

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR DISTRICT USE ONLY



Contract Number

23-1023

SAP Number

San Bernardino County Flood Control District

Department Contract Representative	Brendon Biggs, Chief Flood Control Engineer
Telephone Number	(909) 387-7906
Contractor	17500 Mana Road, LLC
Contractor Representative	Teresa Dowd
Telephone Number	(760) 946-5414
Contract Term	N/A
Original Contract Amount	In-Kind Consideration
Amendment Amount	N/A
Total Contract Amount	In-Kind Consideration
Cost Center	

Briefly describe the general nature of the contract: Acquisition of approximately 8.9 acres of property located in the town of Apple Valley (portion of APN 0473-183-21) from 17500 Mana Road, LLC with the design and construction of a shared access bridge by San Bernardino County Flood Control District as in-kind consideration for the property.

FOR DISTRICT USE ONLY

Approved as to Legal Form

Agnes Cheng, County Counsel

Date 9/21/2023

Reviewed for Contract Compliance

Andy Silao, P.E.

Date

9/21/2023

Reviewed/Approved by District

Brendon Biggs, Chief Flood Control Engineer

Date

9/21/23

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is effective the date the last of the parties executes this Agreement ("Effective Date"), between 17500 MANA ROAD LLC, a California limited liability company ("SELLER"), and SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic ("BUYER").

RECITALS

- A. The SELLER is the owner of the fee simple interest in certain real property containing approximately 89.31 acres improved with the educational facility known as the Academy for Academic Excellence ("Academy"), with an address of 17500 Mana Road, Apple Valley, CA 92307 (APN 0473-183-21), as more particularly described in the legal description attached hereto as Exhibit "A" ("School Property").
- B. The School Property is intersected by a portion of a natural ephemeral stream channel, known as the Desert Knolls Wash ("Wash").
- C. BUYER has proposed a public project to excavate, reshape, and improve portions of the Wash and desires to acquire, in fee, a large part of the footprint of the Wash which flows over the School Property.
- D. SELLER is in support of the public project and desires to sell an 8.90-acre parcel ("Property") of the School Property to BUYER for the consideration described below.
- E. The proposed acquisition by the BUYER of the Property will bisect a portion of the School Property and impede access from the Academy, which is situated at the easterly boundary of the School Property, to the SELLER's proposed nearby expansion site, which is situated at the north-westerly portion of the School Property.
- F. To mitigate impacts from the sale of Property, as well as address consideration for the sale, the parties propose that:
 - i. SELLER will convey to BUYER the Property in fee, comprising BUYER's desired footprint of the Wash, which Property is further described in the legal description attached hereto as Exhibit "B"; and
 - ii. SELLER will reserve from the conveyance of the Property a non-exclusive 0.43-acre easement ("Access Easement"), over which BUYER will construct a shared access bridge for the benefit of the Property and the School Property while the bisected portions thereof are under common ownership, allowing passage to and from the Academy located on one side of the School Property to the other side of the School Property ("Access Bridge"), which easement area is described in the legal description attached hereto as Exhibit "C"; and
 - iii. BUYER's design and construction of the Access Bridge at no cost to SELLER shall serve as consideration for the fee conveyance of the Property to BUYER; and

- iv. SELLER will also reserve from the conveyance of the Property a non-exclusive easement for the benefit of the School Property to use approximately 2.17 acres of access roads lying within the Property, for the sole purpose of physical education class activities for MANA's enrollees during its normal school operating hours (hereafter referred to as "Activity Easement"), which easement area is described in the legal description attached hereto as Exhibit "D" and shown in Exhibit "D-1."
- v. As provided in Exhibit "F", attached hereto:
 - a. The Access Easement shall automatically terminate if the School Property abutting each side of the Access Easement is no longer under common ownership; and
 - b. The Activity Easement shall automatically terminate if the School Property is no longer used for educational purposes.

A G R E E M E N T

Based upon the foregoing Recitals, which are incorporated herein by this reference and made a part of this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SELLER and BUYER agree as follows:

1. PURCHASE AND SALE OF THE PROPERTY.

1.1 Subject to all of the terms, conditions, and provisions of this Agreement, and for the consideration herein set forth, the SELLER agrees to sell to BUYER, and BUYER agrees to purchase from the SELLER all of SELLER's right, title, and interest to the Property as described in the legal description attached hereto as Exhibit "B", subject to SELLER's Access Easement reservation and Activity Easement reservation, both as described in the legal descriptions and plats attached hereto as Exhibits "C", as well as "D" and "D-1," respectively, and as further described in Exhibit "F."

1.2 Payment In Kind Consideration. The consideration from BUYER to SELLER for the Property shall be BUYER's design and construction of the shared Access Bridge at no cost to SELLER ("**In Kind Payment**") as shown in the design plans attached hereto as Exhibit "E" and SELLER's reservation of easements. As a result, the purchase price payable by BUYER to SELLER for the Property is zero dollars (\$0). SELLER shall maintain the Access Easement as provided in Exhibit "F."

1.3 Taxes. Real property taxes will not be prorated between SELLER and BUYER. Upon recordation of the Grant Deed, BUYER will request cancellation of the real property taxes for the Property pursuant to California Revenue and Taxation Code Section 4986. If current taxes have not yet been paid as of the Closing Date, then SELLER shall pay the full amount of the installment applicable for the period prior to the Closing Date. SELLER shall be entitled to a refund of any excess payment made to the taxing authority on account of the Property, including any taxes paid by SELLER and applicable to any period from and after the Closing Date. The taxing authority will notify SELLER of any refund due SELLER resulting from the subject acquisition after a review and any subsequent proration of the property tax assessment by the County.

2. RECORDING. If the Agreement does not terminate pursuant to Paragraphs 5.2(c) and all conditions to closing have been satisfied or waived, ESCROW HOLDER shall deliver to BUYER an executed and recorded Grant Deed with Reservation of Easements substantially in form shown in Exhibit "F" on the Closing Date (as defined in Paragraph 5.3).

3. HAZARDOUS MATERIALS; INDEMNIFICATION. If any hazardous materials or waste (as defined by California Health and Safety Code section 25100, et seq., and/or 42 U.S.C. §9601, et seq.) are present on the Property on the date BUYER takes possession of the Property, SELLER shall be responsible for and bear the entire cost of all removal, disposal, cleanup and decontamination which may be required because of these hazardous materials. SELLER agrees to indemnify, defend (with counsel reasonably approved by BUYER) and hold harmless BUYER, San Bernardino County and their authorized officers, employees, agents and volunteers ("Indemnitees") from any and all claims, actions, losses, damages and/or liability arising out of this Agreement from any cause whatsoever, including: 1) the acts, errors or omissions of any person and for any costs or expenses incurred by BUYER on account of any claim except where such indemnification is prohibited by law; and/or 2) all responsibility, liability and claims for damages to persons or property resulting from the existence or use of hazardous materials which are present on the Property on the date BUYER takes possession under this Agreement. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. SELLER's indemnification obligation applies to Indemnitees' "active" as well as "passive" negligence but does not apply to Indemnitees' "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782. This Section 3 shall survive the termination of this Agreement or the Close of Escrow.

4. REPRESENTATIONS AND WARRANTIES.

4.1 SELLER Representations and Warranties. SELLER hereby makes the following representations and warranties to BUYER, each of which is material and relied upon by BUYER in making its determination to enter into this Agreement and each of which is re-made as of the Closing Date:

(a) SELLER's execution, delivery, and performance of its obligations under this Agreement does not constitute a default or a breach under any contract, agreement, or order to which SELLER is a party or by which it is bound and there are currently no other pending contracts or opened escrow for the sale of the Property.

(b) SELLER owns the Property in fee simple, without leases or leasehold interests. SELLER has the full right, power and lawful authority to sell the Property and undertake all obligations as provided herein. The execution, performance and delivery of this Agreement by SELLER has been fully authorized by all requisite actions on the part of SELLER.

(c) There are no pending, actions, suits, writs, injunctions, decrees, legal proceedings, or governmental investigations against the Property.

(d) SELLER has not received any notices and has no knowledge of any violation of any laws, ordinances, rules, regulations, or requirements of any governmental agency, body, or subdivision affecting or relating to the Property.

(e) SELLER has not received any notices and has no knowledge of any hazardous materials or waste (as defined by California Health and Safety Code section 25100, et. seq.,

and/or 42 U.S.C. §9601, et. seq.) that exists at the Property or a violation of any environmental laws that exists at the Property. Except as otherwise as may be disclosed by the Property Documents, there has been no production, storage or disposal at the Property of any Hazardous Materials (as defined below) by SELLER or by any previous owner or occupant of the Property; (ii) Hazardous Materials have not been dumped, buried, leaked, or otherwise released upon, in, or under the Property or allowed to pass on, under or through the Property at any time during or prior to SELLER's ownership of the Property; (iii) SELLER has not violated any laws, regulations, and ordinances relating to the use of all Hazardous Materials used on the Property; and (iv) there is no proceeding or inquiry by any federal, state or local governmental agency with respect to any Hazardous Materials on the Property

(f) SELLER is not the subject of a current or pending bankruptcy proceeding.

(g) SELLER represents and warrants to BUYER that SELLER is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or an out-of-state seller under California Revenue and Tax Code Section 18805 and that it will deliver to BUYER before the Closing Date a non-foreign affidavit pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE. BUYER and SELLER agree to cooperate with each other in completing any report and/or other information required to be delivered to the Internal Revenue Service.

(h) No Rights Granted. SELLER has not granted any options, rights of first refusal, rights of first offer, or other pre-emptive rights to acquire the Property to any other person so as to impair the title of the Property for this transaction.

4.2 BUYER's Representations and Warranties. BUYER hereby makes the following representations and warranties to SELLER, each of which is material and relied upon by SELLER in making its determination to enter into this Agreement and each of which is re-made as of the Closing Date:

(a) BUYER has the full right, power, and lawful authority to purchase and accept the Property and undertake all obligations as provided herein. The execution, performance, and delivery of this Agreement by BUYER has been fully authorized by all requisite actions on the part of BUYER.

(b) BUYER's execution, delivery, and performance of its obligations under this Agreement does not constitute a default or a breach under any contract, agreement, or order to which BUYER is a party or by which it is bound.

(c) BUYER is not the subject of a current or pending bankruptcy proceeding.

