

FORM APPROVED COUNTY COUNSEL 10/22/14  
BY: GREGORY P. PRIAMOS DATE  
Departmental Concurrence

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

101 B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
November 4, 2014

**SUBJECT:** Adopt Resolution No. F2014-45, Murrieta Creek Phase II Project, Project No. 7-0-00021; Authorization to Acquire the Right to Possess and Use Certain Real Property being River Street adjacent to APNs 922-073-024 and 922-046-025; Possession and Use Agreement with the City of Temecula; CEQA Finding of Nothing Further is Required, District 3/District 3[\$0]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Finds that the acquisition of the right to possess and use real property will not have a significant impact on the environment, nothing further is required because any potentially significant effects have been adequately analyzed in an earlier Environment Impact Report (SCH#2000071051) certified by this Board on January 28, 2003; and
2. Adopt Resolution No. F2014-45, Authorization to Acquire the Right to Possess and Use Certain Real Property being River Street adjacent to APNs 922-073-024 and 922-046-025, located in the city of Temecula, County of Riverside, California; and
3. Approve the Possession and Use Agreement between the District and the City of Temecula and authorize the Chairman of the Board to execute the same on behalf of the District; and

GSW:rlp  
164709

**WARREN D. WILLIAMS**  
General Manager-Chief Engineer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ 0	\$ 0	\$ 0	\$ 0	

**SOURCE OF FUNDS:**

**Budget Adjustment:**

**For Fiscal Year:**

**C.E.O. RECOMMENDATION:**

APPROVE

BY:   
Steven C. Horn

**County Executive Office Signature**

**MINUTES OF THE BOARD OF SUPERVISORS**

☐ A-30 ☐ Positions Added  
☐ 4/5 Vote ☐ Change Order

**Prev. Agn. Ref.:**

**District: 3<sup>rd</sup>/3<sup>rd</sup>**

**Agenda Number:**

11-1

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

**FORM 11:** Adopt Resolution No. F2014-45, Murrieta Creek Phase II Project, Project No. 7-0-00021; Authorization to Acquire the Right to Possess and Use Certain Real Property being River Street adjacent to APNs 922-073-024 and 922-046-025; Possession and Use Agreement with the City of Temecula; CEQA Finding of Nothing Further is Required, District 3/District 3[\$0]

**DATE:** November 4, 2014

**PAGE:** Page 2 of 2

**RECOMMENDED MOTION:**

**(continued)**

4. Direct the Clerk of the Board to submit the Notice of Determination to the County Clerk for filing within five (5) days of approval of this project, the authorization of the Possession and Use Agreement.

**BACKGROUND:**

**Summary**

The District, in conjunction with the U.S. Army Corps of Engineers, is in the final phase of preparing construction drawings for the Murrieta Creek Phase II Project (Project) and is anticipating commencing construction by the end of December 2014.

The subject Possession and Use Agreement covers the use of River Street, adjacent to APNs 922-073-024 and 922-046-025, owned by the City of Temecula, located in the city of Temecula. The property contains approximately .74 acre or 32,332 sq. ft., is unimproved and is the bottom of the creek at First Street on the east side of Murrieta Creek. The District and the City have a difference of opinion as to the value of the property needed for the Project, however, both recognize the importance of the Project proceeding on schedule, therefore, said Possession and Use Agreement will allow the District to take possession of the property, commence the construction of the improvements and negotiate the fair market value within the next 24 months.

Pursuant to CEQA, the Project was reviewed and a Notice of Determination was filed in compliance with Section 21108 or 21152 of the Public Resources Code with the County Clerk of Riverside County on January 30, 2003. The Possession and Use Agreement described herein was found to not have a significant effect on the environment. This acquisition of the property was contemplated and adequately analyzed in the earlier Environment Impact Report considered and certified by the Board on January 28, 2003, Agenda Item 11.5, Resolution No. F2003-1 and a Supplemental Environmental Assessment/Environmental Impact Report (SCH#2000071051) certified by this Board on August 5, 2014, Agenda Item 11-5 with Resolution No. F2014-36. Therefore, nothing further is required.

This action is necessary to facilitate the construction of the Murrieta Creek Phase II improvements.

Resolution No. F2014-45 and the Possession and Use Agreement have been approved as to form by County Counsel.

**Impact on Residents and Businesses**

This project will reduce flooding in the Old Town section of the city of Temecula, thereby protecting property and residents.

**ATTACHMENTS (if needed, in this order):**

- A. Resolution No. F2014-45
- B. Possession and Use Agreement
- C. Notice of Determination

**BOARD OF SUPERVISORS****RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT****RESOLUTION NO. F2014-45**

AUTHORIZATION TO ACQUIRE THE RIGHT TO POSSESS AND  
USE CERTAIN REAL PROPERTY BEING RIVER STREET ADJACENT TO  
ASSESSOR'S PARCEL NUMBERS 922-073-024 AND 922-046-025  
MURRIETA CREEK PHASE II  
PROJECT 7-0-00021

WHEREAS, the Riverside County Flood Control and Water Conservation District ('District') has been working with the U.S. Army Corps of Engineers on the Murrieta Creek Flood Control, Environmental Restoration and Recreation Project, which would reduce the potential threat of future flooding along Murrieta Creek in the southwest area of Riverside County; and

WHEREAS, the District is constructing certain flood control facilities known as the Murrieta Creek Phase II ('Project') and needs to acquire certain real property interests in order to implement the Project; and

WHEREAS, the City of Temecula is a local participant in this Project pursuant to that certain Cooperative Agreement dated January 11, 2005 between the District, the City of Temecula and the City of Murrieta; and

WHEREAS, the City and the District have been negotiating, but have not come to terms on the final agreement for the District's acquisition of certain real property, as further described below, owned by the City ('Subject Property'); and

WHEREAS, based on the importance of this Project to alleviate the threat of potential flooding in the area, the District desires to acquire and City agrees to grant the District the right to possess and use of the Subject Property by entering into that certain Possession and Use Agreement to allow the District to construct the Project without delay; and

WHEREAS, the District, as lead agency for CEQA purposes, has subsequent approvals for the Project, such as authorizing the acquisition of real property interests, located in the city of Temecula, State of California, in order to implement the Project; and

FORM APPROVED COUNTY COUNSEL  
BY: Synthia M. Gunzel DATE: 10-21-14  
SYNTHIA M. GUNZEL

1 WHEREAS, the acquisition of the rights to the Subject Property is a subsequent  
2 discretionary action contemplated for the Project and was analyzed in the previously certified  
3 Environment Impact Report ('EIR') certified by this Board on January 28, 2003 and a  
4 Supplemental Environmental Assessment/EIR (SCH#2000071051) ('SEA/EIR') certified by this  
5 Board on August 5, 2014.

