

FORM APPROVED COUNTY COUNSEL
 BY: GREGORY P. PRIAMOS DATE: 2/17/16

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

3028



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

April 12, 2016

SUBJECT: Approve License Agreement for Tahquitz Creek Channel, Stage 1, Project No. 6-0-0060 (Encroachment Permit No. 3500); District 4 [\$/N/A]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the License Agreement between the District and City of Palm Springs (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 Tahquitz Creek Channel, Stage 1 from South Palm Canyon Drive to Calle Palo Fierro, will be configured, at the sole expense of the City of Palm Springs as a dual use facility, providing certain non-motorized public recreational uses within District's right of way.

WARREN D. WILLIAMS
 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:
 Steven C. Horn

County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

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

Ayes: Jeffries, Washington, Benoit and Ashley
 Nays: None
 Absent: Tavaglione
 Date: April 12, 2016
 xc: Flood

Kecia Harper-Ihem
 Clerk of the Board
 By:
 Deputy

Prev. Agn. Ref.: _____ District: 4th Agenda Number: **11-2**

A-30 Positions Added Change Order
 4/5 Vote

Departmental Concurrence

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

FORM 11: Approve License Agreement for Tahquitz Creek Channel, Stage 1, Project No. 6-0-00060
(Encroachment Permit No. 3500); District 4 [N/A]

DATE: April 12, 2016

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

The Agreement is also necessary as the City will design and construct an 18-inch storm drain as part of its construction project. All construction, inspection, operation and maintenance costs associated with the public use components and storm drain will be borne by the City of Palm Springs. 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.

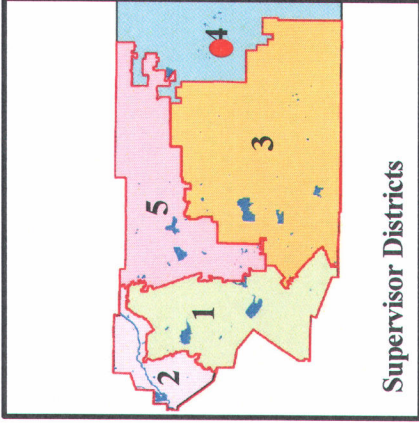
Impact on Residents and Businesses

This project is part of the Coachella Valley Link Bike Path Project. 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

