

**Borrego Water District Board of Directors**  
**Special Meeting**  
**March 12, 2024 @ 9:00 a.m.**  
**806 Palm Canyon Drive**  
**Borrego Springs, CA 92004**

The Borrego Water District Board of Directors meeting as scheduled will be conducted in person and in an electronic format please note BWD is providing remote attendance options solely as a matter of convenience to the public. BWD will not stop or suspend its in-person public meeting should a technological interruption occur with respect to the GoTo meeting or call-in line listed on the agenda. We encourage members of the public to attend BWD meetings in-person at the address printed on page 1 of this agenda. Anyone who wants to listen to or participate in the meeting remotely is encouraged to observe the GO TO MEETING at:

Please join my meeting from your computer, tablet or smartphone.

<https://meet.goto.com/608577917>

You can also dial in using your phone.

United States: +1 (646) 749-3122

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**I. OPENING PROCEDURES -**

- A. Call to Order
- B. Pledge of Allegiance
- C. Directors' Roll Call: President Dice, Vice President Baker, Sec/Treas Johnson and Directors Duncan & Moran.
- D. Approval of Agenda
- E. Comments from the Public & Requests for Future Agenda Items (may be limited to 3 min)
- F. Comments from Directors
- G. Correspondence Received from the Public - None

**II. ITEMS FOR BOARD CONSIDERATION AND POSSIBLE ACTION -**

- A. 2024 Federal Congressional Appropriation – A Schwab, BBK
- B. Best, Best and Krieger Legislative Advocacy Engagement Letter – G Poole
- C. Purchase and Sale Agreement – Viking Ranch – S Anderson
- D. Town Hall 2024 Schedule and Agenda – K Dice/D Johnson
- E. Borrego Springs Subbasin Watermaster Board – VERBAL D Duncan/K Dice/T Driscoll
  - 1. Update on Board Activities Including 2-8-24 Agenda Items
  - 2. Update on Technical Advisory Committee Activities
  - 3. 2023 Draft Annual Report Comments – T Driscoll, Intera

**III. BOARD COMMITTEE REPORTS, IF NEEDED**

STANDING:

- A. Operations and Infrastructure: Duncan/Baker
- B. Budget and Audit: Dice/Moran
- C. ACWA/JPIA Insurance: Dice/Johnson –

AGENDA: March 12, 2023: The Borrego Springs Water District complies with the Americans with Disabilities Act. Persons with special needs should call Geoff Poole, General Manager – at (760) 767 – 5806 at least 48 hours in advance of the start of this meeting, in order to enable the District to make reasonable arrangements to ensure accessibility. If you challenge any action of the Board of Directors in court, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Board of Directors (c/o the Board Secretary) at, or prior to, the public hearing.

All Documents for public review on file with the District's secretary located at 806 Palm Canyon Drive, Borrego Springs CA 92004. Any public record provided to a majority of the Board of Directors less than 72 hours prior to the meeting, regarding any item on the open session portion of this agenda, is available for public inspection during normal business hours at the Office of the Board Secretary, located at 806 Palm Canyon Drive, Borrego Springs CA 92004.

AD HOC:

- A. Prop 68 Implementation: Baker/Johnson
- B. Public Outreach: Dice/Johnson:
- C. Grants: Dice/Johnson
- D. Cyber Security/Risk Management: Baker
- E. Developer's Agreement: Baker/Duncan
- F. Finance: Baker/Moran
- H. Borrego Springs Basin Water Quality: Moran/Johnson
- I. Automated Metering Infrastructure Implementation: Baker/Moran

**IV. STAFF REPORTS – VERBAL**

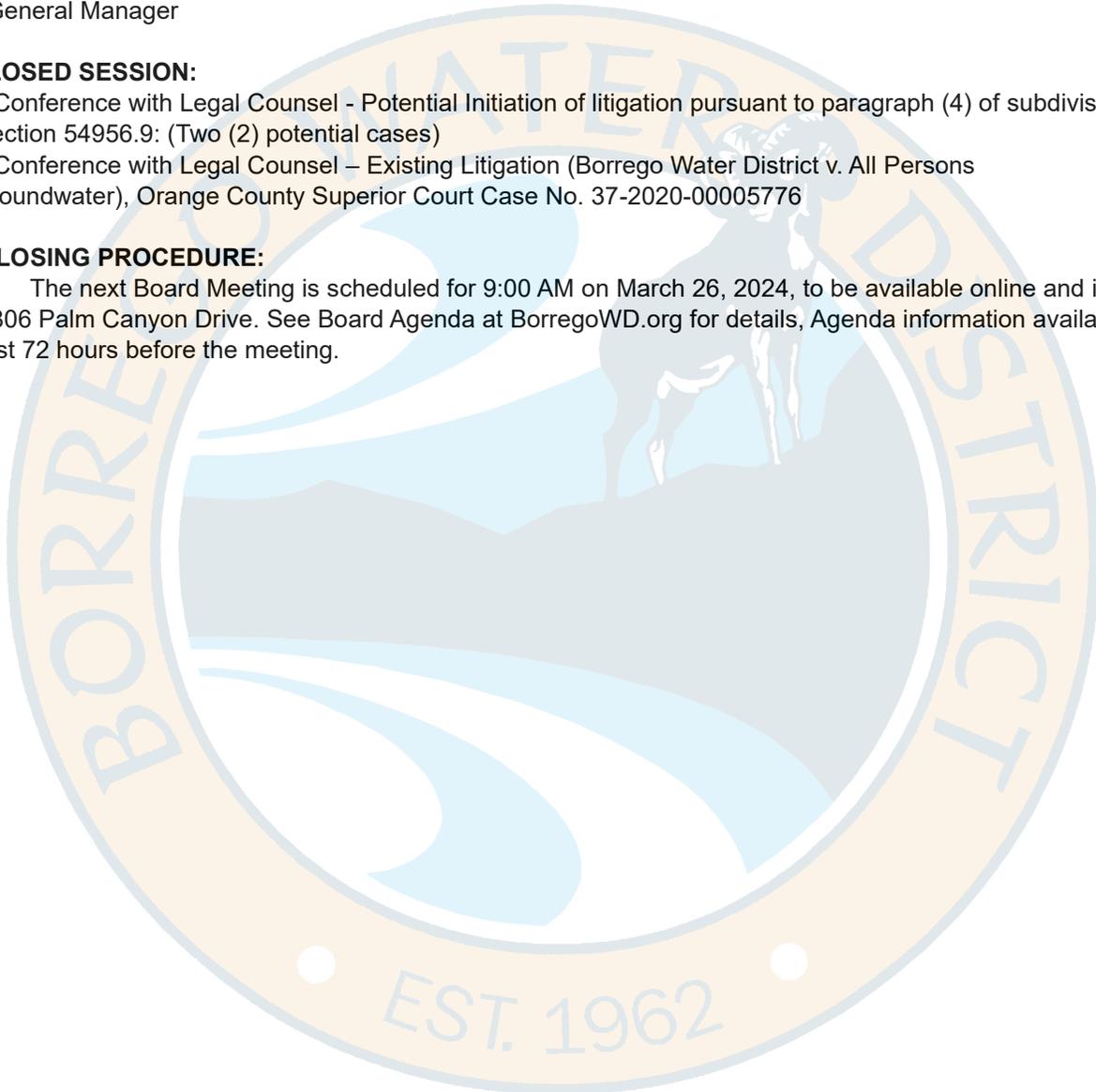
- A. General Manager

**V. CLOSED SESSION:**

- A. Conference with Legal Counsel - Potential Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (Two (2) potential cases)
- B. Conference with Legal Counsel – Existing Litigation (Borrego Water District v. All Persons (Groundwater), Orange County Superior Court Case No. 37-2020-00005776

**VI. CLOSING PROCEDURE:**

- A. The next Board Meeting is scheduled for 9:00 AM on March 26, 2024, to be available online and in person at 806 Palm Canyon Drive. See Board Agenda at [BorregoWD.org](http://BorregoWD.org) for details, Agenda information available at least 72 hours before the meeting.



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BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
MARCH 12, 2024  
AGENDA ITEM II.A

March 4, 2024

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: 2024 Federal Congressional Appropriation – A Schwab, BBK

**RECOMMENDED ACTION:**

Receive update on BWD efforts to obtain another round of funding for pipeline replacement projects

**ITEM EXPLANATION:**

BWD utilizes the services of Best, Best and Krieger for Legislative advocacy in DC. With the assistance of BBK, BWD received a \$4.3 M (80% funded) in the 2023 Federal Budget. Utilizing the expertise of BBK, BWD submitted a request for another round of funds in the 2024 Budget and we have just been informed funding is included. Ana Schwab from BBK will be available at the meeting to update the Board and public on the great news and answer any questions.

