

FORM APPROVED COUNTY COUNSEL
 BY: *G.P.P.* 3/23/16
 DATE: GREGORY P. PRIAMOS

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

1023



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

March 29, 2016

SUBJECT: Approve License Agreement for Perris Valley Channel and Perris Valley Channel
 - Lateral B, Stage 2, Project Nos. 4-0-00010 and 4-0-00009, (Encroachment
 Permit No. 3499); District 5 [\$N/A]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the License Agreement between the District and City of Perris (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:

Summary

This Agreement sets forth the terms and conditions by which the District's Perris Valley Channel from Harley Knox Boulevard to Nuevo Road will be configured, at the sole expense of the City of Perris, as a dual use facility, providing certain non-motorized public recreational uses within District's right of way.

Warren D. Williams
 WARREN D. WILLIAMS
 General Manager-Chief Engineer

P8\202448
 AMR:rlp

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: *Steven C. [Signature]*
 Steven C.

County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

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

Ayes: Jeffries, Tavaglione, Benoit and Ashley
 Nays: None
 Absent: Washington
 Date: March 29, 2016
 xc: Flood

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

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

Prev. Agn. Ref.: District: 5th Agenda Number:

11-3

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT
BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**
FORM 11: Approve License Agreement for Perris Valley Channel and Perris Valley Channel
– Lateral B, Stage 2, Project Nos. 4-0-00010 and 4-0-00009, (Encroachment
Permit No. 3499); District 5 [\$N/A]

DATE: March 29, 2016

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

All construction, operation and maintenance costs associated with the public use components will be borne by the City of Perris. The operation and maintenance of the existing flood control facility will continue to be a District responsibility.

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

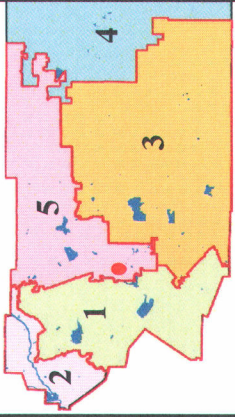
Impact on Residents and Businesses

This project is part of the City's adopted Trails Master Plan. Upon construction completion, the project will enhance opportunity for pedestrian and bicycle use and will benefit residents and businesses in the area.

ATTACHMENTS:

1. Vicinity Map
2. License Agreement

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Supervisor Districts

LEGEND:

- Project Vicinity
- Supervisorial District

DESCRIPTION:

Perris Valley Channel and Perris Valley Channel-Lateral B, Stage 2 Encroachment Permit No. 3499



LICENSE AGREEMENT

Perris Valley Channel

Perris Valley Channel – Lateral B, Stage 2

Project Nos. 4-0-00010 and 4-0-00009

Encroachment Permit No. 3499

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 operates and maintains Perris Valley Channel (Project No. 4-0-00010), hereinafter called "CHANNEL", principally 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 to the cities of Moreno Valley and Perris, and adjacent unincorporated areas; and

C. CITY desires to utilize portions of DISTRICT'S existing CHANNEL right of way, hereinafter called "CHANNEL RIGHT OF WAY", for public recreation purposes including the construction of trail improvements and certain ancillary uses associated therewith, including walking, jogging and bicycling, between Nance Street and Nuevo Road, hereinafter called "TRAIL" as shown in concept on Exhibit A, attached hereto and made a part hereof; and

D. CHANNEL'S flood control function is sporadic in nature and thus, appropriate non-motorized public recreation 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 to construct trail improvements within CHANNEL RIGHT OF WAY, (ii)

1 allow CITY to operate and maintain said trail improvements, and (iii) allow the public to utilize
2 the trail improvements for compatible non-motorized recreational uses; and

3 F. In accordance with the provisions of this License Agreement, CITY is
4 willing to (i) prepare, or cause to be prepared, plans and specifications for TRAIL and submit to
5 DISTRICT for its review and approval, (ii) cause the construction, inspection, operation and
6 maintenance of TRAIL at no cost to DISTRICT, (iii) conduct periodic safety inspections of
7 TRAIL, and (iv) indemnify and hold DISTRICT harmless from any claims arising from public's
8 use of TRAIL or CITY'S responsibilities in connection therewith or the condition thereof; and
9