AMR:blm
P8/202189

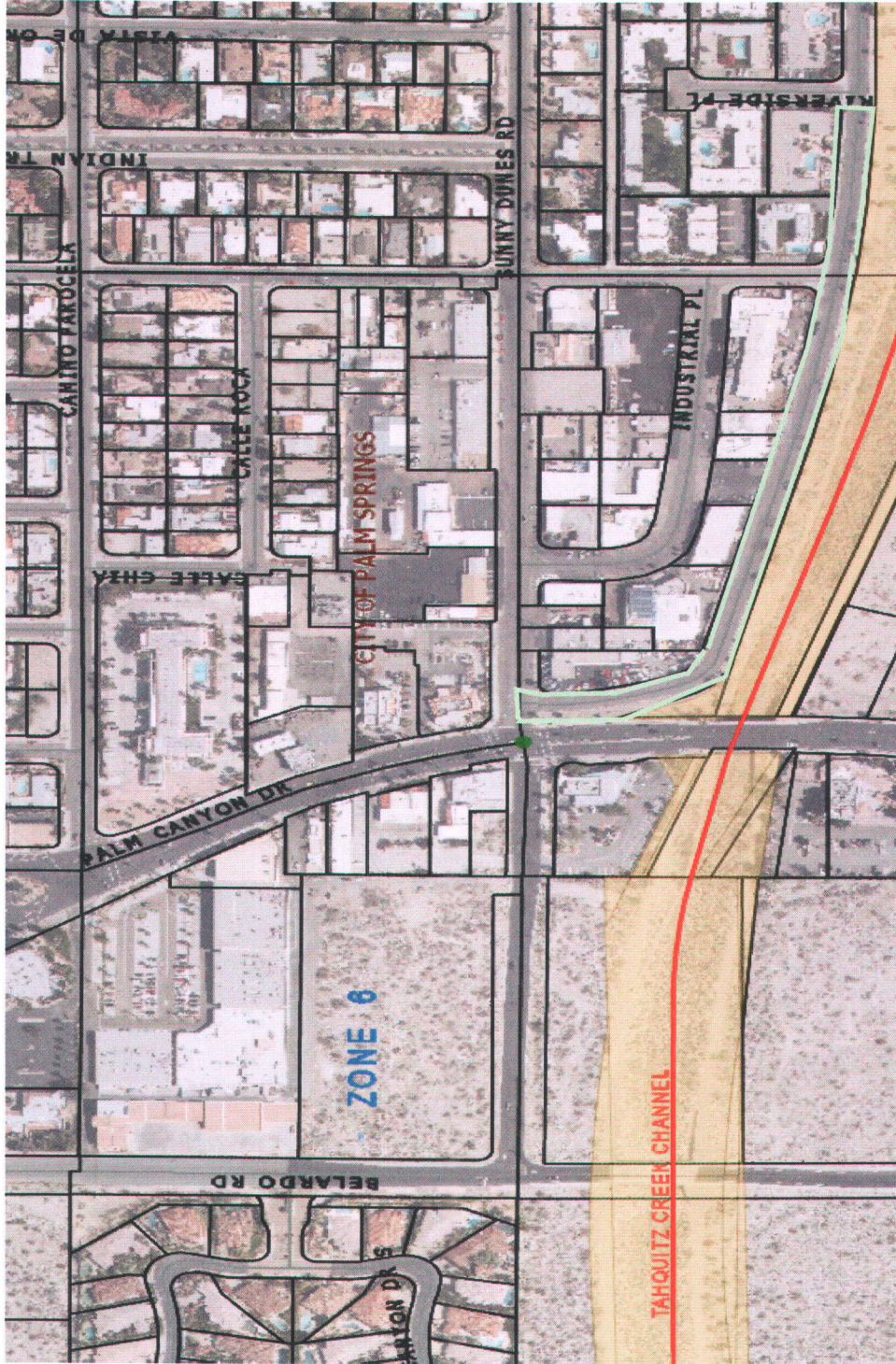


LEGEND:

- Project Vicinity
- Supervisorial District

DESCRIPTION:

Tahquitz Creek Channel, Stage 1
EP 3500



LICENSE AGREEMENT
Tahquitz Creek Channel, Stage 1
Project No. 6-0-00060
Encroachment Permit No. 3500

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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, Stage 1 (Project No. 6-0-00060), hereinafter called "CHANNEL", principally located in the City of Palm Springs; 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 construct, or cause to be constructed, operate and maintain (i) approximately 160 lineal feet of 18-inch reinforced concrete pipe and will connect to DISTRICT'S existing inlet structure, hereinafter called "STORM DRAIN". STORM DRAIN subsequently will drain into Tahquitz Creek Channel; and (ii) certain catch basins, inlets, curbs and gutters, concrete channel and connector pipes located within CITY held easements or rights of way, hereinafter called "APPURTENANCES". Together, STORM DRAIN and APPURTENANCES are hereinafter called "CITY FACILITIES"; and

D. 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, landscaping, irrigation and lighting systems, and certain ancillary uses associated therewith, including walking, jogging and bicycling for

1 public purposes as part of the Coachella Valley Link Bike Path Project, hereinafter called
2 "TRAIL", as shown in concept on Exhibit "A", attached hereto and made a part hereof.
3 Altogether, CITY FACILITIES and TRAIL are hereinafter called "PROJECT"; and

4 E. CHANNEL'S flood control function is sporadic in nature and thus,
5 appropriate non-motorized public recreation may be accommodated within DISTRICT'S
6 CHANNEL RIGHT OF WAY to the extent that such uses do not unreasonably interfere with
7 CHANNEL'S principal function or DISTRICT'S ability to operate and maintain CHANNEL; and

8 F. Subject to the provisions of this License Agreement, DISTRICT is willing
9 to (i) allow CITY to construct trail improvements within CHANNEL RIGHT OF WAY, (ii)
10 allow CITY to operate and maintain said trail improvements, and (iii) allow the public to utilize
11 the trail improvements for compatible non-motorized recreational uses; and

12 G. In accordance with the provisions of this License Agreement, CITY is
13 willing to (i) prepare, or cause to be prepared, plans and specifications for PROJECT and submit
14 to DISTRICT for its review and approval, (ii) cause the construction, inspection, operation and
15 maintenance of PROJECT at no cost to DISTRICT, (iii) conduct periodic safety inspections of
16 TRAIL improvements, and (iv) indemnify and hold DISTRICT harmless from any claims arising
17 from public's use of TRAIL or CITY'S responsibilities in connection therewith or the condition
18 thereof; and

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

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

21 SECTION I

22 CITY shall:

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

4 2. Prior to constructing any improvements or performing any physical
5 modifications within CHANNEL RIGHT OF WAY, prepare or cause to be prepared, plans and
6 specifications for PROJECT, hereinafter together called "IMPROVEMENT PLANS", and
7 submit to DISTRICT for review and approval.