**NEXT STEPS**

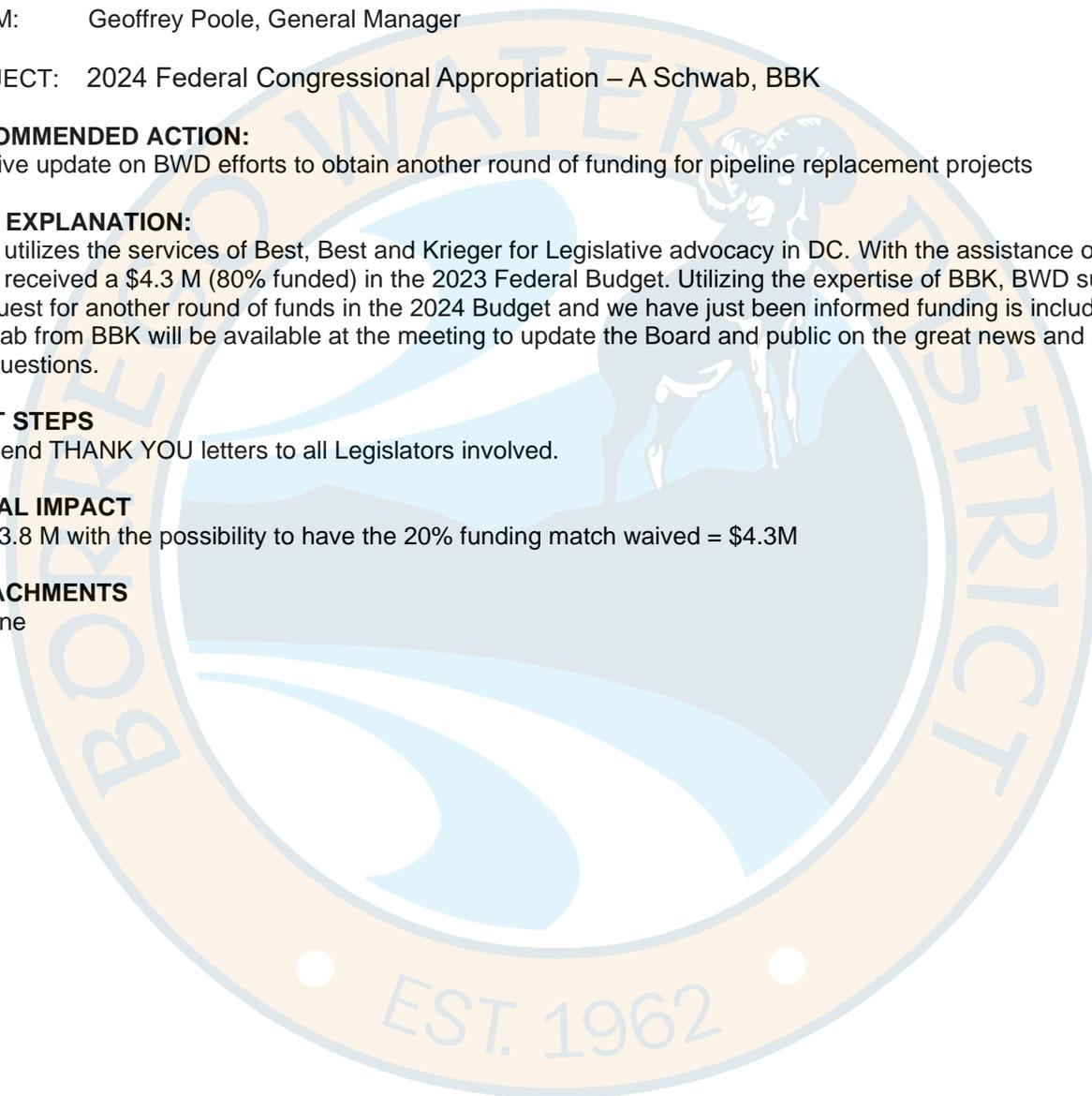
1. Send THANK YOU letters to all Legislators involved.

**FISCAL IMPACT**

1. \$3.8 M with the possibility to have the 20% funding match waived = \$4.3M

**ATTACHMENTS**

1. None



BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
MARCH 12, 2024  
AGENDA ITEM II.B

March 4, 2024

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Best, Best and Krieger Legislative Advocacy Engagement Letter – G Poole

**RECOMMENDED ACTION:**

Approve Engagement Letter to continue Legislative Advocacy

**ITEM EXPLANATION:**

During 2023, changes at BBK prompted a separation of duties and late in the year, BWD entered into an Agreement with Syrus Deevers to cover Sacramento. A new Engagement Letter is needed to cover Ana Schaub and Lowery Crook in DC, which is attached. The proposed monthly retainer in the attached BBK Agreement is increased to \$6,000 per month. Combined with Syrus, the total would be \$8,500/mo.

**NEXT STEPS**

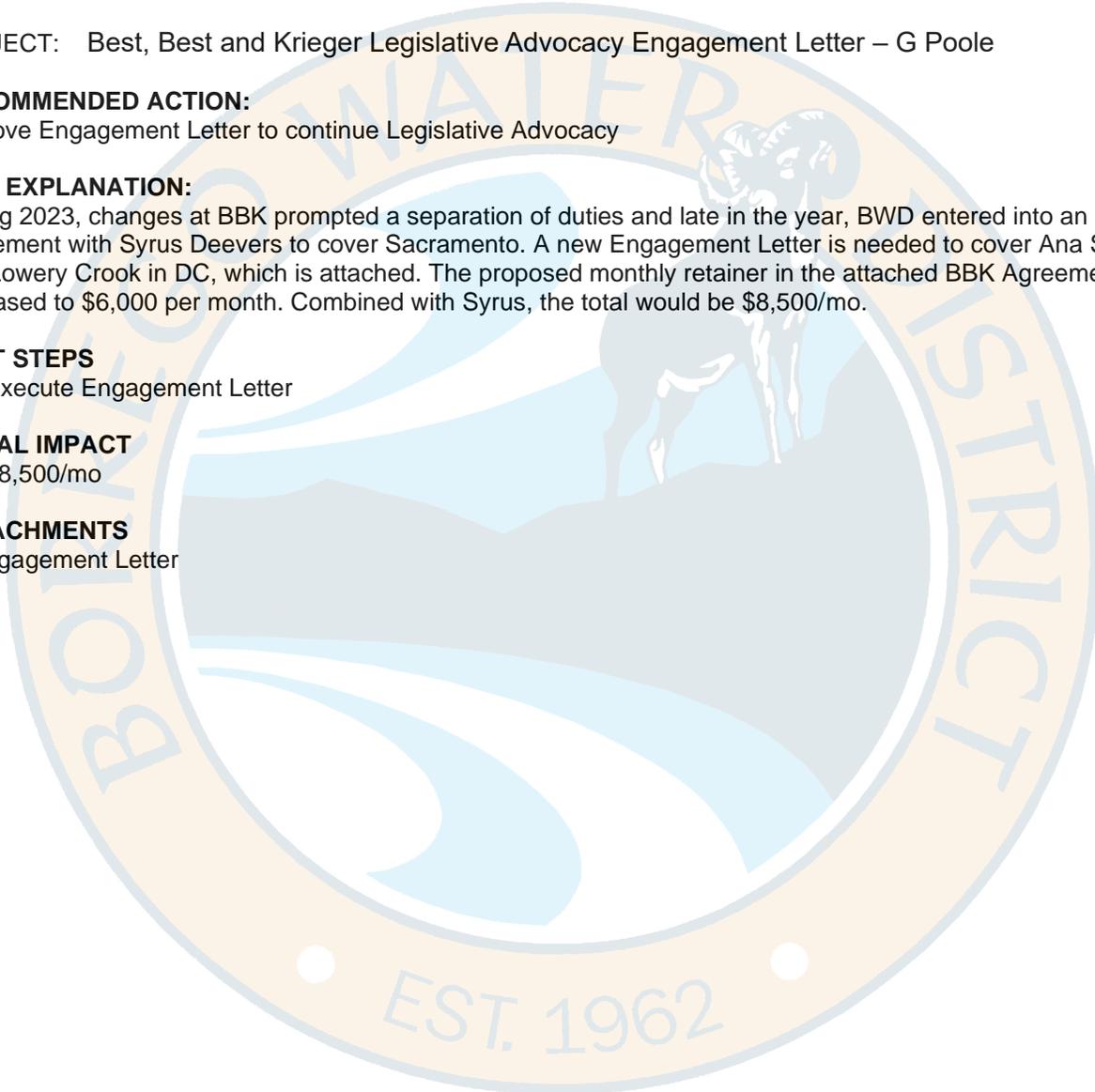
1. Execute Engagement Letter

**FISCAL IMPACT**

1. \$8,500/mo

**ATTACHMENTS**

1. Engagement Letter





Ana D. Schwab  
Director of Government Affairs  
and Of Counsel  
(202) 370-5311  
ana.schwab@bbklaw.com

March 5, 2024

**VIA E-MAIL**

Geoff Poole  
General Manager  
Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, CA 92004

Re: Contract for Federal Legislative Support

Dear Geoff:

ABOUT OUR REPRESENTATION

Best Best & Krieger LLP is pleased to represent Borrego Water District (BWD). Specifically, we will provide BWD with federal advocacy services. This letter constitutes our agreement setting the terms of our representation. If you want us to represent you and agree to the terms set forth in this letter, after you review the letter please sign it and return the signed copy to us.

CONFIDENTIALITY AND ABSENCE OF CONFLICTS

An attorney-client relationship requires mutual trust between the client and the attorney. It is understood that communications exclusively between counsel and the client are confidential and protected by the attorney-client privilege.

To also assure mutuality of trust, we have maintained a conflict of interest index. The California Rules of Professional Conduct defines whether a past or present relationship with any party prevents us from representing you. Similarly, you will be included in our list of clients to ensure we comply with the Rules of Professional Conduct with respect to you.

