

7
8 1. Prepare or cause to be prepared plans and specifications for PROJECT, as
9 shown on District Drawing No. 1-647, hereinafter called "IMPROVEMENT PLANS", in
10 accordance with DISTRICT and TRANSPORTATION standards, and submit IMPROVEMENT
11 PLANS to TRANSPORTATION for its review and approval prior to advertising PROJECT for
12 construction.

13 2. Pursuant to CEQA, assume lead agency role and responsibility for
14 preparation, circulation, and adoption of all necessary and appropriate CEQA documents
15 pertaining to the construction, operation and maintenance of PROJECT.

16
17 3. Pay all DISTRICT costs associated with the preparation of
18 IMPROVEMENT PLANS and with the processing and administration of this Agreement.

19 4. Obtain at its sole cost and expense, all necessary permits, approvals or
20 agreements required by any Federal or State resource or regulatory agencies pertaining to the
21 construction, operation and maintenance of PROJECT. Such documents, hereinafter called
22 "REGULATORY PERMITS", may include, but are not limited to, a Section 404 permit issued
23 by U.S. Army Corps of Engineers (USACOE), a Section 401 Water Quality Certification issued
24 by the California Regional Water Quality Control Board (CRWQCB), and a Section 1602
25 Streambed Alteration Agreement issued by the California Department of Fish and Game
26 (CDFG).
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1 5. Furnish TRANSPORTATION with copies of all permits, approvals or
2 agreements required by any Federal or State resource and/or regulatory agency for the
3 construction, operation and maintenance of PROJECT. Such documents include but are not
4 limited to those issued by the USACOE, CRWQCB, and CDFG.

5 6. Obtain at its sole cost and expense, all necessary licenses, agreements,
6 permits, and rights of entry as may be needed to construct, inspect, operate and maintain
7 PROJECT.

8 7. Advertise, award and administer a public works PROJECT construction
9 contract.

10 8. Provide TRANSPORTATION with written notice that DISTRICT has
11 awarded a construction contract for PROJECT.

12 9. Notify TRANSPORTATION in writing at least twenty (20) days prior to the
13 start of construction of PROJECT.

14 10. Furnish TRANSPORTATION, at the time of providing written notice to
15 TRANSPORTATION of the start of construction as set forth in Section 9, with a construction
16 schedule which shall show the order and dates in which DISTRICT or DISTRICT'S contractor
17 proposes to carry on the various parts of work, including estimated start and completion dates.

18 11. Construct or cause to be constructed, PROJECT pursuant to a DISTRICT
19 administered construction contract, in accordance with IMPROVEMENT PLANS approved by
20 DISTRICT and TRANSPORTATION, and pay all costs associated therewith.

21 12. Inspect construction of PROJECT.

22 13. Require its construction contractor(s) to comply with all Cal/OSHA safety
23 regulations including regulations concerning confined space and maintain a safe working
24 environment for all DISTRICT and TRANSPORTATION employees on the site.
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1 14. Require its prime construction contractor to furnish DISTRICT, following
2 DISTRICT'S award of a PROJECT construction contract, a confined space entry procedure
3 specific to PROJECT. The procedure shall comply with requirements contained in California
4 Code of Regulations, Title 8, Section 5158, Other Confined Space Operations, Section 5157,
5 Permit Required Confined Space and District confined Space Procedures, SOM-18. The
6 procedure shall be reviewed and approved by DISTRICT prior to the issuance of a Notice to
7 Proceed.
8

9 15. Require its prime construction contractor(s), following DISTRICT'S award
10 of a PROJECT construction contract, to procure and maintain comprehensive liability insurance
11 which shall protect DISTRICT and the County of Riverside from claims for damages for
12 personal injury, including accidental or wrongful death, as well as from claims for property
13 damage, which may arise from DISTRICT'S construction of PROJECT or the performance of its
14 obligations hereunder, whether such construction or performance be by DISTRICT, the
15 aforementioned construction contractor(s), or any subcontractors to said construction
16 contractor(s), or by anyone employed directly or indirectly by said construction contractor(s) or
17 subcontractors. Such insurance shall provide for coverage limits of not less than two million
18 dollars (\$2,000,000) per occurrence and shall name DISTRICT and the County of Riverside as
19 additional insureds with respect to this Agreement and the obligations of DISTRICT hereunder.
20 Said insurance coverage shall be provided by an insurance company licensed to transact
21 insurance business in the State of California, having an A.M. Best rating of A:VIII (A:8) or
22 better, and shall be evidenced by a certificate (or certificates) of insurance indicating that the
23 insurance is in full force and effect and that DISTRICT and the County of Riverside are named
24 as additional insureds. Said certificate(s) of insurance shall contain the covenant of the insurance
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1 carrier(s) that thirty (30) days written notice shall be provided to DISTRICT and the County of
2 Riverside prior to any modification, cancellation, or reduction in coverage of said insurance.