8 3. Pay all costs associated with preparation of IMPROVEMENT PLANS and
9 DISTRICT'S review and approval thereof.

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

12 5. Obtain an encroachment permit from DISTRICT, pursuant to its rules and
13 regulations and comply with all provisions set forth therein, prior to commencing construction
14 of PROJECT or any other improvements within CHANNEL RIGHT OF WAY.

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

22 7. Assume sole responsibility for compliance with the requirements of all
23 REGULATORY PERMITS, including any amendments thereto, pertaining to the construction,
24 operation and maintenance of PROJECT.

1 8. Ensure that REGULATORY PERMITS, including any subsequent renewal
2 or amendments thereto, will not (i) impede DISTRICT'S ability to perform all necessary
3 operation and maintenance activities for CHANNEL as determined by DISTRICT, or (ii) include
4 any stipulations that would result in additional mitigation obligations being placed upon
5 DISTRICT for maintenance operations within CHANNEL'S right of way.

6 9. Cause PROJECT to be constructed, in accordance with IMPROVEMENT
7 PLANS approved by DISTRICT, and pay all costs associated therewith.

8 10. Not permit any change to, or modification of, DISTRICT permitted
9 IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT.
10

11 11. Assume sole responsibility for the design, construction, operation and
12 maintenance of PROJECT, including all necessary modifications, repairs, corrections or
13 temporary removal as deemed necessary by DISTRICT for the continuing function,
14 reconstruction, repair or operation and maintenance of CHANNEL.
15

16 12. Within CHANNEL RIGHT OF WAY (i) assume sole responsibility for the
17 operation and maintenance of all CITY constructed improvements, including but not limited to,
18 performing all necessary repairs and the routine removal of trash and debris associated with
19 CITY'S use of CHANNEL RIGHT OF WAY, and (ii) assume all liability associated with the
20 recreational use of CHANNEL RIGHT OF WAY including claims of third persons for injury or
21 death or damage to property. Said obligation shall not include any inverse condemnation liability
22 of DISTRICT by reason of the location of CHANNEL or TRAIL improvements thereto unless
23 such liability is the result of CITY'S operations or use of the property by the public pursuant to
24 CITY'S actual or tacit consent.
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1 13. Ensure the safety of the public who may utilize CHANNEL RIGHT OF
2 WAY by conducting periodic safety inspections and promptly making repairs that are necessary
3 to safeguard the public and its use thereof.

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

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

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

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

1 18. Indemnify and hold harmless DISTRICT and the County of Riverside
 2 (including its directors, officers, Board of Supervisors, elected and appointed officials, agents,
 3 employees, representatives, independent contractors, and subcontractors) from any liability
 4 whatsoever, based or asserted upon any act or omission of CITY (including its officers, agents,
 5 employees, subcontractors, independent contractors, guests and invitees), arising from, related to
 6 or in any manner connected with CITY'S use and responsibilities in connection therewith of
 7 CHANNEL RIGHT OF WAY or the condition thereof, including but not limited to property
 8 damage, bodily injury, or death or any other element of any kind or nature whatsoever. CITY
 9 shall defend, at its sole expense, all costs and fees including but not limited to, attorneys' fees,
 10 cost of investigation, defense and settlements or awards, DISTRICT and the County of Riverside
 11 (including its directors, officers, Board of Supervisors, elected and appointed officials, agents,
 12 employees, representatives, independent contractors, and subcontractors) in any claim or legal
 13 action based upon such alleged acts or omissions.
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16 19. Reconstruct, at its sole cost and expense, any portion(s) of TRAIL that may
 17 be removed during the construction of the Coachella Valley Link Bike Path Project.
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SECTION II

19 DISTRICT shall:

20 1. Act as a Responsible Agency under CEQA, taking all necessary and
 21 appropriate action to comply with CEQA.
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23 2. Review, comment and approve, as appropriate, IMPROVEMENT PLANS
 24 prior to the start of PROJECT construction.

25 3. Review, comment and approve, as appropriate on all REGULATORY
 26 PERMITS, including any subsequent renewal or amendments thereto, prior to final execution or
 27 acceptance by CITY.
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1 4. Upon DISTRICT approval of IMPROVEMENT PLANS and
2 REGULATORY PERMITS, issue an encroachment permit to CITY for the construction,
3 operation and maintenance of PROJECT in accordance with DISTRICT approved
4 IMPROVEMENT PLANS and subject to the provisions set forth in DISTRICT'S encroachment
5 permit.