10 G. All parties recognize and acknowledge that after TRAIL is constructed by
11 CITY, portion(s) of TRAIL may be removed once development has expanded beyond
12 CHANNEL and this License Agreement and Exhibit "A" may be amended as required by
13 DISTRICT. Any portion(s) of TRAIL that are removed during said construction will be
14 reconstructed at the sole cost and expense of CITY; and
15

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

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

18 SECTION I

19 CITY shall:

20 1. Pursuant to California Environmental Quality Act (CEQA), assume lead
21 agency role and responsibility for preparation, circulation and adoption of all necessary and
22 appropriate CEQA documents pertaining to construction, operation and maintenance of TRAIL.
23

24 2. Prior to constructing any improvements or performing any physical
25 modifications within CHANNEL RIGHT OF WAY, prepare or cause to be prepared, plans and
26 specifications for TRAIL, hereinafter together called "IMPROVEMENT PLANS", and submit
27 to DISTRICT for review and approval.
28

1 3. Pay all costs associated with preparation of IMPROVEMENT PLANS and
2 DISTRICT'S review and approval thereof, which shall not be unreasonably withheld.

3 4. Pay all costs associated with DISTRICT'S preparation and administration
4 of this License Agreement.

5 5. Secure, at its sole costs and expense, all necessary permits, approvals,
6 licenses or agreements as may be required by any federal, state or local resource or regulatory
7 agencies, as may be needed to construct, inspect, operate and maintain TRAIL.

8 6. Obtain an encroachment permit from DISTRICT, pursuant to its rules and
9 regulations and comply with all provisions set forth therein, prior to commencing construction
10 of TRAIL or any other improvements within CHANNEL RIGHT OF WAY.

11 7. Prior to commencing construction, furnish DISTRICT with copies of all
12 permits, approvals or agreements as may be required by any federal, state or local resource and/or
13 regulatory agencies for the construction, operation and maintenance of TRAIL. Such documents,
14 hereinafter called "REGULATORY PERMITS", include but are not limited to those issued by
15 the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, California Regional Water
16 Quality Control Board, California Department of Fish and Wildlife, the State Water Resources
17 Control Board and Western Riverside County Regional Conservation Authority.

18 8. Assume sole responsibility for compliance with the requirements of all
19 REGULATORY PERMITS, including any amendments thereto, pertaining to the construction,
20 operation and maintenance of TRAIL.

21 9. Ensure that REGULATORY PERMITS, including any subsequent renewal
22 or amendments thereto, will not (i) unreasonably impede DISTRICT'S ability to perform all
23 necessary operation and maintenance activities for CHANNEL as determined by DISTRICT, or
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1 (ii) include any stipulations that would result in additional mitigation obligations being placed
2 upon DISTRICT for maintenance operations within CHANNEL'S RIGHT OF WAY.

3 10. Cause TRAIL to be constructed, in accordance with IMPROVEMENT
4 PLANS approved by DISTRICT, and pay all costs associated therewith.

5 11. Not permit any change to, or modification of, DISTRICT permitted
6 IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT,
7 which shall not be unreasonably withheld.

8 12. Assume sole responsibility for the design, construction, operation and
9 maintenance of TRAIL, including all necessary modifications, repairs, corrections or temporary
10 removal as reasonably deemed necessary by DISTRICT for the continuing function,
11 reconstruction, repair or operation and maintenance of CHANNEL.

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

21 14. Ensure the safety of the public who may utilize the CHANNEL RIGHT OF
22 WAY by conducting periodic safety inspections and promptly making repairs that are necessary
23 to safeguard the public and its use thereof.

1 15. Promptly repair any damage to CHANNEL resulting from CITY'S use of
2 CHANNEL RIGHT OF WAY under the license granted herein unless such damage is caused by
3 flooding, or is the result of DISTRICT'S customary operation, maintenance or improvements to
4 its facilities located therein.

5 16. Waive any claim against DISTRICT for damages to TRAIL resulting from
6 DISTRICT'S customary operation and maintenance activities performed within CHANNEL
7 RIGHT OF WAY or its appurtenant works, including any natural calamity, act of God, or any
8 cause or conditions beyond the control of DISTRICT, save and except damages resulting from
9 DISTRICT'S active negligence or willful misconduct.