6 NOW, THEREFORE BE IT RESOLVED, DETERMINED AND ORDERED by vote of  
7 the Board of Supervisors of the Riverside County Flood Control and Water Conservation District  
8 in regular session assembled on November 4, 2014, in the meeting room of the Board of  
9 Supervisors of the District located on the 1<sup>st</sup> Floor of the County Administrative Center, 4080  
10 Lemon Street, Riverside, California, based upon the evidence and testimony presented on the  
11 matter, both written and oral, including the EIR and SEA/EIR, as it relates to the acquisition of  
12 the right to possess and use real property project has determined the following:

13 1. The Board has evaluated the proposed acquisition of the right to possess and use  
14 certain real property from the City of Temecula and determined the proposed acquisition is  
15 consistent and included in all substantive respects with the Project approved by the District; and

16 2. Based on the review of the EIR and SEA/EIR, the environmental impacts of the  
17 acquisition project have been sufficiently assessed in the EIR and SEA/EIR and has determined  
18 that it would not have a significant effect on the environment based upon substantial evidence in  
19 light of the whole record; and

20 3. There are no substantial changes in the Project, including this acquisition project,  
21 no substantial changes in circumstances, or no new information which would require the  
22 preparation of subsequent negative declaration or other environmental assessment/  
23 documentation, pursuant to CEQA and Section 15162 of the CEQA Guidelines; and

24 4. Nothing further is required and no new environmental documentation is warranted  
25 because 1) all potentially significant impacts of the Project have been adequately analyzed in an  
26 earlier EIR and SEA/EIR pursuant to legal standards; 2) all potentially significant effects of the  
27 Project have been avoided or mitigated pursuant to the earlier EIR and SEA/EIR; 3) the Project  
28

1 will not result in any new significant environmental effects not identified in the earlier EIR and  
2 SEA/EIR; 4) the Project will not substantially increase the severity of the environmental effects  
3 identified in the earlier EIR and SEA/EIR; 5) no considerably different mitigation measures have  
4 been identified; and 6) no mitigation measures found infeasible have become feasible; therefore  
5 the Board hereby approves the acquisition project.

6 BE IT FURTHER RESOLVED, DETERMINED AND ORDERED by vote of the Board,  
7 that this Board authorizes the acquisition of the right to possess and use the Subject Property, at  
8 or after 10:30 a.m., of that certain real property located in the city of Temecula, County of  
9 Riverside, State of California, consisting of approximately .74 acre of vacant and unoccupied  
10 property with Assessor's Parcel Numbers 922-073-024 and 922-046-025, more particularly  
11 described on Exhibit 'A' attached hereto and by this reference incorporated herein, with the  
12 owner, City of Temecula.

13 BE IT FURTHER RESOLVED, DETERMINED AND ORDERED that the Possession  
14 and Use Agreement between the District and the City of Temecula is hereby approved and the  
15 General Manager-Chief Engineer of the District is authorized to execute the same on behalf of  
16 the District.

17 BE IT FURTHER RESOLVED, DETERMINED AND ORDERED that the Clerk of the  
18 Board certify acceptance of any documents completing the possession and use of the real  
19 property interest in favor of the District.

20 BE IT FURTHER RESOLVED, DETERMINED AND ORDERED that the General  
21 Manager-Chief Engineer or his designee is authorized to execute any other documents and  
22 administer all actions necessary to complete this transaction.  
23  
24  
25  
26  
27  
28

Exhibit "A"

**Murrieta Creek  
Parcel 7021-18A1**

Being a portion of River Street as shown on the map of the Town of Temecula Map Book 15, Page 726, records of San Diego County, California, all within the city of Temecula, Riverside County, California, described as follows:

All of Parcel 7021-18A as shown on Record of Survey Book 119, Pages 40 through 44, inclusive, records of Riverside County, California;

Excepting therefrom the Northeasterly 5.00 feet of said parcel as shown on said Record of Survey.



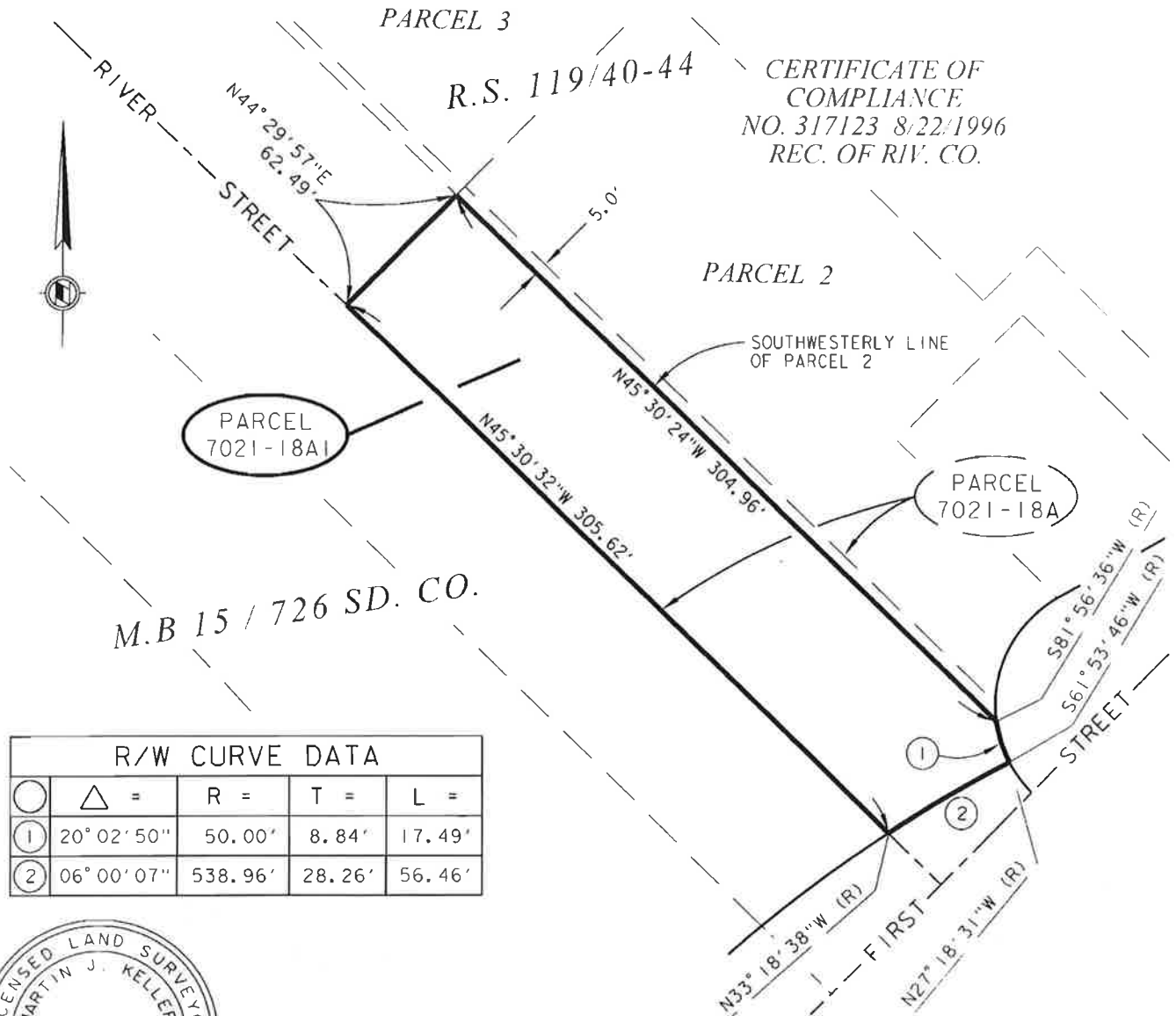
  
MARTIN J. KELLER

Land Surveyor No. 6290

Signed For: Riverside County Flood Control  
and Water Conservation District

Date: 10-6-09

BEING A PORTION OF RIVER STREET AS SHOWN ON THE MAP OF THE TOWN OF TEMECULA  
 MAP BOOK 15, PAGE 726, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, ALL  
 WITHIN THE CITY OF TEMECULA, RIVERSIDE COUNTY, CALIFORNIA.