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

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15 6. Provide CITY with written notice of (i) any non-compatible use or
16 condition that is not in conformity with the provisions of this License Agreement, or (ii) any
17 condition which, in the sole opinion of DISTRICT'S General Manager-Chief Engineer, could
18 adversely affect the primary flood control function of CHANNEL or DISTRICT'S ability to
19 operate and maintain CHANNEL, and grant CITY thirty (30) days from and after such notice to
20 correct any such nonconforming use or condition.

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

25 8. Assume no responsibility, obligation, or liability whatsoever, for (i) the
26 design, construction, inspection, operation and maintenance of PROJECT, or (ii) CITY'S public's
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1 use of CHANNEL RIGHT OF WAY as granted herein, unless done so expressly in writing
2 approved by both parties as an amendment or addendum to this agreement.

3 9. Should DISTRICT determine that a closure of TRAIL for the purpose of
4 operation, maintenance or construction is necessary, DISTRICT shall provide thirty (30) days'
5 notice to CITY of such closure.
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7 SECTION III

8 It is further mutually agreed:

9 1. DISTRICT reserves the right to terminate this License Agreement and any
10 encroachment permit issued thereto, if for any reason whatsoever, DISTRICT determines that
11 CITY'S or public's use of CHANNEL RIGHT OF WAY is not compatible with CHANNEL'S
12 primary flood control purpose or function.
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14 2. PROJECT shall, at all times, remain sole ownership and exclusive
15 responsibility of CITY. Nothing herein shall be construed as creating any obligation or
16 responsibility on the part of DISTRICT to operate, maintain or warranty PROJECT.
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18 3. Except as otherwise provided herein, all construction work associated with
19 PROJECT shall be inspected by CITY and shall not be deemed complete until approved and
20 accepted as complete by CITY.

21 4. DISTRICT personnel may observe and inspect all work being done on
22 PROJECT. It is further mutually agreed by the parties hereto that any quality control comments
23 shall be provided to CITY personnel who, as CITY construction contract administrator, shall be
24 solely responsible for all official communications with its construction contractor(s).
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26 5. Any waiver by DISTRICT or by CITY of any breach of any one or more
27 of the terms of this License Agreement shall not be construed to be a waiver of any subsequent
28 or other breach of the same or of any other term hereof. Failure on the part of DISTRICT or

1 CITY to require exact, full and complete compliance with any terms of this License Agreement
2 shall not be construed as in any manner changing the terms hereof, or estopping DISTRICT or
3 CITY from enforcement hereof.

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

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8 7. This License Agreement is to be construed in accordance with the laws of
9 the State of California.

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

12 RIVERSIDE COUNTY FLOOD CONTROL
13 AND WATER CONSERVATION DISTRICT
14 1995 Market Street
15 Riverside, CA 92501
Attn: Operations and Maintenance Division

CITY OF PALM SPRINGS
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: Gianfranco Laurie

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

21
22 10. This License Agreement is the result of negotiations between the parties
23 hereto and the advice and assistance of their respective counsel. The fact that this License
24 Agreement was prepared as a matter of convenience by DISTRICT shall have no import or
25 significance. Any uncertainty or ambiguity in this License Agreement shall not be construed
26 against DISTRICT because DISTRICT prepared this License Agreement in its final form.

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11. This License 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 License Agreement may be changed or modified only upon the written consent of the parties hereto.

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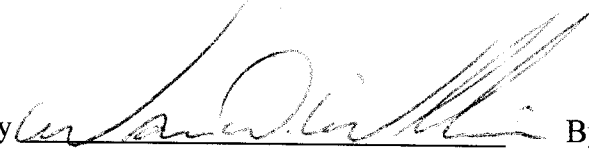
1 IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on

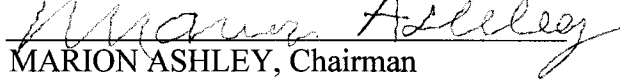
2 APR 1 2 2016

3 (to be filled in by Clerk of the Board)

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5 RECOMMENDED FOR APPROVAL:

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

6
7
8 By 
9 WARREN D. WILLIAMS
General Manager-Chief Engineer

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

10 APPROVED AS TO FORM:

ATTEST:

11 GREGORY P. PRIAMOS
12 County Counsel

KECIA HARPER-IHEM
Clerk of the Board

13
14 By 
15 NEAL R. KIPNIS
16 Deputy County Counsel

By 
Deputy

17 (SEAL)

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25 Tahquitz Creek Channel, Stage 1
26 Project No. 6-0-00060 (EP No. 3500)
27 License Agreement w/City of Palm Springs
28 AMR:blm
02/03/16