At this time there are no names to run against the client index. Based on this, we can represent you. Please inform us promptly if any persons or entities should be included and checked against. If you do not tell us to the contrary, we will assume that this information is complete and accurate. We request that you update this list for us if there are any changes in the future.

#### YOUR OBLIGATIONS ABOUT FEES AND BILLINGS

We have already discussed with you the fee arrangement. Beginning March 1, 2024, your monthly retainer for federal advocacy is \$6,000.

Our rates are reviewed annually and may be increased from time to time with advance written notice to the client.

The billing policies are described in the memorandum attached to this letter, entitled "Best Best & Krieger LLP's Billing Policies." You should consider the Billing Policies memorandum part of this agreement as it binds both of us. For that reason, you should read it carefully.

#### INSURANCE

We understand that you are not now insured or have any insurance that may cover potential liability or attorneys' fees in this case. If you think you may have such insurance, please notify me immediately.

We are also pleased to let you know that Best Best & Krieger LLP carries errors and omissions insurance with Lloyd's of London. After a standard deductible, this insurance provides coverage beyond what is required by the State of California.

#### NEW MATTERS

When we are engaged by a new client on a particular matter, we are often later asked to work on additional matters. You should know that such new matters will be the subject of a new signed supplement to this agreement. Similarly, this agreement does not cover and is not a commitment by either of us that we will undertake any appeals or collection procedures. Any such future work would also have to be agreed upon in a signed supplement.

#### CIVILITY IN LITIGATION

In litigation, courtesy is customarily honored with opposing counsel, such as extensions to file pleadings or responses to other deadlines. In our experience, the reciprocal extension of such courtesies saves our clients' time and money. By signing this letter you will be confirming your approval of this practice in your case.

#### HOW THIS AGREEMENT MAY BE TERMINATED

You, of course, have the right to end our services at any time. If you do so, you will be responsible for the payment of fees and costs accrued but not yet paid, plus reasonable fees and costs in transferring the case to you or your new counsel. By the same token, we reserve the right to terminate our services to you upon written notice, order of the court, or in accordance with our attached Billing Policies memorandum. This could happen if you fail to pay our fees and

costs as agreed, fail to cooperate with us in this matter, or if we determine we cannot continue to represent you for ethical or practical concerns.

CLIENT FILE

If you do not request the return of your file, we will retain your file for five years. After five years, we may have your file destroyed. If you would like your file maintained for more than five years or returned, you must make separate arrangements with us.

THANK YOU

On a personal note, we are pleased that you have selected Best Best & Krieger LLP to represent you. We look forward to a long and valued relationship with you and appreciate your confidence in selecting us to represent you in this case. If you have any questions at any time about our services or billings, please do not hesitate to call me.

If this letter meets with your approval, please sign and date it, and return the original to us. Unless you sign, date and return by March 14, 2024 we will not represent you in any capacity, and we will assume that you have made other arrangements for legal representation. We have enclosed a separate signed copy of this letter for your records.

Sincerely,



Ana D. Schwab

for BEST BEST & KRIEGER LLP

ADS:dag

AGREED AND ACCEPTED:

By: \_\_\_\_\_

Dated: \_\_\_\_\_

## BEST BEST & KRIEGER LLP'S BILLING POLICIES

Our century of experience has shown that the attorney-client relationship works best when there is mutual understanding about fees, expenses, billing and payment terms. Therefore, this statement is intended to explain our billing policies and procedures. Clients are encouraged to discuss with us any questions they have about these policies and procedures. Clients may direct specific questions about a bill to the attorney with whom the client works or to our Accounts Receivable Department (accounts.receivable@bbklaw.com). Any specific billing arrangements different from those set forth below will be confirmed in a separate written agreement between the client and the firm.

### INVOICE AND PAYMENT OPTIONS

Best Best & Krieger strives to meet our clients' needs in terms of providing a wide variety of invoice types, delivery and payment options. Please indicate those needs including the preferred method of invoice delivery (Invoice via Email; or USPS). In addition, accounts.receivable@bbklaw.com can provide a W-9 upon request and discuss various accepted payment methods.

### FEES FOR PROFESSIONAL SERVICES

Unless a flat fee is set forth in our engagement letter with a client, our fees for the legal work we will undertake will be based in substantial part on time spent by personnel in our office on that client's behalf. In special circumstances which will be discussed with the client and agreed upon in writing, fees will be based upon the novelty or difficulty of the matter, or the time or other special limitations imposed by the client.

Hourly rates are set to reflect the skill and experience of the attorney or other legal personnel rendering services on the client's behalf. All legal services are billed in one-tenth of an hour (0.10/hour) or six-minute increments. Our attorneys are currently billed at rates from \$215 to \$985 per hour, and our administrative assistants, research assistants, municipal analysts, litigation analysts, paralegals, paraprofessionals and law clerks are billed at rates from \$180 to \$325 per hour for new work. These rates reflect the ranges in both our public and our private rates. These hourly rates are reviewed annually to accommodate rising firm costs and to reflect changes in attorney status as lawyers attain new levels of legal experience. Any increases resulting from such reviews will

be instituted automatically and will apply to each affected client, after advance notice.

**Non-Attorney Personnel:** BBK may employ the services of non-attorney personnel under the supervision of a BBK attorney in order to perform services called for in the legal services agreement. The most common non-attorney personnel utilized are paralegals. Other types of non-attorney personnel include, but are not limited to, case clerks, litigation analysts, and specialty consultants. The client agrees that BBK may use such non-attorney personnel to perform its services when it is reasonably necessary in the judgment of the responsible BBK attorney. Hourly fees for non-attorney personnel will be charged at the rate then in effect for such personnel. A copy of BBK's current rates and titles for non-attorney personnel will be provided upon request.

### FEES FOR ELECTRONICALLY STORED INFORMATION ("ESI") SUPPORT AND STORAGE

BBK provides Electronically Stored Information ("ESI") services for matters requiring ESI support, which are matters with a document population over 1GB – typically litigation or threatened litigation matters. BBK provides services for basic ESI processing and storage at the following rates per month based on the number of gigabytes of data ("GB") processed and stored:

1GB -250GB:	\$10 per GB
251GB - 550GB:	\$8 per GB
551GB - 750GB:	\$6 per GB
751GB - 1TB:	\$4 per GB

The amount BBK charges for basic processing and storage of ESI allows BBK to recover the costs of providing such services, plus a net profit for BBK. BBK believes that the rates it charges for processing and storage are lower than comparable services available from third party vendors in the market. If you wish to contract separately with a third party vendor for processing and storage costs, please notify PracticeSupportServices@bbklaw.com in writing. BBK also provides advanced ESI processing services at hourly rates for personnel in its Litigation Support Group. A copy of BBK's current rates for such services will be provided on request.

## FEES FOR OTHER SERVICES, COSTS AND EXPENSES

We attempt to serve all our clients with the most effective support systems available. Therefore, in addition to fees for professional legal services, we also charge separately for some other services and expenses to the extent of their use by individual clients. These charges include but are not limited to, mileage at the current IRS approved rate per mile, extraordinary telephone and document delivery charges, copying charges, computerized research, court filing fees and other court-related expenditures including court reporter and transcription fees. No separate charge is made for secretarial or word processing services; those costs are included within the above hourly rates.

We may need to advance costs and incur expenses on your behalf on an ongoing basis. These items are separate and apart from attorneys' fees and, as they are out-of-pocket charges, we need to have sufficient funds on hand from you to pay them when due. We will advise the client from time to time when we expect items of significant cost to be incurred, and it is required that the client send us advances to cover those costs before they are due.

### ADVANCE DEPOSIT TOWARD FEES AND COSTS

Because new client matters involve both a substantial undertaking by our firm and the establishment of client credit with our accounting office, we require an advance payment from clients. The amount of this advance deposit is determined on a case-by-case basis discussed first with the client, and is specified in our engagement letter.

Upon receipt, the advance deposit will be deposited into the firm's client trust account. Our monthly billings will reflect such applications of the advance deposit to costs and not to attorney's fees (unless otherwise noted in our accompanying engagement letter). At the end of engagement, we will apply any remaining balance first to costs and then to fees. We also reserve the right to require increases or renewals of these advanced deposits.

By signing the initial engagement letter, each client is agreeing that trust account balances may be withdrawn and applied to costs as they are incurred and to our billings, when we issue our invoice to the client. If we succeed in resolving your matter before the amounts deposited are used, any balance will be promptly refunded.

## MONTHLY INVOICES AND PAYMENT

Best Best & Krieger LLP provides our clients with monthly invoices for legal services performed and expenses incurred. Invoices are due and payable upon receipt.

Each monthly invoice reflects both professional and other fees for services rendered through the end of the prior month, as well as expenses incurred on the client's behalf that have been processed by the end of the prior month. Processing of some expenses is delayed until the next month and billed thereafter.

Our fees are not contingent upon any aspect of the matter and are due upon receipt. All billings are due and payable within ten days of presentation unless the full amount is covered by the balance of an advance held in our trust account.

It is our policy to treat every question about a bill promptly and fairly. It is also our policy that if a client does not pay an invoice within 60 days of mailing, we assume the client is, for whatever reason, refusing to pay. We reserve the right to terminate our engagement and withdraw as attorney of record whenever our invoices are not paid. If an invoice is 60 days late, however, we may advise the client by letter that the client must pay the invoice within 14 days or the firm will take appropriate steps to withdraw as attorney of record. If the delay is caused by a problem in the invoice, we must rely upon the client to raise that with us during the 14-day period. This same policy applies to fee arrangements which require the client to replenish fee deposits or make deposits for anticipated costs.

