

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

207B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

March 27, 2012

SUBJECT: Murrieta Creek Channel
Project No. 7-0-00020
License Agreement
3rd District/3rd District

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 replacement of the Main Street bridge spanning the District's Murrieta 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

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: Michael R. Shetler
Michael R. Shetler

County Executive Office Signature

FORWARDED TO COUNTY COUNCIL
BY: [Signature] DATE: [Blank]

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD
Per Exec. Ofc.:
 Policy
 Policy
 Consent
 Consent

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

SUBJECT: Murrieta Creek Channel
Project No. 7-0-00020
License Agreement

SUBMITTAL DATE: March 27, 2012
Page 2

BACKGROUND (continued):

All construction, operation and maintenance costs associated with the 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:bjj

LICENSE AGREEMENT

Murrieta Creek Channel - Main Street Replacement Bridge

Concurrent with Encroachment Permit No. 7-0-00020-3326

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 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 to the area; and

C. CITY has budgeted for and plans to design, construct and subsequently maintain a new bridge to replace the existing Main Street Bridge, hereinafter called "BRIDGE", as shown in concept in blue on Exhibit "A" attached hereto and made a part hereof. The existing bridge spans the CHANNEL at Main Street within CITY held rights of way; and

D. Associated with the construction of BRIDGE is the construction of certain outlet pipes, and the placement of rip-rap and environmental mitigation located within DISTRICT held rights of way as shown in concept outlined in green on Exhibit "B" attached hereto and made a part of. Outlet pipes, rip-rap and environmental mitigation are hereinafter called "APPURTENANCES" and "MITIGATION". BRIDGE, APPURTENANCES and MITIGATION are hereinafter collectively called "PROJECT"; and

1 E. CITY is willing to: (i) prepare plans and specifications for PROJECT,
2 hereinafter called "IMPROVEMENT PLANS", including separate plans and specifications for
3 MITIGATION, hereinafter called "MITIGATION PLANS", in accordance with applicable
4 DISTRICT and CITY standards, (ii) assume Lead Agency role pursuant to the California
5 Environmental Quality Act (CEQA), (iii) secure all rights of way and regulatory permits as
6 maybe necessary to construct, inspect, operate and maintain PROJECT, (iv) allow DISTRICT
7 an opportunity to review and approve IMPROVEMENT PLANS and regulatory permits prior to
8 advertising PROJECT for construction, (v) advertise, award and administer a public works
9 PROJECT construction contract, (vi) provide all construction surveys, materials testing and
10 construction inspection necessary for construction of PROJECT, (vii) pay all costs related to the
11 design, construction, inspection, operation and maintenance of PROJECT, (viii) upon
12 completion of PROJECT construction, assume ownership and sole responsibility for the
13 operation and maintenance of PROJECT, (ix) provide to DISTRICT engineering documentation
14 confirming that PROJECT was constructed in accordance with IMPROVEMENT PLANS, and
15 (x) provide to DISTRICT a copy of the reproducible record drawings of IMPROVEMENT
16 PLANS as provided herein; and
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19 F. Subject to the provisions of this License Agreement, DISTRICT is willing to allow
20 CITY to construct, operate and maintain PROJECT within CHANNEL right of way; and

21 G. DISTRICT is willing, at its own expense, to (i) review PROJECT
22 IMPROVEMENT PLANS prepared by CITY, (ii) review and approve regulatory permits, and
23 (iii) inspect the construction of PROJECT for quality control purposes.

24 H. The purpose of this Agreement is to memorialize the mutual understandings
25 by and between DISTRICT and CITY with respect to the design, construction, inspection,
26 ownership, operation and maintenance, and funding of PROJECT.
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1 In consideration of the preceding recitals and the mutual covenants hereinafter
2 contained, the parties hereto mutually agree as follows:

3 SECTION I

4 CITY shall:

5 1. Prepare or cause to be prepared, PROJECT IMPROVEMENT PLANS,
6 including separate plans and specifications for MITIGATION, hereinafter called
7 "MITIGATION PLANS", in accordance with applicable DISTRICT and CITY standards, and
8 submit to DISTRICT for their review and approval prior to awarding a public works
9 construction contract for PROJECT.

10 2. Pursuant to CEQA, assume Lead Agency role and responsibility for
11 preparation, circulation, and adoption of all necessary and appropriate CEQA documents
12 pertaining to the construction, operation and maintenance of PROJECT.

