

AGENDA
Borrego Water District Board of Directors
Special Meeting
March 11, 2013 8:30 a.m.
806 Palm Canyon Drive
Borrego Springs, CA 92004

I. OPENING PROCEDURES

- A. Call to Order
- B. Pledge of Allegiance
- C. Roll Call
- D. Approval of Agenda
- E. Comments from Directors and Requests for Future Agenda Items
- F. Comments from the Public and Requests for Future Agenda Items (comments will be limited to 3 minutes)

II. CURRENT BUSINESS MATTERS

- A. Discussion and possible approval of Agreement regarding the use of Developers funds for legal and technical research associated with developing a water supply for the Ram's Hill Golf Course.

III. CLOSING PROCEDURE, Adjournment

The next Special Meeting of the Board of Directors is scheduled for March 19, 2013 at the Borrego Water District. The next Regular Meeting of the Board of Directors is scheduled for March 27, 2013 at the Borrego Water District.

AGREEMENT REGARDING THE USE OF DEVELOPER FUNDS FOR LEGAL AND TECHNICAL RESEARCH ASSOCIATED WITH DEVELOPING A WATER SUPPLY FOR THE RAM'S HILL GOLF COURSE

This Agreement is made and entered into as of the 4th day of March, 2013, by and between the Borrego Water District ("District") and Coaljen Limited, Inc. ("Developer"). The parties hereto are collectively referred to as the "Parties").

RECITALS

- A. Developer is in the process of purchasing property in Borrego Springs which includes the Ram's Hill Golf Course ("Golf Course"). The Golf Course is currently closed and is not being irrigated. Developer is interested in finding a cost effective water supply for the Golf Course that would allow the Golf Course to be reopened for business; and
- B. Reopening of the Golf Course would be highly beneficial for the Developer, District and residents of Borrego Springs, as this would likely result in the creation of new jobs, improved property values, increased tourism, and new home construction, all of which would contribute to the improvement of the economy in the area; and
- C. Certain legal and technical issues related to the Golf Course water supply need to be investigated in order to identify a cost effective water supply for the Golf Course, and the investigation of these issues will require the use of professional consultants; and
- D. Developer and District have agreed that Developer will provide a \$35,000 deposit to the District to facilitate the hiring of legal and technical consultants to assist with the investigation of these issues, and to ensure that public funds are not used for private benefit; and
- E. Developer and District desire to enter into this agreement, on the terms and provisions provided for below, the subject matter of which is to deal with the use and accounting of the Developer's deposit for the consultant services, and certain ancillary matters in relation to the foregoing.

AGREEMENT

1. Selection of Consultants. Developer acknowledges and agrees that there is a need to hire independent third party consultants to use their own professional judgment to conduct a review of the legal and technical issues associated with developing a cost effective water supply for the Golf Course, as described in more detail in **Attachment 1**. Developer acknowledges and agrees that District shall have and retain full rights to select the consultants and to supervise the work of the consultants. District shall select the qualified engineering consultant(s) using a Request for Qualifications ("RFQ") process. The approval of the scope of services for the RFQ, and approval of the final qualified engineering

consultant selection by the District's Board of Directors shall take place in a noticed, public meeting. One of the conditions of qualification shall be that the consultant not have any disqualifying conflicts of interests in the proposed project and involved parties pursuant to state law, including but not limited to the Political Reform Act and Government Code section 1090. District shall monitor and control the costs incurred by, and time spent by, consultants so that unnecessary costs and time delays can be avoided.

2. Developer Participation. Developer shall be consulted regarding the tasks to be performed under this agreement, and the priority of the tasks to be performed. Developer shall also have a right to receive any reports or presentations provided by the District's consultants about the results of the research at the same time as the District, with the exception of any information that, in the opinion of the District's consultant, would compromise the security of the water system if released to the public.
3. Method of Payment. Developer shall deposit \$35,000 ("Deposit") with the District to cover the costs of the consultant work and attorneys fees for preparation of this agreement. District shall account for the Deposit in a separate general ledger account designated for the research associated with developing a cost effective water supply for the Golf Course ("Project") only and, unless otherwise agreed to in writing by Developer, will only use the Deposited monies to pay for the consultants to complete the Project work. If the District has depleted the Deposit, District shall immediately notify Developer of any additional funds necessary to complete the work. Further, when the District has depleted the Deposit in accordance with this Agreement, District may notify consultants that no further work should continue until Developer has deposited additional funds with the District. If Developer fails to deposit such additional funds with the District as requested, further work shall be suspended until Developer deposits the additional requested funds. Developer shall be responsible for all costs incurred by the District for the consultants' services up until the point that the District notifies the consultants to stop work on the Project or, if applicable, up to the day that Developer advises the District in writing that Developer wishes for the District to stop or suspend carrying out the work. If any portion of the Deposit or any additional funds deposited hereunder remain after the completion of the work or the stoppage of the work and full payment has been made to the consultants for any costs incurred, they shall be forthwith returned to Developer without interest.
4. Examination of Bills. District shall deliver an up-to-date accounting of the charges which have been deducted by the District from the Deposit, and the remaining balance of the Deposit, on a quarterly basis (an "Accounting"). Each Accounting will include, without limitation, sufficient detail to permit Developer to fully ascertain the nature of the charges which have been deducted by the District from the Deposit as of the date of the Accounting. However, in the event that the District requests additional funds to be provided by Developer pursuant to Section 2 above, in the event that the District or Developer causes the Consultant to stop or suspend performance of the work, or the Project itself is stopped or suspended, then (A) District shall deliver an Accounting to Developer within (ten) business days, and (B) if requested in writing by Developer, Developer shall have the right to examine, within ten (10) business days of Developer's written request (i) all invoices of the

Project consultants, and the underlying time and billing records and (ii) all information and documentation in relation to the Deposit, including without limitation, bank statements.

5. Authority of District. District has the ultimate authority and responsibility to review the consultants' work prior to approval of any projects related to water supply for the Golf Course, however, District shall keep Developer informed of any issues or areas of concern that arise during the work, so that the process can continue in a timely manner. Nothing in this Agreement is meant to be a guarantee, nor a contractual, legal or equitable obligation on the part of District to ensure, that any projects related to the water supply for the Golf Course will be approved by the District, or that the approval of other governmental entities with authority over the potential project(s) will be obtained. The District reserves the right to exercise its discretionary approval authority with regard to any proposed contractual arrangements or water supply projects related to the Golf Course. Further, nothing in this Agreement specifies or guarantees the timing of completion of the legal and technical investigation to be undertaken pursuant to this Agreement. Developer acknowledges and understands that the District has discretion to approve any contracts or projects related to provision of water to the Golf Course in accordance with pertinent laws and policies and may not enter into any agreement to obligate the District Board of Directors to exercise its discretion in a particular manner or for a particular result.
6. Indemnity. Developer agrees to defend, indemnify and hold harmless the District, its officers, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein), arising out of District's performance of this Agreement, except for any such claims, demands, actions, losses, damages, injuries, and liability, direct or indirect, arising out of the sole negligence or willful misconduct of the District, its officers, agents, employees or volunteers.
7. No Inducement and Entire Agreement. Developer declares and represents that no promise, inducement or agreement not herein expressed has been made to it with respect to the subject matter of this Agreement, that this Agreement contains the complete and exclusive statement with respect to the subject matter hereof between Developer and District, and that the terms of this Agreement are contractual and not a mere recital. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, with respect to the subject matter of this Agreement are superseded in total by this Agreement. The recitals to this Agreement are incorporated into this Agreement by this reference thereto. This Agreement is entered into knowingly, freely, intelligently, and voluntarily by the parties, without any duress, or coercion. The parties have had a full opportunity to review and consider this Agreement prior to its execution. The parties fully acknowledge that they also have had a full opportunity to discuss the contents of this Agreement with their respective representatives.
8. Validity. If any provision of this Agreement, or part thereof, is held invalid, void or voidable as against the public policy or otherwise, the invalidity shall not affect other provisions or parts thereof, which may be given effect without the invalid provision or part. To this

- 15. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the successors and assigns in interest of the Developer.
- 16. Termination. This Agreement may be terminated with thirty (30) days notice if Developer decides not to proceed with the proposed Project. District has the right to terminate this Agreement for any reason with thirty (30) days notice to Developer. Upon termination, Developer shall be responsible for compensation of the consultant's services performed up to the effective date of termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

BORREGO WATER DISTRICT:

DEVELOPER:

Beth Hart, President

DocuSigned by:
William J. Berkley, Jr. 3/4/2013

 Coalition Limited, Inc.

ATTACHMENT 1: LEGAL AND TECHNICAL ISSUES TO BE RESEARCHED IN ACCORDANCE WITH AGREEMENT BETWEEN DISTRICT AND DEVELOPER FOR USE OF DEVELOPER FUNDS INCLUDES THE ITEMS BELOW:

Engineering and legal feasibility of the proposed Cocopah Well Solution, including legality of wheeling water from the well.

Engineering Study for Center Pivot Well

All of the following issues shall only be addressed upon future written approval of Developer:

Legality of District and Developer sharing ownership of a well (Well ID1-12) and associated potable pipeline

Legality of selling Wells ID1-1 and ID1-2, and possibly ID1-8, and allowing the owner to pump water from one parcel to another

Determination of value of Wells ID-1, 2, 8 and 12

Engineering study on water supplies for Well ID1-12

Rate study on availability fees for golf course parcels

Other issues as they arise