



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

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
August 28, 2012

718 B

SUBJECT: Mountain View Channel
Project No. 5-0-00140
License Agreement
District 5/District 5

RECOMMENDED MOTION:

Approve the License Agreement between the District and the Beaumont Unified School District (School District); and authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

School District wishes to construct, operate and maintain a pedestrian bridge spanning District's Mountain View Channel right of way. The bridge will not conflict with the channel's primary function or the District's continuing operation and maintenance of the channel.

(Continued on Page 2)

KEC:blj:rlp

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Alex Gann

County Executive Office Signature

FORM APPROVED BY COUNTY COUNSEL
BY:
NEAL R. KIPNIS
DATE: 8/27/12

- Consent
- Policy
- Consent
- Policy

Dept Recomm.:
Per Exec. Ofc.:

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

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

Ayes: Buster, Tavaglione, Benoit and Ashley
Nays: None
Absent: Stone
Date: August 28, 2012
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

Prev. Agn. Ref.:

District: 5th, 5th

Agenda Number:

11.1

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

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

SUBJECT: Mountain View Channel
Project No. 5-0-00140
License Agreement
District 5/District 5

SUBMITTAL DATE: August 28, 2012
Page 2

BACKGROUND (continued):

All construction, operation and maintenance costs associated with the pedestrian bridge will be borne by the School District. The operation and maintenance of the existing channel will continue to be a District responsibility.

County Counsel has approved the Agreement as to legal form and the School District has executed the Agreement.

LICENSE AGREEMENT

Mountain View Channel Pedestrian Bridge
Project 5-0-00140
Encroachment Permit No. 3288

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the BEAUMONT UNIFIED SCHOOL DISTRICT, hereinafter called "SCHOOL DISTRICT", hereby agree as follows:

RECITALS

A. DISTRICT operates and maintains Mountain View Channel (Project No. 5-0-00140), hereinafter called "CHANNEL", principally located in the city of Beaumont; and

B. CHANNEL is located within DISTRICT'S existing right of way identified as District Parcel Number 5140-5, hereinafter called "CHANNEL RIGHT OF WAY" as shown in concept cross-hatched in red on Exhibit "A", attached hereto and made a part hereof. CHANNEL RIGHT OF WAY 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. SCHOOL DISTRICT desires to construct, operate and maintain a certain pedestrian bridge and ancillary structures spanning CHANNEL RIGHT OF WAY, hereinafter collectively called "BRIDGE" as shown in concept shaded in green on Exhibit "A"; and

E. SCHOOL DISTRICT will act as the sole Lead Agency pursuant to the California Environmental Quality Act (CEQA). As such, SCHOOL DISTRICT will have the corresponding responsibility to fulfill the obligations of a CEQA Lead Agency with respect to BRIDGE; and

1 F. CHANNEL'S flood control function is sporadic in nature and thus,
2 construction and operation of BRIDGE may be accommodated within CHANNEL RIGHT OF
3 WAY to the extent that such uses do not unreasonably interfere with CHANNEL'S principal
4 function or DISTRICT'S ability to operate and maintain CHANNEL; and

5 G. Subject to the provisions of this License Agreement, DISTRICT is willing
6 to (i) allow SCHOOL DISTRICT to construct BRIDGE within CHANNEL RIGHT OF WAY,
7 and (ii) allow SCHOOL DISTRICT to operate and maintain said BRIDGE for public
8 conveyance; and

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

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

11 SECTION I

12 SCHOOL DISTRICT 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,
15 pursuant to its rules and regulations and comply with all provisions set forth therein including:
16 a) submittal of plans and specifications to DISTRICT for review and approval, and b) payment
17 to DISTRICT for i) the cost of reviewing said plans and specifications, ii) the costs associated
18 with the inspection of BRIDGE construction, and iii) the costs of preparing and administering
19 this Agreement.
20

21 2. Pursuant to California Environmental Quality Act (CEQA), assume Lead
22 Agency role and responsibility for preparation, circulation, and adoption of all necessary and
23 appropriate CEQA documents pertaining to the construction, operation and maintenance of
24 BRIDGE.
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3. Not permit any change to or modification of plans and specifications for BRIDGE without the prior written permission and consent of DISTRICT.

