

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

605B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**

May 4, 2010

**SUBJECT:** Tahquitz Creek Channel  
Project No. 6-0-00060  
Belardo Road Bridge  
Cooperative Agreement

**RECOMMENDED MOTION:**

1. Approve the Cooperative Agreement between the District and the City of Palm Springs (City); and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

**BACKGROUND:**

City wishes to construct, operate and maintain a vehicular bridge on Belardo Road spanning District's Tahquitz Creek Channel easement. The bridge will not conflict with the Channel's primary function.

(Continued on Page 2)

*Steve Thomas*

KEC:blj

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

<b>FINANCIAL DATA</b>	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

<b>SOURCE OF FUNDS:</b> 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: *Alex Gann*  
**Alex Gann**

County Executive Office Signature

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

**MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

On motion of Supervisor Tavaglione, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Tavaglione, Benoit and Ashley

Nays: None

Absent: Buster and Stone

Date: May 4, 2010

xc: Flood

Kecia Harper-Ihem

Clerk of the Board

By: *Kumbarton*  
Deputy

Prev. Agn. Ref.:

District: 4th

Agenda Number:

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

11.1

FORM APPROVED COUNTY COUNCIL  
BY: *Neal R. Kipnis*  
NEAL R. KIPNIS  
DATE: *5/11/10*

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

**SUBJECT:** Tahquitz Creek Channel  
Project No. 6-0-00060  
Belardo Road Bridge  
Cooperative Agreement

**SUBMITTAL DATE:** May 4, 2010

**Page 2**

**BACKGROUND (continued):**

The City will assure unimpeded passage on the access road for the District to continue operation and maintenance of Tahquitz Channel. The City will obtain a District encroachment permit (EP 3247).

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

KEC:blj

COOPERATIVE AGREEMENT  
Tahquitz Creek Channel, 6-0-00060  
Belardo Road Bridge (EP 3247)

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

RECITALS

A. DISTRICT operates and maintains Tahquitz Creek Channel (Project No. 6-0-00060), hereinafter called "CHANNEL", located in the city of Palm Springs; and

B. CHANNEL is located within various easements identified as District Parcel Numbers 6060-311A, 6060-311B, 6060-313A, 6060-313B, 6060-513C and 6060-513L, hereinafter altogether called "CHANNEL EASEMENT" as shown in concept on Exhibit "A" attached hereto and made a part hereof. CHANNEL EASEMENT constitutes a reach of CHANNEL; and

C. 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

D. CITY desires to construct, operate and maintain a certain vehicular bridge and ancillary structures in Belardo Road spanning CHANNEL EASEMENT, hereinafter called "BRIDGE" as shown in concept outlined in green on Exhibit "A"; and

E. CHANNEL'S principal function is flood control. BRIDGE construction within CHANNEL EASEMENT will not unreasonably interfere with CHANNEL'S principal function or DISTRICT'S ability to operate and maintain CHANNEL; and

F. Subject to the provisions of this Agreement, DISTRICT is willing to (i) allow CITY to construct, operate and maintain BRIDGE within CHANNEL EASEMENT, (ii)

1 allow the public to utilize BRIDGE for public conveyance, and (iii) accept responsibility for  
2 keeping CHANNEL under BRIDGE free and clear of sediment and debris; and

3 G. CITY is willing to (i) submit plans and specification for BRIDGE to  
4 DISTRICT for review and approval, (ii) construct, operate and maintain BRIDGE, (iii) accept  
5 ownership and responsibility for the structural integrity of BRIDGE, and (iv) indemnify and  
6 hold DISTRICT harmless from any alleged claims for damage arising from CITY'S design, use,  
7 and operation of BRIDGE; and

8 H. It is in the public interest to proceed with this Agreement.

9  
10 NOW, THEREFORE in consideration of the preceding recitals and the mutual  
11 covenants herein contained, the parties hereto mutually agree as follows

12 SECTION I

13 CITY shall:

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

17  
18 2. Prepare plans and specifications for BRIDGE in accordance with CITY  
19 standards and submit to DISTRICT for review and approval prior to awarding a construction  
20 contract for BRIDGE.