From time to time clients have questions about the format of the bill or description of work performed. If you have any such questions, please ask them when you receive the bill so we may address them on a current basis.

### CHANGES IN FEE ARRANGEMENTS AND BUDGETS

It may be necessary under certain circumstances for a client to increase the size of required advances for fees after the commencement of our engagement and depending upon the scope of the work. For example, prior to a protracted trial or hearing, the firm may require a further advance payment to the firm's trust account sufficient to cover expected fees. Any such changes in fee arrangements will be discussed with the client and mutually agreed in writing.

Because of the uncertainties involved, any estimates of anticipated fees that we provide at the request of a client for budgeting purposes, or otherwise, can only be an approximation of potential fees.

BEST BEST & KRIEGER LLP

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
MARCH 12, 2024  
AGENDA ITEM II.C

March 4, 2024

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Purchase and Sale Agreement – Viking Ranch – S Anderson

**RECOMMENDED ACTION:**

Review Agreement with Legal Counsel and approve

**ITEM EXPLANATION:**

BWD Staff and Legal Counsel have completed negotiations with US Gypsum on the acquisition of the Viking Ranch parcel. Legal will explain the Agreement and answer any questions at the meeting

**NEXT STEPS**

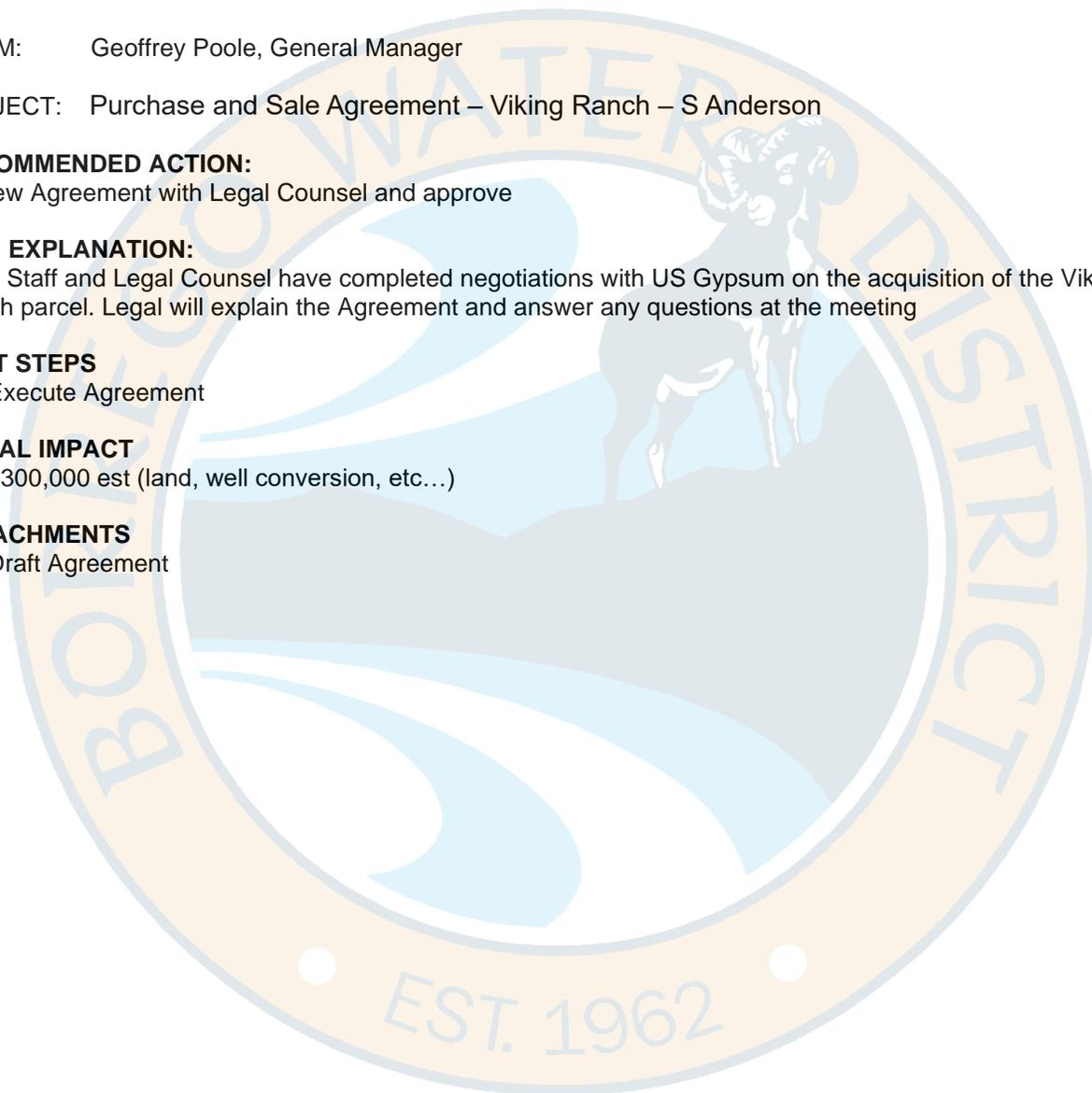
1. Execute Agreement

**FISCAL IMPACT**

1. \$300,000 est (land, well conversion, etc...)

**ATTACHMENTS**

1. Draft Agreement



## PURCHASE AND SALE AGREEMENT FOR ACQUISITION OF REAL PROPERTY

THIS PURCHASE AND SALE AGREEMENT, hereinafter referred to as the “**AGREEMENT**”, is entered into by and between UNITED STATES GYPSUM COMPANY, a Delaware corporation (hereinafter called “**USG**”), and BORREGO WATER DISTRICT, a special district organized and existing under Division 13 of the Water Code of the State of California (hereinafter called “**Seller**”) for acquisition by USG of certain real property rights hereinafter set forth for the use as part of the USG’s expansion of the Plaster City Mine (hereinafter called the “**Project**”).

WHEREAS, USG is in the process of acquiring the necessary real property and property rights for the expansion of the Plaster City Mine, and has determined that a portion of Seller’s property, currently identified as Assessor Parcel Numbers 140-030-0900 & 140-030-1100, located in an unincorporated area of the County of San Diego, State of California (the “**Subject Property**”), is necessary as a mitigation site for the Project.

WHEREAS, USG acknowledges that (i) upon the Closing Date (as defined below) it shall grant Seller an easement on the Subject Property to continue its use of a weather station, and (ii) upon the later of the Closing Date and USG’s acquisition of the Well Parcel (as defined below), USG shall grant Seller an easement on the Well Parcel to potentially install a monitoring well and to access both sites (collectively, “**Easements**”).

WHEREAS, Seller hereby acknowledges that USG’s use of the Subject Property may change the course of water flow on the Subject Property, which may, among things, affect water flow and/or cause the discharge of water on the Easements.

### **NOW THEREFORE, IN CONSIDERATION OF ALL THE FOREGOING, THE PARTIES DO HEREBY AGREE AS FOLLOWS:**

1. AGREEMENT TO SELL AND PURCHASE. Seller agrees to sell to USG, and USG agrees to purchase from Seller, the Subject Property upon the terms and for the consideration set forth in this Agreement. Immediately after the Effective Date, Seller will contract to survey (the “**Survey**”) the Easements in favor of Seller on the Subject Property and the Well Parcel. Said Survey shall be paid for and approved by USG prior to the Closing Date (as defined below). USG shall reimburse Seller for Seller’s reasonable, actual expenses incurred in connection with the Survey, within thirty (30) days after receipt of an invoice for the same. Seller agrees to commence such processes immediately following the Effective Date and diligently prosecute the same to completion, with the completion of the Survey to occur no later than the Closing Date.
2. PURCHASE PRICE. The total purchase price for the Subject Property shall be TWO HUNDRED TWENTY-FIVE THOUSAND AND NO/100’S DOLLARS (\$225,000.00) (the “**Purchase Price**”) and shall be payable as set forth below.