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

5. [THIS SECTION INTENTIONALLY LEFT BLANK]

6. Not install, operate and maintain any improvements and/or equipment or allow use of CHANNEL RIGHT OF WAY in a manner which, in the opinion of DISTRICT'S General Manager-Chief Engineer, would be detrimental to the operation of CHANNEL. Upon written request of DISTRICT'S General Manager-Chief Engineer, SCHOOL DISTRICT shall (i) take all reasonable actions to ensure said improvements and/or equipment do not interfere with the continuing function, repair, or operation and maintenance of CHANNEL as determined solely by DISTRICT, or (ii) cease SCHOOL DISTRICT uses or allow use of BRIDGE in a manner which, in the sole opinion of DISTRICT'S General Manager-Chief Engineer, would be detrimental to the operation of CHANNEL.

7. Waive any claim against DISTRICT for damages to BRIDGE or any other SCHOOL DISTRICT constructed improvements and/or equipment situated within CHANNEL RIGHT OF WAY resulting from DISTRICT'S customary operations and maintenance activities performed within CHANNEL RIGHT OF WAY, save and except damages resulting from DISTRICT'S sole active negligence or willful misconduct.

1 8. Assume sole responsibility for the design, construction, operation and
2 maintenance of BRIDGE, including all necessary modifications or corrections as deemed
3 necessary by DISTRICT for the continuing function, reconstruction, repair or operation and
4 maintenance of CHANNEL.

5 9. [THIS SECTION INTENTIONALLY LEFT BLANK]

6 10. Within CHANNEL RIGHT OF WAY, (i) assume sole responsibility for
7 the operation and maintenance of all SCHOOL DISTRICT constructed improvements, including
8 but not limited to, performing all necessary repairs and the routine removal of trash and debris
9 associated with public use of BRIDGE and CHANNEL RIGHT OF WAY, and (ii) assume all
10 liability associated with the public use of BRIDGE and CHANNEL RIGHT OF WAY including
11 claims of third persons for injury or death or damage to property. Said obligation shall not
12 include any inverse condemnation liability of DISTRICT by reason of the location of
13 CHANNEL or BRIDGE improvements thereto unless such liability is the result of SCHOOL
14 DISTRICT'S operations or use of the property by the public pursuant to SCHOOL DISTRICT'S
15 actual or tacit consent.
16

17 11. Subsequent to BRIDGE construction and within CHANNEL RIGHT OF
18 WAY, ensure the safety of the public who may utilize BRIDGE by conducting periodic safety
19 inspections and promptly making such repairs as are necessary to safeguard the public and its
20 use thereof.
21

22 12. In its use of BRIDGE and CHANNEL RIGHT OF WAY under the rights
23 granted herein, agree to promptly repair any damage to DISTRICT'S CHANNEL improvements
24 within CHANNEL RIGHT OF WAY unless such damage is caused by flooding, or is the result
25 of DISTRICT'S customary operation, maintenance or improvements to its facilities located
26 therein.
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SECTION II

1 DISTRICT shall:

2 1. Pursuant to CEQA, act as Responsible Agency and, as such, will take all
3 necessary and appropriate action to comply with CEQA.
4

5 2. By execution of this Agreement, grant SCHOOL DISTRICT a license to
6 utilize BRIDGE within CHANNEL RIGHT OF WAY for public access purposes which are not
7 incompatible with CHANNEL'S primary flood control purpose and which do not interfere with
8 or impair DISTRICT'S ability to operate and maintain CHANNEL or any of its appurtenant
9 works. Said license shall remain in effect indefinitely, unless terminated by DISTRICT, so long
10 as SCHOOL DISTRICT'S use of CHANNEL RIGHT OF WAY is so limited.
11

12 3. Give written notice to SCHOOL DISTRICT of any non-compatible use or
13 condition that is not in conformity with the provisions of this License Agreement or which may
14 adversely affect CHANNEL'S flood control function, and grant SCHOOL DISTRICT thirty
15 (30) days from and after such notice to correct any such nonconforming use or condition.
16

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

20 5. Assume no responsibility, obligation or liability whatsoever, for (i) the
21 design, construction, operation or maintenance of BRIDGE, or (ii) SCHOOL DISTRICT'S use
22 of CHANNEL RIGHT OF WAY as granted herein.