5. INFORMATION REPORT; REVIEW OF TITLE

5.1 Information Report. Escrow Holder shall file and SELLER and BUYER agree to cooperate with Escrow Holder and with each other in completing any report ("Information Report") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-B as such may be

hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. SELLER and BUYER also agree that SELLER and BUYER, their respective employees and attorneys, and Escrow Holder and its employees may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e), and further agree that neither SELLER nor BUYER shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

5.2 Review of Documents, Title, and Escrow.

(a) Property Documents. Within two (2) days after the Effective Date, SELLER shall provide BUYER with copies of the following documents, if any, that are in its possession or under its control: (i) relevant studies, documents, land surveys, soils reports, licenses, maintenance contracts, utility contracts, management contracts, service contracts, warranties, ADA compliance, Field Act compliance, plans and specifications for the Improvements, copies of all building permits, certificates of occupancy and all other governmental licenses and permits for the Improvements in the possession of SELLER, and other documents and/or contracts pertaining to the Property, together with any amendments or modifications; (ii) any and all information that SELLER has regarding environmental matters affecting the Property and regarding the condition of the Property, including, but not limited to, Phase I and/or Phase II Environmental Assessments, wetlands, structural, mechanical and soils conditions, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks in, on, or about the Property; (iii) copies of any current agreements with occupants; and (iv) any and all other documents and matters relative to the Property (collectively, "Property Documents").

(b) Review of Property Documents and Title. Following the Effective Date of this Agreement, BUYER shall obtain its own preliminary title report issued by a title company of BUYER's choice ("Title Company") and such Title Company shall provide all underlying title documents (collectively, the "Preliminary Title Report") and BUYER shall have the right to obtain a survey of the Property from a licensed surveyor sufficient to obtain an ALTA title insurance policy ("Survey"). The BUYER's review period for the Property Documents, Preliminary Title Report, the Survey shall mean the period from the Effective Date through the date that is forty-five (45) business days after the Effective Date ("BUYER's Review Period"). At any time during BUYER'S Review Period, BUYER shall notify SELLER in writing ("BUYER's Title Notice") of any objections BUYER may have to title exceptions or other matters contained in the Preliminary Title Report or Survey ("Title Objections"). If BUYER does not give such notice by the expiration of BUYER's Review Period, then it shall conclusively be deemed that BUYER has no Title Objections. If BUYER does timely provide BUYER's Title Notice with Title Objections, SELLER shall have five (5) business days after receipt thereof to notify BUYER that SELLER (a) will endeavor to cause or (b) elects not to cause any or all of the Title Objections disclosed therein to be removed or insured over by the Title Company in a manner reasonably satisfactory to BUYER. SELLER's failure to notify BUYER within such five (5) business day period as to any Title Objections that SELLER is willing to endeavor to cure or cause to be insured over shall be deemed an election by SELLER not to pursue such endeavor to remove or have the Title Company insure over such Title Objections. If SELLER notifies or is deemed to have notified BUYER that SELLER shall not endeavor to remove nor have the Title Company insure over any or all of the Title Objections, BUYER shall have five (5) business days after the expiration of SELLER's five (5) business day period to respond

to either (a) terminate this Agreement or (b) waive such Title Objections, without any reduction in the consideration provided by this agreement on account of such Title Objections. If BUYER does not give notice within the said period, BUYER shall be deemed to have elected to waive the Title Objections. BUYER shall have the right to request any supplement to the Preliminary Title Report or the Survey, and if any such supplement discloses any new materially adverse title or survey matters not disclosed to BUYER prior to the expiration of the BUYER's Review Period, the foregoing right of review and approval shall also apply to said new matter; provided, however, the period for BUYER to deliver BUYER's Title Notice with respect to such new title matter shall be the later of (i) expiration of the BUYER's Review Period, or (ii) three (3) business days from receipt of the supplemental title report or survey and the underlying document(s) referenced therein.

(c) If BUYER is not, in its sole discretion, satisfied with the Property for any reason, BUYER shall have the right to terminate this Agreement at no cost by giving written notice to SELLER on or before the expiration of the BUYER's Review Period. If BUYER fails to timely deliver such notice, the BUYER shall conclusive be deemed to have waived its termination right pursuant to this Paragraph 5.2(c).

5.3 Escrow.

(a) Escrow. Within three (3) business days following the Effective Date, an escrow ("Escrow") shall be opened with Ticor Title, located at 4400 MacArthur Boulevard, Suite 800, Newport Beach, CA 92660 ("Escrow Holder"), by BUYER delivering a copy of this fully executed Agreement to Escrow Holder. This Agreement shall, to the extent possible, act as Escrow instructions. The Parties agree to execute all further Escrow instructions required by Escrow Holder, which further instructions shall be consistent with this Agreement.

(b) Closing. "Close of Escrow" is the date the grant deed, in the form attached hereto and incorporated herein as **Exhibit F** ("Grant Deed"), conveying the Property from SELLER to BUYER, is recorded in the Office of the San Bernardino County Recorder, which shall occur on or before thirty (30) business days after expiration of the BUYER's Review Period or on such other date after the BUYER's Review Period as the Parties mutually agree in writing, subject to the terms of this Agreement ("Closing Date").

(c) BUYER's Closing Conditions: In the event each of the Conditions to Closing in this Paragraph 5.3(c), as set forth below, is not fulfilled on the Closing Date or such other time period as provided for herein or waived, BUYER may, at its option, terminate this Agreement and the escrow opened hereunder, provided that BUYER is not in default of this Agreement beyond any applicable notice and cure periods. No termination under this Agreement shall release any party then in default from liability for such default.

(i) Title Policy. Prior to Close of Escrow, BUYER shall have received evidence that Escrow Holder's title insurer ("Title Company") is ready, willing, and able to issue, upon payment of Title Company's regularly scheduled premium, a CLTA or ALTA owner's policy of title insurance, to be determined by the BUYER prior to Closing, with the endorsements BUYER may require, showing title to the Property vested in BUYER, subject only to the exceptions permitted by BUYER in accordance with Section 5.2(b) herein.

(ii) Compliance with Laws. Prior to the Close of Escrow, BUYER has complied with the requirements of the California Environmental Quality Act and any notices pursuant to applicable Government Code sections and BUYER has not received any objections in response to any required notices.

(iii) No Defaults. All SELLER representation and warranties are true and accurate in all material aspects as of the Closing as though made at that time. SELLER shall not be in material default of any of its obligations under this Agreement beyond any applicable notice and cure periods.

(iv) The physical condition of the Property shall substantially be the same on the Closing Date as on the Effective Date. SELLER shall deliver full possession of the Property on the Closing Date free of any tenants, users, and trespassers. Any and all leases, use agreements, and service contracts have been canceled as of the Closing Date.

(d) Costs and Fees. Charges and expenses incurred in this transaction are to be borne by the parties as follows:

(i) The parties shall equally share the Escrow Holder's fees and recording fees.

(ii) SELLER shall pay the cost of the CLTA Title Policy, and BUYER shall pay the cost of any endorsements requested by BUYER.

(iii) SELLER shall pay City and county transfer taxes, if applicable.

(iv) Any miscellaneous costs shall be borne by the parties according to custom in San Bernardino County.

(e) Prorations. All other charges and credits with respect to the Property shall be prorated to the Close of Escrow on the basis of a thirty (30) day month. All non-delinquent general and special real property taxes for the fiscal year at the Close of Escrow, and all special and bonded assessments and levies, if any, included in and payable with the taxes attributable to the Property, are to be prorated as of the date of the Close of Escrow. BUYER is not to be responsible for, and SELLER is to assume all responsibility for, unpaid delinquent taxes or assessments, if any. BUYER is exempt from real estate taxes and certain assessments. Personal property taxes, if any, shall be paid in full by SELLER.

5.4 Items to be Delivered at Close of Escrow. On or before Close of Escrow, SELLER and PURCHASER shall deposit with Escrow Holder the following documents and funds and shall close Escrow as follows:

(a) SELLER's Deposits. SELLER shall deposit with Escrow Holder the following:

(i) Grant Deed for Property. An original executed and acknowledged Grant Deed conveying the Property to BUYER;

(ii) Closing Costs. SELLER will deposit cash in the amount necessary to pay SELLER's share of Closing costs, as set forth in Section 5.3(d); and

(iii) Additional Documents. Any other documents or funds required by Escrow Holder from SELLER for the Close of Escrow in accordance with this Agreement.

(b) BUYER's Deposits. On or before the Close of Escrow, the following will be deposited with Escrow Holder:

(i) Closing Costs. BUYER will deposit cash in the amount necessary to pay BUYER's share of Closing costs, as set forth in Section 5.3(d); and

(ii) Additional Documents. BUYER will deposit any other documents or funds required of BUYER to close Escrow in accordance with this Agreement.

(c) At Close of Escrow, Escrow Holder shall:

(i) Record the Grant Deed;

(ii) Prepare and deliver to both BUYER and SELLER one (1) signed copy of Escrow Holder's settlement statement showing all receipts and disbursements of the Escrow;

(iii) Disburse to BUYER a conformed copy of the Grant Deed and any other documents (or copies thereof) deposited into Escrow by SELLER pursuant hereto; and

(iv) Disburse to SELLER a conformed copy of the Grant Deed and any other documents (or copies thereof) deposited into Escrow by BUYER pursuant hereto.

6. DEFAULTS.

6.1 Defaults. In the event wither party defaults in the performance of any of its obligations under this Agreement, the other party shall, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance. A party shall not be in default under this Agreement unless the non-defaulting party first provides a written notice of default to the defaulting party and the defaulting party, thereafter, fails within five (5) business days after receipt of such notice of default to either cure such default or diligently commence such actions reasonably necessary to cure such default within such five (5) business day period, and thereafter, cures such default not later than ten (10) days after receipt of such notice of default.

6.2 Institution of Legal Actions. Any legal action must be instituted in the Superior Court of the County of San Bernardino, State of California.

6.3 Rights and Remedies are Cumulative. Except as otherwise expressly provided in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

6.4 Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

7. MISCELLANEOUS.

7.1 Notices. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be delivered by either (a) personal delivery,

(b) reliable courier service that provides a receipt showing date and time of delivery, including federal express, or (c) registered or certified U.S. Mail, postage prepaid, return receipt requested. Notices shall be addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other party hereto:

To SELLER: 17500 MANA ROAD LLC
Care of High Desert "Partnership in Academic Excellence"
Foundation, Inc.
Lewis Center for Educational Research
Attn: CEO
17500 Mana Road
Apple Valley, California, 92307

To BUYER: San Bernardino County
Real Estate Services Department
385 North Arrowhead Avenue, 3rd Floor
San Bernardino, CA 92415-0180

Each notice shall be deemed delivered on the date delivered if by personal delivery or by overnight courier service, or on the date of receipt as disclosed on the return receipt if by mail. By giving to the other parties written notice as provided above, the parties to this Agreement and their respective successors and assigns shall have the right from time to time, and at any time during the term of this Agreement, to change their respective addresses.