3 16. Accept ownership and sole responsibility for the operation and maintenance
4 of PROJECT until such time as TRANSPORTATION accepts ownership and responsibility for
5 operation and maintenance of STREET CROSSING IMPROVEMENTS. Further, it is mutually
6 understood by the parties hereto that prior to TRANSPORTATION acceptance of ownership and
7 responsibility for the operation and maintenance of STREET CROSSING IMPROVEMENTS,
8 STREET CROSSING IMPROVEMENTS shall be in a satisfactorily maintained condition as
9 solely determined by TRANSPORTATION.
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11 17. Within two (2) weeks of completing PROJECT construction, provide
12 TRANSPORTATION with written notice that PROJECT construction is substantially complete
13 and requesting that TRANSPORTATION conduct a final inspection of PROJECT.
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15 18. Provide TRANSPORTATION with a copy of the Notice of Completion.

16 19. Provide TRANSPORTATION with original "record drawings" of STREET
17 CROSSING IMPROVEMENTS plans.

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

25 TRANSPORTATION shall:

26 1. Review and approve IMPROVEMENT PLANS prior to DISTRICT
27 advertising PROJECT for construction.
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1 2. Obtain all necessary rights of way to construct, inspect, operate and
2 maintain PROJECT.

3 3. Grant DISTRICT, by execution of this Agreement, the right to construct,
4 inspect, operate and maintain PROJECT within TRANSPORTATION rights of way.

5 4. Order the relocation of all utilities installed by permit or franchise within
6 TRANSPORTATION rights of way which conflict with the construction of PROJECT and
7 which must be relocated at the utility company's expense.

8 5. Issue DISTRICT'S contractor(s) a no fee encroachment permit to construct
9 PROJECT.
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11 6. Inspect PROJECT construction at its sole cost, but provide any comments to
12 DISTRICT personnel who shall be solely responsible for all quality control communications
13 with DISTRICT'S contractor(s) during the construction of PROJECT.

14 7. Upon receipt of DISTRICT'S written notice that PROJECT construction is
15 substantially complete, conduct a final inspection of PROJECT.
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17 8. Accept sole responsibility for ownership, operation, and maintenance of
18 STREET CROSSING IMPROVEMENTS upon (i) receipt of DISTRICT'S Notice of Completion
19 of PROJECT, and (ii) receipt of original "record drawings" as set forth in Section I.19.

20 **SECTION III**

21 It is further mutually agreed:

22 1. Except as otherwise provided herein, all construction work involved with
23 PROJECT shall be inspected by DISTRICT and shall not be deemed complete until approved
24 and accepted as complete by DISTRICT.
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1 2. Except as otherwise provided herein, DISTRICT shall not be responsible for
2 any additional street repairs or improvements not shown in IMPROVEMENT PLANS and not as
3 a result of PROJECT construction.

4 3. DISTRICT shall indemnify, defend, save and hold harmless COUNTY
5 (including their respective officers, districts, special districts and departments, their respective
6 directors, officers, Board of Supervisors, elected and appointed officials, employees, agents,
7 representatives, independent contractors, and subcontractors) from any liabilities, claim, damage,
8 proceeding or action, present or future, based upon, arising out of or in any way relating to
9 DISTRICT (including its officers, employees, agents, representatives, independent contractors,
10 and subcontractors) actual or alleged acts or omissions related to this Agreement, performance
11 under this Agreement, or failure to comply with the requirements of this Agreement, including
12 but not limited to: (a) property damage; (b) bodily injury or death; (c) payment of attorney's fees;
13 or (d) any other element of any kind or nature whatsoever.

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

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

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

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

10 RIVERSIDE COUNTY FLOOD CONTROL
11 AND WATER CONSERVATION DISTRICT
12 1995 Market Street
13 Riverside, CA 92501
14 Attn: Design II Section

COUNTY OF RIVERSIDE
Post Office Box 1090
Riverside, CA 92502-1090
Attn: Transportation Department
Permit Section

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

18 9. This Agreement is the result of negotiations between the parties hereto, and
19 the advice and assistance of their respective counsel. No provision contained herein shall be
20 construed against DISTRICT solely because, as a matter of convenience, it prepared this
21 Agreement in its final form.

22 10. This Agreement is intended by the parties hereto as a final expression of
23 their understanding with respect to the subject matter hereof and as a complete and exclusive
24 statement of the terms and conditions thereof. This Agreement may be changed or modified only
25 upon the written consent of the parties hereto.

