

Borrego Water District Board of Directors
Special Meeting
August 8, 2023 @ 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:

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I. OPENING PROCEDURES -

- A. Call to Order
- B. Pledge of Allegiance
- C. Directors' Roll Call: President Dice, Vice President Baker, Directors Duncan, Johnson & 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. Presentation by Rams Hill/T2 re: Future Development Plans – G Poole & T2 Reps
- B. Capitalization Policy – J Clabaugh
- C. Consulting Agreement with Dynamic Engineering for BWD District Engineer Services – S Anderson
- D. Resolution 2023-08-01 Declaring BWD Property as Surplus – D Del Bono
- E. Borrego Springs Subbasin Watermaster Board – VERBAL D Duncan/K Dice/T Driscoll
 - 1. Update on Board Activities
 - 2. Update on Technical Advisory Committee Activities

AGENDA: August 8, 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.

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

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

IV. STAFF REPORTS – VERBAL

- A. Finance: AMI Proposal Update
- B. General Manager
 - a. William and David Bauer Property Acquisition Documents
 - b. Fallowing Update

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
- C. Conference with Real Property Negotiators (Gov. Code §Section 54956.8) APN: 140-303-0900 & 140-303-1100 Agency Negotiator: Geoff Poole, BWD General Manager Negotiating Parties: BWD and US Gypsum Corp as potential buyer Price and Terms of Payment

VI. CLOSING PROCEDURE:

The next Board Meeting is scheduled for 9:00 AM September 12, 2023, to be available online and in person at 806 Palm Canyon Drive. See Board Agenda at BorregoWD.org for details, Agenda information available at least 72 hours before the meeting.

AGENDA: August 8, 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.

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BORREGO WATER DISTRICT
BOARD OF DIRECTORS MEETING
AUGUST 8, 2023
AGENDA ITEM II.A

August 1, 2023

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Presentation by Rams Hill/T2 re: Future Development Plans – G Poole & T2 Reps

RECOMMENDED ACTION:

Receive presentation from Rams Hill representatives

ITEM EXPLANATION:

Rams Hill is continuing with its plans to develop and is in the process of working with the County of San Diego on all related issues. BWD staff and an Ad Hoc Committee (Duncan/Baker) have met with Rams Hill on three occasions in the past 2 months to discuss water/sewer/flood/gnat/etc.. issues and feel now is a good time for the full Board and public to receive the latest information about the project.

NEXT STEPS

1. TBD

FISCAL IMPACT

1. N/A

ATTACHMENTS

1. None

BORREGO WATER DISTRICT
BOARD OF DIRECTORS MEETING
AUGUST 8, 2023
AGENDA ITEM II.B

August 1, 2023

TO: Board of Directors
FROM: Geoffrey Poole, General Manager
SUBJECT: Capitalization Policy – J Clabaugh

RECOMMENDED ACTION: None

ITEM EXPLANATION:

Recent guidance on Generally Accepted Accounting Principles requires leased assets be capitalized. The District does not lease much equipment but currently has a lease on its Xerox Copier Machine and some postal equipment. Under the District's current policy, these leases must be treated as capital assets when they are valued at \$5,000 or greater. After discussions with the District's Auditing Firm, it is recommended that the threshold for capitalizing leased assets should be raised to \$35,000 which will eliminate the need to capitalize most leased assets. This will save in accounting staff labor and annual auditing expense as it triggers additional audit work to analyze the leases and capital assets.

In addition, the District has historically followed a straight-line method of depreciation which has been added to this version.

This agenda item was reviewed by the Finance Committee and they recommend Board Adoption.

FISCAL IMPACT : None

ATTACHMENTS:

Red line copy of proposed Capitalization Policy Changes
Clean copy of proposed Capitalization Policy Changes

NEXT STEPS

1. Approve Amendment dated 08/08/2023

FISCAL IMPACT

1. N/A

ATTACHMENTS

1. Draft Capitalization Policy

BORREGO WATER DISTRICT

POLICY STATEMENT

SUBJECT: Guidelines for Capitalization of Assets

NO: 90-1

ADOPTED: June 20, 1990

AMENDED: January 9, 2008

AMMENDED: tbd 2023

POLICY

All purchased assets, assets constructed by the District or donated assets valued in excess of \$5,000 and leased assets valued in excess of \$35,000 shall be numbered and accounted for in the District's fixed asset inventory.

The minutes of the board of directors meetings shall note the date when each construction project has been completed and accepted by the District Engineer. The minutes of the board of directors meetings shall note the date, value and name of each donated facility received from developers.

The District's Finance Officer shall keep the fixed asset inventory and the corresponding accounting records in accordance with this policy.

Depreciable assets shall be depreciated according to the Straight Line method.

BORREGO WATER DISTRICT

POLICY STATEMENT

SUBJECT: GUIDELINES FOR CAPITALIZATION OF ASSETS
NO: 90-1
ADOPTED: June 20, 1990
AMENDED: January 9, 2008
AMENDED: August 8, 2023

POLICY

All purchased assets, assets constructed by the District or donated assets valued in excess of \$5,000 and leased assets valued in excess of \$35,000 shall be numbered and accounted for in the District's fixed asset inventory.

The minutes of the Board of Directors meetings shall note the date when each construction project has been completed and accepted by the District Engineer. The minutes of the Board of Directors meetings shall note the date, value and name of each donated facility received from developers.

The District's Finance Officer shall keep the fixed asset inventory and the corresponding accounting records in accordance with this policy.

Depreciable assets shall be depreciated according to the Straight Line method.

BORREGO WATER DISTRICT
BOARD OF DIRECTORS MEETING
AUGUST 8, 2023
AGENDA ITEM II.C

August 1, 2023

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Consulting Agreement with Dynamic Engineering for BWD District Engineer Services – S Anderson

RECOMMENDED ACTION:

Receive overview of Agreement, revise if needed and approve

ITEM EXPLANATION:

At the July 25th Board Meeting, Staff was authorized to develop the Contract for utilizing Dynamic Engineering as BWDs District Engineer. Attached is the Draft Agreement created by BWD Legal Counsel.

NEXT STEPS

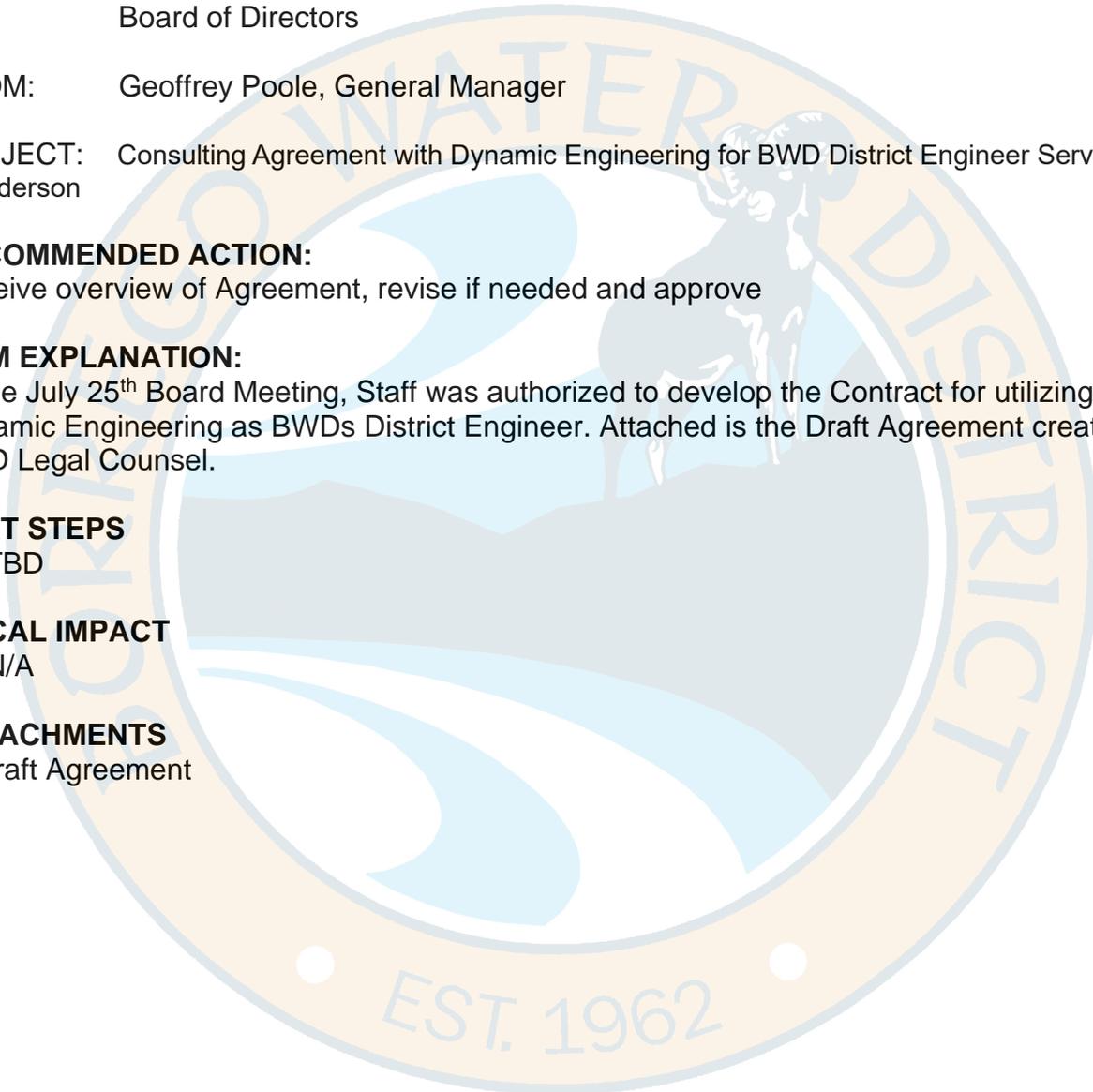
1. TBD

FISCAL IMPACT

1. N/A

ATTACHMENTS

1. Draft Agreement



BORREGO WATER DISTRICT – DYNAMIC CONSULTING ENGINEERS PROFESSIONAL SERVICES AGREEMENT

1. Parties and Date.

This Agreement is made and entered into this _____ day of August, 2023, by and between Borrego Water District (“BWD”) and Dynamic Consulting Engineers (“Consultant”), whose address is 2415 Imperial Business Park Drive, Suite B, Imperial, CA 92251. BWD and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

a. Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by BWD on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing District Engineer services and general engineering services, is licensed in the State of California, and is familiar with the plans of BWD.

b. Project.