10 17. Immediately remove, upon written request by DISTRICT'S General
11 Manager-Chief Engineer, any improvements and/or equipment not previously approved by
12 DISTRICT or cease use where CITY has installed any such improvements and/or equipment or
13 CITY has used or allowed use of CHANNEL RIGHT OF WAY in a manner which, in the sole
14 opinion of DISTRICT'S General Manager-Chief Engineer, would be detrimental to the operation
15 of CHANNEL.

16 18. If in the opinion of the General Manager-Chief Engineer, the public's use
17 of CHANNEL RIGHT OF WAY may cause or contribute to a public hazard, a public nuisance,
18 degradation of water quality or any other matter of substantial concern to the DISTRICT, the
19 DISTRICT reserves the right to require remediation and, if remediation is unsuccessful, to
20 terminate this License Agreement.

21 19. Indemnify and hold harmless DISTRICT (including its directors, officers,
22 Board of Supervisors, elected and appointed officials, agents, employees, representatives,
23 independent contractors, and subcontractors) from any liability whatsoever, based or asserted
24 upon any act or omission of CITY (including its officers, agents, employees, subcontractors,
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1 independent contractors, guests and invitees), arising from, related to or in any manner connected
2 with CITY'S use and responsibilities in connection therewith of CHANNEL RIGHT OF WAY
3 or the condition thereof, including but not limited to property damage, bodily injury, or death or
4 any other element of any kind or nature whatsoever. CITY shall defend, at its sole expense, all
5 costs and fees including but not limited to, attorneys' fees, cost of investigation, defense and
6 settlements or awards, DISTRICT (including its directors, officers, Board of Supervisors, elected
7 and appointed officials, agents, employees, representatives, independent contractors, and
8 subcontractors) in any claim or legal action based upon such alleged acts or omissions.
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10 20. Reconstruct, at its sole cost and expense, any portion(s) of TRAIL that may
11 be removed during the expansion of CITY'S adopted Trails Master Plan project, provided that
12 CITY complies with the provisions as set forth in Sections I.5 and I.10, respectively.
13

14 SECTION II

15 DISTRICT shall:

16 1. Act as a Responsible Agency under CEQA, taking all necessary and
17 appropriate action to comply with CEQA.

18 2. Review, comment and approve, as appropriate, IMPROVEMENT PLANS
19 prior to the start of TRAIL construction.

20 3. Review, comment and approve, as appropriate on all REGULATORY
21 PERMITS, including any subsequent renewal or amendments thereto, prior to final execution or
22 acceptance by CITY.
23

24 4. Upon DISTRICT approval of IMPROVEMENT PLANS and
25 REGULATORY PERMITS, issue an encroachment permit to CITY for the construction,
26 operation and maintenance of TRAIL in accordance with DISTRICT approved
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1 IMPROVEMENT PLANS and subject to the provisions set forth in DISTRICT'S Encroachment
2 Permit.

3 5. Grant CITY a license, as described in this License Agreement, to utilize
4 CHANNEL RIGHT OF WAY for public recreation purposes, provided that CITY'S activities do
5 not, in any way whatsoever, unreasonably impair CHANNEL'S primary flood control purpose
6 and function or otherwise interfere with DISTRICT'S ability to operate, maintain, repair or
7 reconstruct CHANNEL or any of its appurtenant works. Said license may be revoked by
8 DISTRICT in the event that said uses unduly compromise CHANNEL'S primary flood control
9 purpose and function or unreasonably interfere with DISTRICT'S ability to operate and maintain
10 CHANNEL.
11 CHANNEL.

12 6. Provide CITY with written notice of (i) any non-compatible use or
13 condition that is not in conformity with the provisions of this License Agreement, or (ii) any
14 condition which, in the sole opinion of DISTRICT'S General Manager-Chief Engineer, could
15 adversely affect the primary flood control function of CHANNEL or DISTRICT'S ability to
16 operate and maintain CHANNEL, and grant CITY thirty (30) days from and after such notice to
17 correct any such nonconforming use or condition.
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19 7. Continue to maintain CHANNEL'S structural integrity, including but not
20 limited to lines and grades, inlets, fencing and ramps to such an extent that CHANNEL continues
21 to function as a flood control facility at its design level.
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23 8. Assume no responsibility, obligation, or liability whatsoever, for (i) the
24 design, construction, inspection, operation and maintenance of TRAIL, or (ii) CITY'S public's
25 use of CHANNEL RIGHT OF WAY as granted herein, unless done so expressly in writing
26 approved by both parties as an amendment or addendum to this License Agreement.
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1 9. Should DISTRICT determine that a closure of TRAIL for the purpose of
2 operation, maintenance or construction is necessary, DISTRICT shall provide thirty (30) days'
3 notice to CITY of such closure.