21 3. Prior to constructing BRIDGE or performing any physical modifications  
22 within CHANNEL EASEMENT, obtain an encroachment permit from DISTRICT, pursuant to  
23 its rules and regulations.

24 4. Not permit any change to or modification of approved plans and  
25 specifications for BRIDGE without the prior written permission and consent of DISTRICT.  
26

1           5. Construct BRIDGE or cause BRIDGE to be constructed, and pay for all  
2 costs associated therewith.

3           6. Not install any improvements and/or equipment or allow use of  
4 CHANNEL EASEMENT in a manner which, in the opinion of the General Manager-Chief  
5 Engineer of DISTRICT, would be detrimental to the operation of CHANNEL. CITY shall,  
6 upon written request of the General Manager-Chief Engineer of the DISTRICT, remove said  
7 improvements and/or equipment or cease said use.

8           7. With regard to BRIDGE and/or equipment situated within CHANNEL  
9 EASEMENT, CITY hereby waives any claim against DISTRICT for damages resulting from  
10 DISTRICT'S customary use of CHANNEL EASEMENT for operation and maintenance of  
11 CHANNEL or its appurtenant works.

12           8. Subsequent to BRIDGE construction and within CHANNEL  
13 EASEMENT, (i) assume sole responsibility for the operation and maintenance of BRIDGE,  
14 including but not limited to, performing all necessary repairs and the routine removal of trash  
15 and debris associated with public use of BRIDGE and CHANNEL EASEMENT, (ii) assume  
16 sole responsibility for the structural integrity of BRIDGE and (iii) assume all liability associated  
17 with the public use of BRIDGE and CHANNEL EASEMENT including claims of third persons  
18 for injury or death or damage to property. Said obligation shall not include any inverse  
19 condemnation liability of DISTRICT by reason of the location of CHANNEL or DISTRICT'S  
20 improvements thereto unless such liability is the result of CITY'S operations or use of the  
21 property by the public pursuant to CITY'S actual or tacit consent.

22           9. Subsequent to BRIDGE construction and within CHANNEL  
23 EASEMENT, ensure the safety of the public who may utilize BRIDGE by conducting periodic  
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1 safety inspections and promptly making such repairs as are necessary to safeguard the public  
2 and its use thereof.

3 10. In its use of BRIDGE and CHANNEL EASEMENT under the rights  
4 granted herein, CITY agrees to promptly repair any damage to DISTRICT'S CHANNEL  
5 improvements or CHANNEL EASEMENT unless such damage is caused by flooding or is the  
6 result of DISTRICT'S customary operation, maintenance or improvements to its facilities  
7 located therein.

8 11. Grant DISTRICT, by execution of this Agreement, the right to enter upon  
9 property owned or controlled by the CITY where necessary and convenient for the purpose of  
10 gaining access to, and performing maintenance on CHANNEL EASEMENT.  
11

12 SECTION II

13 DISTRICT shall:

14 1. Pursuant to CEQA, act as Responsible Agency and, as such, will have the  
15 corresponding responsibility to fulfill the obligations of a CEQA Responsible Agency with  
16 respect to BRIDGE.  
17

18 2. Review BRIDGE plans and specifications prepared by CITY through the  
19 DISTRICT'S encroachment permit process prior to the start of BRIDGE construction.

20 3. By execution of this Agreement, grant CITY, its agents and contractors all  
21 rights to construct, operate and maintain BRIDGE within CHANNEL EASEMENT for public  
22 conveyance purposes which are (i) not incompatible with CHANNEL'S primary flood control  
23 purpose and which do not interfere with or impair DISTRICT'S ability to operate and maintain  
24 CHANNEL or any of its appurtenant works and (ii) within the authority of DISTRICT to grant  
25 pursuant to the existing easement(s) held by DISTRICT.  
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1 4. Observe and make periodic inspections of BRIDGE construction to assure  
2 general compliance with the approved BRIDGE plans.

3 5. Give written notice to CITY of any non-compatible use of BRIDGE and  
4 CHANNEL EASEMENT that is not in conformity with the provisions of this Agreement or  
5 which may adversely affect CHANNEL'S flood control function and grant CITY thirty (30)  
6 days from and after such notice to correct any such nonconforming use.