BWD desires to engage Consultant to render engineering professional services (“Project”) on behalf of BWD (“District”).

3. Terms.

a. Services. Consultant will provide to BWD consulting services related to those customarily performed by a water agency District Engineer and general engineering services to BWD. **The scope of these services will be developed, in writing, with consent of BWD and Consultant.**

b. Term. The term of this Agreement shall be for an unlimited term unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

c. Compensation. BWD agrees to compensate Consultant for their services as outlined in the Fee Schedule described in Exhibit “A” attached hereto and incorporated herein by reference.

d. Insurance. BWD shall require the Consultant to procure and maintain, at its own expense, for the duration of the Agreement a general liability insurance policy in the amount of two million dollars against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require its subcontractors to procure and maintain the same insurance for the

duration of the Agreement. Such insurance shall give both BWD and the Consultant insured status.

e. General Provisions.

i. Termination of Agreement. BWD may terminate the whole or any part of this Agreement at any time and without cause by giving written notice of such termination, and specifying the effective date thereof, which shall be at least thirty (30) days before the effective date of such termination. Consultant may terminate this Agreement only with the written concurrence of BWD.

ii. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: Dynamic Consulting Engineers
2415 Imperial Business Park Drive, Suite B
Imperial, CA 92251
Attn: Carlos Beltran, Principal Engineer
Phone: (760) 545-0162

BWD: Borrego Water District
806 Palm Canyon Drive
Borrego Springs, CA 92004
Attn: Geoff Poole, General Manager
Phone: (760) 767-5806

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

iii. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

iv. Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

v. Indemnification. Consultant agrees to defend, indemnify and hold BWD, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to the Services provided by the Consultant under the Project.

vi. Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

vii. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

viii. Time of Essence. Time is of the essence for each and every provision of this Agreement.

ix. Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of BWD. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

x. Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to the Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to BWD include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

xi. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

xii. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

xiii. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

xiv. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

xv. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

xvi. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the Parties hereby have made and executed this Agreement as of the date first written above.

BORREGO WATER DISTRICT

DYNAMIC CONSULTING ENGINEERS

By: _____
Geoff Poole
General Manager

By: _____
Carlos Beltran
Principal Engineer

EXHIBIT A

Rate Sheet

Attached



May 5, 2023

Borrego Water District
806 Palm Canyon Drive
Borrego Springs, CA 92004

Attn: Geoff Poole, General Manager

RE: PROPOSAL FOR “DISTRICT ENGINEER” SERVICES AND GENERAL ENGINEERING SERVICES AS NEEDED.

Dynamic Consulting Engineers, Inc (DCE) appreciates the opportunity to present this cost proposal to provide “District Engineer” services and for general engineering services as needed. DCE can assist the District with Civil Engineering, Land Surveying and Construction Management and Inspections as Needed. The hourly rates for professional services are listed below:

Fee Schedule:

District Engineer Services, Carlos Beltran, P.E.	\$180.00
District Engineer Services, Frank Fiorenza, P.E.	\$180.00
Principal Surveyor (PLS)	\$170.00
Project Engineer I	\$120.00
Project Inspector	\$120.00
Construction Inspector (Prevailing Wage)	\$170.00
Staff Engineer	\$95.00
2 Man Survey Crew (Prevailing Wage)	\$340.00
2 Man Survey Crew (Non Prevailing Wage)	\$240.00

Thank you for giving Dynamic Consulting Engineers, Inc the opportunity to serve you. If you have any question please feel free to call me at (760) 545-0162.
Sincerely,

Carlos Beltran, P.E.
Principal Engineer
Dynamic Consulting Engineers, Inc.

BORREGO WATER DISTRICT
BOARD OF DIRECTORS MEETING
AUGUST 8, 2023
AGENDA ITEM II.D

August 1, 2023

TO: Board of Directors
FROM: Diana Del Bono, Administrative Manager
SUBJECT: Resolution 2023-08-01 Declaring BWD Property as Surplus

RECOMMENDED ACTION:

Approve the concept of a land re-swap with Charles White and authorize staff to begin the Surplus Land Declaration process using the attached Resolution No. 2023-08-01. Various public agencies and organizations are notified before sale of public property to see if there is any interest in using the property for housing developments.

ITEM EXPLANATION

In 2005, the District purchased a 1 acre parcel from the Qvale family for the development of Well 4. This parcel is located on Borrego Springs Road near Big Horn Road. In 2015, Charlie White donated 22.5 acres of his 170 acres of land to the BWD. This particular donated parcel horseshoes around the 1 acre parcel previously purchased from the Qvale's. The District fenced a portion of the 22 acres and developed what is now Well 9. The fenced area is @10 acres. Mr. White had contacted the county of San Diego to inquire about building on his 170 acres when he was told the lot was not a legal lot. When the 2015 donation transaction occurred, the proper paperwork was not completed. With this discovery, Mr. White contacted the District inquiring about next steps to correct this. In these discussions, the District came to the conclusion that the BWD does not need the entire donated land and is considering re-donating a portion of that land. The portion of land up for consideration is approximately 10 acres and is located directly east of Well 9 with an entry from Borrego Springs Road.

In order for the District to dispose of this parcel, the District must first go through a public/stakeholder engagement process in accordance with state law and the Surplus Land Act. This process requires the District to transmit notice of availability to designated entities under state law, and allow for a 60-day period during which these entities, including potential affordable housing developers and public entities with jurisdiction over the parcel, may express their interest in negotiation on any of those parcels. The Surplus Land Act requires this right of first refusal in an effort to mitigate the state's housing supply crisis. The District is also required to engage in good-faith real property negotiations for at least 90-days on price and terms with any interested party that responds. The District also has reporting and compliance obligations to the Department of Housing and Community Development, who can impose penalties based on the ultimate sale price of the parcel if the Surplus Land Act is not followed prior to disposition. Today's action and resolution simply sets the surplus process on course and allows staff to vet any other interest by the public, affordable housing developers, or other entities designated under the Surplus Land Act. The subject property will need to go

through a APN split, then a Boundary Adjustment with Certificate of Compliance, and is currently not for sale.

NEXT STEPS

1. Start surplus land disposal process

FISCAL IMPACT

1. @\$4,000 Staff recommends sharing the cost with Mr. White for the needed correction from the 2015 donation transaction.

ATTACHMENTS

1. Resolution 2023-08-01
2. Location Map
3. Notice of Availability Letter



RESOLUTION NO. 2023-08-01

RESOLUTION OF THE BOARD OF DIRECTORS OF BORREGO WATER DISTRICT DECLARING CERTAIN DISTRICT OWNED PROPERTIES ((portion of) APN 141-030-620) IS NON-EXEMPT SURPLUS LAND AND ARE NO LONGER NECESSARY FOR THE DISTRICT'S USE, AND DIRECTING THE GENERAL MANAGER TO FOLLOW THE PROCEDURES SET FORTH IN THE SURPLUS LAND ACT, CALIFORNIA GOVERNMENT CODE SECTION 54220, ET SEQ., AS AMENDED BY AB 1486, FOR THE DISPOSITION OF SAID SURPLUS LAND

WHEREAS, the Borrego Water District (“District”) is the owner of certain real properties located within the District, Assessor Parcel Number 141-030-620, collectively referred to herein as the “Subject Property”; and

WHEREAS, the Subject Property currently are vacant/undeveloped; and

WHEREAS, Assembly Bill 1486 went into effect on January 1, 2020 (“AB 1486”), and expanded the Surplus Land Act (Government Code, § 54220 et. seq.) requirements for local agencies prior to the disposition and disposal of any “surplus land”; and

WHEREAS, the Subject Properties meet the definition of “surplus land,” are no longer necessary for the District’s use, and do not meet any of the applicable exemptions from the Surplus Land Act, as amended by AB 1486; and

WHEREAS, District staff may have an appraisal of the Subject Property performed to establish their fair market value; and

WHEREAS, the District portion of the sale proceeds may provide funding to enhance District services; and

WHEREAS, the Subject Property are currently not listed for sale and consist of undeveloped land; and

WHEREAS, the Subject Property are not currently being used by the District; and

WHEREAS, the District desires to declare that the Subject Property is surplus land, not necessary for the District’s use, and would allow the District to remove the land from its holdings, avoiding ongoing maintenance and liability expenses.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED BY THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT AS FOLLOWS:

SECTION 1. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. The Board of Directors hereby finds and declares that the Subject Property is no longer necessary for the District’s use and are surplus land, as defined in California Government Code section 54221, based on the true and correct written findings found in this Resolution and incorporated herein by this reference.