3. CONVEYANCE OF TITLE. Seller agrees to convey by deed, substantially in the form of Exhibit A attached hereto (the “**Deed**”), to USG title to the Subject Property, provided that the Property is sold on a “AS IS” basis subject to Section 20(a), below, and as further elaborated in Section 22, below, and further provided that the Parties agree and acknowledge that the Subject Property is subject to existing recorded water rights restrictive covenants pertaining to groundwater that run with the Subject Property, and that the Subject Property is being conveyed subject to the provisions of such restrictive covenants (i.e., Grant of Groundwater Easement to County of San Diego recorded in the Official Records of San Diego County Recorder’s Office Instrument No. 2014-0059276). Notwithstanding the foregoing, Seller ~~represents that the conveyance of~~ does not and will not object to use of surface water on the Subject Property to ~~USG is not subject to any reservation of surface water rights. Seller acknowledges that the existing recorded water rights restrictive covenants referenced above pertaining to the Subject Property and the Well Parcel do not reserve surface water rights (whether riparian, prescriptive, or appropriative) to Seller or any other third party, and Seller shall cooperate with USG to execute any commercially reasonable documents required by any governmental or regulatory agency with jurisdiction over the Subject Property and/or the Project to acknowledge the same~~ support the conservation uses that USG is planning. This section shall survive indefinitely.
4. EFFECTIVE DATE. The Effective Date of the Agreement is the date the Parties sign the Agreement. If the Parties sign the Agreement on more than one date, then the last date the Agreement is signed by a Party shall be the Effective Date.
5. TITLE INSURANCE POLICY. If USG so chooses, it shall be a condition precedent to the closing hereunder that subject only to the recording of said Deed by USG and the payment of the premium therefor (to be paid by USG), Chicago Title Insurance Company (or other title insurance company reasonably acceptable to USG) (the “**Title Company**” in its capacity as the title insurance company, or “**Escrow Holder**” in its capacity as the escrow company) issue a CLTA Standard Coverage Policy of Title Insurance, or ALTA extended coverage (if so elected by USG, provided that USG provides an ALTA survey), subject only to (a) the lien of any real estate taxes and assessments for the current tax year not yet delinquent and subsequent periods, provided that the same are prorated in accordance with this Agreement, and (b) such other matters set forth in the title report issued by Title Company, or shown on an updated ALTA survey of the Subject Property, which are approved by USG.
6. EASEMENTS. Upon USG’s acquisition of the Well Parcel and the Subject Property, USG will grant Seller a non-exclusive access and well easement upon and across a portion of the Well Parcel for the operation of a monitoring well, and for the purpose of accessing the Weather Station Easement (as defined below), in the form of Exhibit B attached hereto (the “**Well Parcel Easement**”). Upon USG’s acquisition of the Subject Property, USG will grant Seller a non-exclusive easement upon and across a portion of the Subject Property for the use of the weather station located on the Subject Property, in the form of Exhibit C attached hereto (the “**Weather Station Easement**”). USG agrees

to permit Seller to refurbish the existing well on the Well Parcel, including the conversion of such existing well to a monitoring well, in compliance with all applicable laws. Seller shall be solely responsible for such conversion and refurbishment of the existing well. Notwithstanding the foregoing, in consideration of Seller's refurbishment and conversion of such existing well, USG shall pay Seller a one-time payment in the sum of \$25,000.00 upon the Closing Date and the recordation of the Deed, the Well Parcel Easement, and the Weather Station Easement.

7. TRANSACTION. Seller shall execute and deliver said Deed, as referenced in Paragraph 3 above, to Escrow Holder as soon as USG has waived in writing the Contingencies (as defined below). Within fourteen (14) days after USG has waived the Contingencies, or such earlier date mutually agreed upon by Seller and USG (the "**Closing Date**"), USG shall pay the Purchase Price to Seller through an escrow established with the Escrow Holder by wire transfer to the Escrow Holder. USG and Seller agree to cooperate and provide any additional commercially reasonable instruments as may be reasonably necessary to complete this transaction. Upon receipt of the Purchase Price, Escrow Holder shall cause the Deed, the Well Parcel Easement, and the Weather Station Easement to be recorded, the title policy to be issued to USG and the Purchase Price to be released to Seller.
8. TRANSACTION COSTS. USG agrees to pay all transaction costs and fees related to the recording and conveyance of the Deed, including but not limited to recording and title insurance fees, escrow fees, and transfer taxes incurred in this transaction. Furthermore, USG agrees to pay a one-time cost of transaction fee of \$25,000.00 to Seller immediately upon the full execution of this Agreement.
9. COUNTERPARTS. This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument. The parties intend to treat any facsimile or electronic PDF signature as if it were an original.
10. CONTINGENCIES. It is understood and agreed between the parties hereto that USG's obligation to purchase the Subject Property is contingent upon: (a) USG acquiring that certain real property known as assessor's parcel number 140-030-1000 in San Diego County, California (the "**Well Parcel**"), upon which is located a concrete pad and a well, and (b) USG acquiring the approval(s) of all governmental or quasi-governmental agency(ies) or organization(s) with respect to USG's intended use of the Subject Property and the Well Parcel, including, without limitation, use for mitigation purposes (collectively, the "**Contingencies**"). During the period of time USG plans to complete the applicable Contingencies, USG will pay a fee of \$500 per month (the "**Contingency Fee**") from the Effective Date directly to Seller at the address listed below, until the Closing Date, or the date this Agreement is terminated (whichever is earlier), on a prorated basis for any partial months. USG, at its option, may terminate this Agreement prior to the Closing Date and satisfaction of the Contingencies upon thirty (30) days'

written notice to Seller, and upon such termination, the Parties shall have no further liability or obligation hereunder. If the Contingencies have not been satisfied or waived within five (5) years from the Effective Date, this Agreement shall automatically terminate without any further action by either of the Parties.

11. NO BROKERS. USG and Seller each represents to the other that no brokers have been involved in this transaction other than USG's broker, Cushman and Wakefield, which broker USG will compensate in accordance with a separate written agreement. Any party in breach of this provision will indemnify the non-breaching party against any claim, suits, damages and costs incurred or resulting from the claims of any person for any brokerage fee or compensation due in connection with this transaction pursuant to a written agreement made with said claimant.
12. JURISDICTION AND VENUE. This Agreement shall be governed by and constructed in accordance with the laws of the State of California. The parties consent to the jurisdiction of the San Diego County Superior Court, for any and all claims related to this Agreement or the Subject Property.
13. ASSIGNMENT. The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereto. USG may freely assign any or all if its interests or rights under this Agreement without the consent of Seller.
14. COOPERATION. Each party agrees to cooperate with the other in the closing of this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.
15. ENTIRE AGREEMENT, WAIVER AND MODIFICATION. This Agreement is the entire Agreement between the parties with respect to the subject matter of this Agreement. It supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Agreement. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.
16. NOTICES. Any notice that either party may or is required to give the other shall be in writing, and shall be either (i) personally delivered, (ii) sent by FedEx or similar generally recognized overnight courier regularly providing proof of delivery, or (iii) sent by U.S. Mail, as first class, registered or certified mail, return receipt requested, with postage prepaid, to all of the addresses set forth below. Either party may, from time to time, by written notice to the other, designate a different address.

As to USG:	United States Gypsum Company
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	550 West Adams Street Chicago, IL 60661 Attn: Iryna Sladkevych Real Estate Department #179
As to USG Counsel:	United States Gypsum Company 550 West Adams Street Chicago, IL 60661 Attn: Jennifer Adams, Esq. Legal Department #149
As to Seller:	Borrego Water District 806 Palm Canyon Drive Borrego Springs, CA 92004 Attn: General Manager
As to Seller Counsel:	Best Best & Krieger P.O. Box 1028 3390 University Ave, 5th Floor Riverside, CA 92502 Attn: Steven M. Anderson

17. RECORDING. USG shall be entitled to record the Deed contemplated herein, along with any Certificate of Acceptance with the San Diego County Recorder's Office. Seller shall complete and provide any required preliminary change of ownership report (PCOR) as necessary to facilitate the recording of the Deed.
18. SEVERABILITY. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either party. Upon such determination that any term or provision is illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.
19. CONSTRUCTION. Section headings are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to Sections are to this Agreement.
20. REPRESENTATIONS AND WARRANTIES.

- a. Representations and Warranties of Seller. Seller hereby represents and warrants the following to USG as of the Effective Date and as of the Closing Date, which shall survive closing: (i) Seller has full authority to enter into and perform this Agreement and the person or persons signing this Agreement and any documents executed pursuant hereto on Seller's behalf have full power and authority to bind Seller, and no further approvals are required to be binding upon Seller, (ii) the execution, delivery and performance of this Agreement do not, and the consummation of the transaction contemplated hereby will not, violate any agreements made by or binding upon, Seller, (iii) there are no contracts, leases, licenses or other occupancy agreements that currently affect the Subject Property, and at closing the Subject Property will be free of all occupants, (iv) Seller has not received any written notice to the effect that the Subject Property is not in compliance with applicable laws or codes or any private restrictions and to Seller's knowledge the Subject Property complies with all applicable laws, codes and private restrictions, (v) there are no actions, suits or proceedings pending, and Seller has not received any written notice of any, and to Seller's knowledge, there are no threatened actions, suits or proceedings to be, before or by any judicial, administrative or body, any arbiter or any governmental authority, against or affecting Seller or the Subject Property (or any portion thereof), (vi) to Seller's knowledge, there are (and have been) no, and Seller has not received any written notice of any hazardous materials used, manufactured, generated, treated, stored, disposed of, released or discharged in, on, under or about the Subject Property in violation of applicable laws or codes, or of any wells or underground storage tanks, and (vii) Seller has not entered into any executory contracts for the sale of the Subject Property and there do not exist any rights of first refusal, option rights or other preferential rights to acquire, purchase or ground lease the Subject Property.
- b. Representations and Warranties of USG. USG hereby represents and warrants to Seller that USG is duly organized and validly existing under the laws of the State of Delaware, has, or will as of the closing have, full authority to enter into and perform this Agreement and the person or persons signing this Agreement and any documents executed pursuant hereto on USG's behalf have full power and authority to bind USG. The execution, delivery and performance of this Agreement do not, and the consummation of the transaction contemplated hereby will not, violate the organizational documents of USG.
21. AGENCY APPROVALS; ACCESS. From the Effective Date until the Closing Date or earlier termination of the Agreement, (a) USG shall be permitted to contact and submit applications to any governmental or quasi-governmental agency or organization with respect to USG's intended use of the Subject Property and Seller shall reasonably cooperate with such applications upon USG's written request, and (b) Seller shall provide USG and its agents and representatives with reasonable access to the Subject Property hereunder, for the purpose of performing USG's analysis and investigations with respect

to the Subject Property, including, without limitation, physical inspections, soil studies, and environmental studies using a right of entry agreement approved by the Seller.