7.2 Relationship Between SELLER and BUYER. It is hereby acknowledged that the relationship between SELLER and BUYER is not that of a partnership or joint venture and that SELLER and BUYER shall not be deemed or construed for any purpose to be the agent of the other.

7.3 Attorneys' Fees. If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This subsection shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Section 3 ("Hazardous Materials; Indemnification") or under Section 7.11 ("Real Estate Brokerage Commission").

7.4 Successors and Assigns; Assignment. Neither party shall have the right to assign this Agreement or any interest or right hereunder without the prior written consent of the other party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of SELLER and BUYER and their respective successors and permitted assigns.

7.5 Entire Agreement, Waivers, and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged. Any amendment or modification to this Agreement must be in writing and executed by SELLER and BUYER.

7.6 Prohibited Persons and Transactions. BUYER represents to SELLER that it is not a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

7.7 Executive Order N-6-22 Russia Sanctions. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the "EO") regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate agreements with and to refrain from entering any new agreements with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined by the County or the State of California that SELLER is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. SELLER shall be provided advance written notice of such termination, allowing SELLER at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of BUYER.

7.8 Computation of Time. In the event that the day on which a party is required to take any action under the terms of this Agreement is a holiday, Saturday, or Sunday, such action shall be taken on the next succeeding business day. The term "holiday" shall mean all holidays as recognized by BUYER.

7.9 Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California, without regard to conflict of interest principles.

7.10 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

7.11 Real Estate Brokerage Commission. SELLER and BUYER each represent and warrant to the other that it has not had conversations or negotiations with any broker or third party concerning the sale or purchase of the Property, respectively. In the event SELLER breaches the foregoing representation and warranty, SELLER shall be responsible, at its sole cost and expense, for any commissions, finders' fees, and/or payments claimed to be due to any broker or third party that represents SELLER regarding the sale of the Property. SELLER agrees to indemnify, defend, and hold harmless BUYER as provided in Section 3 of this Agreement from any claims or fees or commissions, based upon agreements by SELLER, if any, to pay any additional broker's commission and/or finder's fee.

7.12 Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on both parties hereto, notwithstanding that both parties are not signatories to the original or the same counterpart. If authorized by law, the parties

shall be entitled to manually sign and transmit this Agreement by electronic means (whether by facsimile, PDF, or email transmission) and are entitled to electronically sign and transmit this Agreement via DocuSign, Adobe Sign, or other similar digital signature software, which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

7.13 Exhibits. Exhibits “A,” “B,” “C,” “D,” “D-1,” “E,” “F,” and “G” and are attached to this Agreement are incorporated herein by this reference and made a part hereof.

7.14 Inducement. The making, execution and delivery of this Agreement by the parties hereto have been induced by no representations, statements, warranties or agreements other than those expressly set forth herein.

7.15 Political Contributions. SELLER has disclosed to the BUYER using Exhibit G, whether it has made any campaign contributions of more than \$250 to any member of the BUYER’s governing body, the County’s Board of Supervisors, or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of SELLER’s proposal to BUYER, or (2) 12 months before the date this Agreement was approved by the BUYER’s governing body. SELLER acknowledges that under Government Code section 84308, SELLER is prohibited from making campaign contributions of more than \$250 to any member of the BUYER’s governing body or the County’s Board of Supervisors or other County elected officer for 12 months after the BUYER’s consideration of the Agreement. In the event of a proposed amendment to this Agreement, SELLER will provide the BUYER a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the BUYER’s governing body, the County’s Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment, Campaign contributions include those made by any agent/person/entity on behalf of the SELLER or by a parent, subsidiary or otherwise related business entity of SELLER.

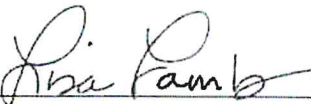
8. BOARD OF SUPERVISORS APPROVAL: This Agreement is subject to, and shall have no force or effect until and unless approved by the San Bernardino County Board of Supervisors and executed by an authorized BUYER signatory.

[Signatures on next page]

IN WITNESS WHEREOF, SELLER and BUYER have entered into this Agreement as of the date the last of the parties executes this Agreement.

SELLER:

17500 MANA ROAD LLC

By: 

Title: LCER President/CEO

Date: September 21, 2023

BUYER:

**SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT**

By: 

Title: Chair, Board of Supervisors

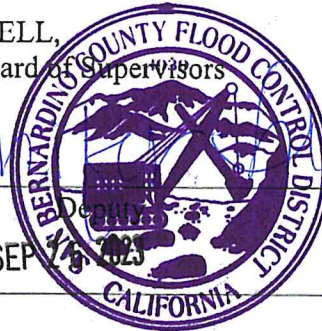
Date: SEP 26 2023

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRMAN OF THE
BOARD

LYNNA MONELL,
Clerk of the Board of Supervisors

By: 

Date: SEP 26 2023



APPROVED AS TO LEGAL FORM:

Tom Bunton, County Counsel
San Bernardino County, California

By: 

for Agnes Cheng
Deputy County Counsel

Date: 9/21/23

EXHIBIT "A"

(Legal Description of the School Property)

RESTATED AS RECORDED IN GRANT DEED TO 17500 MANNA ROAD, A CALIFORNIA LIMITED LIABILITY CORPORATION, RECORDED FEBRUARY 02, 2020, UNDER DOCUMENT NUMBER 2020-005949, OFFICIAL RECORDS.

THAT PORTION OF THE EAST 1/2 OF THE EAST 1/2 OF SECTION 10, TOWNSHIP 5 NORTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND ON FILE IN THE DISTRICT LAND OFFICE, LYING SOUTHERLY OF THE SOUTHERLY LINE OF STATE HIGHWAY.

EXCEPTING THEREFROM ANY PORTIONS THEREOF LYING WITHIN THOSE PARCELS OF LAND CONVEYED TO THE STATE OF CALIFORNIA FOR PUBLIC HIGHWAY AS DESCRIBED IN THAT CERTAIN DEED FROM APPLETON LAND, EATER AND POWER COMPANY, RECORDED JANUARY 23, 1948, IN BOOK 2111, PAGE 432, OFFICIAL RECORDS. SAID PAREL OF LAND BEING ALSO DESCRIBED IN QUITCLAIM DEEDS. RECORDED IN BOOK 2029, PAGE 183, OFFICIAL RECORDS, AND IN BOOK 2290, PAGE 239, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF CONVEYED TO THE STATE OF CALIFORNIA, BY DEED RECORDED FEBRUARY 24, 1961, IN BOOK 5359, PAGE 490, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL OF THE MINERALS, INCLUDING AND WITHOUT LIMITATION, ALL THE OIL, GAS AND OTHER HYDROCARBON SUBSTANCES BUT EXCLUDING EXPLICITLY LIMESTONE AND WITHOUT ANY RIGHTS TO USE THE SURFACE OR THAT PORTION OF SAID LAND LYING WITHIN 500 FEET OF THE SURFACE, AND ALSO, THE RIGHT TO DRILL INTO AND THROUGH SAID LAND BELOW 500 FEET FROM THE SURFACE, AS RESERVED BY TEXICO PRODUCING INC., BY DEED RECORDED MARCH 2, 1987, INSTRUMENT NO. 87-66791, OFFICIAL RECORDS.

APN 0473-183-21

EXHIBIT "B"

(Legal Description of the Property to be Conveyed to BUYER)

A portion of that part of the East half of the East half of Section 10, Township 5 North, Range 4 West, San Bernardino Meridian, said part being that parcel of land described in that document recorded March 2, 1987 as Instrument Number 1987-0066790, said portion being all of said part described as follows:

COMMENCING at the Northeast corner of said parcel of land per said Instrument Number 1987-0066790;

Thence along the East line of said parcel South 00°58'26" East a distance of 176.92 feet to the POINT OF BEGINNING;

Thence South 27°34'34" West, a distance of 345.54 feet;
Thence South 25°14'52" West, a distance of 242.57 feet;
Thence South 34°32'05" West, a distance of 70.93 feet;
Thence South 31°12'41" West, a distance of 244.19 feet;
Thence South 36°09'02" West, a distance of 95.56 feet;
Thence South 70°36'49" West, a distance of 59.37 feet;
Thence South 46°45'50" West, a distance of 96.45 feet;
Thence South 20°37'58" West, a distance of 114.06 feet;
Thence South 20°37'58" West, a distance of 27.64 feet;
Thence South 45°41'06" West, a distance of 73.39 feet;
Thence South 21°26'22" West, a distance of 89.09 feet;
Thence South 13°22'02" West, a distance of 80.16 feet;
Thence South 26°26'58" West, a distance of 64.83 feet;
Thence South 17°17'57" West, a distance of 39.71 feet;
Thence South 27°43'09" West, a distance of 49.16 feet;
Thence South 30°00'22" West, a distance of 137.88 feet;
Thence South 42°04'47" West, a distance of 123.40 feet;
Thence South 46°16'14" West, a distance of 79.26 feet;
Thence South 55°13'12" West, a distance of 24.62 feet;
Thence South 49°00'43" West, a distance of 92.15 feet;
Thence South 61°55'18" West, a distance of 64.90 feet;
Thence South 28°04'42" East, a distance of 68.39 feet to the beginning of a curve, concave northeasterly having a radius of 140.00 feet;
Thence southeasterly along said curve an arc distance of 199.77 feet through a central angle of 81°45'27";
Thence North 33°17'39" East, a distance of 84.02 feet;
Thence North 33°37'46" East, a distance of 330.05 feet;
Thence North 34°06'30" East, a distance of 475.90 feet;
Thence North 42°21'49" East, a distance of 91.38 feet;
Thence North 32°32'41" East, a distance of 644.21 feet;
Thence North 24°22'31" East, a distance of 207.21 feet to the said East line;

Thence North 00°58'26" West, a distance of 398.79 feet along said East line to the POINT OF BEGINNING.

Containing 8.90 acres (387,586 sq. ft.) more or less.

This legal description was prepared by me or under
My direction.