SECTION 3. The Board of Directors hereby authorizes the General Manager to send written notices of availability of the Subject Property for sale (a form of which is attached hereto as Exhibit A), to negotiate the terms of a proposed sale of the Subject Property, to any beneficially interested person or entity and to otherwise follow the procedures of the Surplus Land Act, California Government Code section 54220, *et seq.*, as applicable to a proposed sale of the Surplus Properties.

SECTION 4. Any proposed agreement for the sale of the Subject Property shall be subject to the approval of the Board of Directors.

SECTION 5. District staff is hereby authorized and directed to take any appropriate action consistent with the purposes of this Resolution to implement and administer the District’s rights and obligations pursuant hereto.

SECTION 6. The sale of the Subject Property as surplus is exempt from environmental review under the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15312 (Surplus Government Property Sales). However, if development was proposed on the Subject Properties by a subsequent buyer, then that development would be reviewed under CEQA.

SECTION 7. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 8th day of August, 2023.

AYES:

NOES:

ABSENT:

ABSTAIN:

President of the Board

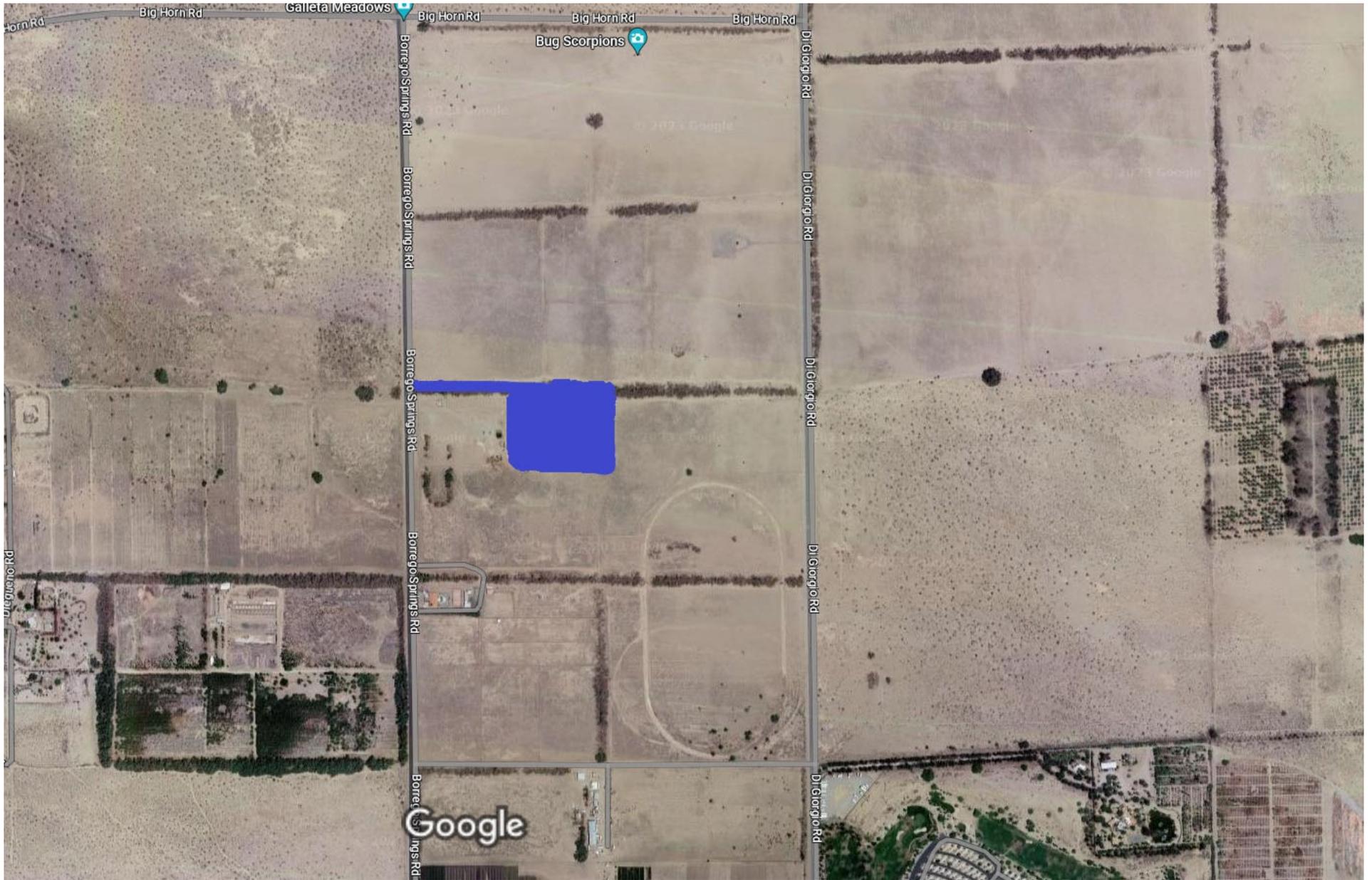
ATTEST:

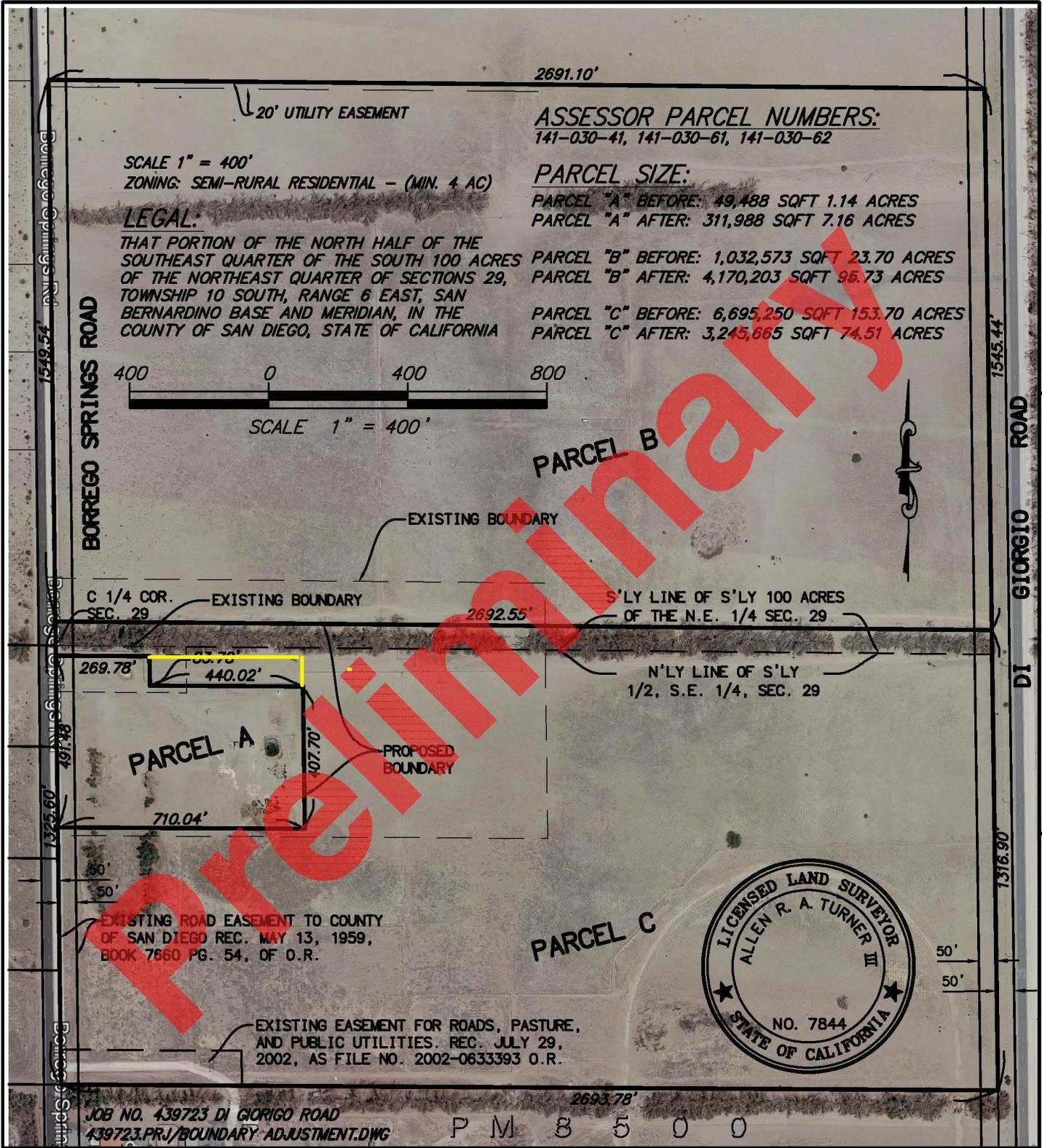
Secretary of the Board

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

I, _____, Secretary of the Board of the Borrego Water District, do hereby certify that the foregoing is a true and correct copy of the Resolution passed and adopted by the Board of Directors of the Borrego Water District at a meeting of said Board held on the 8th day of August 2023.