R/W CURVE DATA				
○	△ =	R =	T =	L =
①	20° 02' 50"	50.00'	8.84'	17.49'
②	06° 00' 07"	538.96'	28.26'	56.46'



*M. J. Keller*  
 DATE: 10-6-09

# RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

1995 MARKET ST. RIVERSIDE, CA. 92501

PROJECT NAME:	MURRIETA CREEK		
THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.	RCFC PARCEL NUMBER(S):  PARCEL 7021-18AI	SCALE:	PREPARED BY:
		NO SCALE	DAC
		DATE:	SHEET NO.
		SEP-30-2009	1 OF 1

Exhibit "A"

**Murrieta Creek  
Parcel 7021-32A**

Being a portion of River Street as shown on the map of the Town of Temecula Map Book 15, Page 726, records of San Diego County, California, all within the city of Temecula, Riverside County, California, described as follows:

All of Parcel 7021-32 as shown on Record of Survey Book 119, Pages 40 through 44, inclusive, records of Riverside County, California;

Excepting therefrom the Northeasterly 5.00 feet of said parcel as shown on said Record of Survey.



  
MARTIN J. KELLER

Land Surveyor No. 6290

Signed For: Riverside County Flood Control  
and Water Conservation District

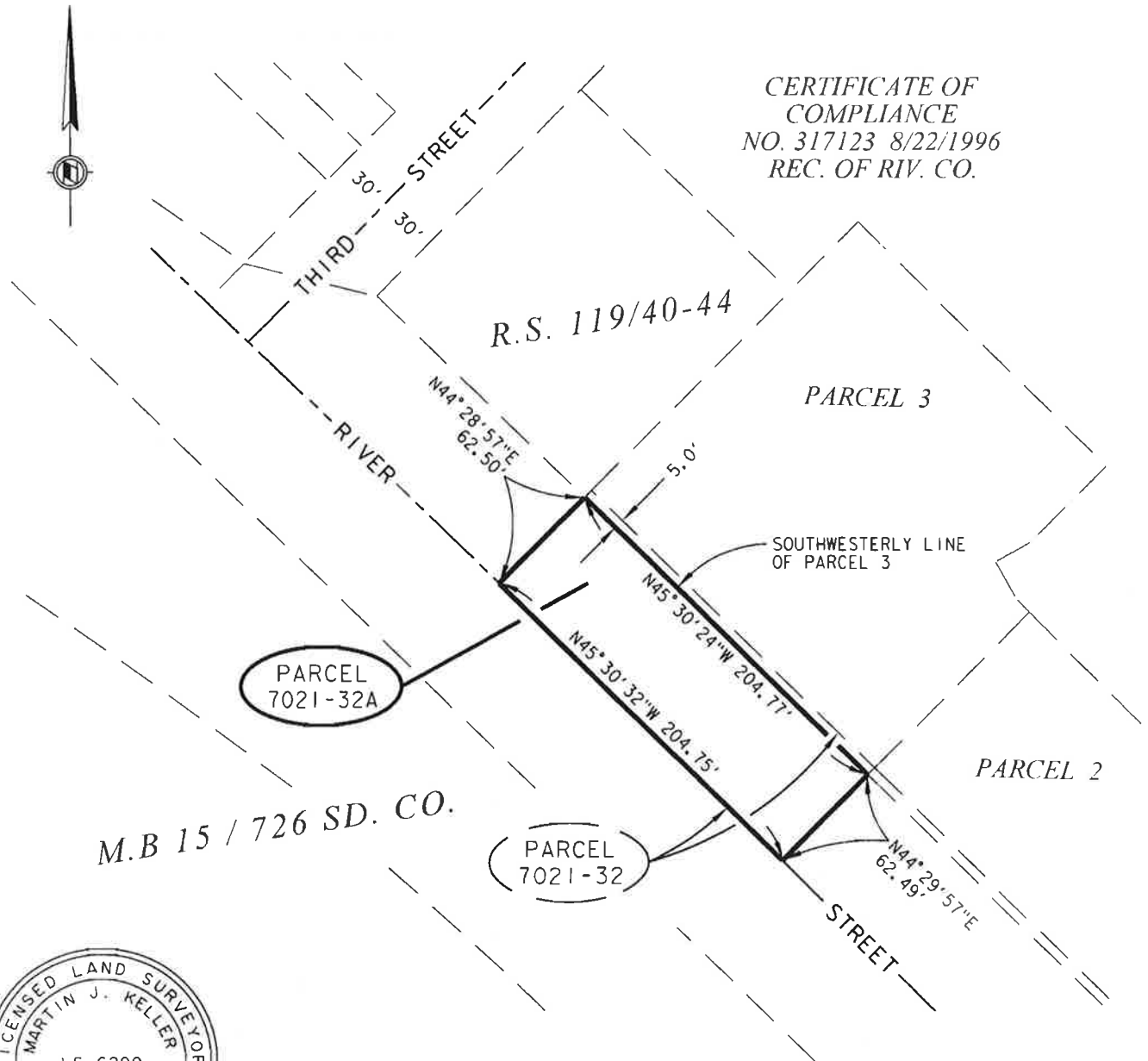
Date: 10-6-09



# Exhibit "B"

BEING A PORTION OF RIVER STREET AS SHOWN ON THE MAP OF THE TOWN OF TEMECULA  
MAP BOOK 15, PAGE 726, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, ALL  
WITHIN THE CITY OF TEMECULA, RIVERSIDE COUNTY, CALIFORNIA.

CERTIFICATE OF  
COMPLIANCE  
NO. 317123 8/22/1996  
REC. OF RIV. CO.



M.B 15 / 726 SD. CO.



*M. J. Keller*  
DATE: 10-6-09

## RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

1995 MARKET ST. RIVERSIDE, CA. 92501

PROJECT NAME:

MURRIETA CREEK

THIS PLAT IS SOLELY AN AID IN LOCATING  
THE PARCEL(S) DESCRIBED IN THE  
ATTACHED DOCUMENT. IT IS NOT A PART  
OF THE WRITTEN DESCRIPTION THEREIN.

RCFC PARCEL NUMBER(S):

PARCEL 7021-32A

SCALE:

NO SCALE

DATE:

SEP-30-2009

PREPARED BY:

DAC

SHEET NO.