By: _____

Ryan Hunsicker, P.L.S. # 8302

Date: 05/28/2023



EXHIBIT "C"

(Legal Description of the Access Easement Reservation Area)

COMMENCING at the Point of Beginning of the hereinbefore described parcel of land;

Thence along the northwesterly line of said parcel, South 27°34'34" West, a distance of 345.54 feet;

Thence continuing along said northwesterly line, South 25°14'52" West, a distance of 166.91 feet to the POINT OF BEGINNING of this access easement;

Thence also along said northwesterly line continuing South 25°14'52" West, a distance of 75.66 feet;

Thence along said northwesterly line South 34°32'05" West, a distance of 20.76 feet;

Thence leaving said northwesterly line South 59°21'05" East, a distance of 189.75 feet to the southeasterly line of the aforementioned parcel;

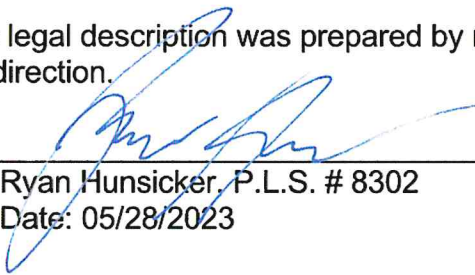
Thence along said southeasterly line North 32°32'41" East, a distance of 61.74 feet;

Thence continuing along the southeasterly line North 24°22'31" East, a distance 36.25 feet;

Thence leaving said southeasterly line North 59°51'12" West, a distance of 193.55 feet to said POINT OF BEGINNING.

Reserved Access Easement containing 0.43 acres (18,604 sq. ft.) more or less

This legal description was prepared by me or under
My direction.

By: 

Ryan Hunsicker, P.L.S. # 8302
Date: 05/28/2023



EXHIBIT "D"

Legal Description of SELLER's Activity Easement Reservation

A portion of that part of the East half of the East half of Section 10, Township 5 North, Range 4 West, San Bernardino Meridian, in San Bernardino County, State of California, according to the official plat thereof said part being a portion of that parcel of land described in that document recorded March 2, 1987 as Instrument Number 1987-0066790, official records of said county, said portion being all of said part described as follows:

COMMENCING at the Northeast corner of said parcel of land per said Instrument Number 1987-0066790, said corner being on the East line of said Section 10;

Thence South 00°58'26" East along the East line of said parcel a distance of 176.92 feet;
Thence South 27°34'34" West, a distance of 345.54 feet;
Thence South 25°14'52" West, a distance of 176.68 feet to the **POINT OF BEGINNING**;
Thence continuing South 25°14'52" West a distance of 65.90 feet;
Thence South 34°32'05" West, a distance of 70.93 feet;
Thence South 31°12'41" West, a distance of 244.19 feet;
Thence South 36°09'02" West, a distance of 95.56 feet;
Thence South 70°36'49" West, a distance of 59.37 feet;
Thence South 46°45'50" West, a distance of 96.45 feet;
Thence South 20°37'58" West, a distance of 114.06 feet;
Thence South 20°37'58" West, a distance of 27.64 feet;
Thence South 35°17'36" East, a distance of 2.85 feet;
Thence North 49°01'39" East, a distance of 83.85 feet to the beginning of a non-tangent curve, concave northwesterly, having a radius of 1092.03 feet and a radial bearing of South 41°49'23" East;
Thence northeasterly along said curve an arc distance of 194.74 feet through a central angle of 10°13'03" to a point of non-tangency;
Thence North 37°01'24" East a distance of 141.77 feet to the beginning of a non-tangent curve, concave northwesterly, having a radius of 800.55 feet and a radial bearing of South 53°12'33" East; Thence northerly along said curve an arc distance of 140.87 feet through a central angle of 10°04'57" to the beginning of a reverse curve, concave southeasterly and having a radius of 557.79 feet;
Thence northerly along said curve an arc distance of 139.81 feet through a central angle of 14°21'39" to a point of non-tangency;
Thence South 58°33'07" East a distance of 110.78 feet;
Thence South 32°33'35" West a distance of 228.76 feet to the beginning of a non-tangent curve, concave northwesterly, having a radius of 1117.00 feet and a radial bearing of North 56°56'15" West;
Thence southwesterly along said curve an arc distance of 51.36 feet through a central angle of 02°38'04" to a point of non-tangency;
Thence South 30°36'34" West a distance of 62.78 feet;
Thence South 38°32'10" West a distance of 141.57 feet;
Thence South 49°51'03" East a distance of 19.80 feet;
Thence South 30°36'34" West a distance of 54.06 feet to the beginning of a non-tangent curve, concave westerly, having a radius of 576.00 feet, and a radial bearing of South 59°31'18" East;

Thence southwesterly along said curve an arc distance of 151.61 feet through a central angle of 15°04'50" to the beginning of a reverse curve, concave southeasterly and having a radius of 497.00 feet;

Thence southerly along said curve an arc distance of 142.04 feet through a central angle of 16°22'31";

Thence South 32°50'30" West a distance of 544.26 feet to the beginning of a non-tangent curve, concave northwesterly, having a radius of 453.00 feet and a radial bearing of South 52°21'36" East;

Thence southwesterly along said curve an arc distance of 121.85 feet through a central angle of 15°24'41" to a point of non-tangency;

Thence South 37°48'36" East a distance of 59.09 feet;

Thence North 33°17'39" East a distance of 16.32 feet;

Thence North 33°37'46" East a distance of 330.05 feet;

Thence North 34°06'30" East a distance of 475.90 feet;

Thence North 42°21'49" East a distance of 91.38 feet;

Thence North 32°32'41" East a distance of 644.21 feet;

Thence North 24°22'31" East a distance of 27.02 feet;

Thence North 65°37'29" West a distance of 40.28 feet;

Thence South 70°57'24" West a distance of 31.83 feet;

Thence North 58°32'48" West a distance of 62.47 feet;

Thence North 08°03'00" West a distance of 31.83 feet;

Thence North 58°32'48" West a distance of 50.64 feet to the **POINT OF BEGINNING.**

Containing 2.17 acres (94,681 sq. ft.) more or less.

This legal description was prepared by me or under
My direction.

By: _____

Ryan Hunsicker, P.L.S. # 8302

Date: 05/28/2023



EXHIBIT "D-1"

Plat of SELLER's Activity Easement Reservation

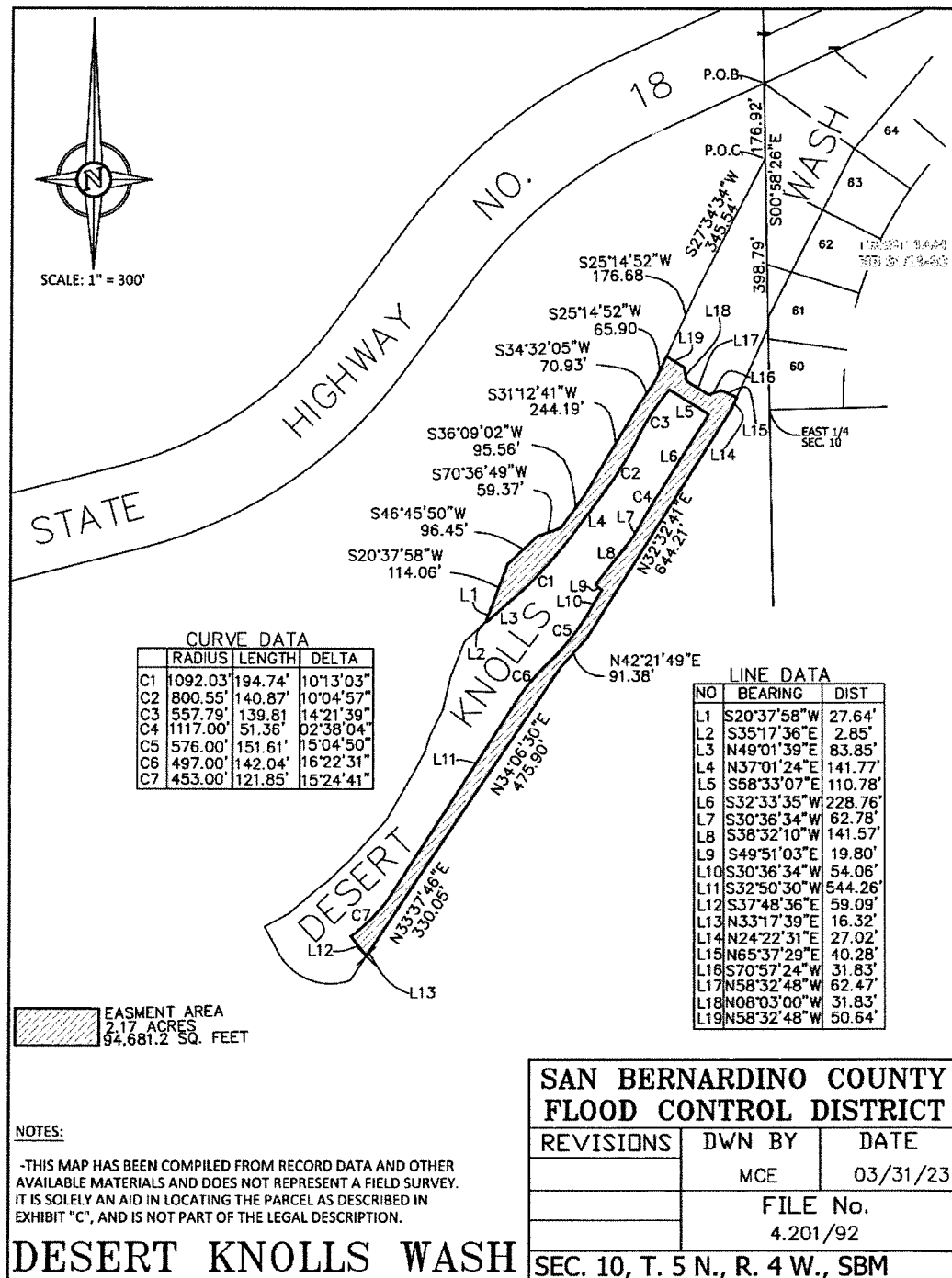


EXHIBIT "E"