22. AS IS CONDITION; SOLE RELIANCE. USG acknowledges and agrees that except as expressly stated herein, Seller has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (i) value of the Subject Property; (ii) the suitability of the Subject Property for any and all activities and uses which USG may conduct therefrom or thereon; (iii) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Subject Property; (iv) the manner, quality, state of repair or lack of repair of the Subject Property; (v) the nature, quality or condition of the Subject Property, including, without limitation, the water, soil and geology; (vi) the compliance of or by the Subject Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (vii) the resources to be derived from the Subject Property; (viii) compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements; (ix) the content, completeness or accuracy of any materials, documents, title reports or other documents or reports regarding the Subject Property; (x) the conformity of the Subject Property to past, current or future applicable zoning or other requirements; (xi) deficiency of any undershoring; (xii) the fact that all or any part of the Subject Property is or may be in any flood plain or flood area; (xiii) deficiency of any drainage; (xiv) the fact that all or a portion of the Subject Property may be located on or near an earthquake fault line; (xv) the existence of vested land use, zoning or building entitlements affecting the Subject Property; (xvi) any claims, causes of action or demands by adjoining property owners; (xvii) the impact of, or ability to amend, any easements or other documents referenced in any title reports for the Subject Property; (xviii) the availability of any insurance coverage for any aspect of the Subject Property or any improvements thereon; or (xix) any other matter, including any and all such matters referenced, discussed or disclosed in any documents delivered by Seller to USG, in any public records of any governmental agency or entity or utility company, or in any other documents available to USG. USG further acknowledges and agrees that having been given the opportunity to inspect the Subject Property and conduct tests thereon and review information and documentation affecting the Subject Property, USG is relying solely on its own investigations of the Subject Property and review of such information and documentation, except as expressly stated herein. USG further acknowledges and agrees that any information made available to USG or provided or to be provided by or on behalf of Seller with respect to the Subject Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information, except as expressly stated herein. Except for the representations, warranties and covenants stated herein, Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Subject Property, or the operation thereof, furnished by its employees, representatives, agents, servants, attorneys, affiliates, successors or assigns or any other individual or entity, other than

written statements furnished by individuals who are in such a position that it is reasonable for USG to rely on their written statements. USG further acknowledges and agrees that except as otherwise expressly provided herein, the sale of the Subject Property as provided for herein is made on an “as is” “where is” condition and basis with all known and unknown faults, and that Seller has no obligation to make repairs, replacements or improvements thereto.

23. USG’S USE OF THE SUBJECT PROPERTY. Seller hereby acknowledges that USG’s use of the Subject Property as a mitigation site may change the course and/or intensity of water flow on the Subject Property, which may, among things, affect water flow and/or cause the discharge of water on the Easements. Seller acknowledges and accepts the risk that such may adversely affect Seller’s adjacent property, including the Easements, and Seller (on behalf of itself and its agents, employees, independent contractors, successors and/or assigns) hereby waives and releases USG from any and all claims, damages, and/or losses arising therefrom, and covenants to notify any successor owner(s) of the Easements of same. This provision shall survive the closing.
24. AUTHORITY; IDENTIFICATION OF SELLER. Seller hereby represents and warrants that the person signing this Agreement has full power and authority to bind Seller, and no further approvals are required to be binding upon Seller. For purposes of identifying the owner of the Subject Property being acquired by USG for issuing IRS Form 1099, Seller requests that said Form name the recipient of the funds paid herein as listed on the provided W-9.

**SIGNATURE PAGE FOR THE PURCHASE AND SALE AGREEMENT FOR  
ACQUISITION OF REAL PROPERTY BY AND BETWEEN UNITED STATES  
GYPSUM COMPANY AND BORREGO WATER DISTRICT**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year last set forth below.

**SELLER:**

**BORREGO WATER DISTRICT,**  
a special district organized and existing under  
Division 13 of the Water Code of the State of  
California

By: \_\_\_\_\_  
Kathy Dice, President

Date: \_\_\_\_\_, 2024

**USG:**

**UNITED STATES GYPSUM COMPANY,**  
a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2024

**EXHIBIT "A"**

**[See Grant Deed Attached]**

Recorded at request of and return to:  
United States Gypsum Company  
550 West Adams Street  
Chicago, IL 60661  
Attn: \_\_\_\_\_

FREE RECORDING  
This instrument is for the benefit of  
The Borrego Water District and is  
entitled to be recorded without fee.  
(Govt. Code 6103)

(Space above this line for Recorder's use)

APNs: 140-030-0900; 140-030-1100

## GRANT DEED

[THE UNDERSIGNED GRANTOR DECLARES THAT DOCUMENTARY TRANSFER TAX IS COUNTY TRANSFER TAX \$ \_\_\_\_\_; CITY TRANSFER TAX \$ \_\_\_\_\_.

computed on full value of property conveyed, or  
 computed on full value less value of liens or encumbrances remaining at time of sale.  
 unincorporated area  City of \_\_\_\_\_, AND]

FOR GOOD AND VALUABLE CONSIDERATION, receipt, and adequacy of which are hereby acknowledged,

BORREGO WATER DISTRICT, a special district organized and existing under Division 13 of the Water Code of the State of California ("Grantor")

Hereby grants to UNITED STATES GYPSUM COMPANY, a Delaware corporation ("Grantee"), all that certain real property in the County of San Diego, State of California, as more particularly described in Exhibit "A" attached hereto ("Property"), together with all improvements thereon and all privileges, easements, appurtenances, rights of way and hereditaments appertaining to same:

See Exhibit "A" attached hereto and made a part hereof.

Grantor hereby acknowledges and agrees that Grantee's use of the Property may change the course and/or intensity of existing water flow on and over the Property, and may affect water flow and/or cause the discharge of water on Grantor's easement areas on the Property and

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Exhibit "A" to Purchase and Sale Agreement - 2

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adjacent property. Grantor acknowledges and accepts the risk that such may adversely affect Grantor's adjacent property.

PARCELS:

APNs: 140-030-0900; 140-030-1100

Dated: \_\_\_\_\_

**GRANTOR:**

**BORREGO WATER DISTRICT,**  
a special district organized and existing under  
Division 13 of the Water Code of the State of  
California

\_\_\_\_\_  
Kathy Dice, President

**ACKNOWLEDGMENT**

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 \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, \_\_\_\_\_ personally \_\_\_\_\_ appeared \_\_\_\_\_, 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 \_\_\_\_\_

**EXHIBIT “A” TO DEED**

**Legal Description of Subject Property**

**[to be inserted]**

EXHIBIT "B"

Form of Well Parcel Easement

[See Attachment]



D. Accordingly, Grantor now grants to District a non-exclusive permanent easement over the Burdened Property according to the terms and conditions of this Easement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby creates the Easement rights described below:

1. Effect of Recitals. The Recitals are incorporated and made a part of this Easement as if fully stated herein.

2. Grant of Access Easement. Grantor hereby grants in favor of Grantee a permanent, non-exclusive access easement (the "Access Easement") for ingress and egress through the Burdened Property over any roads, driveways, or trails leading to the Benefited Property whether now existing or installed by Grantor in the future; provided, however, that Grantor will ensure that there is always at least one road way available for such access, and will coordinate with Grantee to allow for an independent locking device or another security feature to allow passage through gates, if any (the "Access Easement Area"). The Access Easement is granted for the purpose of ingress and egress by Grantee and its guests and invitees over the Access Easement Area to access the Benefited Property.

3. Grant of Well Easement. Grantor hereby grants in favor of Grantee a permanent, non-exclusive easement (the "Well Easement") for the purpose of converting, operating, maintaining, and/or repairing a monitoring well (the "Well") in the location more particularly described on Exhibit C attached hereto (the "Well Easement Area"). The Access Easement and the Well Easement are collectively referred to as the "Easement" herein, and the Access Easement Area and the Well Easement Area are collectively referred to as the "Easement Area" herein.

4. Temporary Construction Easement. In connection with Grantee's conversion of the Well, Grantor hereby grants to Grantee a temporary construction easement (the "Temporary Construction Easement") to go upon that portion of Burdened Property to convert and refurbish the Well, in the location more particularly described on Exhibit D attached hereto (the "Temporary Construction Easement Area"). All construction work pursuant to the Temporary Construction Easement shall be in accordance with applicable laws. Grantee shall, to the extent reasonably practicable, restore the Burdened Property to the condition in which it existed prior to such access pursuant to this Temporary Construction Easement. The Temporary Construction Easement shall automatically terminate and be of no further force or effect upon the first to occur of: (a) completion of the conversion and refurbishment of the Well within the Well Easement Area; or (b) twenty-four (24) months following the date of recordation of this Easement.

5. Maintenance and Repair. Grantee has the right, but not the obligation, to maintain and repair the Easement Area as defined in Section 3 above. Except as expressly set forth herein, in no event shall Grantee construct or place any permanent obstructions or structures within the Easement Area without Grantor's prior written consent.