Name: _____
Secretary of the Board of Directors of the
Borrego Water District





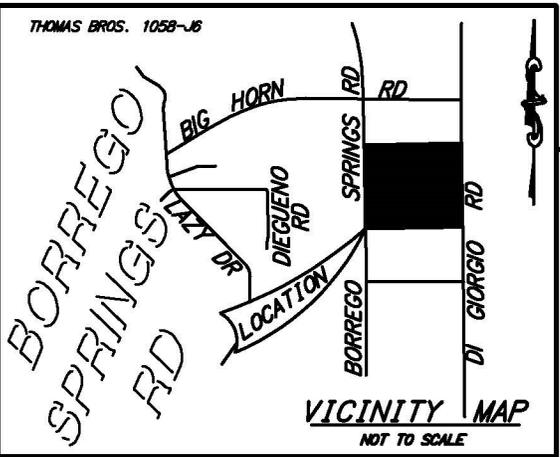
DATE FILED _____
 REC'D BY: _____

PRELIMINARY ACTION DATE: _____
 SIGNED BY: _____

FINAL ACTION DATE: _____
 SIGNED BY: _____

PLAT NO. _____

HEALTH DEPARTMENT CERTIFICATION



PARCEL A OWNER(S): BORREGO WATER DISTRICT

PARCEL B-C OWNER(S): CHARLES WHITE

ADDRESS: 0 BORREGO SPRINGS RD

ADDRESS: 0 DI GIORIGO RD

CITY BORREGO SPRINGS ZIP 92004 PHONE _____

CITY BORREGO SPRINGS ZIP 92004 PHONE (707) 396-7989

THIS PLAT WAS PREPARED WITH MY/OUR KNOWLEDGE AND CONSENT: BORREGO WATER DISTRICT

THIS PLAT WAS PREPARED WITH MY/OUR KNOWLEDGE AND CONSENT: CHARLES WHITE

MAP PREPARED BY: Allen R. Turner LS# 7844
 KAPPA SURVEYING & ENGINEERING INC.

ADDRESS 8402 NORTH MAGNOLIA AVE, SUITE C

CITY SANTEE ZIP 92071 PHONE (619)449-2600

August 2, 2023

To All Interested Parties:

RE: Notice of Availability/Offer to Sell Surplus Property

As required by Government Code Section 54220 of the State of California, Borrego Water District is providing notification that the Borrego Water District located in Borrego Springs California intends to **sell** the surplus property listed in the accompanying table titled **Borrego Water District Surplus Land Attachment "A"**.

In accordance with Government Code Section 54222, you have sixty (60) days from the date this offer was sent via certified mail or electronic mail to notify Borrego Water District of your interest in acquiring the property. However, this offer shall not obligate the Borrego Water District to sell the property to you. Instead, Borrego Water District would enter into at least ninety (90) days of negotiations with you pursuant to Government Code Section 54223. If no agreement is reached on sales price and terms, or lease terms, the Borrego Water District may market the property to the general public.

As required by Government Code Section 54227, if the Borrego Water District receives more than one letter of interest during this 60-day period, it will give first priority to entities proposing to develop housing where at least 25 percent of the units will be affordable to lower income households. If more than one such proposal is received, priority will be given to the proposal with the greatest number of affordable units. If more than one proposal specifies the same number of affordable units, priority will be given to the proposal that has the lowest average affordability level.

In the event your agency or company is interested in purchasing the property, you must notify the Borrego Water District in writing within sixty (60) days of the date this notice was sent via certified mail or electronic mail. Notice of your interest in acquiring the property shall be delivered to Geoff Poole, General Manager, at 806 Palm Canyon Dr., Borrego Springs CA 92004. You may also direct your questions to geoff@borregowd.org or by calling 760-767-5806

Entities proposing to submit a letter of interest are advised to review the requirements set forth in the Surplus Land Act (Government Code Section 54220-54234).

BORREGO WATER DISTRICT
BOARD OF DIRECTORS MEETING
AUGUST 8, 2023
AGENDA ITEM II.E

August 1, 2023

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
2. Update on Technical Advisory Committee Activities

RECOMMENDED ACTION:

Receive report from Watermaster and TAC Representatives

ITEM EXPLANATION:

Receive report from Watermaster and TAC Representatives

NEXT STEPS

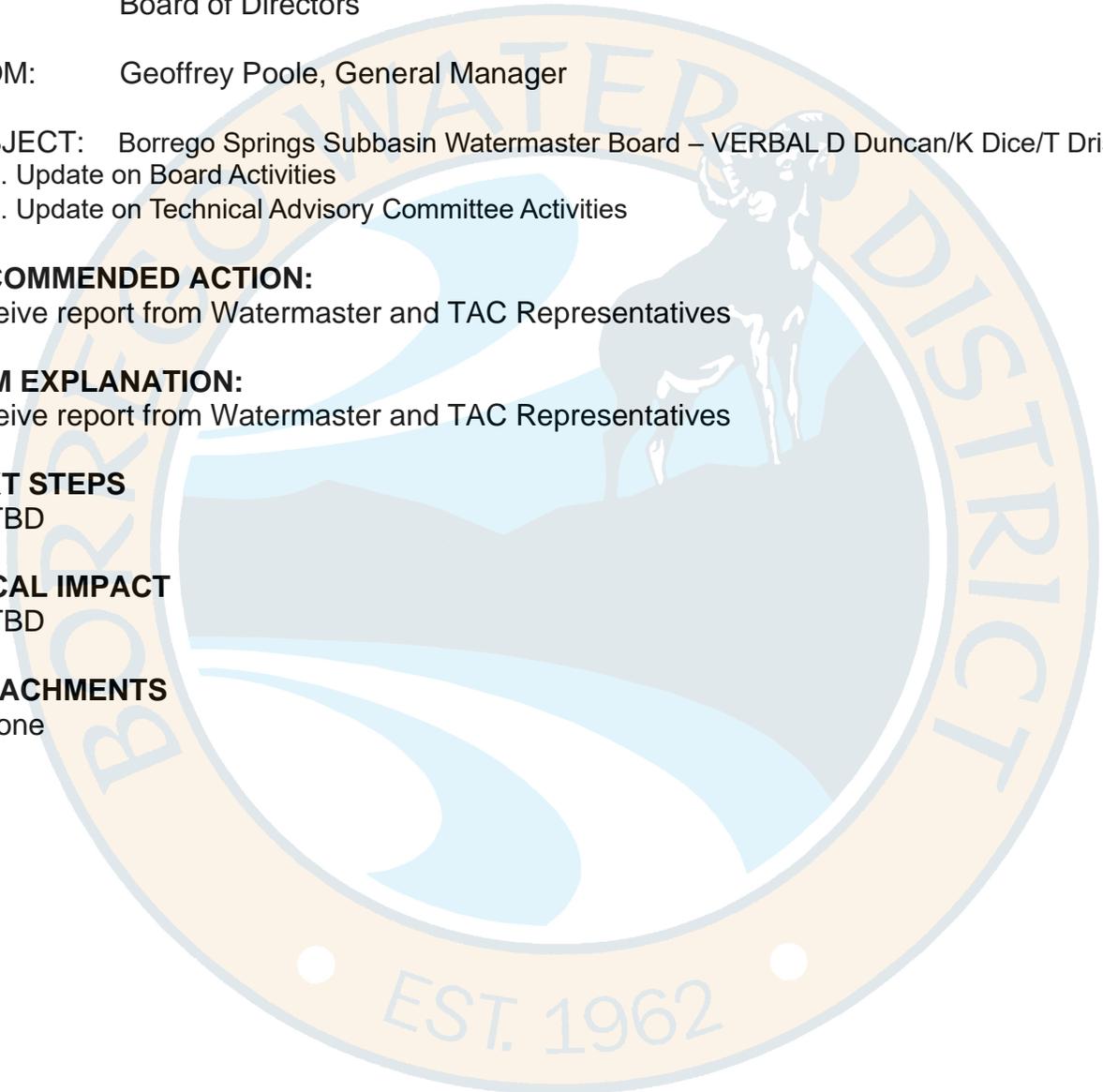
1. TBD

FISCAL IMPACT

1. TBD

ATTACHMENTS

1. None



IV.B
General Managers Report

Bauer Agreements



PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") is made and entered into as of May 31, 2023 ("Effective Date"), by and between DAVID BAUER AND JULI BAUER, Co-Trustees of the D&J Bauer Family Trust 11-18-04 ("Sellers"), and BORREGO WATER DISTRICT, a California Water District ("Buyer" or "District"). Buyer/District and Sellers are referred to individually as a "Party" and collectively as the "Parties"

RECITALS

A. Sellers own Baseline Pumping Allocation (BPA) in the amount of 1,826 acre-feet of water ("Sellers' BPA") in the Borrego Springs Subbasin of the Borrego Valley Groundwater Subbasin ("Basin"), as such terms are defined in the Stipulated Judgment dated April 8, 2021 approved by the Superior Court and entered as part of a comprehensive adjudication of groundwater rights of the Basin pursuant to California Code of Civil Procedure sections 830 et seq., *Borrego Water District v. All Persons Who Claim a Right to Extract Groundwater Subbasin No. 7.024-01 Whether Based on Appropriation, Overlying Right, or Other Basis of Right, and/or Who Claim a Right to Use of Storage Space in the Subbasin; et al.*, Case No. 37-2020-00005776 in the Superior Court of the County of Orange, California ("Judgment").