Access Bridge Design Plans

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Plans Start on Next Page

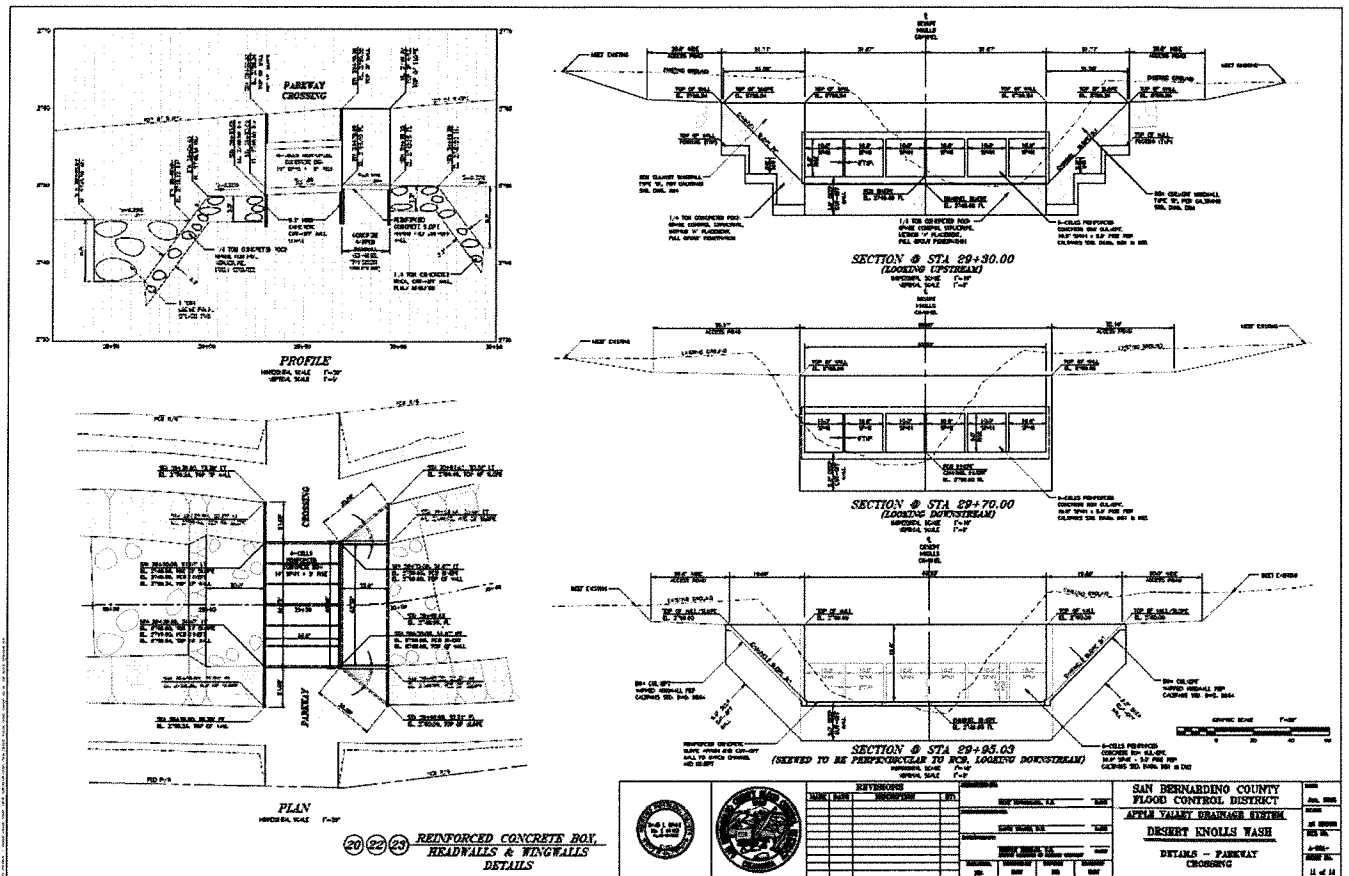


EXHIBIT "F"

Form of Grant Deed with Reservation of Easements



Recording Requested By:
San Bernardino County
Flood Control District

When Recorded Mail Document
and Tax Statement To:
San Bernardino County
Flood Control District
825 E. Third Street, Room 140
San Bernardino, CA 92415-0835

Exempt recording per Gov. Code Sections
6103 and 27383

Project: Desert Knolls
System No.: 4.201
Parcel No.: 92
Dept. Code: 11600

**GRANT DEED
WITH
RESERVATION OF
EASEMENTS**

D.P. No.: 4.200
APN: 0473-183-21
Date: March 29, 2023

The undersigned grantor(s) declare(s):

DOCUMENTARY TRANSFER TAX \$

- ☐ computed on full value of property conveyed, or
☐ computed on full value less liens and encumbrances remaining at the time of sale
☐ Unincorporated Area ☐ City: _____

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **17500 MANA ROAD LLC, a California Limited Liability Company**, hereinafter referred to as "**MANA**", does hereby grant to the **San Bernardino County Flood Control District**, a body corporate and politic, hereinafter referred to as "**District**", the following described real property (hereinafter "**Property**"), in the County of San Bernardino, State of California, more particularly described in **Exhibit "A"**, Legal Description, and shown on **Exhibit "A-1"**, Plat, attached hereto and made a part hereof,

RESERVING unto MANA and its successors and assigns, for the benefit of and appurtenant to MANA's adjacent real property, as the dominant tenement, containing approximately 89.31 acres improved with the educational facility currently known as the Academy for Academic Excellence, with an address of 17500 Mana Road, Apple Valley, CA 92307 (APN 0473-183-21), as more particularly described in the legal description attached hereto as **Exhibit "D"** (hereinafter "**MANA Property**"), the following two (2) non-exclusive easements (collectively, the "**Easements**"):

- (1) a non-exclusive access easement of approximately 0.43 acres located on a certain portion of the **Property**, more particularly described in **Exhibit "B"**, Legal Description, and shown on **Exhibit "B-1"**, Plat, attached hereto and made a part hereof (the "**Access Easement Area**") for pedestrian and vehicular bridge access by MANA and its enrollees to access the portion of **MANA Property** on each side of the **Property** (the "**Access Easement**"); and

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(2) a non-exclusive easement to access and use approximately 2.17 acres of District access roads located on a certain portion of the Property, more particularly described in Exhibit "C", Legal Description, and shown on Exhibit "C-1", Plat, attached hereto and made a part hereof (the "Activity Easement Area") for physical education class activities by MANA for its enrollees during its normal school operating hours (the "Activity Easement"). The Access Easement Area and the Activity Easement Area are collectively referred to herein as the "Easement Areas").

The Access Easement and Activity Easement are also subject to the following terms, conditions and restrictions:

1. **District Reservation of Rights.** The District reserves to itself and its successors and assigns a continuing superior right to use and make any improvements to the Property, without the right by MANA to claim compensation or damages.

2. **Improvements.** The District agrees to construct a pedestrian and vehicular culvert bridge and road over the Property in the Access Easement Area for use by MANA in connection with its Access Easement rights. MANA shall not make any improvements, change the existing grade, or otherwise modify the topography of the Easement Areas without prior written consent of the District, which the District may withhold in its sole discretion. If the District approves any such improvements or changes, MANA shall submit all plans for installation and construction or reconstruction of any improvements to the District for review and approval, which may be withheld in the District's sole discretion. MANA shall also obtain a permit from the District for any approved improvements within the Easement Areas, as applicable, and MANA shall be responsible for securing and maintaining all necessary permits and approvals from other appropriate local, state and federal agencies for its use of the Easement Areas, as applicable. MANA shall comply with all applicable laws and regulations concerning its use of the Easement Areas.

3. **Maintenance.**

(a) **Access Easement Area.** The District shall be responsible for the repair, replacement, and maintenance of the access bridge below the deck of the access bridge, while MANA shall be responsible for the repair, replacement, and maintenance on or above the access bridge deck, including, but not limited to the road over the bridge. If either party believes that repair or maintenance of the Access Easement Area is advisable, necessary, or required, by the other party, such party shall provide written notice to the other party specifying the subject repair or maintenance work. The notified party shall timely and diligently perform or complete the repair and maintenance work set forth in such notice.

(b) **Activity Easement Area.** The parties acknowledge that the Activity Easement Area is a dirt access road for the District to access and maintain the Property. MANA shall keep the Activity Easement Area free of weeds and debris.

4. **Use of Access Easement Area.** The Access Easement Area shall only be used by MANA for access purposes over the access bridge to the MANA Property located on each side of the Property, and for no other purposes. The Access Easement shall automatically terminate if the

MANA Property abutting each side of the Access Easement is no longer under common ownership.

5. Use of Activity Easement Area. The Activity Easement Area shall only be used by MANA for physical education class activities only for its enrollees during its normal school operating hours and for no other purposes. The Activities Easement shall automatically terminate if the MANA Property is no longer used for educational purposes.

6. Easement Closures. The District may temporarily close off the Access Easement Area and Activity Easement Area (or portions thereof) to MANA at any time and for any reason and excepting emergencies, shall give MANA at least 48 hours prior notice of any planned closure to the extent reasonably possible, or as soon as possible thereafter.

7. District Grant of Additional Rights. The District may grant further permits, agreements, licenses, leases, easements, reservations, restrictions, terms, conditions, covenants, encumbrances, liens, or other rights over the Easement Areas (or portions thereof) for the benefit of other entities not parties to this grant, provided that such further grants do not materially and adversely interfere with MANA's use of the Easement Areas, as determined by the District in its sole discretion.

8. Damages. MANA shall be responsible for any damage caused by its use and use by MANA's representatives, employees, agents, contractors, subcontractors, volunteers, enrollees, licensees and invitees (collectively, the "MANA Parties") of the Easement Areas and MANA shall promptly repair to District's reasonable satisfaction all such damage at MANA's sole expense.

9. Obstruction of Easement Areas. District shall at all times have free and clear access through and over the Easement Areas, and MANA shall not park vehicles within the Easement Areas, nor permit any portion of the Easement Areas to be blocked off or obstructed in any manner, except temporarily during periods of MANA's construction and/or maintenance of the Easement Areas as approved by District in its sole discretion.

10. Indemnification. MANA agrees to indemnify, defend (with counsel reasonably approved by District) and hold harmless the District, San Bernardino County and their authorized officers, employees, agents and volunteers ("District Indemnitees") from any and all claims, actions, losses, damages, and/or liability arising out of use of the Easements by the MANA Parties, including the acts, errors or omissions of any person and for any costs or expenses incurred by the District on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of District Indemnitees. The MANA indemnification obligation applies to District Indemnitees' "active" as well as "passive" negligence but does not apply to District Indemnitees' "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

11. Insurance. MANA agrees to comply with the following insurance requirements (for the purpose of this paragraph, District shall be deemed to include San Bernardino County):

A. Additional Insured - All policies, except for the Workers' Compensation policy, shall contain endorsements naming the District and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of MANA's easement obligations. The additional insured endorsements shall not limit the scope of coverage for the District to vicarious

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liability but shall allow coverage for the District to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

B. Waiver of Subrogation Rights - MANA shall require the carriers of required coverages to waive all rights of subrogation against the District, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit MANA and MANA's employees or agents from waiving the right of subrogation prior to a loss or claim. MANA hereby waives all rights of subrogation against the District.