1 OF 1

**"COPY"**

Project: Murrieta Creek Phase II  
Project No. 7-0-00021  
RCFC Parcel Nos. 7021-18A1 and 7021-32A

**DO NOT EXECUTE**

**AGREEMENT FOR POSSESSION AND USE BETWEEN THE  
RIVERSIDE COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT AND THE CITY OF TEMECULA  
(Murrieta Creek Phase II)**

This Agreement for Possession and Use ("Agreement") is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic ("District"), and the City of Temecula, a municipal corporation ("City") as of the date the Agreement is fully executed by the District and the City ("Effective Date"). The District and the City are referred to below collectively as the "Parties".

**RECITALS**

A. The District has been working with the U.S. Army Corps of Engineers on the Murrieta Creek Flood Control, Environmental Restoration and Recreation Project, which would reduce the potential threat of future flooding along Murrieta Creek in the southwest area of Riverside County. The District is constructing flood control facilities known as the Murrieta Creek Phase II ("Project").

B. The Project is comprised of several funding sources, including local participation by the Cities of Temecula and Murrieta. The City is a local participant in this Project pursuant to that certain Cooperative Agreement dated January 11, 2005 between the District, the City of Temecula and the City of Murrieta.

C. The City owns those certain real properties, located in the city of Temecula, County of Riverside, State of California, identified as Riverside County Tax Assessor's Parcel Numbers 922-073-024 and 922-046-025 (referred to collectively as the "Larger Parcel"). The Larger Parcel is burdened by an easement dedicated for River Street and Santa Gertrudis Creek on the Town of Temecula Map, recorded in Book 15, Page 726 ("River Street").

D. On November 8, 2012, the District extended a written offer to the City to purchase in fee an approximate 32,332 square foot (0.74 acre) portion of the Larger Parcel and River Street referenced as RCFC Parcel Nos. 7021-18A1 and 7021-32A ("Subject Property"). The portion of the Subject Property identified as RCFC Parcel No. 7021-18A1 is described on Exhibit "A" to this Agreement labeled "Exhibit 'A' Murrieta Creek Parcel 7021-18A1" and is depicted on Exhibit "B" hereto labeled "Parcel 7021-18A1". The portion of the Subject Property identified as RCFC Parcel No. 7021-32A is labeled "Exhibit 'A' Murrieta Creek Parcel 7021-32A" and is depicted on Exhibit "B" to this Agreement labeled "Parcel 7021-32A". Said Exhibits are incorporated in this Agreement by this reference.

E. The Subject Property is intersected by and/or adjacent to the Project and is needed in order to proceed with the Project. The Parties believe that the completion of the Project is in the public interest and will alleviate the threat of potential flooding in the area. The Parties further believe that any delay in the commencement of the construction of the Project is contrary to the public interest and health.

1 F. Based on the timing of the Project, the District desires for itself, its agents,  
2 contractors, employees and representatives, the right to possession and use of the Subject  
Property to allow the District to construct the Project without delay.

3 G. It is agreed by the Parties that any delay in the commencement of construction of  
4 the Project is contrary to the public interest and could cause an unnecessary health and safety  
burden upon the City of Temecula.

5 H. Accordingly, the Parties have agreed to enter into this Agreement to allow the  
6 District to proceed with the construction of the Project and to authorize the District's possession  
7 and use of the Subject Property as provided herein.

### 8 OPERATIVE PROVISIONS

9 NOW, THEREFORE, in consideration of the above recitals and mutual promises,  
covenants and other conditions set forth herein, the City and the District agree as follows:

10 1. Purpose. The District requires immediate possession of the Subject Property to  
11 construct the Project, which is designed to protect the health and safety. The purpose of this  
12 Agreement is to allow the District to (a) enter upon the Subject Property at all reasonable times  
to conduct any necessary or appropriate due diligence activities, environmental testing, and  
13 inspections of the Subject Property, and (b) use and possess the Subject Property without delay  
in connection with the District's construction of the Project.

14 2. Exclusive Right to Possession and Use. The City irrevocably grants to the District,  
15 its contractors, agents and all others deemed necessary by the District, the irrevocable and  
16 exclusive right to possession and use of the Subject Property including the right to remove and  
dispose of improvements within the right of way, subject to the rights, if any, of First & Front, a  
17 California general partnership and/or its tenant(s) to the Subject Property. The District is entitled  
to take possession and use the Subject Property, including but not limited to the right to begin  
18 construction of the Project, upon execution of this Agreement by both Parties. The City has  
informed the District about the Agreement and Grant Deed of Real Property Subject to and  
19 Reserving Parking Easement, which was recorded on May 13, 1999 as Document No. 208241 of  
20 Official Records of the County of Riverside. Accordingly, the District is aware that it is solely  
responsible for obtaining any necessary consents from First & Front, a California general  
21 partnership and/or its tenant(s) in connection with the District's use of the Subject Property.

22 3. Liens and Encumbrances. The City represents that except for the liens and  
encumbrances identified on Litigation Guarantee No. 0930473-1-E dated December 30, 2011,  
23 which was obtained by the District, the title to the Larger Parcel is free and clear of all liens and  
encumbrances or that proper releases will be executed for the Subject Property before funds are  
24 disbursed under this Agreement. The City further agrees to hold the District harmless from all  
liability for unreleased or undisclosed liens or encumbrances affecting the Subject Property.

25 4. Term. The District's right to possession of the Subject Property commences on the  
26 Effective Date of this Agreement and shall terminate on the earlier occurrence of (a) the date the  
27 City completes the conveyance of title to the Subject Property to the District or (b) the issuance  
of a Final Order of Condemnation by the Riverside County Superior Court.

1           5. Offer Pursuant to Government Code Section 7267.2. The City acknowledges that it  
2 has received a written offer for the Subject Property pursuant to Government Code Section  
3 7267.2 that is based on the District's independent appraisal. The District has provided to the City  
4 a copy of the appraisal summary statement, which sets forth the basis of the amount of just  
5 compensation for the Subject Property.

6           6. Negotiations. It is understood by the Parties that the District will continue to  
7 negotiate in good faith with the City to acquire the Subject Property. It is further understood that  
8 in the event the City and the District do not reach a negotiated agreement for the purchase of the  
9 Subject Property within nine months of the Effective Date of this Agreement, such failure will be  
10 an acknowledgement that the negotiations to acquire the Subject Property have proved futile.

11           7. Power of Eminent Domain. The City acknowledges the District is authorized and  
12 entitled to exercise the power of eminent domain for public purposes under Article I, Section 19,  
13 of the California Constitution; California Water Code – Appendix, Chapter 48, Section 48-9,  
14 Paragraph 9; and Code of Civil Procedure Sections 1240.010, 1240.020, 1240.110, 1240.120,  
15 1240.140, 1240.410, 1240.510, and 1240.610. The City further acknowledges that the use for  
16 which the District seeks to acquire the Subject Property, namely flood control channel purposes,  
17 is authorized by law and is a public use; the public interest and necessity require the Project; the  
18 Project is planned and located in the manner that will be most compatible with the greatest public  
19 good and the least private injury; and the Subject Property is necessary for the Project. If the  
20 City and the District do not reach a negotiated agreement for the District's purchase of the  
21 Subject Property, District staff may recommend to the District's Board that it consider the  
22 adoption of a resolution of necessity authorizing the initiation of eminent domain proceedings to  
23 acquire the Subject Property in accordance with the Eminent Domain Law. Under the Eminent  
24 Domain Law, the District's Board has the exclusive and sole discretion to adopt a resolution of  
25 necessity.