B. The Judgment is administered by the Borrego Springs Watermaster as a court-appointed special master for the Basin ("Watermaster") and the Parties' use and transfer of BPA are subject to the terms of the Judgment.

C. Under Exhibit 4 of the Judgment, Sellers' BPA is associated with specific real property parcels overlying the Basin owned by Sellers located and presently referred to as Assessor Parcel Numbers (APN) 140-070-27, 140-110-14, 140-070-18, 140-070-17, and 140-010-11 by the San Diego County Assessor ("Sellers' Parcels"). Sellers' Parcels are more particularly described in **Exhibit "A"**.

D. Buyer desires to acquire from Sellers all of Sellers' BPA (i.e., 1,826 acre feet) incrementally in the amount of approximately 23% in year 1, commencing on or before August 3, 2023, and then in equal annual amounts, at a rate of approximately 11% per year during the following 7 years, ending on October 2, 2030, as reflected on the attached **Exhibit "F"**. The expectation of the Parties is that Sellers may continue to conduct limited agricultural operations on portions of Sellers' Parcels, as determined exclusively by Sellers after consultation with Buyer, during the "Acquisition Period".

E. Buyer also desires to acquire the Sellers' Parcels totaling approximately 300 acres during the Acquisition Period, after each of the parcels is "fallowed" (in the manner required by the Judgment) by Seller, on the schedule described in **Exhibit "F"**; provided, that the First Parcel (as defined below) is to be acquired by Buyer before fallowing is complete. As part of the acquisition of Sellers' Parcels, Buyer will, subject to the provisions described herein, acquire all water wells and other fixtures located on Sellers' Parcels; provided, however, that Sellers will retain their personal property and specific fixtures enumerated in this Agreement.

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NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

I. Purchase and Sale of BPA. Subject to the terms of this Agreement, Buyer shall purchase from Sellers and Sellers shall sell to Buyer: (1) Sellers' BPA rights in the amount of One Thousand Eight Hundred Twenty-Six (1,826) ("Total BPA") acre-feet of water over the Acquisition Period and (2) Sellers' Parcels. The purchase price shall be \$2,954,287 ("Purchase Price"), which includes consideration for Buyer's purchase of Sellers' Total BPA and Sellers' Parcels, including fixtures (before following). Buyer will also pay Seller a total of \$336,225 in financing payments paid over the Acquisition Period (each a "Finance Payment"). The Purchase Price plus proportional Finance Payments shall be payable on the schedule described in Paragraph 1(A) below and shown in the attached **Exhibit "F"**, which reflects payment dates and anticipated conveyance dates for the Sellers' BPA and Sellers' Parcels to Buyer.

A. BPA Transfer and Payment Schedule. The Sellers' Total BPA rights will be transferred from Sellers to Buyer as follows:

- i. No later than August 3, 2023, Sellers will transfer to Buyer 23% of their total BPA, or 415 acre feet, as well as APN 140-070-18 ("First Parcel") in exchange for Buyer's payment of 23% of the Purchase Price plus proportionate Finance Payment, or \$756,818 in total. The 415 acre-feet of BPA transferred to Buyer pursuant to this subparagraph shall, after conveyance, remain attached to the First Parcel in the name of Buyer until Buyer decides to move such BPA to its municipal account at a later date, after following and other Judgment requirements have been satisfied. Buyer agrees that some or all of such 415 acre-feet of BPA may be utilized by or leased to Sellers during the 7-year Acquisition Period pursuant to the terms of this Agreement.
- ii. On or about October 1 of each year from 2024 to 2029, Sellers will transfer to Buyer 11% of the remaining Sellers' BPA, or 200 acre feet, in exchange for equal annual payments to Sellers of the balance of the Purchase Price plus proportional Finance Payment, or \$361,956 per year. (See **Exhibit "F"**.) Sellers will transfer to Buyer 206 acre of BPA in 2030 upon Buyer's final payment of \$361,956 to Sellers. (See **Exhibit "F"**.)
- iii. Except as to the First Parcel which may be conveyed to Buyer before following is completed, Sellers and Buyer intend to transfer Sellers' Parcels to Buyer incrementally, likely in no more than one transaction every two years, after Sellers' Parcels are followed. (See anticipated conveyance schedule in **Exhibit "F"**.) BPA transferred from Sellers to Buyer in any year from 2023 to 2030 may remain attached to those Sellers' Parcels conveyed to Buyer in such year or to Sellers' Parcels conveyed to Buyer in prior years, in the discretion of Buyer.

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iv. The obligation of Buyer to purchase Seller's Parcels and the transfer of title to any one or more of Sellers' Parcels, or any portion thereof, to Buyer, shall occur only after the completion of Buyer's due diligence investigation, conducted in Seller's sole discretion, and after Buyer's conditions to Close of Escrow for each Sellers' Parcel, as described below, have been satisfied.

B. BPA Transfer Escrow and Documentation. Unless otherwise agreed to in writing by the Parties, to accomplish the incremental transfer of Sellers' BPA to Buyer each year from 2023 to 2030, Buyer will open a first-year escrow ("Escrow") with a reputable escrow company selected by Buyer within 20 days of the full execution of this Agreement. This Escrow will be opened and closed on an annual basis. The schedule for such Escrow annual opening and closings, along with the anticipated dates of conveyance of BPA and Sellers Parcels' from Sellers to Buyer during the Acquisition Period, is described in the attached **Exhibit "F"**. Within 30 days of the opening of each annual Escrow, Sellers will execute and deliver to the escrow agent a water rights deed in the form attached hereto as **Exhibit "B"**, inserting the applicable volume of BPA to be transferred to Buyer in each applicable year during the Acquisition Period. For the first BPA transfer in 2023, Sellers will transfer 415 acre-feet of BPA to Buyer. Each of the water rights deeds for Acquisition Period years 2 to 6 (i.e., from 2024 to 2029) will reflect the transfer of 200 acre feet of Sellers' BPA to Buyer. The 2030 water right deed will reflect the transfer of 206 acre-feet of Sellers' BPA to Buyer. Buyer will also complete during each annual Escrow any documentation necessary for the Watermaster to recognize the incremental transfer of Sellers' BPA to Buyer, including but not limited to any deeds, water transfer forms, and Water Rights Restrictive Covenant(s) that may be required to be completed or recorded when the Sellers' Parcels are conveyed to Buyer, as required by the Judgment. As shown on **Exhibit "F"**, no later than October 5 of each year from 2024 to 2030, Buyer will deposit \$361,956 into the Escrow. Within five days of each of those deposits, the escrow agent shall record with the County of San Diego Recorder's Office the applicable Water Rights Deed for the year in which payment is made and provide to the Watermaster and to Buyer any necessary documentation reflecting the transfer of the applicable amount of acre-feet of Sellers' BPA to Buyer. Buyer shall be responsible for all costs of establishing and maintaining the annual Escrows.

C. Advanced Transfers. Nothing in this Agreement prevents Sellers and Buyer from jointly amending this Agreement to provide for more accelerated transfers of Sellers' BPA or Sellers' Parcels to Buyer and more accelerated payments to Sellers attendant to any accelerated BPA or Sellers' Parcels transfers.

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D. BPA Transfer to Buyer Municipal Water Service Account. To satisfy the terms of the Judgment, the intent of Buyer is that BPA conveyed from Sellers to Buyer under this Agreement shall remain attached to the First Parcel, or to other Sellers' Parcels transferred to Buyer during the 7-year Acquisition Period, and shall not be conveyed to Buyer's BPA account used to provide water service to Buyer's municipal customers until following and other requirements of the Judgment are first proportionately satisfied for Sellers' Parcels. As such Judgment requirements are incrementally satisfied, the conveyed BPA described in this Agreement may be transferred into Buyer's municipal water service BPA account, incrementally or otherwise, in the discretion of Buyer.

II. Sellers' Water Use 2023-2030

A. Use of BPA Transferred to Buyer. During the period from 2023 to 2030, Buyer grants an exclusive option to Sellers to use any of the water associated with the Sellers' BPA already transferred to Buyer under this Agreement (i.e., the "Annual Allocation"), subject to the following conditions: (1) Sellers' use of any Annual Allocation associated with the Sellers' BPA already transferred to the Buyer shall be subject to all terms of the Judgment, including the Rampdown and Overproduction requirements; (2) Sellers shall be responsible for the payment of all Watermaster assessments and all other fees associated with its use of Annual Allocation associated with BPA then-owned by Buyer; (3) Sellers shall pay to Buyer \$5 (five dollars) per acre foot per year for use of such Annual Allocation; (4) no later than February 15 of each year, Sellers shall notify Buyer in writing as to the quantity of Annual Allocation associated with Sellers' BPA (then-owned by Buyer) that the Sellers intend to use between March 1 and September 30 of that year; (5) Sellers shall use any water available under this Paragraph exclusively on Sellers' Parcels, and shall not lease or sell such water to third parties; and (6) the Parties shall reconcile each year the amount of Annual Allocation used by Sellers pursuant to this Paragraph.