C. Policies Primary and Non-Contributory - All policies required herein are to be primary and noncontributory with any insurance or self-insurance programs carried or administered by the District.

D. Severability of Interests - MANA agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between MANA and the District or between the District and any other insured or additional insured under the policy.

E. Proof of Coverage - MANA shall furnish Certificates of Insurance to District evidencing the insurance coverage, including endorsements, as required, prior to MANA's execution of this document, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to District, and MANA shall maintain such insurance throughout the term of the easements. Within fifteen (15) days of recordation of this Grant Deed, MANA shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

F. Acceptability of Insurance Carrier - Unless otherwise approved by the Director of the San Bernardino County Department of Risk Management (hereinafter "Risk Management Director"), insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

G. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management Director.

H. Failure to Procure Coverage - In the event that any policy of insurance required under this Grant Deed for the easements does not comply with the requirements, is not procured, or is canceled and not replaced, the District has the right but not the obligation or duty to obtain insurance if it deems necessary and any premiums paid by the District will be promptly reimbursed by MANA.

I. Insurance Review - Insurance requirements are subject to periodic review by the District. District's Risk Management Director or designee is authorized, but not required, to increase, reduce, waive or suspend any insurance requirements whenever Risk Management Director determines that any of the required insurance is not available, is unreasonably priced, or needed, or not needed, to protect the interests of the District. In addition, if the Risk Management Director determines that heretofore unreasonably priced or unavailable types of insurance

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coverage or coverage limits become reasonably priced or available, the Risk Management Director or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the District, inflation, or any other item reasonably related to the District's risk.

J. Any failure, actual or alleged, on the part of the District to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the District.

K. MANA agrees to provide insurance set forth in accordance with the requirements herein. If MANA uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, MANA agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the easements.

L. Without in any way affecting the indemnity herein provided and in addition thereto, MANA shall secure and maintain throughout the duration of the easements the following types of insurance with limits as shown:

(1) Workers' Compensation/Employers Liability - A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of MANA and all risks to such persons under these easements.

If MANA has no employees, it may certify or warrant to the District that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the District's Risk Management Director.

If MANA is a non-profit corporation organized under California or Federal law, volunteers for MANA are required to be covered by Workers' Compensation insurance.

(2) Commercial/General Liability Insurance - MANA shall carry General Liability Insurance covering all operations performed by or on behalf of MANA providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment;
- (b) Products and completed operations;
- (c) Broad form property damage (including completed operations);
- (d) Explosion, collapse and underground hazards;
- (e) Personal injury;
- (f) Contractual liability; and
- (g) \$2,000,000 general aggregate limit.

(3) Automobile Liability Insurance - Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or

symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If MANA is transporting one or more non-employee passengers in MANA's use of the Access Easement Area, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If MANA owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(4) Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

(5) Environmental Liability Insurance with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence. The required additional insured endorsement shall protect District without any restrictions.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date the Grant Deed is signed by District. The claims made insurance shall be maintained or "tail" coverage provided throughout the duration of the easements and for a minimum of five (5) years after termination of these easements.

(6) Subcontractor Insurance Requirements. MANA agrees to require all parties, including (but not limited to) subcontractors, architects, or others it hires or contracts with related to the repair, maintenance, replacement of the access bridge or any other work performed by or on behalf of MANA within the Access Easement Area to provide insurance covering the contracted operation with the same policies and provisions required of MANA in these easements and with builder's risk property insurance, providing all risk, including theft coverage for all property and materials to be used for or related to the access bridge and said insurance policies shall not have any coinsurance penalty. All policies required under this provision shall include waiver of subrogation rights against District and shall name District as an additional insured. MANA agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required herein.

12. Default. In the event of MANA's default of the terms, conditions and/or restrictions set forth herein, District shall give written notice to MANA of the same. Except in the case of the emergency as determined by District in its sole discretion, MANA shall have thirty (30) calendar days from the date of the District's notice to cure the default. If MANA, within thirty (30) calendar days from the date of the District's notice to cure the default (except in the case of an emergency as determined by District in its sole, reasonable discretion), commences the elimination of such default and continuously and diligently proceeds in good faith to eliminate such default, then the period for correction shall be extended for such length of time as is reasonably necessary to complete such correction. In the event MANA fails to cure the default within the time prescribed herein, District has the right but not the obligation to cure said default at the sole expense of MANA, or MANA's successors and assigns, and without liability to District for loss thereof. MANA and MANA's successors and assigns agree to pay District on demand all expenses incurred by District in curing such default of MANA. In addition, District may pursue all other remedies available to it at law or in equity and such remedies shall be cumulative.

13. Covenants Running With the Land. The Easements are granted for the benefit of and are appurtenant to the MANA Property, as the dominant tenement, and shall burden the District's Property, as the servient tenement. In accordance with California Civil Code Section 1468, the Easements shall run with the land and may not be assigned or transferred separate or apart from the properties which it burdens and/or benefits. The Easements shall be binding upon and shall benefit the successors of District and MANA, as owners of their respective properties.

14. Governance. This grant shall be governed by the laws of the State of California.

15. Amendments. This grant may only be amended by a writing executed by both District and MANA and recorded in the Official Records of the County of San Bernardino.

16. Attorneys' Fees. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorneys' fees directly arising from a third-party legal action against a party hereto and payable under paragraph 10 above.

17. No Waiver. No waiver with respect to any provision of the Easements shall be effective unless in writing and signed by the party against whom it is asserted or shall be construed as a waiver of any subsequent breach or failure of the same term or condition, or as a waiver of any other provision of the Easements.

18. Counterparts. This Grant Deed with Reservation of Easements may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF District and MANA have executed this Grant Deed with Reservation of Easements, the day and year written below and have agreed to be bound by the terms and provisions hereof.

DISTRICT: San Bernardino County Flood Control District

By: _____
Name: Dawn Rowe
Title: Chair, Board of Supervisors
Date: _____

MANA: 17500 MANA ROAD LLC, a California Limited Liability Company

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT "A"

(Legal Description of the Property)

A portion of that part of the East half of the East half of Section 10, Township 5 North, Range 4 West, San Bernardino Meridian, said part being that parcel of land described in that document recorded March 2, 1987 as Instrument Number 1987-0066790, said portion being all of said part described as follows:

COMMENCING at the Northeast corner of said parcel of land per said Instrument Number 1987-0066790;

Thence along the East line of said parcel South 00°58'26" East a distance of 176.92 feet to the POINT OF BEGINNING;

Thence South 27°34'34" West, a distance of 345.54 feet;

Thence South 25°14'52" West, a distance of 242.57 feet;

Thence South 34°32'05" West, a distance of 70.93 feet;

Thence South 31°12'41" West, a distance of 244.19 feet;

Thence South 36°09'02" West, a distance of 95.56 feet;

Thence South 70°36'49" West, a distance of 59.37 feet;

Thence South 46°45'50" West, a distance of 96.45 feet;

Thence South 20°37'58" West, a distance of 114.06 feet;

Thence South 20°37'58" West, a distance of 27.64 feet;

Thence South 45°41'06" West, a distance of 73.39 feet;

Thence South 21°26'22" West, a distance of 89.09 feet;

Thence South 13°22'02" West, a distance of 80.16 feet;

Thence South 26°26'58" West, a distance of 64.83 feet;

Thence South 17°17'57" West, a distance of 39.71 feet;

Thence South 27°43'09" West, a distance of 49.16 feet;

Thence South 30°00'22" West, a distance of 137.88 feet;

Thence South 42°04'47" West, a distance of 123.40 feet;

Thence South 46°16'14" West, a distance of 79.26 feet;

Thence South 55°13'12" West, a distance of 24.62 feet;

Thence South 49°00'43" West, a distance of 92.15 feet;

Thence South 61°55'18" West, a distance of 64.90 feet;

Thence South 28°04'42" East, a distance of 68.39 feet to the beginning of a curve, concave northeasterly having a radius of 140.00 feet;

Thence southeasterly along said curve an arc distance of 199.77 feet through a central angle of 81°45'27";

Thence North 33°17'39" East, a distance of 84.02 feet;

Thence North 33°37'46" East, a distance of 330.05 feet;

Thence North 34°06'30" East, a distance of 475.90 feet;

Thence North 42°21'49" East, a distance of 91.38 feet;

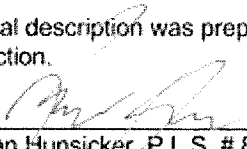
Thence North 32°32'41" East, a distance of 644.21 feet;

Thence North 24°22'31" East, a distance of 207.21 feet to the said East line;

Thence North 00°58'26" West, a distance of 398.79 feet along said East line to the POINT OF BEGINNING.

Containing 8.90 acres (387,586 sq. ft.) more or less.

This legal description was prepared by me or under
My direction.