26           8. Eminent Domain Proceeding.

27           a. The Parties agree and acknowledge that in the event the District and the City  
28 do not reach a negotiated settlement in connection with the District's acquisition of the Subject  
Property within nine months of the Effective Date of this Agreement, the District may  
commence an eminent domain proceeding to acquire the Subject Property. The City reserves all  
of its rights regarding the payment of just compensation for the Subject Property in any such  
eminent domain proceeding. The City, however, agrees not to object to the District's filing of  
any such eminent domain proceeding to acquire the Subject Property by eminent domain. The  
Parties agree that the only issue in any such eminent domain proceeding will be the amount of  
just compensation that the District will pay for the Subject Property, including, but not limited to  
the fair market value of the Subject Property, and any claims for mitigation, costs to cure,  
severance damages and interest.

          b. California Code of Civil Procedure Section 1245.235 requires the District, to  
give each person whose property is to be acquired by eminent domain notice and a reasonable  
opportunity to appear before the Board of Supervisors for the District and be heard on the  
matters referred to in Code of Civil Procedure Section 1240.030, which provides:

The power of eminent domain may be exercised to acquire property  
for a proposed project only if all of the following are established:

- (1) The public interest and necessity require the project.
- (2) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- (3) The property sought to be acquired is necessary for the project.

c. By granting this irrevocable right to possession and use of the Subject Property to the District, the City agrees to the following:

(i) The City specifically waives the notice required by Code of Civil Procedure Section 1245.235 of the hearing on the matters referred to in Code of Civil Procedure Section 1240.030, and the City shall not object to the adoption of the resolution of necessity by the District authorizing the taking of the Subject Property described in Exhibits "A" and "B".

(ii) The City shall not object to the filing of an eminent domain proceeding to acquire the Subject Property described in Exhibits "A" and "B".

(iii) In any eminent domain proceeding filed by the District to acquire the Subject Property described in Exhibits "A" and "B", the City shall not challenge District's right to acquire such property, and the only issue shall be the amount of just compensation for the Subject Property.

d. If the District fails to file an eminent domain proceeding within twenty-four months of the Effective Date of this Agreement, then the City shall be entitled to file an inverse condemnation proceeding. The District agrees that in any such inverse condemnation proceeding, the only issue shall be the amount of just compensation for the Subject Property and the District shall not challenge liability.

9. Date of Valuation. The Parties agree that in any eminent domain proceeding filed by the District to acquire the Subject Property, the date of valuation for determining the amount of just compensation for the Subject Property would be the date on which the District files the Complaint in Eminent Domain.

10. Indemnification.

a. The District will, and will request that its contractor, indemnify, defend and hold the City harmless from any and all liability for bodily injury, death and property damage arising out of or in any way connected with the District's use of the Subject Property, and will reimburse the City for all reasonable costs, expenses and losses, including reasonable attorney's fees, incurred by it in consequence of any claims, demands and causes of action that may be made or brought against it arising out of the District's entry on and use of the Subject Property for the construction of the Project. In the event that any portions of the Larger Parcel not comprising the Subject Property are damaged in any way by the District's construction of the Project, the District will, at its sole expense, return said portions of the Larger Parcel to as close to its pre-construction condition at the sole expense of the District.

b. To the extent permitted by law, the District hereby indemnifies the City from and against all claims and demands for payment, or liens or lien claims made against the City or any portion of the Larger Parcel by contractors, subcontractors, suppliers, engineers and/or

1 architects and surveyors who might have lien rights as a result of the District's use of the Subject  
2 Property for the construction of the Project.

3 c. Prior to entry onto the Subject Property, the District shall cause the District's  
4 contractors or agents constructing the Project to procure or maintain a policy of commercial  
5 general liability insurance issued by an insurer reasonably satisfactory to the District covering  
6 the construction of the Project on the Subject Property with a single limit of liability (per  
7 occurrence and aggregate) of not less than \$2,000,000.00, and will require that the Contractor  
8 add the City as an additional insured. The District will require its contractor to maintain the  
9 insurance in force throughout the term of this Agreement.

10 11. Taxes. The City agrees to pay all taxes, including prorated taxes for the current  
11 year, and special assessments due as of the date the District takes possession of the Subject  
12 Property.

13 12. Compliance with Laws. The District shall comply with all laws, ordinances, orders,  
14 rules and regulations enacted or promulgated by all state, federal, municipal and other  
15 governmental agencies and bodies relating to the use, condition and occupancy of the Subject  
16 Property.

17 13. Hazardous Materials.

18 a. The City represents and warrants that, from the date of its purchase of the  
19 Subject Property through the Effective Date of this Agreement, the City did not use, generate,  
20 release, discharge, store or dispose of any hazardous waste, toxic substances or related materials  
21 on, or under, in or about the Subject Property or transport any Hazardous Materials to or from  
22 the Subject Property. The term "Hazardous Materials" shall mean any substance, material or  
23 waste which is or becomes regulated by any local governmental authority, the State of California  
24 or the United States Government, including, but not limited to, any material or substance which  
25 is (i) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous  
26 waste" under Section 25115, 25117 or 25122.7 or listed pursuant to Section 25140 of the  
27 California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law),  
28 (ii) defined as "hazardous material", "hazardous substance" or "hazardous waste" under Section  
25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials  
Release Response Plans and Inventory), (iv) defined as "hazardous substance" under Section  
25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage  
of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii)  
listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11  
of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as a  
"hazardous substances" pursuant to Section 311 of the Clean Water Act, (33 U.S.C. §1317), (x)  
defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and  
Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903) or (xi) defined as a "hazardous  
substances" pursuant to Section 101 of the Comprehensive Environmental Response,  
Compensation, as amended by Liability Act, 42, U.S.C. §9601 *et seq.* (42 U.S.C. §9601).

27 b. District has the opportunity to conduct due diligence inspections,  
28 investigations and examinations of the Subject Property, and subject to the City's representations  
set forth above in Operative Provision 13.a., District will take possession and use of the Subject  
Property on an "AS IS, WHERE IS BASIS." Except for the representations and warranties set  
forth above in Operative Provision 13.a., District is not relying on and the City has not made any

1 warranties of any kind or character with respect to the environmental, soils, seismic or  
2 geotechnical condition of the Subject Property. Further, District is not relying on, and the City  
3 has not made and is not making any representations or warranties of any kind or character  
4 whatsoever with respect to the environmental, soils, seismic or geotechnical condition of the  
5 Subject Property based on the use of the Subject Property by any previous owner or occupant,  
6 including any use, generation, release, discharge, storage, or disposal of any hazardous waste,  
7 toxic substances or related materials on, under, in or about the Subject Property or transportation  
8 of any hazardous materials to or from the Subject Property by any previous seller or occupant of  
9 the Subject Property.