13 3. Obtain at its sole cost and expense, all necessary permits, approvals or
14 agreements and any associated subsequent renewal or amendments thereafter, as may be
15 required by any Federal, State or local resource or regulatory agencies pertaining to the
16 construction, operation and maintenance of PROJECT. Such documents, hereinafter called
17 "REGULATORY PERMITS", may include but are not limited to, a Section 404 permit issued
18 by the U.S. Army Corps of Engineers (USACOE), a Section 401 Water Quality Certification
19 issued by the California Regional Water Quality Control Board (CRWQCB), a Section 1602
20 Streambed Alteration Agreement issued by the California State Department of Fish and Game,
21 and National Pollutant Discharge Elimination System Permits issued by the State Water
22 Resources Control Board or CRWQCB.

23 4. Prior to advertising PROJECT for construction, provide DISTRICT an
24 opportunity to review and approve all REGULATORY PERMITS. DISTRICT approval of
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1 REGULATORY PERMITS may be withheld when, in the sole judgment of DISTRICT'S
2 General Manager-Chief Engineer, the said REGULATORY PERMITS unreasonably constrains,
3 inhibits or impairs DISTRICT'S ability to operate and maintain CHANNEL.

4 5. Secure at its sole cost and expense, all necessary rights of way, rights of
5 entry and temporary construction easements necessary to construct, operate and maintain
6 PROJECT.

7 6. Advertise, award and administer a public works construction contract for
8 PROJECT at its sole cost and expense.

9 7. Prior to commencing construction of IMPROVEMENT PLANS, obtain
10 from DISTRICT, pursuant to its rules and regulations, the necessary encroachment permit and
11 comply with all provisions set forth therein.

12 8. Not permit any change to or modification of the DISTRICT approved
13 IMPROVEMENT PLANS that would result in a change of functionality or maintainability of
14 CHANNEL.

15 9. Ensure that all work performed pursuant to this Agreement by CITY, its
16 agents or contractors is done in accordance with all applicable laws and regulations, including
17 but not limited to all applicable provisions of the Clean Water Act, Labor Code, Business and
18 Professions Code, Fish and Game Code, and Water Code. CITY shall be sole responsible for all
19 costs associated with compliance with applicable laws and regulations.

20 10. Inspect construction of PROJECT at its sole cost and expense.

21 11. Furnish at its sole cost and expense, all construction survey and materials
22 testing services necessary to ensure PROJECT construction is accomplished in accordance with
23 the DISTRICT approved IMPROVEMENT PLANS.
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1 12. Grant DISTRICT, by execution of this Agreement, the right to enter upon
2 property owned or controlled by CITY where necessary and convenient for the purpose of
3 gaining access to, and performing inspection service for the construction of PROJECT.

4 13. Upon completion of PROJECT construction and CITY'S acceptance
5 thereof, be solely responsible for the ownership, operation and maintenance of PROJECT in
6 such a way that it is compatible with CHANNEL'S primary flood control purpose and function.

7 14. Upon completion of PROJECT construction, provide DISTRICT with a
8 copy of CITY'S Notice of Completion.

9 15. Upon completion of PROJECT construction, CITY'S civil engineer of
10 record or construction civil engineer of record, duly registered in the State of California, shall
11 provide DISTRICT a redlined "record drawing" of IMPROVEMENT PLANS.
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13 16. Indemnify, hold harmless and defend DISTRICT for all aspects of CITY'S
14 use of DISTRICT right-of-way as granted herein, including but not limited to (i) claims made
15 by the public, employees of CITY, or its contractors for injury or death or damage to property,
16 and (ii) damage, fines or other such penalties resulting from any illegal or improper discharges
17 into CHANNEL, regardless of the nature of the circumstances.
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19 17. Prior to constructing any additional improvements or performing any
20 additional physical modifications within CHANNEL right-of-way, obtain an encroachment
21 permit from DISTRICT, pursuant to its rules and regulations.