B. Carryover Associated with Sellers' BPA from 2023-2030. Under Paragraph III.B. of the Judgment, unused Annual Allocation may ordinarily be carried over for use in subsequent years by the BPA holder if the associated Pumping Assessment is paid in the current year.

i. *Carryover Associated with Sellers' BPA Already Transferred to Buyer.* To the extent neither the Buyer nor the Sellers utilize all of the Annual Allocation associated with that portion of the Sellers' BPA already purchased by and transferred to Buyer in any year during the period 2023 to 2030, such unused allocation may be subject to being carried over. The Parties agree that the Buyer shall have the right, at its sole discretion and expense, including

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Buyer's payment of associated Pumping Assessments, to Carryover any such unused allocation, subject to the terms of the Judgment.

- ii. *Carryover Associated with Sellers' BPA Not Yet Transferred to the Buyer.* To the extent Sellers do not use all of their remaining Sellers' BPA in any year during the Acquisition Period (i.e., from 2023 to 2030), such unused allocation may be subject to being carried over. The Parties agree that Sellers may carry over such unused allocation, provided they comply with the requirements of the Judgment to do so, including timely paying any associated Pumping Assessments to the Watermaster. To the extent Sellers have unused allocation associated with their remaining Sellers' BPA that they do not desire to carryover in any year between 2023 and 2030, Sellers hereby grant to Buyer the first right to purchase such carryover right at a price of \$5 (five dollars) per acre foot. Further, any carryover already held by Sellers as of the date of the First Parcel is transferred to Buyer shall remain in Sellers' ownership, unless the Parties agree otherwise in writing.

III. Early Access to Portions of Sellers' Parcels or Wells. Notwithstanding Article I(A), above, access to Sellers' Parcels shall be given to Buyer prior to the conveyance of Sellers' Parcels to Buyer as agreed to by the Parties or described herein. The Parties agree to execute a right of entry agreement for the subject parcels, substantially in the form of the attached **Exhibit "D"**, to confer such access. The Parties agree to cooperate and work together to achieve such early access, subject to the requirements of the Judgment and the circumstances of each Party. In addition, in the discretion of Buyer, Buyer may access Sellers' Parcels during the Acquisition Period subject to the execution of any right of entry agreement to conduct due diligence including to undertake an assessment of the real property subject to the right of entry agreement to determine the presence thereon of any Hazardous Materials, as defined below. All transfers of Sellers' Parcels to Buyer during the Acquisition Period shall be subject to the due diligence and other real property conveyance procedures described in this Agreement. After the Buyer acquires any Sellers' Parcels, or portion thereof, in fee title, Buyer may associate BPA with such newly acquired parcel(s), in Buyer's discretion.

IV. Fallowing

- A. Fallowing Procedures: During the Acquisition Period and before transfer of each of Sellers' Parcels to Buyer (except for the First Parcel), Sellers intend to complete fallowing incrementally on those portions of Sellers' Parcels taken out of agricultural production to be conveyed to Buyer. In conducting such fallowing, Sellers agree to comply with the fallowing standards of Exhibit 3 of the Judgment. In particular, Seller shall be responsible for: (1) destroying all agricultural tree crops on the property, once Sellers are no longer watering such trees; (2) stabilizing the land


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where the tree crops were destroyed; (3) permanently removing all above ground irrigation lines/piping before applicable portions of the Sellers' Parcels are conveyed to Buyer; and (4) removing all hazardous materials from Sellers' Parcels. In its discretion, Buyer may seek at its expense Watermaster confirmation that the following standards have been satisfied by Sellers.

- B. Following Schedule. In addition to following Sellers' Parcels, Sellers intend to conduct following on real property known as San Diego County APN 140-010-080 ("William Bauer Parcel"), which is real property Buyer recently purchased from William Bauer, on the schedule described in **Exhibit "E"**. The total amount of following to be conducted by Sellers, including on the William Bauer Parcel, is approximately 391 acres. Notwithstanding the schedule described in **Exhibit "E"**, Sellers may determine, after consultation with Buyer, to conduct following of Sellers' Parcels on a more or less expedited basis; provided, (1) Sellers agree to complete the Year 2023-2024 Following described in Exhibit E (including following of the William Bauer Parcel") as soon as possible, and not later than June 1, 2024; and (2) Sellers complete following of the balance of Sellers' Parcels no later than October 1, 2030. Buyer agrees to provide Sellers with a right of entry agreement to allow Sellers to access and complete the following on the William Bauer Parcel and the First Parcel after Buyer becomes the owner of such parcels.
- C. Following Payment. In addition to the Purchase Price and Finance Payment, Buyer will also pay Sellers a total amount of \$971,000 to reimburse Sellers for following the William Bauer Parcel and Sellers' Parcels. The Parties intend that following payments be made from Buyer to Sellers within 30 days following Sellers' completion of following for each parcel to be fallowed and Watermaster verification that such following satisfies the requirements of the Judgment. Such following payments shall be made as part of the Escrow after the Sellers' Parcels have been fallowed, on the schedule set forth in **Exhibit "E.1"**. The Parties may modify the following payment schedule upon joint written agreement. Should the Parties determine that the total \$971,000 additional following payment is insufficient to cover Sellers' costs plus 30% administrative overhead given prevailing market conditions when such following is conducted by Sellers, the Parties agree to meet and confer about an amendment to this agreement to reflect these additional costs. Provided that Sellers submit adequate back-up documentation justifying their reasonable, actual following costs, Buyer anticipates providing appropriate additional following payments to Sellers to cover such reasonable, actual following costs.
- D. Fencing. Fencing is located on many of Sellers' Parcels. The Parties agree to address the potential removal of any such fencing during the


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Acquisition Period, with the understanding that Buyer reimbursement of Sellers for the removal of some or all of Seller Parcels' fencing, if any, will be handled outside of escrow.

V. Wells. Buyer understands and agrees that Buyer's acquisition of wells located on Sellers' Parcels, as part of Buyer's acquisition of Seller's Parcels, will be on an "as is, where is, with all faults" basis and Sellers disclaims all warranties, suitability or fitness for use. The well numbers for the ~~six~~⁷ Sellers-owned wells located on Sellers' Parcels are listed in Exhibit 4 to the Judgment. There is also one other onsite well. If Sellers own other wells beyond those seven, Sellers shall provide a list and map of those wells to Buyer, including any wells that are no longer in use, within 90 days of execution of this Agreement. Sellers are responsible at their sole cost and expense for the maintenance and operation of the wells before Sellers' Parcels are transferred to Buyer or until Buyer formally accepts conveyance of the well(s) to Buyer. The Parties agree to cooperate to determine the continued operation or disposition of each existing well on Sellers' Parcels. In addition, the Parties also agree to cooperate regarding the disposition of ~~two~~³ wells located on the William Bauer Parcel. The Parties anticipate that the nine wells will be addressed as follows, though the Parties may modify this arrangement as they jointly agree: (a) five wells will be abandoned at a cost of approximately \$30,000 per well; (b) two wells will be abandoned at a cost of approximately \$20,000 per well; and (c) two wells will be converted into monitoring wells at a cost of approximately \$30,000 per well. All wells that are not subject to conversion to a monitoring well shall be properly abandoned by the Sellers before close of escrow for the particular Sellers' Parcel to be conveyed to Buyer, unless Sellers receive written confirmation from the County of San Diego that any particular well is legally exempt from abandonment or agreement from the Buyer that the Buyer will assume responsibility for the well. Buyer shall be responsible for the cost of well abandonment, which is anticipated to amount, in total, to \$250,000. Unless otherwise agreed to in writing by the Parties, these costs will be paid outside of escrow upon submission of an invoice from Sellers to Buyer in amounts described in this section. *7-Total wells + 2 abandoned well. Note see well*

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VI. Grant of Ingress/Egress Easement to the Wells. In addition to the provisions of Article V, prior to 2030, Buyer shall have the right to access Sellers' wells on those portions of the Sellers' Parcels not yet owned by Buyer on a quarterly basis beginning on September 1, 2023 for the purpose of monitoring water quality and water elevation levels. In particular, the Sellers' wells listed in Exhibit 4 of the Judgment shall be subject to Buyer access under this Agreement. Such access shall be subject to a right of entry agreement, as described in the attached Exhibit "D", which shall be executed by the Parties no later than August 30, 2023.

VII. Escrow for Transfer of Sellers' Parcels. The Parties acknowledge that any and all individual transactions supporting the transfer of one or more Sellers' Parcels to Buyer, or transfer of any portion of any Sellers' Parcel, shall be subject to the regular real property acquisition due diligence process, including all procedures described herein. Unless otherwise agreed to in writing by the Parties, all transfers of Sellers' Parcels to Buyer shall be handled through the same annual Escrows opened to transfer Sellers' BPA to Buyer. The Escrow shall open and close as described in Exhibit "F". Within 30 days of the opening of each annual Escrow in which one or more Sellers' Parcels are to be transferred to Buyer, Sellers will execute and deliver to the Sellers' Parcels Escrow Agent a grant deed for each applicable Sellers' Parcel

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substantially in the form attached hereto as **Exhibit "C"**. The Parties anticipate transferring each of Sellers' Parcels consistent with the schedule listed in **Exhibit "F"**. The Parties may modify the timing of such Sellers' Parcels conveyances upon joint, written agreement. The Parties acknowledge and agree that, for ease of transfer, the Parties will endeavor to transfer entire parcels to Buyer, rather than acreages less than an entire Sellers' Parcel. The Parties may agree to lease any Sellers' Parcels acquired by Buyer back to Seller, with the agreement of both Parties. The Parties also agree that Buyer may record a memorandum of agreement or similar form against Sellers' Parcels that reflects the terms of this Agreement.