10 14. Notices. All notices and demands will be given in writing by certified mail, postage  
11 prepaid, and return receipt requested or by Federal Express. Notices will be considered given  
12 upon the earlier of (a) two business days following deposit in the United States mail, postage  
13 prepaid, certified or registered, return receipt requested, or (b) one business day following  
14 deposit with Federal Express. The Parties will address such notices as provided below or as may  
15 be amended by written notice:

16 City: City of Temecula  
17 41000 Main Street  
18 Temecula, California 92590  
19 Attention: Aaron Adams, City Manager

20 Copy to: Richards, Watson & Gershon  
21 Attention: Peter M. Thorson, City Attorney  
22 355 South Grand Avenue, 40th Floor  
23 Los Angeles, California 90071-3101

24 Grantor: Riverside County Flood Control and Water Conservation District  
25 1995 Market Street  
26 Riverside, California 92501  
27 Attention: Greg Walker

28 Copy to: Riverside County Counsel's Office  
Attention: Synthia Gunzel, Deputy County Counsel  
3960 Orange Street, Fifth Floor  
Riverside, California 92501-3674

29 15. Miscellaneous Provisions.

30 a. *Authority to Bind Parties and Execute Agreement*. The City and the  
31 District represent and warrant to one another that this Agreement constitutes a binding obligation  
32 on each of them and that the person executing this Agreement is authorized to execute the  
33 Agreement on behalf of the respective Party and to bind it.

34 b. *Entire Agreement*. This Agreement reflects the entire agreement between  
35 the City and the District regarding the District's possession and use of the Subject Property, and  
36 shall supersede all prior or contemporaneous oral or written understandings, statements,  
37 representations or promises between the City and the District concerning the subject matter of  
38 this Agreement.



1           c.     *Governing Law.* This Agreement is deemed to have been prepared by  
2 each of the Parties hereto, and any uncertainty or ambiguity herein shall not be interpreted  
3 against the drafter, but rather, if such uncertainty or ambiguity exists, shall be interpreted  
4 according to the applicable rules of interpretation of contracts under the laws of the State of  
5 California, and not the substantive law of another state or the United States or federal common  
6 law. This Agreement shall be deemed to have been executed and delivered within the State of  
7 California, and the rights and obligations of the Parties shall be governed by, and construed and  
8 enforced in accordance with, the laws of the State of California.

9           d.     *Amendment or Modification.* This may be modified or amended only by a  
10 writing executed by all Parties to this Agreement.

11           e.     *Partial Invalidity/Severability.* Each provision of this Agreement shall be  
12 valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement  
13 or the application of such provision to any person or circumstance is, to any extent, deemed to be  
14 invalid or unenforceable, the remainder of this Agreement, or the application of such provision to  
15 persons or circumstances other than those as to which it is held invalid or unenforceable, shall  
16 not be affected by such invalidity or unenforceability, unless such provision or such application  
17 of such provision is essential to this Agreement.

18           f.     *Successors-in-Interest and Assigns.* Except as otherwise provided herein,  
19 the provisions of this Agreement will be binding on and inure to the benefit of the Parties hereto  
20 and their respective heirs, successors and assigns.

21           g.     *Legal Representation.* The Parties, and each of them, acknowledge that in  
22 connection with the negotiation and execution of this Agreement, they have each been  
23 represented by independent counsel of their own choosing and the Parties executed the  
24 Agreement after review by such independent counsel, or, if they were not so represented, said  
25 non-representation is and was the voluntary, intelligent and informed decision and election of  
26 any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties  
27 has had an adequate opportunity to conduct an independent investigation of all the facts and  
28 circumstances with respect to the matters that are the subject of this Agreement.

          h.     *Counterparts, Facsimile & Electronic Signatures.* This Agreement may  
be executed in whole or in counterparts which together shall constitute the entire Agreement.  
Facsimile or electronic signatures/counterparts to this Agreement shall be effective as if the  
original signed counterpart were delivered.

          i.     *Fees and Costs.* Each of the Parties to this Agreement shall bear its own  
attorney's fees and costs, including, but not limited to expert fees, incurred in connection with  
negotiating the matters described in this Agreement. This provision is not a waiver of the City's  
rights to seek litigation costs and expenses in any inverse condemnation filed in connection with  
the Subject Property.



IN WITNESS WHEREOF, the City and the District have entered into this Agreement as of the date set forth below.

DISTRICT:

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT,  
a body politic**

Dated

By: WARREN D. WILLIAMS  
General Manager-Chief Engineer

ATTEST:

By: Kecia Harper-Ihem  
Clerk of the Board

Approved as to Form:

Dated: 10-21-14

GREGORY P. PRIAMOS  
County Counsel

By: Synthia M. Gunzel  
Synthia M. Gunzel  
Deputy County Counsel

Project: Murrieta Creek Phase II  
Project No. 7-0-00021  
RCFC Parcel Nos. 7021-18A1 and 7021-32A

CITY:

**CITY OF TEMECULA, a municipal  
corporation**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
JEFF COMERCHERO  
Mayor Pro Tem

ATTEST:

\_\_\_\_\_  
RANDI JOHL-OLSON, JD, MMC  
City Clerk

Approved as to form:

Dated: \_\_\_\_\_

RICHARDS, WATSON & GERSHON

\_\_\_\_\_  
PETER M. THORSON  
City Attorney

Exhibit "A"

**Murrieta Creek  
Parcel 7021-18A1**

Being a portion of River Street as shown on the map of the Town of Temecula Map Book 15, Page 726, records of San Diego County, California, all within the city of Temecula, Riverside County, California, described as follows:

All of Parcel 7021-18A as shown on Record of Survey Book 119, Pages 40 through 44, inclusive, records of Riverside County, California;

Excepting therefrom the Northeasterly 5.00 feet of said parcel as shown on said Record of Survey.



