

FORM APPROVED COUNTY COUNSEL 5/2/16
 BY: GREGORY P. PRIAMOS DATE

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

813B



FROM: Acting General Manager-Chief Engineer

SUBMITTAL DATE:
 June 7, 2016

SUBJECT: Approve License Agreement for Metz Road Storm Drain Pedestrian Bridge; Project No. 4-0-00080 (Encroachment Permit 3443); District 5; [\$N/A]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the License Agreement between the District, and the City of Perris (City); and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District; and
3. Authorize the General Manager-Chief Engineer to terminate the Agreement at his sole discretion.

BACKGROUND:

Summary

The License Agreement (Agreement) sets forth the terms and conditions by which the City will construct, operate and maintain a certain pedestrian bridge and ancillary structures spanning the District's Metz Road Storm Drain.

(Continued on Page 2)

Departmental Concurrence

[Signature]
 JASON UHLEY
 General Manager-Chief Engineer

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

SOURCE OF FUNDS:	Budget Adjustment: No
	For Fiscal Year: N/A

C.E.O. RECOMMENDATION:

APPROVE

BY: *[Signature]*
 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: 5th | Agenda Number:

11-6

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

FORM 11: Approve License Agreement for Metz Road Storm Drain Pedestrian Bridge; Project No. 4-0-00080 (Encroachment Permit 3443); District 5; [\$N/A]

DATE: June 7, 2016

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

Said pedestrian bridge spanning District's Metz Road Storm Drain Channel will not conflict with the Channel's primary function and the City will assure unimpeded passage on the access road for the District to continue operation and maintenance of Channel.

County Counsel has approved the Agreement as to legal form, and the City has executed the Agreement.

Impact on Residents and Businesses

The residents and businesses of city of Perris will be the primary beneficiaries of the proposed expansion of pedestrian bridge project.

SUPPLEMENTAL:

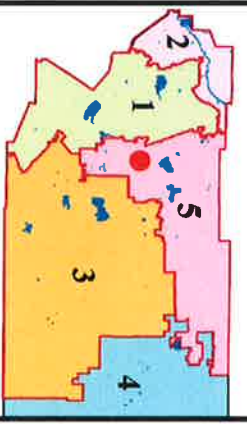
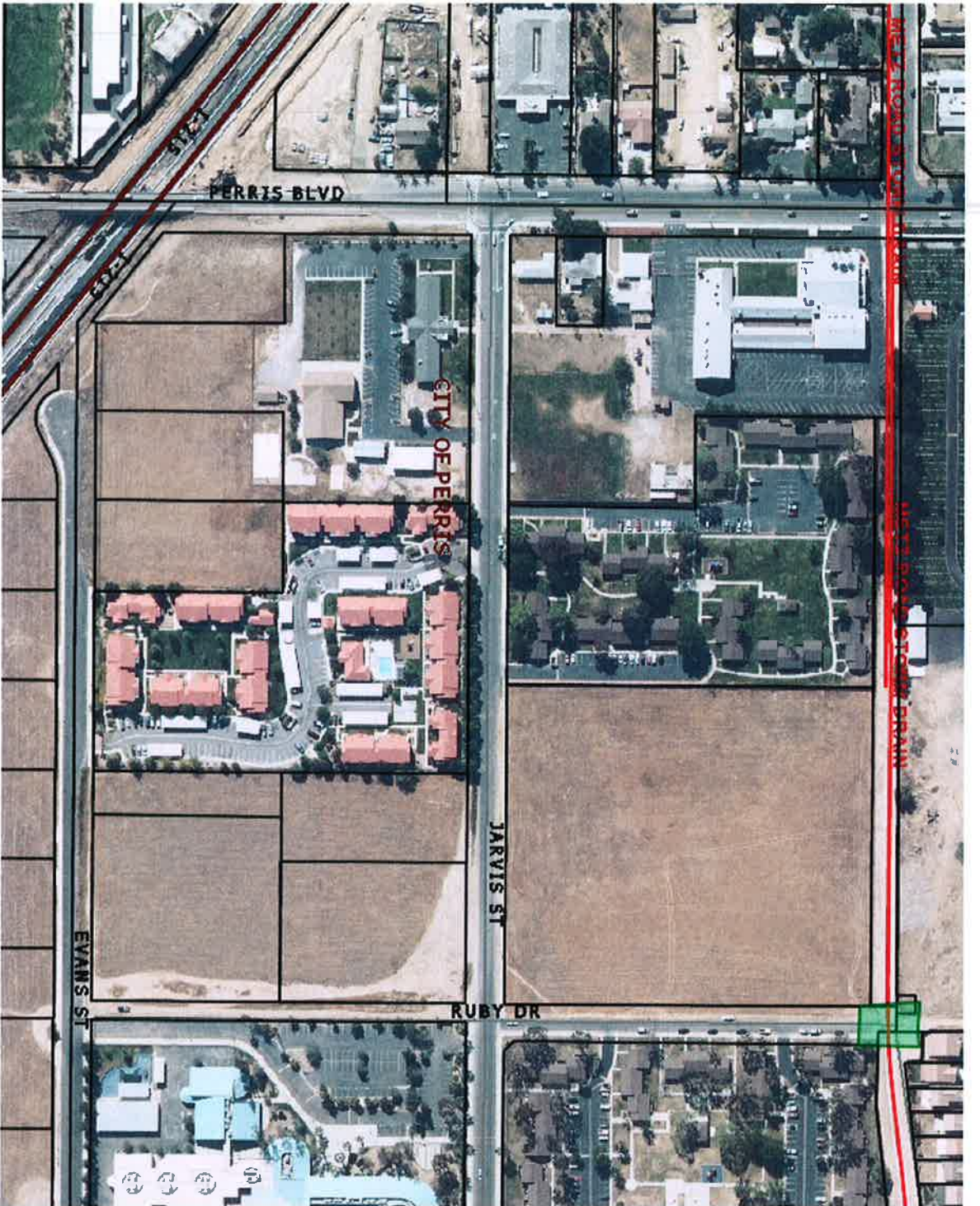
Additional Fiscal Information

