

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

615B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
August 16, 2011

SUBJECT: Temescal Creek Channel
Project No. 2-0-00050
License Agreement

RECOMMENDED MOTION:

1. Approve the License Agreement (Agreement) between the District and the City of Corona (City);
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:

The Agreement sets forth the terms and conditions by which the City will construct, operate and maintain a sewer line within the District's Temescal Creek Channel right of way.

Continued on Page 2

TT:KEC:blj

Warren D. Williams
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 |
| | 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: *Alex Gann*
Alex Gann

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
 BY: *NEAL R. KIPNIS*
 DATE: 8/23/11
 Departmental Concurrence

- Policy
- Policy
- Consent
- Consent

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

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

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
 Nays: None
 Absent: None
 Date: August 16, 2011
 xc: Flood

Kecia Harper-Ihem
 Clerk of the Board
 By: *Kecia Harper-Ihem*
 Deputy

Dept's Recomm.:
 Per Exec. Ofc.:

Prev. Agn. Ref.:

District: 2nd
 ATTACHMENTS FILED WITH THE CLERK OF THE BOARD
 Agenda Number:

11.7

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

SUBJECT: Temescal Creek Channel
Project No. 2-0-00050
License Agreement

SUBMITTAL DATE: August 16., 2011
Page 2

BACKGROUND: (continued)

The project will not conflict with the channel's primary flood control function. All construction, operations and maintenance costs associated with the sewer line will be borne by the City of Corona. The operation and maintenance of the existing flood control facility 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: blj

LICENSE AGREEMENT
Temescal Creek Channel
Encroachment Permit No. 3306
(Project No. 2-0-00050)

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

RECITALS

A. DISTRICT operates and maintains the Temescal Creek Channel (Project No. 2-0-00050), hereinafter called "CHANNEL", located in the City of Corona; 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 desires to utilize portions of DISTRICT'S existing CHANNEL right of way, hereinafter called "CHANNEL RIGHT OF WAY", for construction, operation and maintenance of a certain sewer line, hereinafter called "SEWER LINE", as shown in concept in green on Exhibit A, attached hereto and made a part hereof; and

D. Subject to the provisions of this License Agreement, DISTRICT is willing to allow CITY to construct, operate and maintain SEWER LINE within CHANNEL RIGHT OF WAY; and

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

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

SECTION I

1
2 CITY shall:

3 1. Act as the sole Lead Agency pursuant to the California Environmental
4 Quality Act (CEQA). As such, CITY will have the corresponding responsibility to fulfill the
5 obligations of CEQA lead agency with respect to the SEWER LINE.

6 2. Prior to constructing SEWER LINE or performing any physical
7 modifications within CHANNEL RIGHT OF WAY, submit plans and specifications to
8 DISTRICT for review and approval at no cost to CITY.

9 3. Prior to constructing SEWER LINE or performing any physical
10 modifications within CHANNEL RIGHT OF WAY, obtain an Encroachment Permit from
11 DISTRICT, pursuant to its rules and regulations and comply with all provisions set forth
12 therein.

13 4. Construct or cause SEWER LINE to be constructed at its sole cost and
14 expense.

15 5. Not permit any change to or modification of DISTRICT approved plans
16 and specification without prior written permission and consent of DISTRICT.

17 6. Immediately remove, upon written request by DISTRICT'S General
18 Manager-Chief Engineer, any improvements and/or equipment or cease use where CITY has
19 used or allowed use of SEWER LINE in a manner which, in the sole opinion of the
20 DISTRICT'S General Manager-Chief Engineer, would be detrimental to the operation of
21 CHANNEL.