23 6. Other than in emergency situations, provide thirty (30) days written notice
24 to SCHOOL DISTRICT, should DISTRICT determine that a closure of BRIDGE for the
25 purpose of operation, maintenance, repair or re-construction of CHANNEL is necessary.
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1 7 By execution of this Agreement, grant SCHOOL DISTRICT and its
2 contractor(s) all rights necessary to construct BRIDGE.

3 8. Review BRIDGE plans and specifications prepared by SCHOOL
4 DISTRICT prior to the start of BRIDGE construction.

5 9. Observe and make periodic inspections of BRIDGE construction to assure
6 general compliance with the approved BRIDGE plans.

7 SECTION III

8 It is further mutually agreed:

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

20 2. If in the opinion of DISTRICT'S General Manager-Chief Engineer,
21 SCHOOL DISTRICT'S use of BRIDGE and CHANNEL RIGHT OF WAY may cause or
22 contribute to a public hazard, a public nuisance, degradation of water quality or any other matter
23 of substantial concern to DISTRICT, DISTRICT reserves the right to require remediation and, if
24 remediation is unsuccessful, to terminate this License Agreement.
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1 3. All construction work associated with BRIDGE shall be inspected by
2 SCHOOL DISTRICT and shall not be deemed complete until approved and accepted as
3 complete by SCHOOL DISTRICT.

4 4. DISTRICT personnel may observe and inspect all work being done on
5 BRIDGE. It is further mutually agreed by the parties hereto that any quality control comments
6 shall be provided to SCHOOL DISTRICT personnel who, as BRIDGE construction contract
7 administrator, shall be solely responsible for all official communications with its construction
8 contractor(s).

9 5. Any waiver by DISTRICT or by SCHOOL DISTRICT of any breach of
10 any one or more of the terms of this Agreement shall not be construed to be a waiver of any
11 subsequent or other breach of the same or of any other term hereof. Failure on the part of
12 DISTRICT or SCHOOL DISTRICT to require exact, full and complete compliance with any
13 terms of this Agreement shall not be construed as in any manner changing the terms hereof, or
14 estopping DISTRICT or SCHOOL DISTRICT from enforcement hereof.
15

16 6. If any provision in this Agreement is held by a court of competent
17 jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be declared
18 severable and shall be given full force and effect to the fullest extent possible.
19

20 7. This Agreement is to be construed in accordance with the laws of the State
21 of California.

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

24 RIVERSIDE COUNTY FLOOD CONTROL	BEAUMONT UNIFIED SCHOOL
25 AND WATER CONSERVATION DISTRICT	DISTRICT
26 1995 Market Street	500 Grace Avenue
27 Riverside, CA 92501	Beaumont, CA 92223
28 Attn: Encroachment Permit Section	Attn: Barry Kayrell

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9. 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.

10. 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.

11. 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 Amendment to this Agreement signed by the parties hereto.

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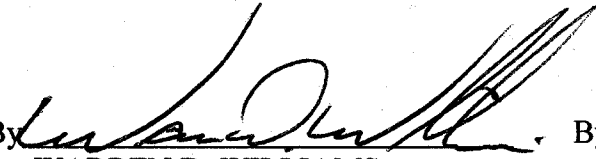
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on
AUG 28 2012

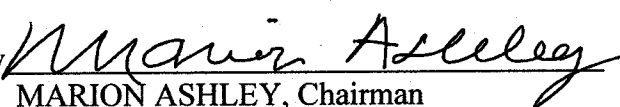
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(to be filled in by Clerk of the Board)

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

RECOMMENDED FOR APPROVAL:

By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

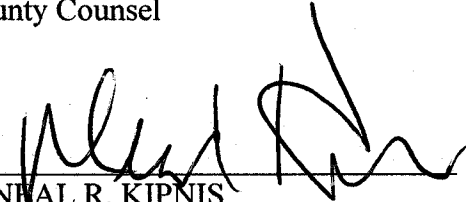
By 
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District, Board of Supervisors

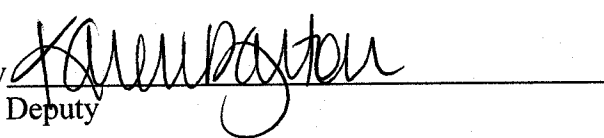
APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By 
NEAL R. KIPNIS
Deputy County Counsel