The City is funding all construction and construction inspection costs. Future operation and maintenance costs of the Channel will accrue to the District.

ATTACHMENT:

1. Vicinity Map
2. License Agreement

CSS:blm
P8/204168



Supervisor Districts

LEGEND:

 Project Vicinity

DESCRIPTION:

License Agreement for Pedestrian Bridge over Metz Road Storm Drain
Concurrent with Encroachment Permit
Number 3443



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LICENSE AGREEMENT
Metz Road Storm Drain
Concurrent with Encroachment Permit No. 3443
Project No. 4-0-00080

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

RECITALS

A. DISTRICT owns, operates and maintains the Metz Road Storm Drain (Project No. 4-0-00080), hereinafter called "CHANNEL", located in the City of Perris; 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 or its contractor to construct BRIDGE within DISTRICT'S CHANNEL right of way, and (ii) allow CITY to operate and maintain said BRIDGE; and

F. In accordance with the provisions of this License Agreement, CITY is willing to (i) construct BRIDGE pursuant to a public works contract, (ii) operate and maintain

1 CITY constructed BRIDGE, (iii) conduct periodic safety inspections of BRIDGE, and (iv)
2 indemnify and hold DISTRICT harmless against any claims resulting from the public's use of
3 BRIDGE; and

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

7 H. Pursuant to the California Environmental Quality Act (CEQA), CITY will
8 act as the sole Lead Agency. As such, CITY will have the corresponding responsibility to fulfill
9 the obligations of a CEQA Lead Agency with respect to the construction, operation and
10 maintenance of BRIDGE; and

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

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

13 SECTION I

14 DISTRICT shall:

15 1. Act as Responsible Agency and take all necessary and appropriate
16 action(s) to comply with CEQA with respect to BRIDGE project.

17 2. Grant to CITY a revocable license to utilize CHANNEL right of way for
18 public access purposes which shall not, in any way whatsoever, impair CHANNEL'S primary
19 flood control purpose and function or otherwise unreasonably interfere with or adversely affect
20 DISTRICT'S ability to operate, maintain, repair or reconstruct CHANNEL or any of its
21 appurtenant works. Said license shall remain in effect indefinitely so long as CITY'S use of
22 BRIDGE is so limited.

23 3. Give written notice to CITY of any non-compatible use or condition that
24 is not in conformity with the provisions of this License Agreement or which may unreasonably
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1 adversely affect CHANNEL'S flood control function, and grant CITY thirty (30) days from and
2 after such notice to correct any such nonconforming use or condition.

3 4. Continue to maintain CHANNEL'S flood conveyance capacity in order for
4 CHANNEL to function as a flood control facility at its design level.

5 5. Assume no responsibility, obligation or liability whatsoever, for (i) the
6 design, construction, operation or maintenance of BRIDGE, or (ii) CITY'S use of BRIDGE
7 within DISTRICT'S CHANNEL right of way as granted herein.

8 6. Other than in emergency situations, provide thirty (30) days written notice
9 to CITY, should DISTRICT determine that a closure of BRIDGE for the purpose of operation,
10 maintenance, repair or re-construction of CHANNEL is necessary.

11 SECTION II

12 CITY shall:

13 1. Prior to commencing construction of BRIDGE or any other improvements
14 within CHANNEL right of way, obtain an Encroachment Permit from DISTRICT, pursuant to
15 its rules and regulations and comply with all provisions set forth therein including: 1) submittal
16 of plans and specifications to DISTRICT for review and approval, and 2) payment to DISTRICT
17 for i) the cost of reviewing said plans and specifications, ii) the costs associated with the
18 inspection of BRIDGE construction, and iii) the costs of preparing and administering this
19 Agreement.