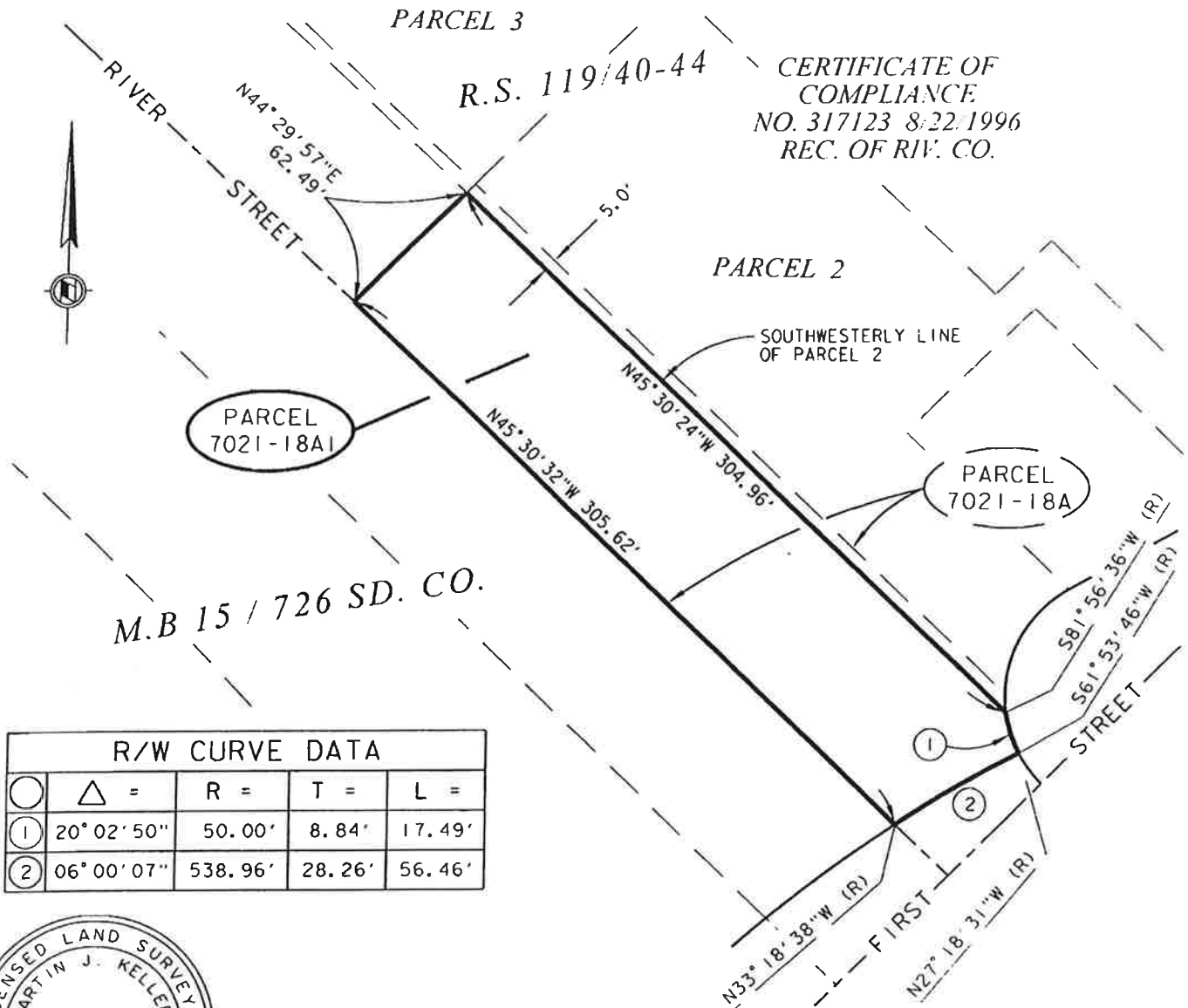
  
MARTIN J. KELLER

Land Surveyor No. 6290

Signed For: Riverside County Flood Control  
and Water Conservation District

Date: 10-6-09

BEING A PORTION OF RIVER STREET AS SHOWN ON THE MAP OF THE TOWN OF TEMECULA  
 MAP BOOK 15, PAGE 726, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, ALL  
 WITHIN THE CITY OF TEMECULA, RIVERSIDE COUNTY, CALIFORNIA.



M.B 15 / 726 SD. CO.

R/W CURVE DATA				
Δ =	R =	T =	L =	
1 20°02'50"	50.00'	8.84'	17.49'	
2 06°00'07"	538.96'	28.26'	56.46'	



DATE: 10-6-09

**RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**  
 1995 MARKET ST. RIVERSIDE, CA. 92501

PROJECT NAME:

MURRIETA CREEK

THIS PLAT IS SOLELY AN AID IN LOCATING  
 THE PARCEL(S) DESCRIBED IN THE  
 ATTACHED DOCUMENT. IT IS NOT A PART  
 OF THE WRITTEN DESCRIPTION THEREIN.

RCFC PARCEL NUMBER(S):

PARCEL 7021-18A1

SCALE:

NO SCALE

DATE:

SEP-30-2009

PREPARED BY:

DAC

SHEET NO.

1 OF 1

Exhibit "B"

**Murrieta Creek  
Parcel 7021-32A**

Being a portion of River Street as shown on the map of the Town of Temecula Map Book 15. Page 726, records of San Diego County, California, all within the city of Temecula. Riverside County, California, described as follows:

All of Parcel 7021-32 as shown on Record of Survey Book 119, Pages 40 through 44, inclusive, records of Riverside County, California;

Excepting therefrom the Northeasterly 5.00 feet of said parcel as shown on said Record of Survey.