By: 
Ryan Hunsicker, P.L.S. # 8302
Date: 05/28/2023

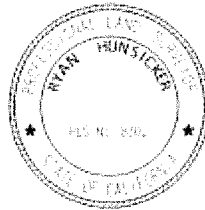


EXHIBIT "A-1" (Plat of the Property)

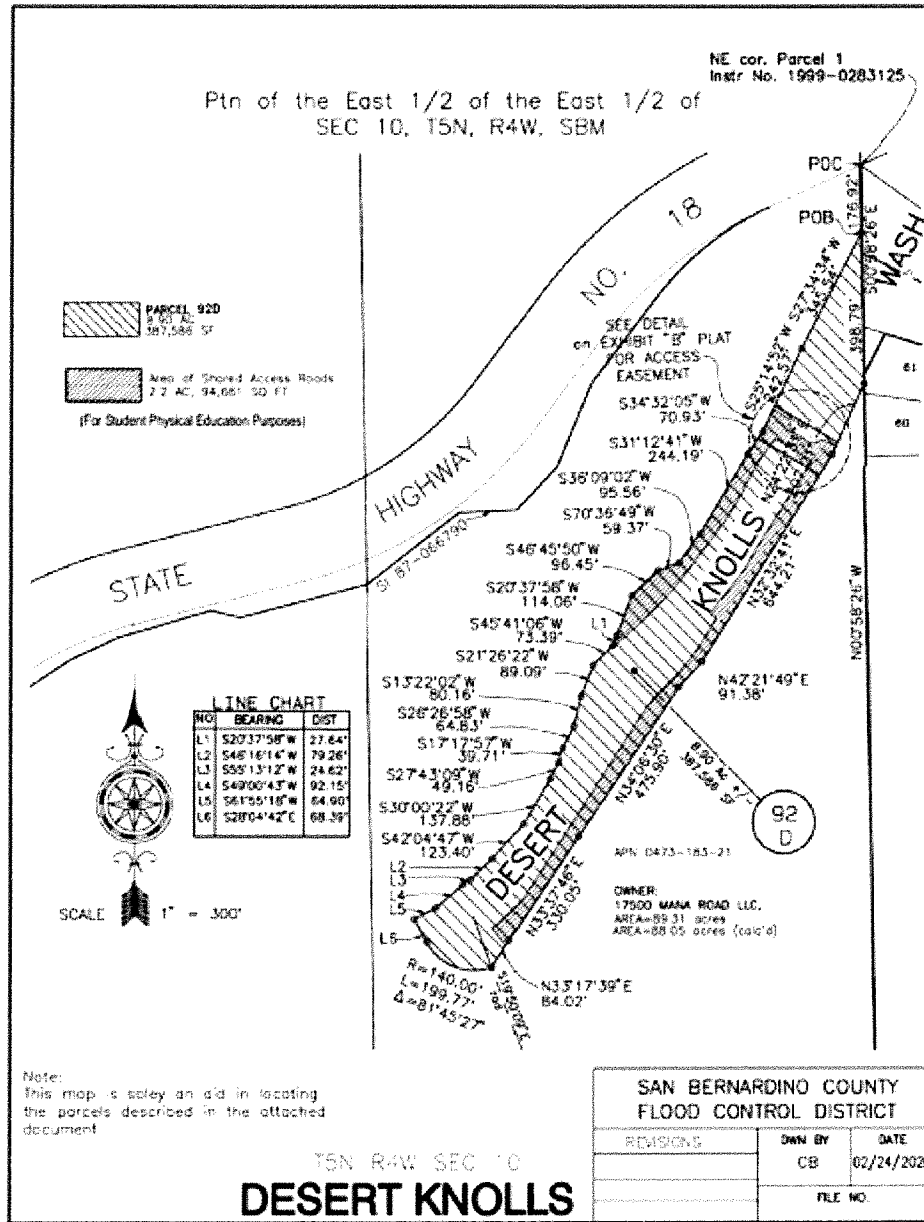


EXHIBIT "B"


(Legal Description of the Access Easement Area)

COMMENCING at the Point of Beginning of the hereinbefore described parcel of land;

Thence along the northwesterly line of said parcel, South 27°34'34" West, a distance of 345.54 feet;
Thence continuing along said northwesterly line, South 25°14'52" West, a distance of 166.91 feet to the POINT OF BEGINNING of this access easement;
Thence also along said northwesterly line continuing South 25°14'52" West, a distance of 75.66 feet;
Thence along said northwesterly line South 34°32'05" West, a distance of 20.76 feet;
Thence leaving said northwesterly line South 59°21'05" East, a distance of 189.75 feet to the southeasterly line of the aforementioned parcel;
Thence along said southeasterly line North 32°32'41" East, a distance of 61.74 feet;
Thence continuing along the southeasterly line North 24°22'31" East, a distance 36.25 feet;
Thence leaving said southeasterly line North 59°51'12" West, a distance of 193.55 feet to said POINT OF BEGINNING.

Reserved Access Easement containing 0.43 acres (18,604 sq. ft.) more or less

This legal description was prepared by me or under
My direction.

By: 
Ryan Hunsicker, P.L.S. # 8302
Date: 05/28/2023

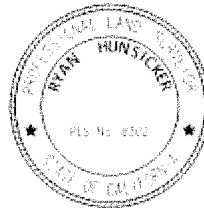
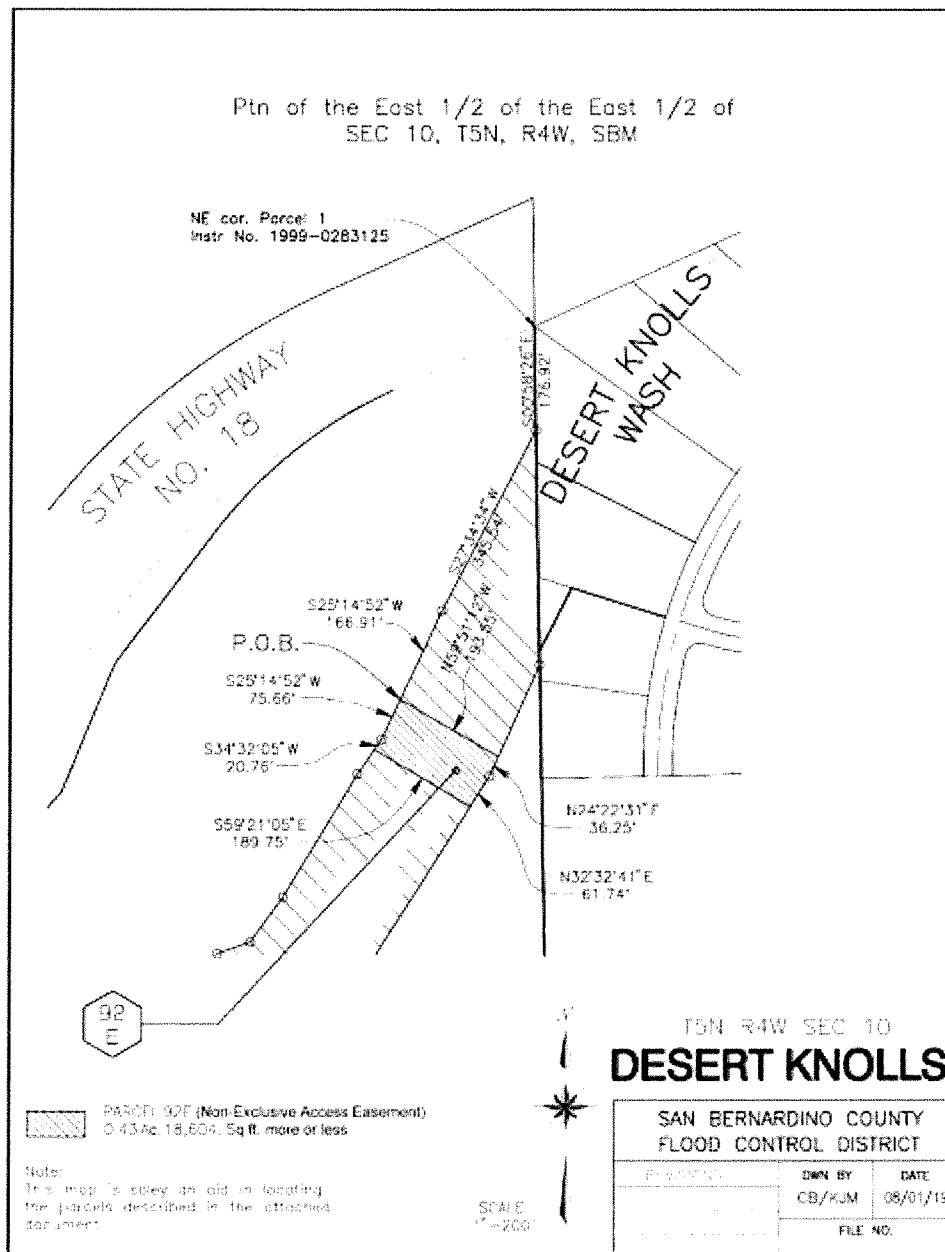


EXHIBIT "B-1" (Plat of the Access Easement Area)



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EXHIBIT "C"

Legal Description of the Activity Easement Reservation

A portion of that part of the East half of the East half of Section 10, Township 5 North, Range 4 West, San Bernardino Meridian, in San Bernardino County, State of California, according to the official plat thereof said part being a portion of that parcel of land described in that document recorded March 2, 1987 as Instrument Number 1987-0066790, official records of said county, said portion being all of said part described as follows:

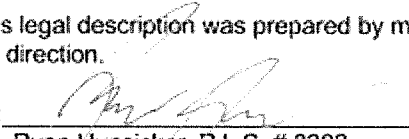
COMMENCING at the Northeast corner of said parcel of land per said Instrument Number 1987-0066790, said corner being on the East line of said Section 10;

Thence South $00^{\circ}58'26''$ East along the East line of said parcel a distance of 176.92 feet;
Thence South $27^{\circ}34'34''$ West, a distance of 345.54 feet;
Thence South $25^{\circ}14'52''$ West, a distance of 176.68 feet to the **POINT OF BEGINNING**;
Thence continuing South $25^{\circ}14'52''$ West a distance of 65.90 feet;
Thence South $34^{\circ}32'05''$ West, a distance of 70.93 feet;
Thence South $31^{\circ}12'41''$ West, a distance of 244.19 feet;
Thence South $36^{\circ}09'02''$ West, a distance of 95.56 feet;
Thence South $70^{\circ}36'49''$ West, a distance of 59.37 feet;
Thence South $46^{\circ}45'50''$ West, a distance of 96.45 feet;
Thence South $20^{\circ}37'58''$ West, a distance of 114.06 feet;
Thence South $20^{\circ}37'58''$ West, a distance of 27.64 feet;
Thence South $35^{\circ}17'36''$ East, a distance of 2.85 feet;
Thence North $49^{\circ}01'39''$ East, a distance of 83.85 feet to the beginning of a non-tangent curve, concave northwesterly, having a radius of 1092.03 feet and a radial bearing of South $41^{\circ}49'23''$ East;
Thence northeasterly along said curve an arc distance of 194.74 feet through a central angle of $10^{\circ}13'03''$ to a point of non-tangency;
Thence North $37^{\circ}01'24''$ East a distance of 141.77 feet to the beginning of a non-tangent curve, concave northwesterly, having a radius of 800.55 feet and a radial bearing of South $53^{\circ}12'33''$ East;
Thence northerly along said curve an arc distance of 140.87 feet through a central angle of $10^{\circ}04'57''$ to the beginning of a reverse curve, concave southeasterly and having a radius of 557.79 feet;
Thence northerly along said curve an arc distance of 139.81 feet through a central angle of $14^{\circ}21'39''$ to a point of non-tangency;
Thence South $58^{\circ}33'07''$ East a distance of 110.78 feet;
Thence South $32^{\circ}33'35''$ West a distance of 228.76 feet to the beginning of a non-tangent curve, concave northwesterly, having a radius of 1117.00 feet and a radial bearing of North $56^{\circ}56'15''$ West;
Thence southwesterly along said curve an arc distance of 51.36 feet through a central angle of $02^{\circ}38'04''$ to a point of non-tangency;
Thence South $30^{\circ}36'34''$ West a distance of 62.78 feet;
Thence South $38^{\circ}32'10''$ West a distance of 141.57 feet;
Thence South $49^{\circ}51'03''$ East a distance of 19.80 feet;
Thence South $30^{\circ}36'34''$ West a distance of 54.06 feet to the beginning of a non-tangent curve, concave westerly, having a radius of 576.00 feet, and a radial bearing of South $59^{\circ}31'18''$ East;
Thence southwesterly along said curve an arc distance of 151.61 feet through a central angle of $15^{\circ}04'30''$ to the beginning of a reverse curve, concave southeasterly and having a radius of 497.00 feet;
Thence southerly along said curve an arc distance of 142.04 feet through a central angle of $16^{\circ}22'31''$;