22 7. [THIS SECTION INTENTIONALLY LEFT BLANK]

23 8. With regard to SEWER LINE and/or equipment situated within
24 CHANNEL RIGHT OF WAY, waive any claim against DISTRICT for damages resulting
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1 from DISTRICT'S customary use of CHANNEL RIGHT OF WAY for operation and
2 maintenance of CHANNEL or its appurtenant works.
3

4 9. Within CHANNEL RIGHT OF WAY, (i) assume sole responsibility for
5 the operation and maintenance of all CITY constructed improvements, including but not
6 limited to, performing all necessary repairs associated with CITY'S use of CHANNEL RIGHT
7 OF WAY and (ii) assume all liability associated with CITY use of CHANNEL RIGHT OF
8 WAY including claims of third persons for injury or death or damage to property. Said
9 obligation shall not include any inverse condemnation liability of DISTRICT by reason of the
10 location of CHANNEL or DISTRICT'S improvements thereto unless such liability is the result
11 of CITY'S operations or use of the property by the public pursuant to CITY'S actual or tacit
12 consent.
13

14 10. Within CHANNEL RIGHT OF WAY, ensure the safety of CITY staff
15 who may utilize CHANNEL RIGHT OF WAY by conducting periodic safety inspections and
16 promptly making such repairs as are necessary to safeguard the public and its use thereof.
17

18 11. In its use of CHANNEL RIGHT OF WAY under the rights herein
19 granted, agree to promptly repair any damage to DISTRICT'S CHANNEL improvements,
20 unless such damage is caused by flooding or is the result of DISTRICT'S customary operation,
21 maintenance or improvements to its facilities located therein.
22

23 12. Within CHANNEL RIGHT OF WAY or otherwise associated with this
24 Agreement, indemnify and hold DISTRICT, its officers, agents, employees and independent
25 contractors free and harmless from any liability whatsoever, based or asserted upon any act or
26 omission of CITY, its officers, agents, employees, subcontractors, independent contractors,
27 guests and invitees for property damage, bodily injury or death (CITY employees included) or
28

1 any other element of damage of any kind or nature, related to or in any manner connected with
2 or arising from CITY'S use and responsibilities in connection therewith of CHANNEL RIGHT
3 OF WAY or the condition thereof, and CITY shall defend, at its expense, including attorneys'
4 fees, DISTRICT, its Board of Supervisors, officers, agents, employees and independent
5 contractors, in any legal action based upon such alleged acts or omissions.

6 SECTION II

7 DISTRICT shall:

8 1. Grant to CITY a license to utilize CHANNEL RIGHT OF WAY for
9 construction and subsequent operation and maintenance of SEWER LINE which do not, in any
10 way whatsoever, impair CHANNEL'S primary flood control purpose and function or otherwise
11 interfere with or adversely affect DISTRICT'S ability to operate, maintain, repair or reconstruct
12 CHANNEL or any of its appurtenant works. Said license shall remain in effect indefinitely
13 unless terminated by DISTRICT, so long as CITY'S use of CHANNEL RIGHT OF WAY is so
14 limited.
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16 2. Grant permission to CITY to construct, operate and maintain the SEWER
17 LINE after CITY receives an encroachment permit in accordance with DISTRICT'S rules and
18 regulation, in order to effectuate the purpose of the license.
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20 3. Review and approve CITY'S SEWER LINE plans and specifications,
21 through the DISTRICT'S encroachment permit process at no cost to CITY, prior to CITY
22 commencing construction of SEWER LINE.
23

24 4. Give written notice to CITY of any non-compatible use of CHANNEL
25 RIGHT OF WAY that is not in conformity with the provisions of this License Agreement or
26 which may adversely affect CHANNEL'S flood control function and grant CITY thirty (30)
27 days from and after such notice to correct any such nonconforming use.
28

1 5. Continue to maintain CHANNEL'S flood conveyance capacity and,
2 maintain structural integrity, including but not limited to lines and grades, inlets, fencing,
3 ramps and access roads to such an extent that CHANNEL continues to function as a flood
4 control facility at its design level.

5 6. Assume no responsibility, obligation or liability whatsoever, for the (i)
6 design, construction, operation and maintenance of CITY constructed SEWER LINE or (ii)
7 CITY'S use of CHANNEL RIGHT OF WAY as granted herein.

8 7. Other than in emergency situations, provide thirty (30) days written notice
9 to CITY of temporary closure and its expected duration, should DISTRICT determine that a
10 temporary denial of CITY access is necessary for the purpose of operation, maintenance, repair
11 or re-construction of CHANNEL.

12
13 SECTION III

14 It is further mutually agreed:

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

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

22 3. DISTRICT reserves the right to terminate this License Agreement, if for
23 any reason whatsoever DISTRICT determines that CITY'S use of CHANNEL RIGHT OF
24 WAY is detrimental to CHANNEL'S primary purpose.
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1 If in the opinion of the General Manager-Chief Engineer, the CITY'S use
2 of CHANNEL RIGHT OF WAY may cause or contribute to a public hazard, a public nuisance,
3 degradation of water quality or any other matter of substantial concern to the DISTRICT, the
4 DISTRICT reserves the right to require remediation and, if remediation is unsuccessful, to
5 terminate this License Agreement.

6 4. Any waiver by DISTRICT or by CITY of any breach of any one or more
7 of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other
8 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to
9 require exact, full and complete compliance with any terms of this Agreement shall not be
10 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from
11 enforcement hereof.
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13 5. If any provision in this Agreement is held by a court of competent
14 jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless
15 continue in full force without being impaired or invalidated in any way.
16

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

19 7. 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:

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|--|--------------------------------|
| 21 RIVERSIDE COUNTY FLOOD CONTROL | CITY OF CORONA |
| 22 AND WATER CONSERVATION DISTRICT | 400 South Vincentia Avenue |
| 1995 Market Street | Corona, CA 92552-2167 |
| 23 Riverside, CA 92501 | Attn: Director of Public Works |
| 24 Attn: Operations and Maintenance Division | |

25 8. Any action at law or in equity brought by any of the parties hereto for the
26 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of
27 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
28

1 waive all provisions of law providing for a change of venue in such proceedings to any other
2 county.

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

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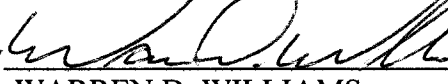
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

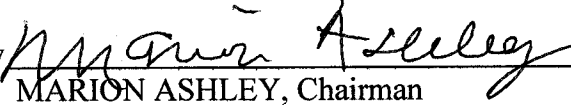
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~~AUG 16 2011~~

(to be filed in by Clerk of the Board)

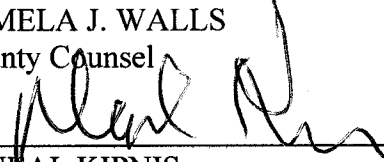
RECOMMENDED FOR APPROVAL: RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

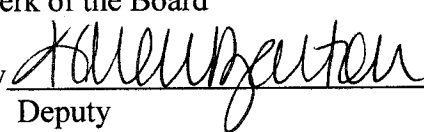
By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

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

KECIA HARPER-IHEM
Clerk of the Board
By 
Deputy

(SEAL)

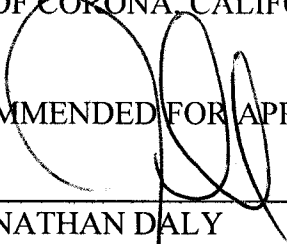
License Agreement: Temescal Creek Channel
5/15/11
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AUG 16 2011 11.7

CITY OF CORONA, CALIFORNIA

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RECOMMENDED FOR APPROVAL:

By 

JONATHAN DALY
DWP General Manager


By 

CAROLYN J. APPELT
Property & Contract Administrator

APPROVED AS TO FORM:

By 

DEAN DERLETH
City Attorney

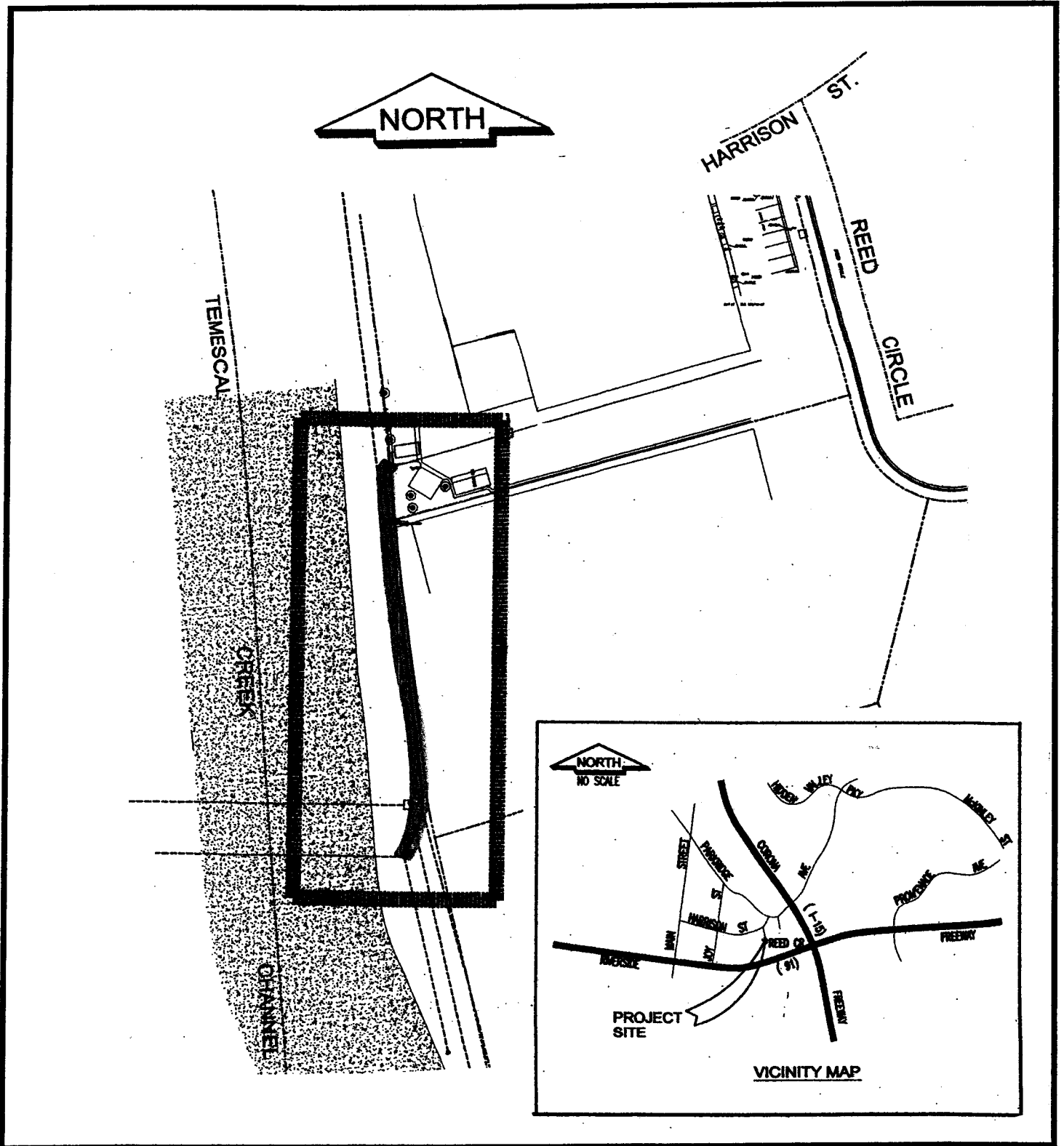
ATTEST:
By 

JAN BATES
City Clerk

(SEAL)

License Agreement: Temescal Creek Channel
5/15/11
KEC:blj

Exhibit A



License Agreement
Sewer Line at Temescal Creek Channel
Project No. 2-0-00050
Encroachment Permit 3306
1 of 1