  
MARTIN J. KELLER

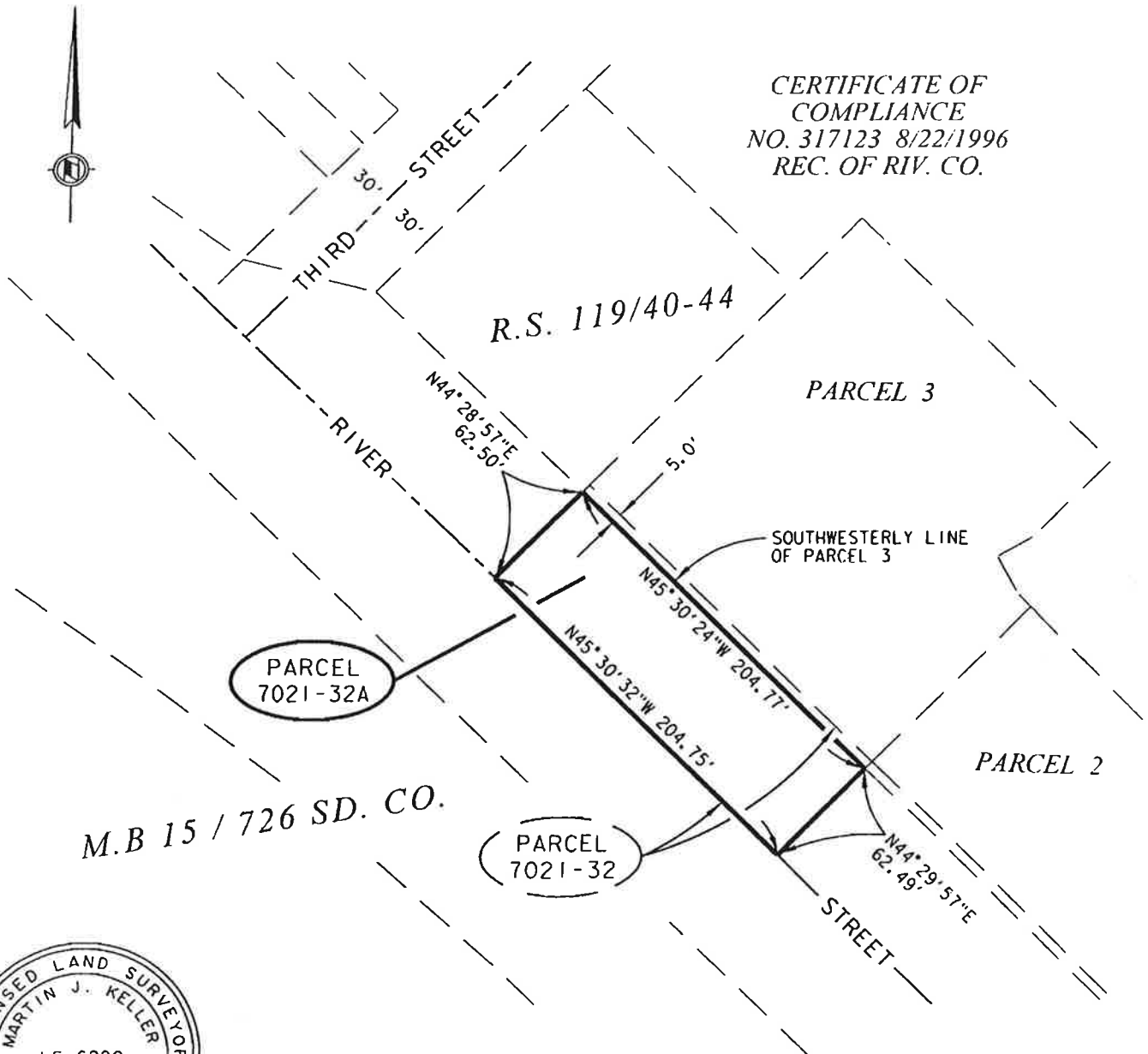
Land Surveyor No. 6290

Signed For: Riverside County Flood Control  
and Water Conservation District

Date: 10-6-09

BEING A PORTION OF RIVER STREET AS SHOWN ON THE MAP OF THE TOWN OF TEMECULA  
 MAP BOOK 15, PAGE 726, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, ALL  
 WITHIN THE CITY OF TEMECULA, RIVERSIDE COUNTY, CALIFORNIA.

CERTIFICATE OF  
 COMPLIANCE  
 NO. 317123 8/22/1996  
 REC. OF RIV. CO.



*M. J. Keller*  
 DATE: 10-6-09

**RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**  
 1995 MARKET ST. RIVERSIDE, CA. 92501

PROJECT NAME: MURRIETA CREEK		SCALE: NO SCALE	
THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.	RCFC PARCEL NUMBER(S): PARCEL 7021-32A	DATE: SEP-30-2009	PREPARED BY: DAC
		SHEET NO. 1 OF 1	

## Notice of Determination

To: County Clerk  
County of Riverside  
2724 Gateway Drive  
P.O. Box 3044  
Riverside, CA 92507

From: Riverside County Flood Control  
1995 Market Street  
Riverside, CA 92501  
Contact: Mike Wong  
Phone: 951.955.1233

Lead Agency (if different from above):

### SUBJECT:

**Filing of Notice of Determination in compliance with Section 21152 of the Public Resources Code.**

State Clearinghouse Number (if submitted to State Clearinghouse): N/A

**Project Title:** Possession and Use Agreement in Property for  
Murrieta Creek Phase II

### Project Location (include county)

The project area is generally bounded to the north by Third Street, to the east by Front Street, to the south by First Street and to the west by Murrieta Creek in the city of Temecula within Riverside County.

### Project Description

The proposed action is to authorize the acquisition 0.74-acre of real property within APNs 922-073-024 and 922-046-025 from the City of Temecula ("Property Agreement"). This Property Agreement is a subsequent discretionary action to further the flood control purposes of the Murrieta Creek Phase II Project ("Phase II Project"), where the Riverside County Flood Control and Water Conservation District, acting as lead agency for California Environmental Quality Act purposes, is responsible for acquiring any real property interest necessary to complete the Phase II Project.

This is to advise that the Riverside County Flood Control and Water Conservation District (Lead Agency) has approved the above described Property Agreement on November 4, 2014 and has made the following findings and determinations regarding the above described Property Agreement:

1. The Property Agreement will not have a significant effect on the environment.
2. A Final Environmental Impact Report (EIR) and Supplemental EIR (SCH No. 200071051) were prepared for the Phase II Project pursuant to the provisions of CEQA and the Supplemental EIR was certified on August 5, 2014, Agenda Item 11-5 with Resolution No. F2014-36.
3. Mitigation measures were made a condition of the approval of the Phase II Project.
4. The Property Agreement will not result in any new significant environmental effects not identified in the EIR and the Supplemental EIR (SCH No. 200071051); will not substantially increase the severity of the environmental effects identified in the EIR and Supplemental EIR; no considerably different mitigation measures have been identified; and no mitigation measures found infeasible have become feasible.
5. No further action or environmental documentation is required to comply with the California Environmental Quality Act because the Property Agreement was adequately analyzed in the earlier environmental documents.

This is to certify that the previously adopted EIR and Supplemental EIR and the record of Project approval are available to the General Public at: The Office of the Clerk of the Board, County Administrative Center, 4080 Lemon Street, Riverside, CA 92501.

\_\_\_\_\_  
Signature (Public Agency)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Date received for filing at OPR:

**Revised 2004**

Authority cited: Sections 21083 and 21087, Public Resources Code.  
Reference: Sections 21000-21174, Public Resources Code.

P8\164772

# RIVERSIDE COUNTY CLERK-RECORDER

## AUTHORIZATION TO BILL

### TO BE FILLED OUT BY SUBMITTING AGENCY

DATE: 10/21/2014 BUSINESS UNIT/AGENCY: FLOOD CONTROL - FCARC

ACCOUNTING STRING:

ACCOUNT: 526410 FUND: 25170

DEPT ID: 947520 PROGRAM: \_\_\_\_\_


AMOUNT: \$50.00

REF: CEQA POSTING FOR MURRIETA CREEK PHASE II  
PROJECT NO 227-7-8-00021-00-15-3230-000

THIS AUTHORIZES THE COUNTY CLERK & RECORDER TO ISSUE AN INVOICE FOR PAYMENT OF ALL DOCUMENTS INCLUDED.

NUMBER OF DOCUMENTS INCLUDED:

1

AUTHORIZED BY: DARRYLENN PRUDHOLME-BROCKINGTON 

PRESENTED BY: RANDY SHEPPEARD EXT 51306

CONTACT: DARRYLENN PRUDHOLME-BROCKINGTON EXT 58357

### TO BE FILLED OUT BY COUNTY CLERK

ACCEPTED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

DOCUMENT NO(S)/INVOICE NO(S): \_\_\_\_\_

STATE OF CALIFORNIA - THE RESOURCES AGENCY  
DEPARTMENT OF FISH AND GAME  
ENVIRONMENTAL FILING FEE CASH RECEIPT

RECEIVED

MAR 24 2003

Receipt # 200300072

RIVERSIDE COUNTY FLOOD CONTROL  
WATER CONSERVATION DISTRICT

Lead Agency: COUNTY FLOOD CONTROL

Date: 01/30/2003

County Agency of Filing: Riverside

Document No: 200300072

Project Title: MURRIETA CREEK FLOOD CONTROL

Project Applicant Name: COUNTY FLOOD CONTROL

Phone Number:

Project Applicant Address: 1995 MARKET ST. RIVERSIDE CA 92501

Project Applicant: Local Public Agency

CHECK APPLICABLE FEES:

☒ Environmental Impact Report

\$850.00

☐ Negative Declaration

☐ Application Fee Water Diversion (State Water Resources Control Board Only)

☐ Project Subject to Certified Regulatory Programs

☒ County Administration Fee

\$64.00

☐ Project that is exempt from fees (DeMinimis Exemption)

☐ Project that is exempt from fees (Notice of Exemption)

Total Received \$914.00

Signature and title of person receiving payment:

C. F. F. F.

Notes: