

TO: BOARD OF DIRECTORS
REVIEWED: MARIO IGLESIAS *MIG*
GENERAL MANAGER
FROM: PETER V. SEVCIK, P.E. *P.V.S.*
DIRECTOR OF
ENGINEERING & OPERATIONS
DATE: April 7, 2016

**AGENDA ITEM
D-4
APRIL 13, 2016**

**ACCEPT OFFER OF WATER AND SEWER IMPROVEMENTS
AND EASEMENTS FOR TRACT 2494**

ITEM

Accept offer of water and sewer improvements and easements for Tract 2494, a 16 single family unit development on Tefft Street in Nipomo [RECOMMEND ADOPT RESOLUTION ACCEPTING OFFER OF IMPROVEMENTS AND EASEMENTS].

BACKGROUND

Upon completion of a developer's project, the District accepts improvements for the project after all requirements have been met. James and Sandra Eudy, the developers of Tract 2494, a 16 single family unit development on Tefft Street, have met the District's standard conditions:

- Installed water and sewer improvements that are to be dedicated to the District
- Paid associated capacity charges
- Provided an Offer of Dedication
- Provided required easements
- Provided project as-built drawings
- Provided Engineer's certification

Regarding the Plan Check and Inspection Fees, the developers owe the District for inspection and other costs, some of which have yet to be billed by the District. Historically, the District has recovered these costs after the Board accepts the project as part of staff's project close out procedure. Staff will not physically set water meters until all of these costs are paid.

FISCAL IMPACT

The developer paid a District Capacity Fee Deposit in the amount of \$315,024 for the project. The project's plan check and inspection account has a positive balance of approximately \$1970. Staff will not physically set water meters until all of District's costs related to the project are paid.

RECOMMENDATION

By motion and roll call vote, adopt Resolution accepting improvements and easements.

ATTACHMENTS

- A. Resolution 2016-XXXX Accept Tract 2494

April 13, 2016

ITEM D-4

ATTACHMENT A

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2016-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
ACCEPTING WATER AND SEWER IMPROVEMENTS AND EASEMENTS FOR TRACT 2494**

WHEREAS, the District approved the construction plans on February 24, 2005, for the water and sewer improvements to be constructed to serve Tract 2494; and

WHEREAS, the water and sewer improvements have been constructed and said improvements are complete and certified by the Owners' Engineer; and

WHEREAS, on March 6, 2016, James and Sandra Eudy (herein the "Owner") offered the water and sewer improvements to the Nipomo Community Services District; and

WHEREAS, this District has accepted such offer without obligation except as required by law; and

WHEREAS, all water and sewer capacity fees for service, required in conformance with District ordinances, have been paid for Tract 2494; and

WHEREAS, Owner has offered to the District water pipeline and sewer pipeline easements for APN's 092-574-001, 092-574-003, and 092-574-004 (EXHIBITS A, B and C respectively).

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AS FOLLOWS:

1. That the water and sewer improvements to serve Tract 2494 in Nipomo are accepted by the District.
2. That the attached water pipeline and sewer pipeline easements are hereby accepted and staff is ordered to record the attached easements (EXHIBITS A, B and C).
3. That staff is authorized to set water meters to serve the project once all legal costs and the Plan Check and Inspection Agreement costs have been paid by the Owner.

On the motion by Director _____, seconded by Director _____, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

CONFLICT:

the foregoing resolution is hereby adopted this 13th day of April 2016.

CRAIG AMSTRONG
President, Board of Directors

ATTEST:

APPROVED AS TO FORM:

MARIO IGLESIAS
General Manager and Secretary to the Board

MICHAEL W. SEITZ
District Legal Counsel

RECORDING REQUESTED BY:
NIPOMO COMMUNITY SERVICES DISTRICT

WHEN RECORDED RETURN TO:
Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444

A portion of APN #: 092-574-003

**GRANT OF EASEMENT AND
AGREEMENT AFFECTING REAL PROPERTY**

Exhibits Incorporated by Reference:

Exhibit "A" – Real Property Legal Description
Exhibit "B" – Legal Description of Easement Granted to District
Exhibit "C" – Depiction of Easement Granted to District

THIS GRANT OF EASEMENT AND AGREEMENT AFFECTING REAL PROPERTY (herein "Agreement") is entered into March 9, 2016, by and between James and Sandra Eudy, (herein "Grantors") and the Nipomo Community Services District, a political subdivision of the State of California, (herein "Grantee" or "District") with reference to the following Recitals:

A. Grantors own certain real property (herein "Real Property") located within the Nipomo Community Services District, County of San Luis Obispo, more particularly described in Exhibit "A".

B. Grantors are improving said Real Property including the construction of certain utilities that will be dedicated to the District for operation and maintenance ("District Facilities").

C. Grantors desire to convey a utility easement to Nipomo Community Services District over a portion of said Real Property for the purposes referenced in this Agreement.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged the parties hereto agree as follows:

1. **GRANT OF EASEMENT**

Grantors, hereby grant and convey to the Nipomo Community Services District a utility easement (herein "Easement" or "Easement Area"), more particularly described in Exhibit "B" and as depicted in Exhibit "C".

2. **PURPOSE**

The purpose of the Easement is the present and future construction, reconstruction, operation, repair, and maintenance of a District facilities, including water pipelines, sewer pipelines and other utilities operated by the District, from and after said utilities are dedicated and accepted by the District (herein "District Facilities"), in such manner and size and with such accessory parts and structures, as the District or its successors in interests from time to time deem necessary.

3. **MAINTENANCE AND REPAIR**

It is anticipated by the parties that construction, repair, replacement and inspection of District facilities will be performed by District within said Easement Area. Therefore, Grantor(s) covenants, promises and agree as follows:

A. District shall have the right of ingress and egress for personnel, vehicles, and construction equipment to, from, and along the Easement Area at any time, without prior notice, including the right to use lanes, drives, rights-of-way, and roadways within the Real Property which now exist or which hereinafter may be constructed, as shall be convenient and necessary for the purpose of exercising the rights herein, and herein above, set forth.

B. The Grantor(s) shall not construct or permit others to construct utilities or improvements on, over, or under the Easement Area, such as retaining walls, fences, patios, trees and/or shrubs which could obstruct

District's access to the Easement Area, or cause damage to District Facilities contained within the Easement Area, without first receiving the written approval of District.

C. Grantor(s) shall remove improvements and or utilities constructed in violation of subparagraph (b), above, immediately at Grantor's expense. If Grantors do not remove the improvements, District is authorized to enter the Easement Area and remove them. District shall charge all costs, including administrative costs, for the removal of said improvements to Grantors, individually and/or collectively.

D. Grantor(s), jointly and severally, agree to indemnify, defend, and hold harmless District and its agents and employees from any claims, suits, or losses of any kind (including attorney's fees and court costs) or any damages occurring to or within the Easement Area and/or any adjacent real or personal property due to District's exercise of its rights to remove improvements, pursuant to subparagraph (d), above and/or the Districts construction, operation, repair and maintenance of District Facilities.

E. District has the right to enforce all reimbursement remedies described in Paragraphs C and D, above, by all means available to the District.

4. **MISCELLANEOUS**

A. This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Agreement shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged.

B. In the event of any controversy, claim, or dispute relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

C. The obligations of Grantor(s) shall be considered for all purposes to be both covenants and conditions that shall run with the land and be binding

on the successors and assigns of the Grantor(s) and shall inure to the benefit of District and its successors and assigns.

D. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

E. This Deed Restriction, Easement and Agreement Affecting Real Property shall be recorded in the Official Records in the County Recorder's Office, San Luis Obispo County.

F. Recitals A through C are incorporated herein by reference as though set forth at length.

G. The Agreement shall be governed by the laws of the State of California. Any litigation regarding the Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court nearest to San Luis Obispo County, if in federal court.

5. AUTHORITY TO EXECUTE.

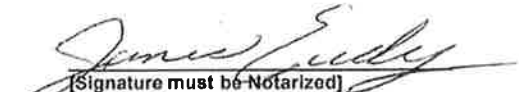
All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Grantor(s) hereby warrants that Grantor(s) shall not have breached the terms or conditions of any other contract or Agreement to which Grantor(s) is obligated, which breach would have a material effect hereon.

///


///

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective the date the District executes the Certificate of Acceptance.

GRANTOR(S):


[Signature must be Notarized]

James Eudy
[Type or print name]


[Signature must be Notarized]

Sandra Eudy
[Type or print name]

Date: 03-09-2016

**CERTIFICATE OF ACCEPTANCE
GOVERNMENT CODE §2781**

This is to certify that the Nipomo Community Services District, Grantee, herein, by Board action on _____, 2016, accepts for public purposes the real property, or interest described in the foregoing Easement and Agreement, dated _____, 2016, from Grantors, and consents to the recordation thereof.

Nipomo Community Services District

By: _____
Name: Craig Armstrong
Title: President

ATTEST:

Mario Iglesias, General Manager and Secretary
Nipomo Community Services District

Exhibit "A"

Lot 2 of Tract 2494 recorded in Book 29 of Maps, Pages 49-53 in the Office of the County Recorder of San Luis Obispo, State of California.



Jeffrey G. Zambo, PLS 9210


Date 3-9-2016



Exhibit "B"

The southerly 20 feet of Lot 2 of Tract 2494 recorded in Book 29 of Maps, Pages 49-53 in Office of the County Recorder of San Luis Obispo, State of California.

The above described land is for present and future construction, reconstruction, operation, repair, and maintenance of a District facility for sewer pipeline only.



Jeffrey G. Zambo, PLS 9210

Date 3-9-2016



TEFFT STREET

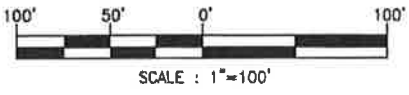
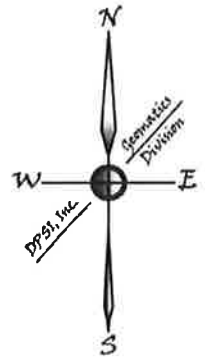


LEGEND


R = 29/MB/49-53



= Sewer Easement Area as legally described on Exhibit "B"



THIS MAP IS PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY.

 DIVERSIFIED PROJECT SERVICES INTERNATIONAL	EXHIBIT "C2" PORTION OF TRACT 2494 30/MB/49-53 COUNTY OF SAN LUIS OBISPO, STATE OF CA	
	PROJECT: 160105 DATE: 03/08/2016	PROJ. MGR: JGW DRAFTED BY: JGW

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Kern)

On March 10, 2016 before me, T. Valentine, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared James Eudly and Sandra Eudly
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Grant of Easement Document Date: 3/10/16
Number of Pages: 9 Signer(s) Other Than Named Above: Jeffrey Zumbo

Capacity(ies) Claimed by Signer(s)

Signer's Name: James Eudly
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: Sandra Eudly
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

RECORDING REQUESTED BY:
NIPOMO COMMUNITY SERVICES DISTRICT

WHEN RECORDED RETURN TO:
Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444

A portion of APN #: 092-574-004

**GRANT OF EASEMENT AND
AGREEMENT AFFECTING REAL PROPERTY**

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on the successors and assigns of the Grantor(s) and shall inure to the benefit of District and its successors and assigns.

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5. AUTHORITY TO EXECUTE.

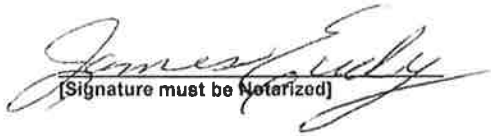
All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Grantor(s) hereby warrants that Grantor(s) shall not have breached the terms or conditions of any other contract or Agreement to which Grantor(s) is obligated, which breach would have a material effect hereon.

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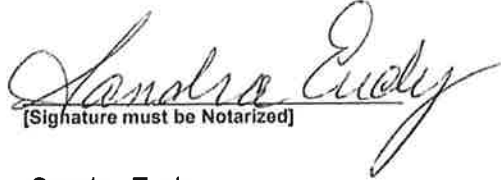
////

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective the date the District executes the Certificate of Acceptance.

GRANTOR(S):


[Signature must be Notarized]

James Eudy
[Type or print name]


[Signature must be Notarized]

Sandra Eudy
[Type or print name]

Date: 03-09-2016

**CERTIFICATE OF ACCEPTANCE
GOVERNMENT CODE §2781**

This is to certify that the Nipomo Community Services District, Grantee, herein, by Board action on _____, 2016, accepts for public purposes the real property, or interest described in the foregoing Easement and Agreement, dated _____, 2016, from Grantors, and consents to the recordation thereof.

Nipomo Community Services District

By: _____
Name: Craig Armstrong
Title: President

ATTEST:

Mario Iglesias, General Manager and Secretary
Nipomo Community Services District

Exhibit "A"

Lot 3 of Tract 2494 recorded in Book 29 of Maps, Pages 49-53 in the Office of the County Recorder of San Luis Obispo, State of California.



Jeffrey G. Zambo, PLS 9210

Date 3-9-2016



Exhibit "B"

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The above described land is for present and future construction, reconstruction, operation, repair, and maintenance of a District facility for sewer pipeline only.



Jeffrey G. Zambo, PLS 9210

Date 3-9-2016



TEFFT STREET

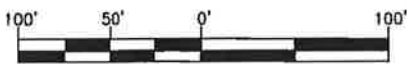
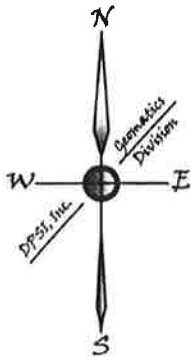


LEGEND

R = 29/MB/49-53



= Sewer easement area as legally described in Exhibit "B"



SCALE : 1"=100'



EXHIBIT "C3"
PORTION OF TRACT 2494
30/MB/49-53
COUNTY OF SAN LUIS OBISPO, STATE OF CA

PROJECT: 160105	PROJ. MGR: JGW	SHEET NO. 4 OF 4
DATE: 03/08/2016	DRAFTED BY: JGW	

THIS MAP IS PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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State of California)
County of Kern)

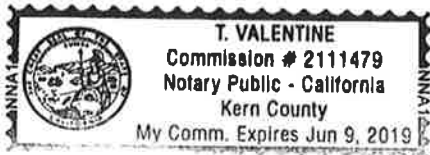
On March 10, 2016 before me, T Valentine, notary public
Date Here Insert Name and Title of the Officer

personally appeared James Elicky and Sandra Elicky
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature T Valentine
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Grant of Easement Document Date: 3/9/16
Number of Pages: 9 Signer(s) Other Than Named Above: Jeffrey Zumbo

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Signer's Name: James Elicky
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: Sandra Elicky
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
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 Other: _____
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RECORDING REQUESTED BY:
NIPOMO COMMUNITY SERVICES DISTRICT

WHEN RECORDED RETURN TO:
Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444

A portion of APN #: 092-574-001

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C. The obligations of Grantor(s) shall be considered for all purposes to be both covenants and conditions that shall run with the land and be binding

on the successors and assigns of the Grantor(s) and shall inure to the benefit of District and its successors and assigns.

D. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

E. This Deed Restriction, Easement and Agreement Affecting Real Property shall be recorded in the Official Records in the County Recorder's Office, San Luis Obispo County.

F. Recitals A through C are incorporated herein by reference as though set forth at length.

G. The Agreement shall be governed by the laws of the State of California. Any litigation regarding the Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court nearest to San Luis Obispo County, if in federal court.

5. AUTHORITY TO EXECUTE.

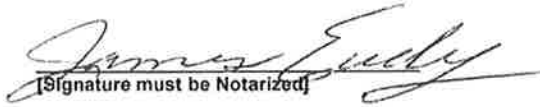
All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Grantor(s) hereby warrants that Grantor(s) shall not have breached the terms or conditions of any other contract or Agreement to which Grantor(s) is obligated, which breach would have a material effect hereon.

////

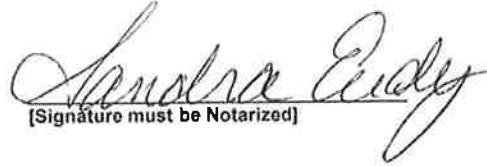
////

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective the date the District executes the Certificate of Acceptance.

GRANTOR(S):


[Signature must be Notarized]

James Eudy
[Type or print name]


[Signature must be Notarized]

Sandra Eudy
[Type or print name]

Date: 03-09-2016

**CERTIFICATE OF ACCEPTANCE
GOVERNMENT CODE §2781**

This is to certify that the Nipomo Community Services District, Grantee, herein, by Board action on _____, 2016, accepts for public purposes the real property, or interest described in the foregoing Easement and Agreement, dated _____, 2016, from Grantors, and consents to the recordation thereof.

Nipomo Community Services District


By: _____
Name: Craig Armstrong
Title: President

ATTEST:

Mario Iglesias, General Manager and Secretary
Nipomo Community Services District

Exhibit "A"

Lot 18 of Tract 2494 recorded in Book 29 of Maps, Pages 49-53 in the Office of the County Recorder of San Luis Obispo, State of California.



Jeffrey G. Zambo, PLS 9210

Date 3-9-2016



Exhibit "B"

Portion of Lot 18 as shown as Finnians Way and Derek Court within Tract 2494 recorded in Book 29 of Maps, Pages 49-53 in Office of the County Recorder of San Luis Obispo, State of California.

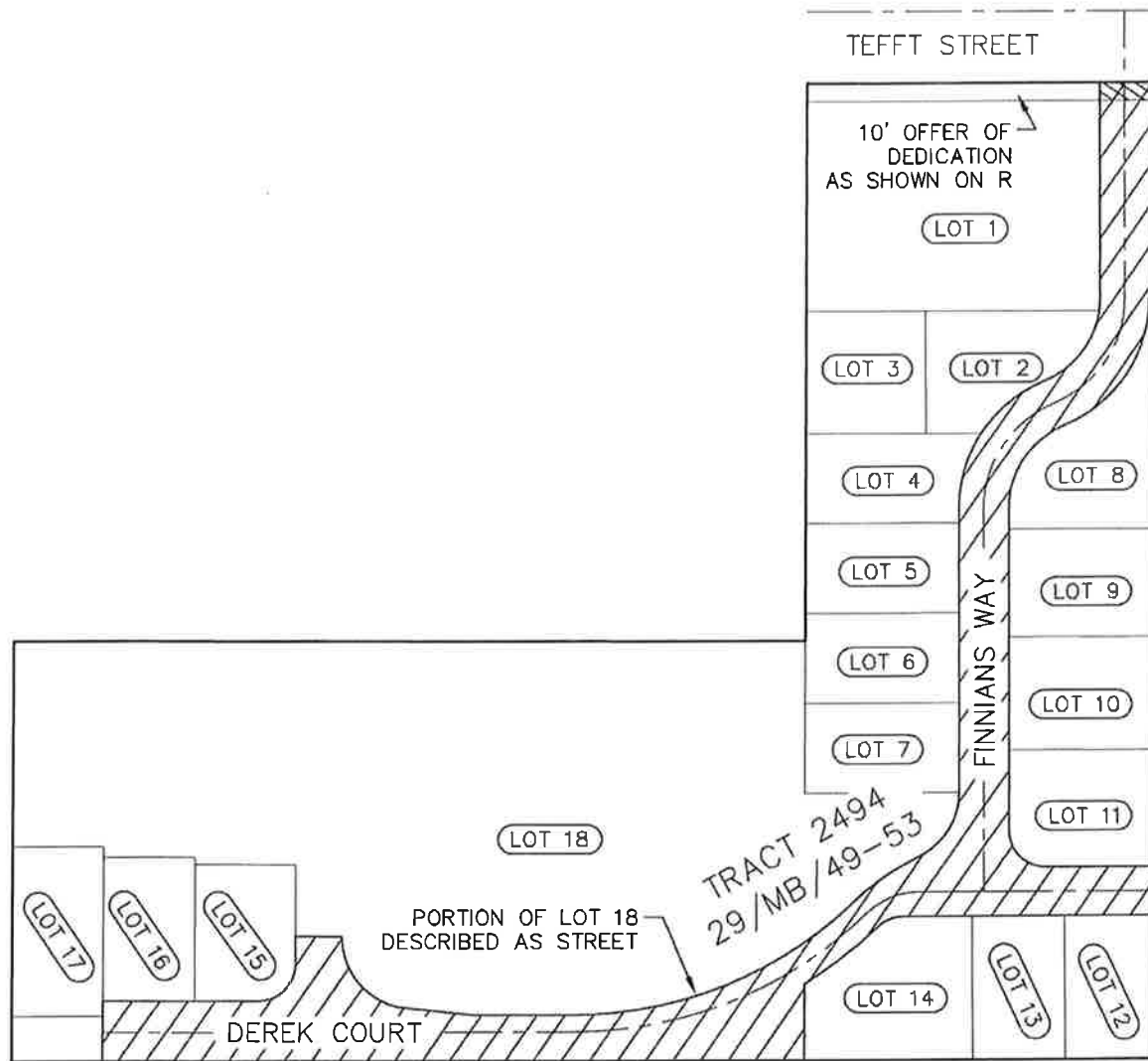
The above described land is for present and future construction, reconstruction, operation, repair, and maintenance of a District facility for sewer and water pipelines only.



Jeffrey G. Zambo, PLS 9210

Date 3-9-2016






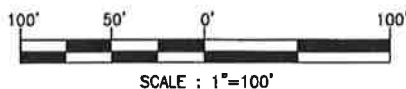
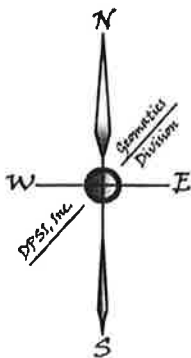
LEGEND


R = 29/MB/49-53

— = STREET RIGHT OF WAY PER R

 = WATER AND SEWER EASEMENT AREA AS LEGALLY DESCRIBED ON EXHIBIT "B"

 = A PORTION OF A 10 WIDE OFFER OF DEDICATION AS SHOWN ON R



 DIVERSIFIED PROJECT SERVICES INTERNATIONAL	EXHIBIT "C1" PORTION OF TRACT 2494 30/MB/49-53 COUNTY OF SAN LUIS OBISPO, STATE OF CA		SHEET NO. 2 OF 4
	PROJECT: 160105 DATE: 03/08/2016	PROJ. MGR: DRAFTED BY:	JGW JGW

THIS MAP IS PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Kern)

On March 10, 2014 before me, T. Valentine, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared James Eddy and Sandra Eddy
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Grant of Easement Document Date: 3/9/10
Number of Pages: 01 Signer(s) Other Than Named Above: Jeffrey Zambro

Capacity(ies) Claimed by Signer(s)

Signer's Name: James Eddy
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: Sandra Eddy
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____