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CITY OF PALM SPRINGS

By 

DAVID H. READY

City Manager APPROVED BY CITY COUNCIL

WR

3.2.16 JH AB831

APPROVED AS TO FORM:

ATTEST:

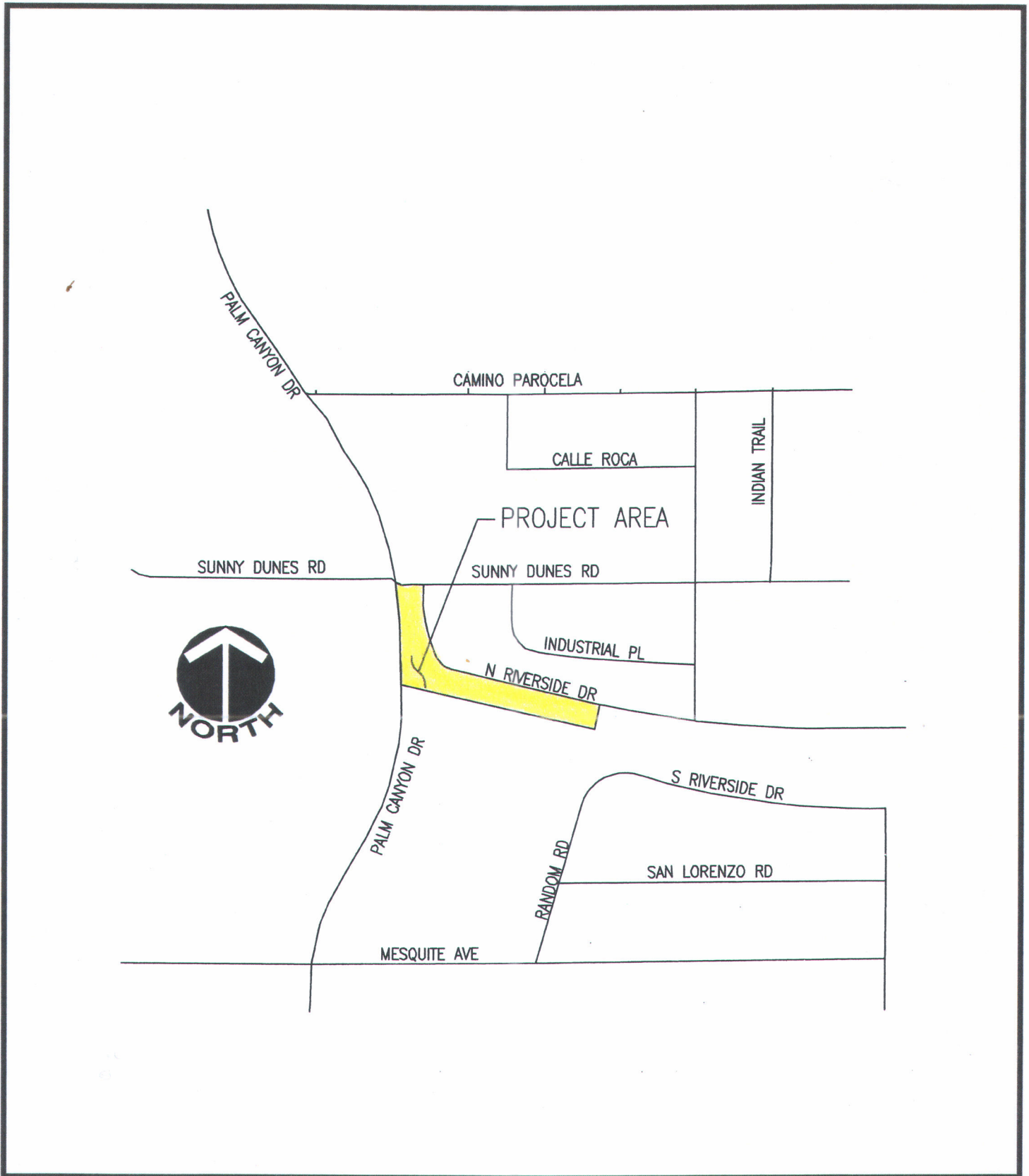
By 
DOUGLAS HOLLAND
City Attorney

By 
JAMES THOMPSON
City Clerk

(SEAL)

Tahquitz Creek Channel, Stage 1
Project No. 6-0-00060 (EP No. 3500)
License Agreement w/City of Palm Springs
AMR:blm
02/03/16

Exhibit A



License Agreement
Tahquitz Creek Channel, Stage 1 (EP 3500)
Project Number: 6-0-00060