VIII. Feasibility Period.

- A. During the period commencing ninety (90) days from the anticipated date of conveyance of each of Sellers' Parcels to Buyer ("Feasibility Period"), as reflected on **Exhibit "F"** (or any alternate dates agreed to by the Parties), Buyer may undertake at Buyer's expense an inspection of the Sellers' Parcels proposed for transfer to Buyer. Said inspection may include: (i) a review of the physical condition of the Sellers' Parcels, including but not limited to, inspection and examination of soils, environmental factors, Hazardous Substances, if any, and archeological information relating to the Sellers' Parcels, including the preparation of an environmental site assessment (Phase 1) report; (ii) an ALTA survey and/or (iii) a review and investigation of the effect of any zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Sellers' Parcels. Within 30 days following the full execution of this Agreement by both Parties, Sellers shall deliver to Buyer copies of all surveys and other documents pertaining to the physical or environmental condition of all of the Sellers' Parcels that are owned by or in the possession of Seller.
- B. If Buyer's environmental consultant requires additional time to determine the existence and extent of any Hazardous Substances on the Sellers' Parcels proposed for conveyance during the applicable escrow, Buyer shall have the right, exercisable by delivering written notice to Sellers prior to the expiration of the Feasibility Period, to extend the Feasibility Period for up to an additional sixty (60) days to complete the testing.
- C. If Buyer disapproves of the results of the inspection and review or the results of any Phase I environmental site assessment report, the Parties agree to meet and confer on the applicable issues. If Buyer fails to properly notify Sellers of the intent to not follow through with the acquisition of any one or more Sellers' Parcels, Buyer shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision. The Parties agree that, even if the transfer of one or more Sellers' Parcels to Buyer is delayed or rendered infeasible, such circumstance shall not excuse the Parties from consummating the transfer of all of Sellers' BPA

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to Buyer by the end of the Acquisition Period for the Purchase Price described herein.

IX. Conditions to Buyer's Performance. Buyer's obligation to perform under this Agreement as to its acquisition of Sellers' Parcels is subject to the following conditions:

- A. Buyer's approval of the condition of each of the Sellers' Parcels as provided in Articles VIII, XI and XII. In addition, the Sellers shall remove any debris or trash, including but not limited to storage tanks and other Retained Property, from the Sellers' Parcels prior to the conveyance of each Sellers' Parcel to Buyer;
- B. Sellers' representations and warranties in this Agreement being true and correct as of the date of this Agreement and as of the date of each Sellers' Parcels is conveyed to Buyer;
- C. Except for fallowing and removal of debris, no adverse material change shall have occurred with respect to the condition of the Sellers' Parcels from the effective date of this Agreement through the date when each Sellers' Parcel is conveyed to Buyer;
- D. Seller's performance of all obligations under this Agreement;
- E. Sellers' Parcels Escrow Agent being prepared to issue the ALTA Standard Title Policy at the time of closing for each Sellers' Parcel, subject only to the Approved Exceptions; and
- F. Buyer's acquisition of Sellers' Parcels shall be expressly contingent upon formal acceptance and approval by the Buyer's Board of Directors of completing the transaction. To allow members of the Board of Directors to comply with Government Code section 84308, Sellers agree to disclose any contribution(s) given to members of the Board of Directors of more than \$250 within the preceding twelve (12) months.

X. Conditions to Seller's Performance. Sellers' obligation to perform under this Agreement is subject to Buyer's performance of all of the obligations which it is required to perform pursuant to this Agreement.

XI. Access.

- A. Access to Sellers' Parcels during the Feasibility Period for each Sellers' Parcel shall be given to Buyer, its agents, employees, or contractors during normal business hours upon at least one (1) business day's notice to Seller, at Buyer's own cost and risk, for any purposes, including, but not limited to, inspecting the Sellers' Parcels, taking samples of the soil, and conducting an environmental audit (including an investigation of past and current uses of the Sellers' Parcels). Buyer shall indemnify and defend Sellers against and hold Sellers harmless from all losses, costs, damages,


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liabilities, and expenses, including, without limitation, reasonable attorney fees arising out of Buyer's entry onto the Sellers' Parcels or any activity thereon by Buyer or its agents, employees, or contractors prior to the Close for each Sellers' Parcel except to the extent any such losses, costs, damages, liabilities, and expenses arise out of the gross negligence or willful acts of Seller. Any entry onto the Sellers' Parcels by Buyer or its agents, employees, or contractors shall be at reasonable times. The provisions of this Article shall survive the Close of Sellers' Parcels Escrow. Notwithstanding anything herein to the contrary, Buyer and Sellers agree that Buyer shall not incur any liability hereunder merely by the discovery of an "Existing Adverse Condition" (as defined below) regardless of whether such Existing Adverse Condition, once revealed, negatively impacts the value of the Sellers' Parcels or otherwise causes Sellers to incur liabilities, costs or expenses. The term "Existing Adverse Condition" shall mean an adverse condition existing on or with respect to the Sellers' Parcels that is discovered or revealed by Buyer in the course of its Sellers' Parcels inspection hereunder.

- B. In addition to Buyer's investigation in Article VIII and its right of access in the provisions of Article XI(A), Buyer and its agents, employees, or contractors shall have the right, from the date of this Agreement until the applicable Closing Date for each Sellers' Parcel, to contact any federal, state, or local governmental authority or agency to investigate any matters relating to the Sellers' Parcels. Sellers agree to cooperate reasonably with Buyer and its agents, employees, or contractors in the inspection of the Sellers' Parcels and agrees to deliver to Buyer all information in Sellers' possession or control pertaining to the condition of the Sellers' Parcels, including engineering and environmental reports, studies, tests, monitoring results, and related documentation. Buyer's inspection of such information and materials provided by Seller, and investigation of Sellers' Parcels shall be part of Buyer's approval.

XII. Title.

- A. At least 30 days prior to the close of escrow for each of Sellers' Parcels (as reflected in the timeline described in **Exhibit "F"**), Buyer shall cause Sellers' Parcels Escrow Agent to issue to Buyer (with a copy to Seller) a preliminary report for an ALTA Standard Policy of Title Insurance for each of Sellers' Parcels, setting forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings, and other matters of record affecting Seller's title to the Sellers' Parcels ("Preliminary Report"), together with copies of all documents relating to title exceptions referred to in the Preliminary Report.

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- B. Sellers agree to deliver to Buyer, at least 45 days prior to the anticipated close of escrow for each of Sellers' Parcels (per Exhibit "F"), copies of any survey of the Sellers' Parcels in the possession of Seller.
- C. Buyer shall approve or disapprove, in writing to Sellers with a copy to Sellers' Parcels Escrow Agent, each exception shown on the Preliminary Report and each encroachment, overlap, or boundary line dispute, or any other matter that materially and adversely affects title to the Sellers' Parcels or that violates any law, rule, or regulation (each an "Exception") within thirty (30) days following the receipt of the Preliminary Report, whichever is later ("Review Period"). Buyer's failure to approve or disapprove within the Review Period shall be deemed to be a disapproval of the Exceptions. The Exceptions approved by Buyer hereunder shall be referred to as the "Approved Exceptions." All monetary liens or monetary encumbrances on the Sellers' Parcels except for liens for general and special taxes and assessments not yet due and payable (collectively, "Monetary Liens") are disapproved and Sellers shall eliminate the same prior to or upon the Closing Date.
- D. If any Exception is disapproved or deemed disapproved (each a "Disapproved Exception"), Sellers shall have the right, but not the obligation, within thirty (30) days following expiration of the Review Period, to cause each Disapproved Exception to be discharged, satisfied, released, or terminated, as the case may be, of record, and in a form that is reasonably satisfactory to Buyer and Sellers' Parcels Escrow Agent, all at Seller's sole cost and expense. Sellers authorizes Sellers' Parcels Escrow Agent to disburse from the cash portion of the Purchase Price and proceeds otherwise disburseable to Sellers upon Closing the sum sufficient to discharge any Disapproved Exception that may be discharged only by the payment of money. If Sellers are unable or unwilling to obtain a discharge, satisfaction, release, or termination of any Disapproved Exception within the period specified above, then this Agreement may, at Buyer's discretion, be modified or terminate as to the Buyer's duty to acquire the subject Sellers' Parcel(s) ten (10) business days after expiration of the thirty day period for curing the Disapproved Exceptions or after Sellers advise Buyer in writing that Sellers are unable or unwilling to cause such discharge, satisfaction, release, or termination, whichever occurs first, unless within such ten business day period, Buyer waives in writing such Disapproved Exception, in which event such Disapproved Exception shall be deemed an Approved Exception under this Agreement. If this Agreement is modified or terminates as to the subject Sellers' Parcel pursuant to the foregoing sentence, then Sellers shall pay all charges of the Sellers' Parcels Escrow Agent in connection with this transaction, including the charges of the surveyor and environmental engineering company, the parties shall be relieved of all further obligations and liabilities to each other under this Agreement as to the subject Sellers Parcel except as otherwise provided herein (provided that


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Buyer's acquisition of all of Sellers' BPA under this Agreement shall survive), and all funds and documents related to the subject Sellers' Parcel deposited with Sellers' Parcels Escrow Agent shall be promptly refunded or returned, as the case may be, by Sellers' Parcels Escrow Agent to the depositing party.