22 18. Implement at its sole cost and expense, any additional mitigation imposed
23 as a result of all necessary revisions to MITIGATION PLANS to accommodate the design,
24 construction, operation and maintenance of DISTRICT'S ultimate CHANNEL configuration.
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SECTION II

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DISTRICT shall:

1. Assume Responsible Agency role and responsibility under CEQA, take all necessary and appropriate action to comply with CEQA.
2. Review and approve all necessary REGULATORY PERMITS in a timely manner.
3. Consent to CITY'S construction of PROJECT within DISTRICT'S CHANNEL right-of-way in accordance with DISTRICT approved IMPROVEMENT PLANS and subject to the provisions set forth in DISTRICT'S encroachment permit.
4. Conduct periodic inspections of PROJECT construction for quality control purposes at its sole cost and provide any comments to CITY'S primary inspector who shall be solely responsible for all quality control communications with CITY'S contractor(s) during the construction of PROJECT.
5. By execution of this Agreement, grant CITY a license to operate and maintain PROJECT provided PROJECT is compatible with CHANNEL'S primary flood control purpose and function and does not unduly interfere with or impair DISTRICT'S ability to operate and maintain CHANNEL or any of its appurtenant works.
6. Give written notice to CITY of any non-compatible use or condition that is not in conformity with the provisions of this License Agreement or which may adversely affect CHANNEL'S flood control function, and grant CITY thirty (30) days from and after such notice to correct any such nonconforming use or condition.
7. Correct the non-conforming use or condition, if, after CITY'S receipt of such notice, CITY has not taken corrective actions within the time period prescribed. CITY

1 shall reimburse DISTRICT for any and all costs incurred by DISTRICT or its contractor(s) to
2 perform said corrections.

3 8. Assume no responsibility, obligation or liability whatsoever, for the (i)
4 design, construction, operation and maintenance of PROJECT or (ii) CITY'S use of
5 DISTRICT'S CHANNEL right-of-way as granted herein.

6 SECTION III

7 It is further mutually agreed:

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

18 2. In the event of any arbitration, action or suit brought by either CITY or
19 DISTRICT against the other party by reason of any breach on the part of the other party of any
20 of the covenants and agreements set forth in this Agreement, or any other dispute between the
21 DISTRICT and CITY concerning this Agreement, the prevailing party in any such action or
22 dispute, by a final judgment or arbitration award, shall be entitled to have and recover from the
23 other party all costs and expenses or claims, including but not limited to, attorneys' fees and
24 expert witness fees. This section shall survive any termination of this Agreement.
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3. 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.

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

5. Neither the 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 the 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 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 Attn: Encroachment Permit Section	CITY OF TEMECULA Post Office Box 9033 Temecula, CA 92589-9033 Attn: Director of Public Works/City Engineer
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8. 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.

9. 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

1 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT
2 prepared this Agreement in its final form.

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

9 11. This Agreement is intended by the parties hereto as a final expression of
10 their understanding with respect to the subject matter hereof and as a complete and exclusive
11 statement of the terms and conditions thereof and supersedes any and all prior and
12 contemporaneous agreements and understandings, oral or written, in connection therewith. This
13 Agreement may be changed or modified only upon the written consent of the parties hereto.

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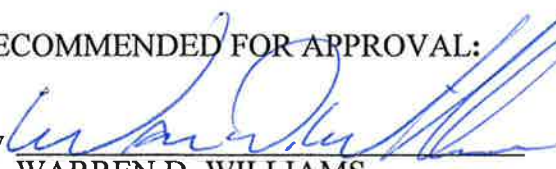
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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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
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By 
NEAL KIPNIS
Deputy County Counsel

By _____
Deputy

(SEAL)

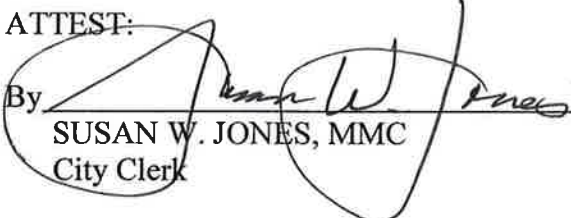
License Agreement: Murrieta Creek Channel - Main Street Bridge Replacement
KEC:blj
1/24/12

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CITY OF TEMECULA

RECOMMENDED FOR APPROVAL:

By 
CHUCK WASHINGTON
Mayor

ATTEST:
By 
SUSAN W. JONES, MMC
City Clerk

(SEAL)