7 6. Assume sole responsibility for keeping CHANNEL under BRIDGE free  
8 and clear of sediment and debris.

9 7. Continue to maintain CHANNEL'S lines and grades, inlets, fencing, ramps  
10 and access roads to such an extent that CHANNEL continues to function as a flood control  
11 facility at its design level.  
12

13 SECTION III

14 It is further mutually agreed:

15 1. All construction work associated with BRIDGE shall be inspected by  
16 CITY and shall not be deemed complete until approved and accepted as complete by CITY.  
17

18 2. DISTRICT personnel may observe and inspect all work being done on  
19 BRIDGE. It is further mutually agreed by the parties hereto that any quality control comments  
20 shall be provided to CITY personnel who, as the BRIDGE construction contract administrator,  
21 shall be solely responsible for all official communications with its construction contractor(s).  
22

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

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

16           5. In the event of any arbitration, action or suit brought by either CITY or  
 17 DISTRICT against the other party by reason of any breach on the part of the other party of any  
 18 of the covenants and agreements set forth in this Agreement, or any other dispute between the  
 19 DISTRICT and CITY concerning this Agreement, the prevailing party in any such action or  
 20 dispute, by a final judgment or arbitration award, shall be entitled to have and recover from the  
 21 other party all costs and expenses or claims, including but not limited to, attorneys' fees and  
 22 expert witness fees. This section shall survive any termination of this Agreement.  
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24           6. This Agreement is made and entered into for the sole protection and  
 25 benefit of the parties hereto. No other person or entity shall have any right of action based upon  
 26 the provisions of this Agreement.  
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1           7. This Agreement describes only the responsibilities of the parties  
2 described herein and is not intended to address any other responsibilities or obligations that  
3 CITY may have to third parties not party to this Agreement.

4           8. DISTRICT and CITY each pledge to cooperate in regard to the operation  
5 and maintenance of their respective facilities as set forth herein and to discharge their respective  
6 maintenance responsibilities in an expeditious fashion so as to avoid the creation of any  
7 nuisance condition or undue maintenance impact upon the other's facilities.

8           9. Any waiver by DISTRICT or by CITY of any breach of any one or more  
9 of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other  
10 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to  
11 require exact, full and complete compliance with any terms of this Agreement shall not be  
12 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from  
13 enforcement hereof.

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

17           11. This Agreement is to be construed in accordance with the laws of the  
18 State of California.

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

21 RIVERSIDE COUNTY FLOOD CONTROL  
22 AND WATER CONSERVATION DISTRICT  
23 1995 Market Street  
24 Riverside, CA 92501  
25 Attn: Administrative Services

CITY OF PALM SPRINGS  
Post Office Box 2743  
Palm Springs, CA 92263-2743  
Attn: Marcus Fuller

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13. 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.

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

15. This Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This 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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MAY 04 2010

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By Steve Thomas  
FOR WARREN D. WILLIAMS  
General Manager-Chief Engineer

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

APPROVED AS TO FORM

ATTEST:

PAMELA J. WALLS  
County Counsel

**KECIA HARPER-IHEM**  
Clerk of the Board

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

By Kecia Harper-Ihem  
Deputy

(SEAL)

Cooperative Agreement: Palm Springs Balardo Road Bridge  
KEC:blj  
2/10/10

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RECOMMEND FOR APPROVAL:

CITY OF PALM SPRINGS

By   
DAVID J. BARAKIAN  
Director of Public Works/City Engineer

By   
DAVID H. READY  
City Manager

APPROVED AS TO FORM:

ATTEST:

By   
DOUGLAS C. HOLLAND  
City Attorney

By   
JAMES THOMPSON  
City Clerk

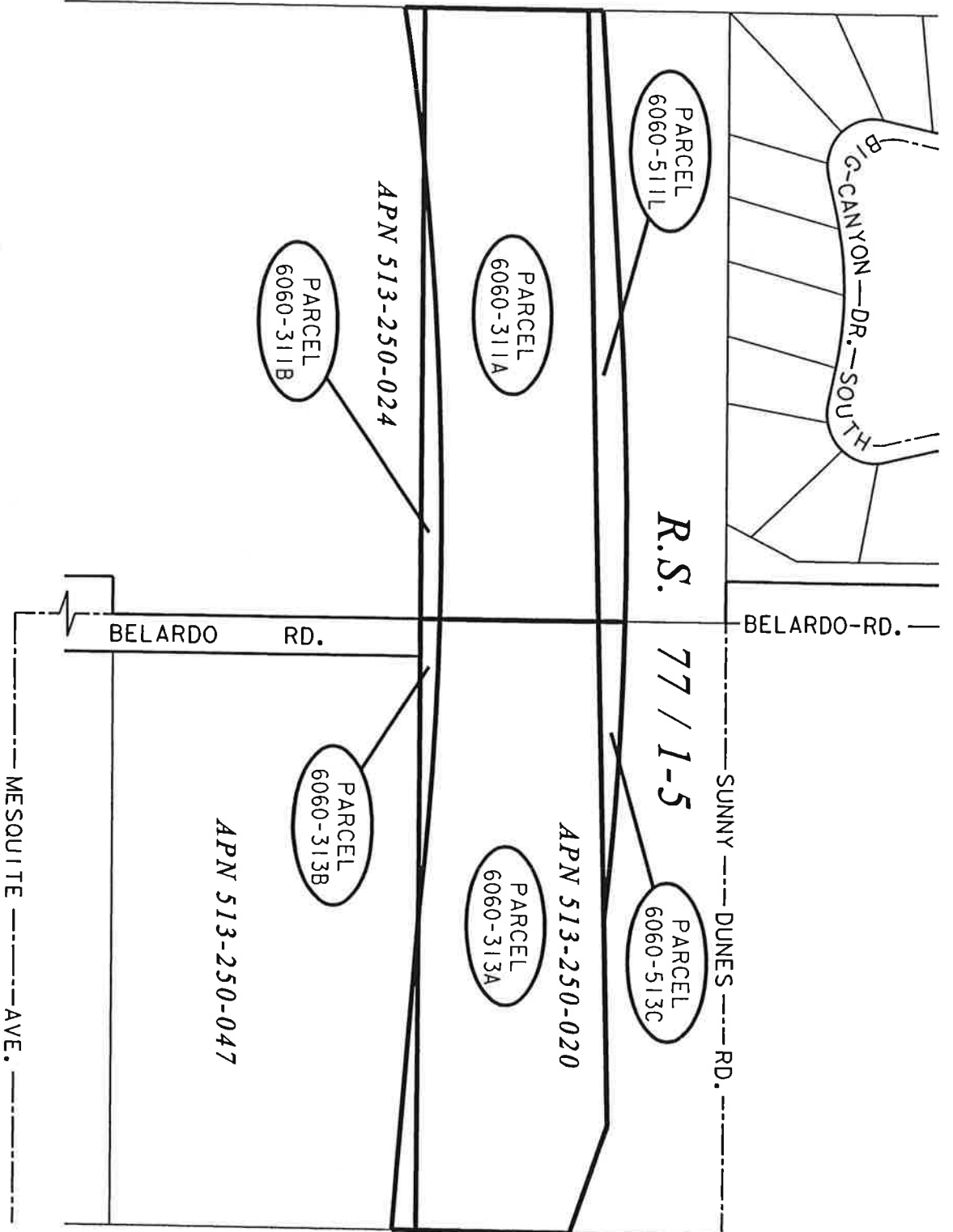
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APPROVED BY CITY COUNCIL

3-3-10  

Cooperative Agreement: Palm Springs Balardo Road Bridge  
KEC:blj  
2/10/10

Exhibit "A"



BELARDO ROAD BRIDGE CROSSING OF TAHQUITZ CREEK CHANNEL EASEMENT		
LICENSE AGREEMENT		
VEHICULAR BRIDGE AT TAHQUITZ CHANNEL		
PROJECT NO. 6-0-00060		
ENCROACHMENT PERMIT 3247		
RCFE PARCEL NUMBERS AFFECTED:		
PARCELS 6060-311A, 6060-311B, 6060-313A, 6060-313B, 6060-511L & 6060-513C		
SCALE:	NO SCALE	PREPARED BY:
DATE:	FEB-09-2010	DAB
SHEET NO.	1 OF 1	SHEET NO.

Exhibit A