20 2. Not permit any change to or modification of BRIDGE plans without the
21 prior written permission and consent of DISTRICT, which shall not be unreasonably withheld.

22 3. Furnish DISTRICT with copies of all permits, approvals or agreements
23 required by any Federal or State resource and/or regulatory agency for the construction,
24 operation and maintenance of BRIDGE. Such documents include but are not limited to those
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1 issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board,
2 California State Department of Fish and Game and State Water Resources Control Board.

3 4. Immediately remove, upon written request by DISTRICT'S General
4 Manager-Chief Engineer, any improvements and/or equipment which, in the sole opinion of
5 DISTRICT'S General Manager-Chief Engineer, would be detrimental to the operation of
6 CHANNEL.
7

8 5. With regard to BRIDGE or any other CITY constructed improvements
9 and/or equipment situated within CHANNEL right of way, CITY hereby waives any claim
10 against DISTRICT for damages resulting from DISTRICT'S customary use of CHANNEL right
11 of way for operation and maintenance of CHANNEL or its appurtenant works, save and except
12 damages resulting from DISTRICT'S sole active negligence or willful misconduct.
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14 6. Assume sole responsibility for the construction, operation and
15 maintenance of BRIDGE, including all necessary modifications, corrections or temporary
16 removal as deemed necessary by DISTRICT for the continuing function, reconstruction, repair
17 or operation and maintenance of CHANNEL.

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

3 8. Ensure the safety of the public who may utilize property within
4 DISTRICT'S CHANNEL right of way by conducting periodic safety inspections and promptly
5 making such repairs as are necessary to safeguard the public and its use thereof.
6

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

11 SECTION III

12 It is further mutually agreed:

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

23 2. DISTRICT shall indemnify, defend, save and hold harmless CITY
24 (including its officers, Board of Supervisors, elected and appointed officials, agents, employees,
25 representatives, independent contractors, and subcontractors) from any liabilities, claim,
26 damage, proceeding or action, present or future, based upon, arising out of or in any way relating
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1 to DISTRICT (including its officers, agents, employees, representatives, subcontractors,
2 independent contractors, public, guests and invitees) actual or alleged acts or omissions related
3 to this Agreement, performance under this Agreement, or failure to comply with the
4 requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily
5 injury or death; (c) payment of attorney's fees; or (d) any other element of any kind or nature
6 whatsoever.
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8 3. If, in the sole opinion of DISTRICT'S General Manager-Chief Engineer,
9 CITY'S use of DISTRICT'S CHANNEL right of way may cause or contribute to a public health
10 and safety hazard, or any other matter of substantial concern to DISTRICT, DISTRICT reserves
11 the right to terminate this License Agreement.
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13 4. Any waiver by DISTRICT or by CITY of any breach of any one or more
14 of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other
15 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to
16 require exact, full and complete compliance with any terms of this Agreement shall not be
17 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from
18 enforcement hereof.
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20 5. This Agreement is to be construed in accordance with the laws of the State
21 of California. If any provision of this Agreement is held by a court of competent jurisdiction to
22 be invalid, void or unenforceable, the remaining provisions shall be declared severable and shall
23 be given full force and effect to the fullest extent possible.
24

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
27 California located in Riverside, California, and the parties waive any provisions of law providing
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1 for a change of venue to another location. Prior to the filing of any legal action, the parties shall
2 be obligated to attend a mediation session with a neutral mediator or try to resolve the dispute.

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

5 RIVERSIDE COUNTY FLOOD CONTROL	CITY OF PERRIS
6 AND WATER CONSERVATION DISTRICT	101 N. D Street
7 1995 Market Street	Perris, CA 92570
8 Riverside, CA 92501	Attn: City Manager
Attn: Encroachment Permit Section	

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

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



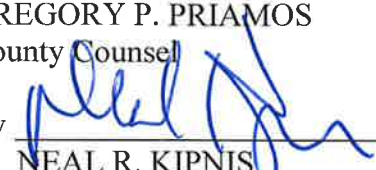
JASON UHLEY
Acting General Manager-Chief Engineer

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

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

APPROVED AS TO FORM:

GREGORY P. PRIAMOS
County Counsel

By 

NEAL R. KIPNIS
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

(SEAL)

License Agreement: Pedestrian Bridge Over Metz Road Storm Drain
4/26/16
CSS:blm


CITY OF PERRIS

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By 
RICHARD BELMUDEZ
City Manager

APPROVED AS TO FORM:

ATTEST:

By 
ERIC DUNN
City Attorney

By 
NANCY SALAZAR
City Clerk

(SEAL)

License Agreement: Pedestrian Bridge Over Metz Road Storm Drain
4/26/16
CSS:blm

Exhibit A