26 11. This Agreement may be executed and delivered in any number of
27 counterparts or copies, hereinafter called "COUNTERPART", by the parties hereto. When each
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1 party has signed and delivered at least one COUNTERPART to the other parties hereto, each
2 COUNTERPART shall be deemed an original and, taken together, shall constitute one and the
3 same Agreement, which shall be binding and effective as to 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)

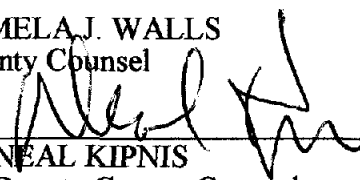
RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:


PAMELA J. WALLS
County Counsel
By 
NEAL KIPNIS
Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By _____
Deputy

(SEAL)

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By 
JUAN C. PEREZ
Director of Transportation

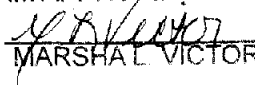
By _____
BOB BUSTER, Chairman
County of Riverside Board of Supervisors

ATTEST:

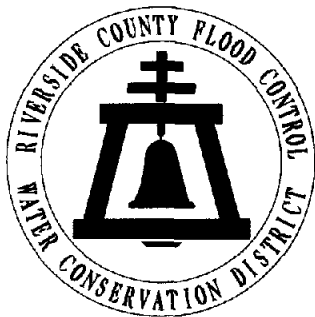
KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

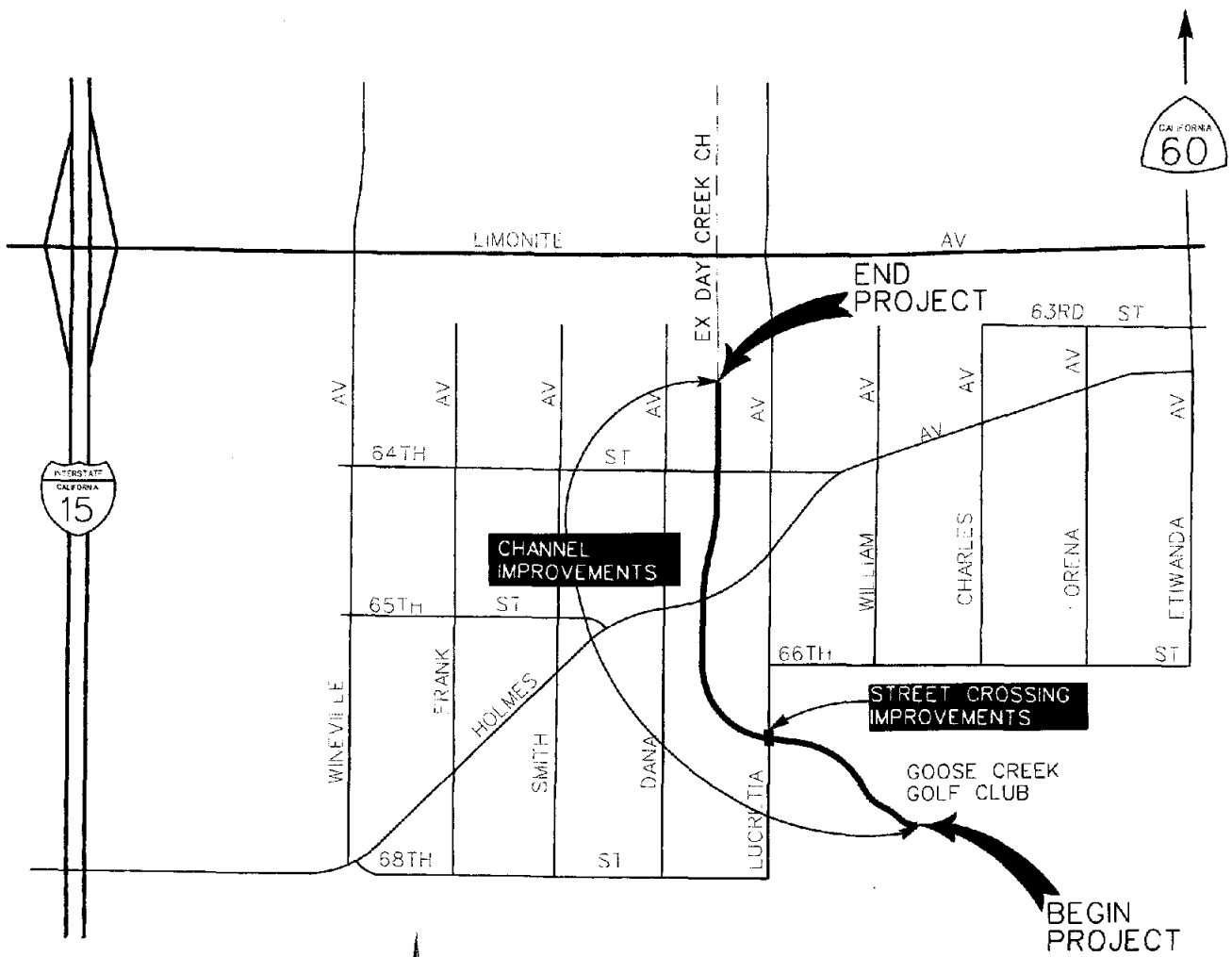
(SEAL)

FORM APPROVED COUNTY COUNSEL
BY:  4/15/11
MARSHAL VICTOR DATE

Cooperative Agreement: Day Creek Channel, Stage 6, Phase 2
TT/TMC/TLC:bjp
03/15/11



DAY CREEK CHANNEL
STAGE 6 PHASE 2
PROJECT NO. 1-0-0250
DECEMBER 2010



LOCATION MAP
NTS