6. Relocation of Well Easement Area. Grantor hereby reserves the right to relocate the Well and the Well Easement Area to another location on the Burdened Property or Grantor's

adjacent Property, provided Grantor pays all costs and expenses associated with such relocation of the Well and the Well Easement Area.

7. Covenants Running with the Land. The Access Easement is made for the direct benefit of the Benefited Property. The Easement (a) constitutes covenants running with the land pursuant to California Civil Code section 1468 burdening the Burdened Property; (b) is appurtenant to and shall not be conveyed or otherwise transferred separately from the Burdened Property; and (c) shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of Grantor and Grantee.

8. Indemnification. Grantee shall indemnify, defend and hold Grantor harmless from any and all losses, claims, causes of action, liabilities and/or damages (collectively, "Claims") to the extent arising out of or due to Grantee's exercise of its rights under this Easement and/or the negligence or willful misconduct of Grantee or its employees, agents, contractors or invitees, except to the extent of the negligence or willful misconduct of Grantor or Grantor's employees, agents, contractor, or invitees. Grantor shall indemnify, defend and hold Grantee harmless from any and all Claims to the extent arising out of or due to the negligence or willful misconduct of Grantor or its employees, agents, contractors or invitees within the Easement, except to the extent of the negligence or willful misconduct of Grantee or Grantee's employees, agents, contractors or invitees.

9. Insurance. Grantor and Grantee shall each maintain commercial general liability insurance covering all use of the Easement, the Temporary Construction Easement, Temporary Construction Easement Area, and the Easement Area hereunder, in commercially reasonable amounts and coverages, and naming the other party hereunder as an additional insured.

10. Attorneys' Fees. In the event of any controversy, claim, or dispute arising out of or relating to this Easement or the alleged breach thereof, the party prevailing in such action shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as its attorneys' fees and costs.

11. Notices. As used in this Easement, notice includes but is not limited to, the communication of any notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment. All notices must be in writing. Notice is given either when delivered in person to the person or company intended named below or when sent via reputable overnight courier (such as Federal Express), addressed by name and addressed to the party or persons intended, as follows:

To Grantor: United States Gypsum Company  
550 West Adams Street  
Chicago, IL 60661  
Attn: Iryna Sladkevych  
Real Estate Department #179

With copy to: United States Gypsum Company  
550 West Adams Street

Chicago, IL 60661  
Attn: Jennifer Adams, Esq.  
Legal Department #149

To Grantee: Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, CA 92004  
Attn: General Manager

With copy to: Best Best & Krieger LLP  
P.O. Box 1028  
Riverside, CA 92501  
Attention: Borrego Water District General Counsel

The addresses will remain valid until such time as a party gives notice of the change of address in accordance with the terms of this section.

12. Assignment. Grantee shall have the right to assign all rights and liabilities under this Easement to any third party or governmental agency.

13. No Public Dedication. This Easement shall not be deemed to constitute a gift or dedication of any portion of the Burdened Property to the general public or for any public use or purpose whatsoever. Nothing expressed or implied in this Easement shall confer upon any person, other than Grantor and the Grantee, their successors and assigns, any rights or remedies under or by reason of this Easement.

IN THE WITNESS THEREOF, the Parties have caused this Easement to be executed by their duly-authorized representatives on the date and year set forth above.

**GRANTEE:**

**BORREGO WATER DISTRICT, a special district organized and existing under Division 13 of the Water Code of the State of California**

**GRANTOR:**

**UNITED STATES GYPSUM COMPANY, a Delaware corporation**

By: \_\_\_\_\_  
**Kathy Dice, President**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[ATTACH NOTARY ACKNOWLEDGMENTS]

EXHIBIT "A"

LEGAL DESCRIPTION OF THE BURDENED PROPERTY

All that certain real property situated in the County of San Diego, State of California, described as follows:

Assessor's Parcel Number:

EXHIBIT "B"

LEGAL DESCRIPTION OF THE BENEFITED PROPERTY

All that certain real property situated in the County of San Diego, State of California, described as follows:

Assessor's Parcel Number:

EXHIBIT "C"

LEGAL DESCRIPTION AND DEPICTION OF THE EASEMENT AREA

All that certain real property situated in the County of San Diego, State of California, described as follows:

Assessor's Parcel Number:

EXHIBIT "D"

DEPICTION OF THE TEMPORARY CONSTRUCTION EASEMENT AREA

All that certain real property situated in the County of San Diego, State of California, described as follows:

Assessor's Parcel Number:

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by \_\_\_\_\_, on the Grant of Permanent Non-Exclusive Access Easement dated \_\_\_\_\_, 20\_\_, to Borrego Water District (“Grantee”), is hereby accepted by the undersigned officer on behalf of the Grantee, pursuant to authority conferred by the Board of Directors, and Grantee consents to recordation thereof by its duly authorized officer.

GRANTEE:

Date: \_\_\_\_\_, 20\_\_

BORREGO WATER DISTRICT, a special district organized and existing under Division 13 of the Water Code of the State of California

By: \_\_\_\_\_  
Kathy Dice, President

EXHIBIT "C"  
Form of Weather Station Easement  
[See Attachment]



1. Effect of Recitals. The Recitals are incorporated and made a part of this Easement as if fully stated herein.

2. Grant of Easement. Grantor hereby grants in favor of Grantee a permanent, non-exclusive easement (the “Easement”) for the purpose of operating, maintaining, and/or repairing the Weather Station in the location more particularly described on Exhibit B attached hereto (the “Weather Station Easement Area”), along with ingress and egress through the Burdened Property over any roads, driveways, or trails leading to the Weather Station Easement Area, whether now existing or installed by Grantor in the future; provided, however, that Grantor will ensure that there is always at least one road way available for such access, and will coordinate with Grantee to allow for an independent locking device or another security feature to allow passage through gates, if any (the “Access Easement Area”). The Access Easement Area and the Weather Station Easement Area are collectively referred to herein as the “Easement Area.”

3. Maintenance and Repair. Grantee has the right, but not the obligation, to maintain and repair the Easement Area as defined in Section 2 above. Except as expressly set forth herein, in no event shall Grantee construct or place any permanent obstructions or structures within the Easement Area without Grantor’s prior written consent.

4. Covenants Running with the Land. The Easement (a) constitutes covenants running with the land pursuant to California Civil Code section 1468 burdening the Burdened Property; (b) is appurtenant to and shall not be conveyed or otherwise transferred separately from the Burdened Property; and (c) shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of Grantor and Grantee.

5. Indemnification. Grantee shall indemnify, defend and hold Grantor harmless from any and all losses, claims, causes of action, liabilities and/or damages (collectively, “Claims”) to the extent arising out of or due to Grantee’s exercise of its rights under this Easement and/or the negligence or willful misconduct of Grantee or its employees, agents, contractors or invitees, except to the extent of the negligence or willful misconduct of Grantor or Grantor’s employees, agents, contractor, or invitees. Grantor shall indemnify, defend and hold Grantee harmless from any and all Claims to the extent arising out of or due to the negligence or willful misconduct of Grantor or its employees, agents, contractors or invitees within the Easement, except to the extent of the negligence or willful misconduct of Grantee or Grantee’s employees, agents, contractors or invitees.

6. Insurance. Grantor and Grantee shall each maintain commercial general liability insurance covering all use of the Easement and the Easement Area hereunder, in commercially reasonable amounts and coverages, and naming the other party hereunder as an additional insured.

7. Attorneys’ Fees. In the event of any controversy, claim, or dispute arising out of or relating to this Easement or the alleged breach thereof, the party prevailing in such action shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as its attorneys’ fees and costs.

8. Notices. As used in this Easement, notice includes but is not limited to, the communication of any notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment. All notices must be in writing. Notice is given either when delivered in person to the person or company intended named below or when sent via reputable overnight courier (such as Federal Express), addressed by name and addressed to the party or persons intended, as follows:

To Grantor: United States Gypsum Company  
550 West Adams Street  
Chicago, IL 60661  
Attn: Iryna Sladkevych  
Real Estate Department #179

With copy to: United States Gypsum Company  
550 West Adams Street  
Chicago, IL 60661  
Attn: Jennifer Adams, Esq.  
Legal Department #149

To Grantee: Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, CA 92004  
Attn: General Manager

With copy to: Best Best & Krieger LLP  
P.O. Box 1028  
Riverside, CA 92501  
Attention: Borrego Water District General Counsel

The addresses will remain valid until such time as a party gives notice of the change of address in accordance with the terms of this section.

9. Assignment. Grantee shall have the right to assign all rights and liabilities under this Easement to any third party or governmental agency, provided that such assignee shall assume in writing all obligations and liabilities of Grantee under this Easement in a written instrument satisfactory to Grantor.

10. No Public Dedication. This Easement shall not be deemed to constitute a gift or dedication of any portion of the Burdened Property to the general public or for any public use or purpose whatsoever. Nothing expressed or implied in this Easement shall confer upon any person, other than Grantor and the Grantee, their successors and assigns, any rights or remedies under or by reason of this Easement.

IN THE WITNESS THEREOF, the Parties have caused this Easement to be executed by their duly-authorized representatives on the date and year set forth above.

**GRANTEE:**

**BORREGO WATER DISTRICT, a special district organized and existing under Division 13 of the Water Code of the State of California**

**GRANTOR:**

**UNITED STATES GYPSUM COMPANY, a Delaware corporation**

**By:** \_\_\_\_\_  
**Kathy Dice, President**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

[ATTACH NOTARY ACKNOWLEDGMENTS]

EXHIBIT "A"

LEGAL DESCRIPTION OF THE BURDENED PROPERTY

All that certain real property situated in the County of San Diego, State of California, described as follows:

Assessor's Parcel Number:

EXHIBIT "B"

LEGAL DESCRIPTION AND DEPICTION OF THE EASEMENT AREA

All that certain real property situated in the County of San Diego, State of California, described as follows:

Assessor's Parcel Number:

48248808.14

722694-00946

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**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by \_\_\_\_\_, on the Grant of Permanent Non-Exclusive Access Easement dated \_\_\_\_\_, 20\_\_, to Borrego Water District (“Grantee”), is hereby accepted by the undersigned officer on behalf of the Grantee, pursuant to authority conferred by the Board of Directors, and Grantee consents to recordation thereof by its duly authorized officer.

GRANTEE:

Date: \_\_\_\_\_, 20\_\_

BORREGO WATER DISTRICT, a special district organized and existing under Division 13 of the Water Code of the State of California

By: \_\_\_\_\_  
Kathy Dice, President

<b>Summary report:</b>	
<b>Litera Compare for Word 11.5.0.74 Document comparison done on 2/23/2024 1:31:44 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://bbklaw-mobility.imanage.work/IMANAGE/34533654/17	
<b>Modified DMS:</b> iw://bbklaw-mobility.imanage.work/IMANAGE/34533654/18	
<b>Changes:</b>	
<a href="#">Add</a>	22
<del>Delete</del>	22
<del>Move From</del>	0
<a href="#">Move To</a>	0
<a href="#">Table Insert</a>	0
<del>Table Delete</del>	0
<a href="#">Table moves to</a>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>44</b>

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
MARCH 12, 2024  
AGENDA ITEM II.D

March 4, 2024

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Town Hall 2024 Schedule and Agenda – K Dice/D Johnson

**RECOMMENDED ACTION:**

Review Agenda and direct staff accordingly

**ITEM EXPLANATION:**

The 2024 Town Hall plans are proceeding and the Outreach Committee would like to share the latest re: topics and Presenters. One BWD Presenter spot is open for review our Prop 68 Projects.

**NEXT STEPS**

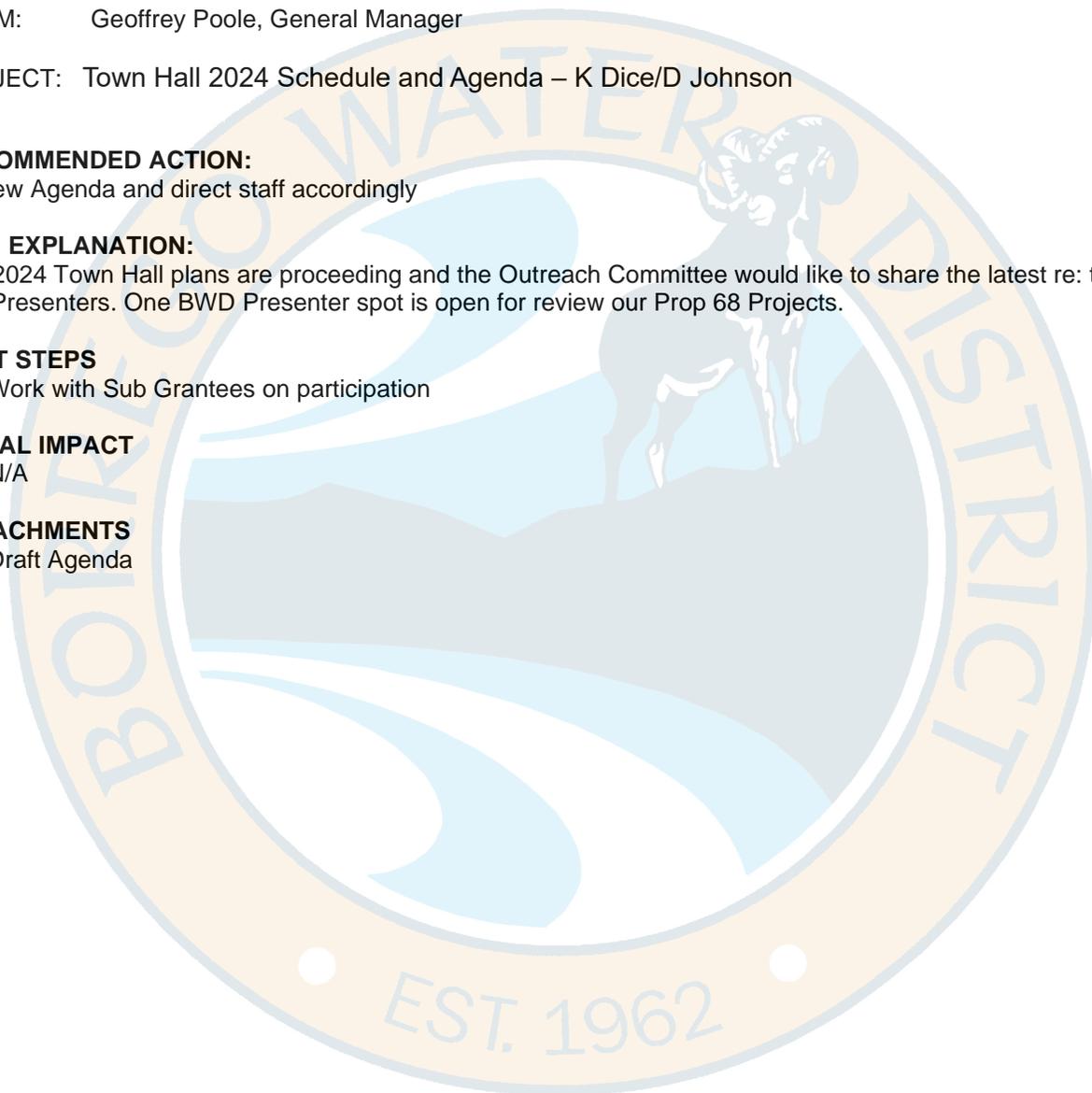
1. Work with Sub Grantees on participation

**FISCAL IMPACT**

1. N/A

**ATTACHMENTS**

1. Draft Agenda



**Borrego Water District Board of Directors**  
**Special Meeting & Town Hall**  
**April 3, 2024 @ 5:30 p.m. to 7:00 p.m.**  
**SD County Library: 2580 Country Club Road**  
**Borrego Springs, CA 92004**

COVID-19 UPDATE: The Borrego Water District Board of Directors meeting as scheduled in an electronic format as well as on site at the Library. BWD will also be providing public access to the Meeting thru electronic means only to minimize the spread of the COVID-19 virus, based upon direction from the California Department of Public Health, the California Governor's Office and the County Public Health Office. Anyone who wants to listen to or participate in the meeting is encouraged to observe the GO TO MEETING at

<https://meet.goto.com/432670341>

You can also dial in using your phone. United States: +1 (646) 749-3122 Access Code: 432-670-341

**I. OPENING PROCEDURES -**

- A. Call to Order:
- B. Pledge of Allegiance
- C. Roll Call – Directors Baker, Duncan, Johnson and Rosenboom. President Dice
- D. Approval of Agenda
- E. Comments from the Public & Requests for Future Agenda Items (may be limited to 3 min)
- F. Comments from Directors

**I. ITEMS FOR BOARD CONSIDERATION AND POSSIBLE ACTION –**

- A. Welcome/Introductions/Overview of Agenda – President K. Dice
  - 1. Borrego Water District
    - i. 2023 Year in Review and 2024 Priorities – T Baker (10 min)
    - ii. Water Quality Analysis – T Driscoll (10 min)
  - B. Proposition 68 Project Overviews
    - 1. Borrego Springs Watermaster (15 min)
      - i. Farmland Fallowing
      - ii. GMP Update
      - iii. WQ Monitoring Network
    - 2. University of California Groundwater Dependent Eco Systems (10 min)
    - 3. Borrego Valley Stewardship Council (10 min)
    - 4. Borrego Springs School District (10 min)
    - 5. Borrego Water District - VOLUNTEER? (10 min)
      - i. Groundwater Monitoring Wells – WWTP
      - ii. Automated Metering Infrastructure
- C. Questions and Answers – (20 min est.) - G. Poole
- D. BWD Director Comments and Town Hall Closing Comments – President K Dice

III. **CLOSING PROCEDURE:** The next Board Meeting is scheduled for April 9, 2024 to be available online. See Board Agenda at [BorregoWD.org](http://BorregoWD.org) for details, Agenda information available at least 72 hours before the meeting.

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
MARCH 12, 2024  
AGENDA ITEM II.E

March 4, 2024

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Borrego Springs Subbasin Watermaster Board – VERBAL D Duncan/K Dice/T Driscoll

1. Update on Board Activities Including 3-14 Agenda Items
2. Update on Technical Advisory Committee Activities
3. Annual Report Comments – T Driscoll

**RECOMMENDED ACTION:**

Discuss upcoming Watermaster related activities

**ITEM EXPLANATION:**

BWD Representatives from the Watermaster and TAC will provide a review of recent events and an update on upcoming meetings.

**NEXT STEPS**

1. TBD

**FISCAL IMPACT**

1. TBD

**ATTACHMENTS**

1. None