Thence South 32°50'30" West a distance of 544.26 feet to the beginning of a non-tangent curve, concave northwesterly, having a radius of 453.00 feet and a radial bearing of South 52°21'36" East; Thence southwesterly along said curve an arc distance of 121.85 feet through a central angle of 15°24'41" to a point of non-tangency;
 Thence South 37°48'36" East a distance of 59.09 feet;
 Thence North 33°17'39" East a distance of 16.32 feet;
 Thence North 33°37'46" East a distance of 330.05 feet;
 Thence North 34°06'30" East a distance of 475.90 feet;
 Thence North 42°21'49" East a distance of 91.38 feet;
 Thence North 32°32'41" East a distance of 644.21 feet;
 Thence North 24°22'31" East a distance of 27.02 feet;
 Thence North 65°37'29" West a distance of 40.28 feet;
 Thence South 70°57'24" West a distance of 31.83 feet;
 Thence North 58°32'48" West a distance of 62.47 feet;
 Thence North 08°03'00" West a distance of 31.83 feet;
 Thence North 58°32'48" West a distance of 50.64 feet to the **POINT OF BEGINNING.**

Containing 2.17 acres (94,681 sq. ft.) more or less.

This legal description was prepared by me or under
 My direction.

By: 
 Ryan Hunsicker, P.L.S. # 8302
 Date: 05/28/2023

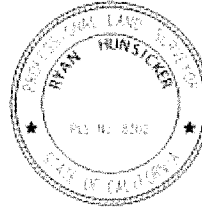
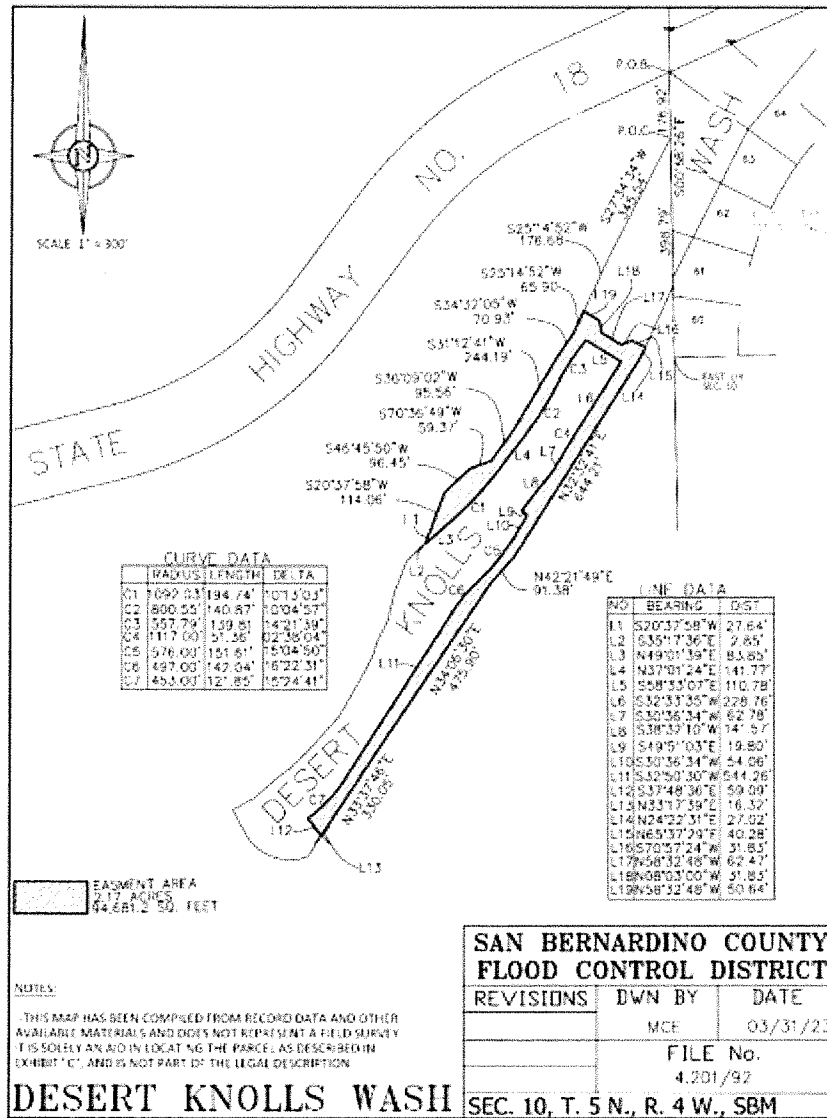


EXHIBIT "C-1"
Plat of the Activity Easement Reservation



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EXHIBIT "D"

(Legal Description for MANA Property, as the dominant tenement, containing approximately 89.31 acres improved with the educational facility currently known as the Academy for Academic Excellence, with an address of 17500 Mana Road, Apple Valley, CA 92307 (APN 0473-183-21))

RESTATED AS RECORDED IN GRANT DEED TO 17500 MANNA ROAD, A CALIFORNIA LIMITED LIABILITY CORPORATION, RECORDED FEBRUARY 02, 2020, UNDER DOCUMENT NUMBER 2020-005949, OFFICIAL RECORDS.

THAT PORTION OF THE EAST 1/2 OF THE EAST 1/2 OF SECTION 10, TOWNSHIP 5 NORTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND ON FILE IN THE DISTRICT LAND OFFICE, LYING SOUTHERLY OF THE SOUTHERLY LINE OF STATE HIGHWAY.

EXCEPTING THEREFROM ANY PORTIONS THEREOF LYING WITHIN THOSE PARCELS OF LAND CONVEYED TO THE STATE OF CALIFORNIA FOR PUBLIC HIGHWAY AS DESCRIBED IN THAT CERTAIN DEED FROM APPLETON LAND, EATER AND POWER COMPANY, RECORDED JANUARY 23, 1948, IN BOOK 2111, PAGE 432, OFFICIAL RECORDS. SAID PAREL OF LAND BEING ALSO DESCRIBED IN QUITCLAIM DEEDS. RECORDED IN BOOK 2029, PAGE 183, OFFICIAL RECORDS, AND IN BOOK 2290, PAGE 239, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF CONVEYED TO THE STATE OF CALIFORNIA, BY DEED RECORDED FEBRUARY 24, 1961, IN BOOK 5359, PAGE 490, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL OF THE MINERALS, INCLUDING AND WITHOUT LIMITATION, ALL THE OIL, GAS AND OTHER HYDROCARBON SUBSTANCES BUT EXCLUDING EXPLICITLY LIMESTONE AND WITHOUT ANY RIGHTS TO USE THE SURFACE OR THAT PORTION OF SAID LAND LYING WITHIN 500 FEET OF THE SURFACE, AND ALSO, THE RIGHT TO DRILL INTO AND THROUGH SAID LAND BELOW 500 FEET FROM THE SURFACE, AS RESERVED BY TEXICO PRODUCING INC., BY DEED RECORDED MARCH 2, 1987, INSTRUMENT NO. 87-66791, OFFICIAL RECORDS.

EXHIBIT G

Senate Bill 1439
SELLER Information Report

DEFINITIONS

Actively supporting the matter: (a) Communicate directly, either in person or in writing, with a member of the BUYER's governing body or the County's Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] with the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the BUYER in a proceeding on the matter; or (c) communicates with BUYER employees, for the purpose of influencing the BUYER's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the BUYER's governing body, the County's Board of Supervisors or BUYER employees for purposes of influencing the BUYER's decision in a matter.

Agent: A third-party individual or firm who is representing a party or a participant in the matter submitted to the BUYER's governing body. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

SELLER must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

Name of Seller:

17500 Mana Road LLC

1. Name of Principal (i.e., CEO/President) of Seller, if the individual actively supports the matter and has a financial interest in the decision:

Lisa Lamb

2. Name of agent of Seller:

Company Name	Agent(s)
N/A	

3. Name of any known lobbyist(s) who actively supports or opposes this matter:

Company Name	Contact
N/A	

4. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the BUYER or BUYER's board governed special district.

Company Name	Subcontractor(s):	Principal and/or Agent(s):
N/A		

5. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?

Yes ☐

No ☐

6. Name of any known individuals/companies who are not listed in Questions 1-5, but who may (1) actively support

or oppose the matter submitted to the BUYER's Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
N/A	

7. Was a campaign contribution, of more than \$250, made to any member of the BUYER's Board of Supervisors or other BUYER elected officer on or after January 1, 2023, by any of the individuals or entities listed in Question Nos. 1-7?

No ☒ If **no**, please skip Question No. 9 and sign and date this form.

Yes ☐ If **yes**, please continue to complete this form.

8. Name of Buyer's Board of Supervisor Member or other _____
Buyer elected officer:

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Buyer's Board Members/Buyer elected officer to whom anyone listed made campaign contributions.

By signing the Agreement, SELLER certifies that the statements made herein are true and correct. SELLER understands that the individuals and entities listed in Question Nos. 1-7 are prohibited from making campaign contributions of more than \$250 to any member of the BUYER's governing body, the County's Board of Supervisors or other County elected officer while award of this Agreement is being considered and for 12 months after a final decision by the BUYER.⁹