4 10. Indemnify and hold harmless CITY (including its directors, officers, City
5 Council, elected and appointed officials, agents, employees, representatives, independent
6 contractors, and subcontractors) from any liability whatsoever, based or asserted upon any act or
7 omission of DISTRICT (including its officers, agents, employees, subcontractors, independent
8 contractors, guests and invitees), arising from, related to or in any manner connected with
9 DISTRICT'S use and responsibilities in connection therewith of CHANNEL RIGHT OF WAY
10 or the condition thereof, including but not limited to property damage, bodily injury, or death or
11 any other element of any kind or nature whatsoever. DISTRICT shall defend, at its sole expense,
12 all costs and fees including but not limited to, attorneys' fees, cost of investigation, defense and
13 settlements or awards, CITY (including its directors, officers, City Council, elected and
14 appointed officials, agents, employees, representatives, independent contractors, and
15 subcontractors) in any claim or legal action based upon such alleged acts or omissions.

18 SECTION III

19 It is further mutually agreed:

20 1. DISTRICT reserves the right to terminate this License Agreement and any
21 encroachment permit issued thereto, if for any reason whatsoever, DISTRICT determines that
22 CITY'S or public's use of CHANNEL RIGHT OF WAY is not compatible with CHANNEL'S
23 primary flood control purpose or function.

24 2. TRAIL shall, at all times, remain sole ownership and exclusive
25 responsibility of CITY. Nothing herein shall be construed as creating any obligation or
26 responsibility on the part of DISTRICT to operate, maintain or warranty TRAIL.
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1 3. Except as otherwise provided herein, all construction work associated with
2 TRAIL shall be inspected by CITY and shall not be deemed complete until approved and
3 accepted as complete by CITY.

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

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

14 6. If any provision in this License 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 7. This License Agreement is to be construed in accordance with the laws of
18 the State of California.

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

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25 RIVERSIDE COUNTY FLOOD CONTROL
26 AND WATER CONSERVATION DISTRICT
27 1995 Market Street
28 Riverside, CA 92501
Attn: Operations and Maintenance Division

CITY OF PERRIS
101 North D Street
Perris, CA 92570
Attn: Darren Madkin

1 9. Any action at law or in equity brought by any of the parties hereto for the
2 purpose of enforcing a right or rights provided for by this License Agreement, shall be tried in a
3 court of competent jurisdiction in the County of Riverside, State of California, and the parties
4 hereto waive all provisions of law providing for a change of venue in such proceedings to any
5 other county.

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

11 11. This License Agreement is intended by the parties hereto as a final
12 expression of their understanding with respect to the subject matter hereof and as a complete and
13 exclusive statement of the terms and conditions thereof and supersedes any and all prior and
14 contemporaneous agreements and understandings, oral or written, in connection therewith. This
15 License Agreement may be changed or modified only upon the written consent of the parties
16 hereto.
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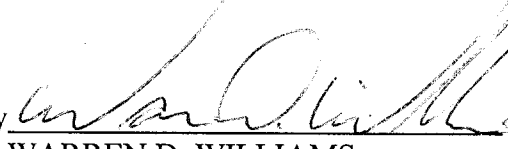
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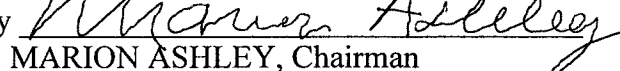
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IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on
MAR 29 2016

(to be filled 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:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By 
NEAL R. KIPNIS
Deputy County Counsel

By 
Deputy

(SEAL)

Perris Valley Channel
Perris Valley Channel – Lateral B, Stage 2
Project Nos. 4-0-00010 and 4-0-00009 (EP No. 3499)
License Agreement w/City of Perris
AMR:rlp
02/16/16


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CITY OF PERRIS

By 
RICHARD BELMUDEZ
City Manager

APPROVED AS TO FORM:

ATTEST:

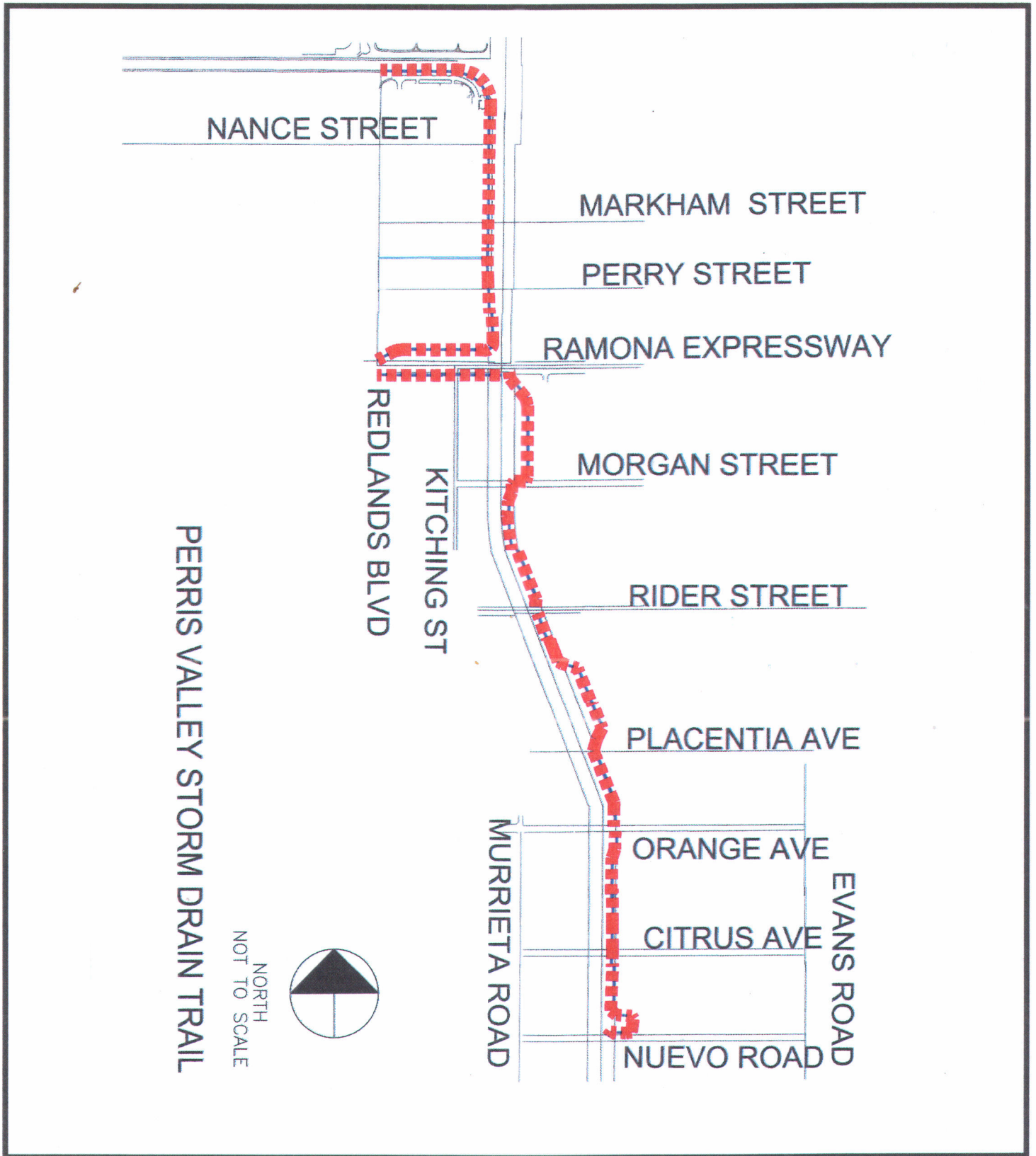
By 
ERIC DUNN
City Attorney

By 
NANCY SALAZAR
City Clerk

(SEAL)

Perris Valley Channel
Perris Valley Channel – Lateral B, Stage 2
Project Nos. 4-0-00010 and 4-0-00009 (EP No. 3499)
License Agreement w/City of Perris
AMR:rlp
02/16/16

Exhibit A



License Agreement
Perris Valley Channel
Perris Valley Channel – Lateral B, Stage 2
Project Nos. 4-0-00010 and 4-0-00009
Encroachment Permit No. 3499