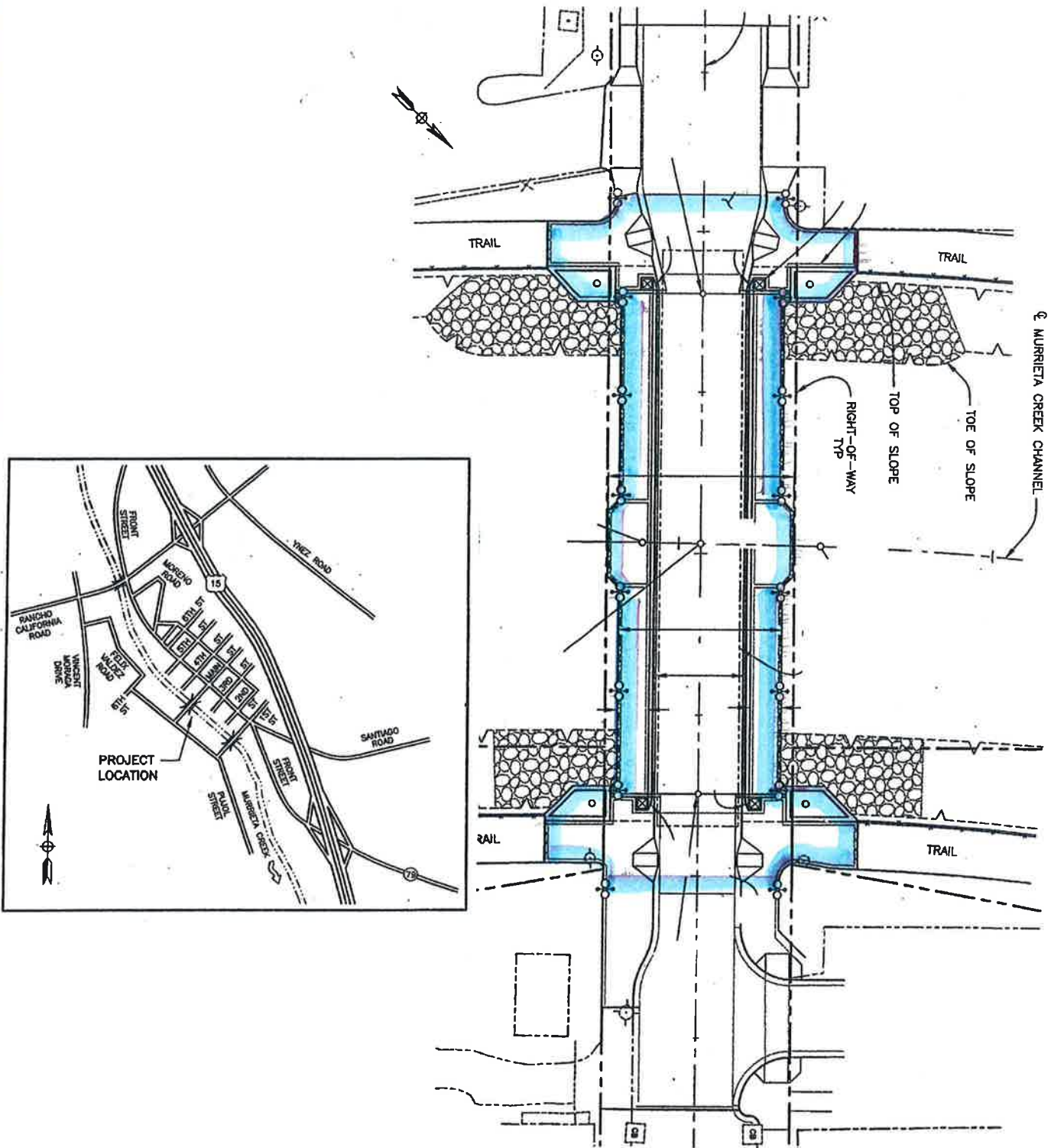
APPROVED AS TO FORM:

By 
PETER M. THORSON
City Attorney

(SEAL) *OB 2/22/12*

License Agreement: Murrieta Creek Channel - Main Street Bridge Replacement
KEC:blj
1/25/12

Exhibit A



License Agreement
Bridge at Murrieta Creek Channel
Project No. 7-0-0020
Encroachment Permit 3326
1 of 1

City of Temecula
Main Street Bridge Replacement over Murrieta Creek
RCFCD Impact Diagram