By 
Deputy

(SEAL)

License Agreement – Mountain View Channel
7/17/12
KEC:blj:rlp

**BEAUMONT UNIFIED SCHOOL
DISTRICT**

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By *Barry Kayrell* 7/25/12
DR. BARRY KAYRELL
Superintendent

License Agreement – Mountain View Channel
7/17/12
KEC:blj:rlp

Exhibit A

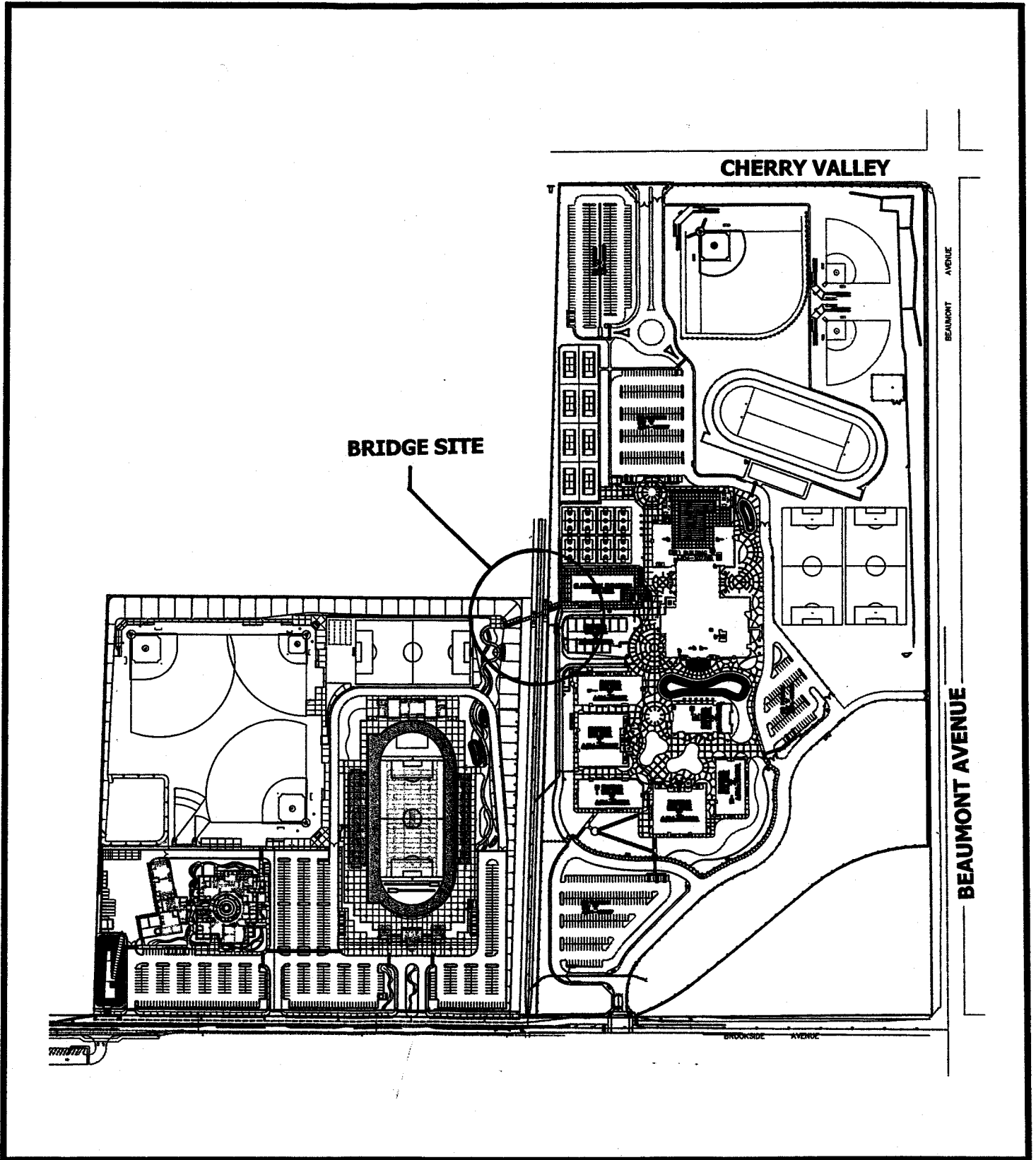


Exhibit A

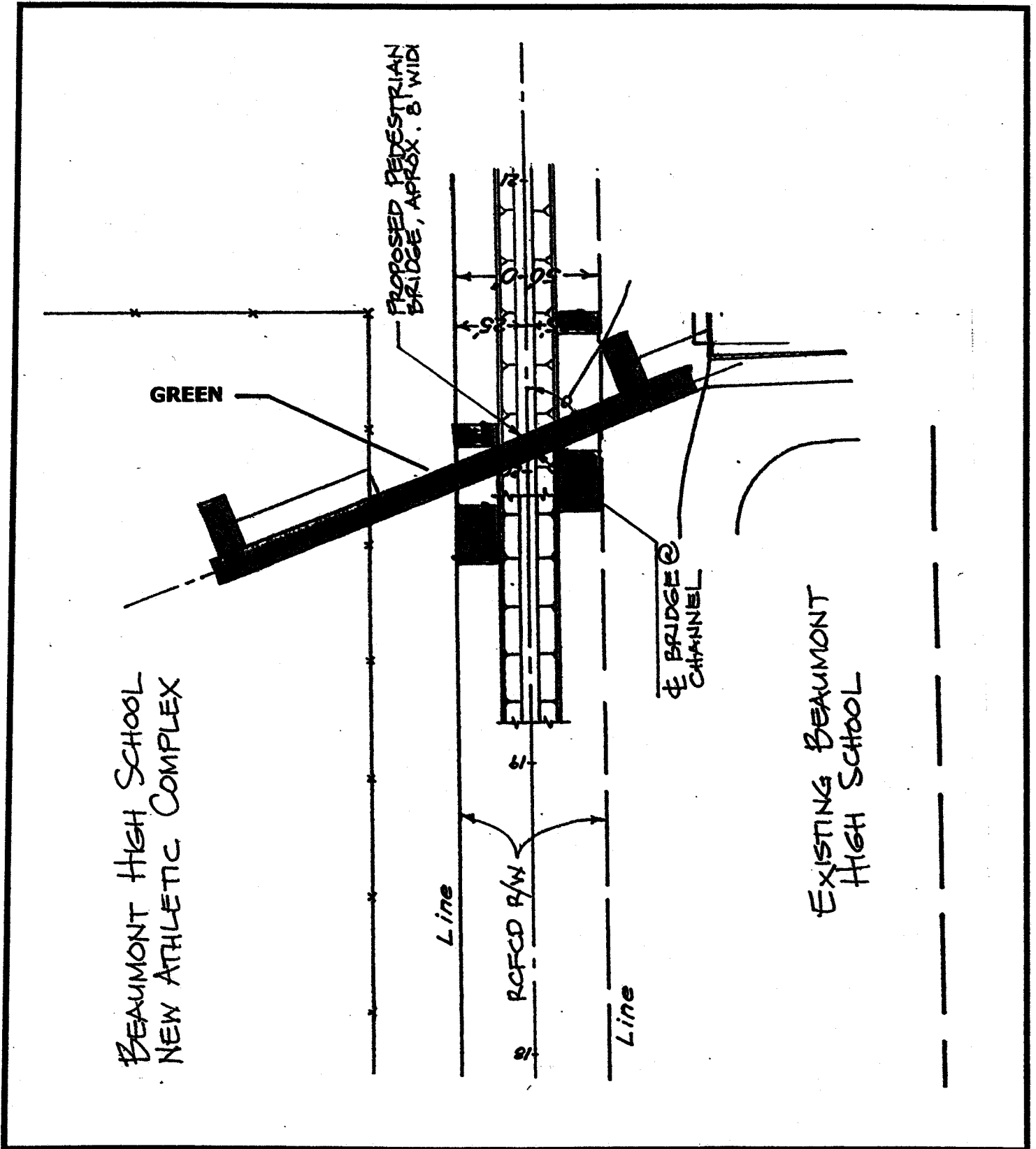


Exhibit A