XIII. Closing; Closing Contingencies.

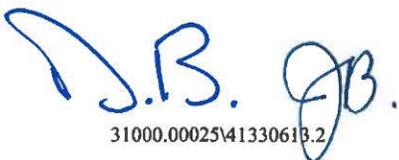
A. Buyer's obligation to consummate each of the Closings on each of the Sellers' Parcels to be conveyed to Buyer (see **Exhibit "F"**) shall be conditioned upon the following: (i) Sellers' representations and warranties shall be true, correct and complete as of the Effective Date and as of the applicable Closing Date.

B. Sellers' obligation to consummate each of the Closings shall be conditioned upon the following: (i) Buyer's representations and warranties shall be true, correct and complete as of the Effective Date and as of the Closing Date.

XIV. Representations and Warranties of Sellers. Sellers hereby represent and warrant to Buyer: (i) that Sellers are the owners of the Sellers' BPA and Sellers' Parcels, free and clear of any liens, encumbrances or reservations of rights; (ii) that Sellers have the power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (iii) that all necessary approvals and authorizations of Sellers have been obtained; (iv) that Sellers have the right to sell, transfer and deliver the Sellers' BPA and Sellers' Parcels; (v) that Sellers have not entered into any other contract, agreement or option for the transfer or use, whether actual or beneficial, of the Sellers' BPA and Sellers' Parcels; and (vi) that this Agreement constitutes a legal, valid and binding obligation of Sellers, enforceable against Sellers in accordance with its terms.

XV. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Sellers: (i) that Buyer has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (ii) that all necessary approvals and authorizations of Buyer have been obtained; and (iii) that this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

XVI. Form 8283. Buyer agrees to cooperate with Sellers to acknowledge receipt of a donation of a portion of Sellers' Parcels, as determined exclusively by Sellers, by signing one or more Internal Revenue Form 8283s (Non-Cash Charitable Contributions) before the Close of Escrow on each of the conveyances described herein and any other tax-related forms or documents reasonably requested by Sellers and to return any such forms to Sellers within thirty business (30) days after Buyer's receipt of such forms from Sellers. Notwithstanding the foregoing, Buyer makes no representation or warranty to Sellers regarding the tax attributes of this transaction, nor shall Buyer endorse or otherwise acknowledge any valuation of the Property for tax purposes, it being understood that the Sellers has obtained its own appraisals and tax advice for such purposes.


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XVII. Removal of Retained Property. Prior to close of escrow for the transfer of each of Sellers' Parcels to Buyer, Sellers shall remove all personal property from the applicable Sellers' Parcels, including but not limited to agricultural equipment, wind machines, a metal detachable hanger, storage tanks, and materials and trucks (collectively, "Retained Property") located on the Sellers' Parcels. Sellers' Retained Property is more particularly described in the attached Exhibit "G". Sellers will clean up any spill of Hazardous Materials, including hydrocarbons, as a result of its removal of the Retained Property from Sellers' Parcels.

XVIII. Termination / Amendment. Subject to the provisions herein, this Agreement may be terminated or amended only with the express written approval of each Party.

XIX. Entire Agreement. This Agreement contains the entire understanding between Buyer and Sellers with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between Buyer and Sellers. This Agreement cannot be amended except in writing signed by both Parties.

XX. No Waiver. Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

XXI. Notices. All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when received. Each such notice or communication shall be addressed to the Parties at their respective addresses set forth next to their signatures below, or such other address as a Party notifies the other in writing.

Notices to the Sellers shall be directed to:

DAVID BAUER AND JULI BAUER, Co-Trustees of the D&J
Bauer Family Trust 11-18-04
32540 Couser Canyon Road
Valley Center, CA 92082
Email: borregofarms@gmail.com

Notices to the Buyer shall be directed to:

BORREGO WATER DISTRICT
806 Palm Canyon Drive
Borrego Springs, CA 92004
Attn: General Manager
Email: Geoff@borregowd.org

XXII. Headings; Article or Section References. Captions and headings appearing in this Agreement are inserted solely as reference aids for ease and convenience; they shall not

Handwritten signatures in blue ink, including "D.B." and "J.B.".

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be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

XXIII. Severability. If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

XXIV. Binding Effect and Assignment. This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. Neither Buyer nor Sellers shall have the right to assign its rights under this Agreement without the written consent of the other Party.

XXV. Governing Law and Venue. This Agreement is a contract governed in accordance with the laws of the State of California. The Parties hereby agree that venue for any action brought to enforce the terms of this agreement shall be in a court of competent jurisdiction in the County of San Diego, California, and consent to the jurisdiction thereof.

XXVI. Further Assurances. Each of the parties shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations under this Agreement and to carry out the intent of the parties.

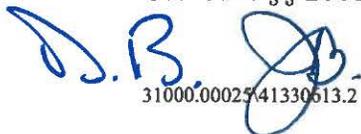
XXVII. Definitions. As used in this Agreement the following terms shall have the following definitions:

“Approved Exceptions” is defined in Article XII(c).

“Disapproved Exception” is defined in Article XII(d)

“Effective Date” is defined in the preamble.

“Environmental Laws” means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (as defined subsequently in this Agreement), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Sellers’ Parcels), occupational or environmental conditions on, under, or about the Sellers’ Parcels, as now in effect, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C.A. §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) and the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 U.S.C.A. §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 U.S.C.A. §§ 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 U.S.C.A.


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§§ 5101 et seq.]; the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [7 U.S.C.A. §§ 136 et seq.]; the Clean Air Act (CAA) [42 U.S.C.A. §§ 7401 et seq.]; the Safe Drinking Water Act (SDWA) [42 U.S.C.A. §§ 300f et seq.]; the Surface Mining Control and Reclamation Act of 1977 (SMCRA) [30 U.S.C.A. §§ 1201 et seq.]; the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA or EPCRTKA) [42 U.S.C.A. §§ 11001 et seq.]; the Occupational Safety and Health Act of 1970 (OSHA) [29 U.S.C.A. §§ 651 et seq.]; the California laws regarding the underground storage of hazardous substances [H & S C §§ 25280 et seq.]; the Hazardous Substance Account Act [H & S C §§ 25300 et seq.]; the California laws regarding hazardous waste control [H & S C §§ 25100 et seq.]; the Safe Drinking Water and Toxic Enforcement Act of 1986 [H & S C §§ 25249.5 et seq.]; the Porter-Cologne Water Quality Control Act [Wat C §§ 13000 et seq.], and any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect that pertains to occupational health or industrial hygiene, and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Sellers' Parcels, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

"Exception" is defined in Article XII(c).

"Existing Adverse Condition" is defined in Article XI(a).

"Feasibility Period" is defined in Article VIII(a).

"Hazardous Substances" includes without limitation:

(a) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminant" in CERCLA, RCRA, TSCA, HMTA, or under any other Environmental Law;

(b) Those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 CFR Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(d) Any material, waste, or substance that is:

(i) a petroleum or refined petroleum product,

(ii) asbestos,

(iii) polychlorinated biphenyl,

(iv) designated as a hazardous substance pursuant to 33 U.S.C.A. § 1321 or listed pursuant to 33 U.S.C.A. § 1317,

(v) a flammable explosive, or

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(vi) a radioactive material.

“Laws” shall mean all federal, state and local laws, codes, ordinances and regulations,

“Preliminary Report” is defined in Article XII(a).

“Retained Property” is defined in Article XVII.

“Purchase Price” is defined in Article I.

“Sellers’ Parcels” means collectively the Sellers’ Parcels, all improvements presently or hereafter existing on the Sellers’ Parcels, all water rights, all mineral rights, all plans and specifications relating to the present or planned construction of improvements on the Sellers’ Parcels, including all governmental permits or licenses, utility contracts, service contracts, maintenance contracts, operating contracts, or other intangible property (if any) now or in the future owned by Sellers in connection with the development, operation, or ownership of the Sellers’ Parcels or other rights relating to the ownership, use, or operation of the Sellers’ Parcels, including all materials purchased by Sellers for use on the Sellers’ Parcels or in the construction of improvements on the Sellers’ Parcels, and all of Seller’s rights in and to any fees paid to any governmental agency or utility.

(signature page to follow)

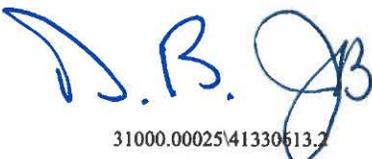

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EXHIBIT A

Legal Descriptions of Sellers' Parcels

County of San Diego APNs

140-070-17

140-070-18

140-070-27

140-010-11

140-110-14

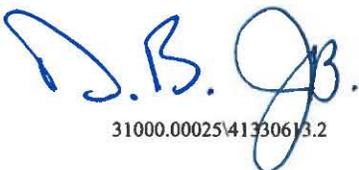

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Exhibit "B"
WATER RIGHTS GRANT DEED
(for annual use during Acquisition Period)
[ON FOLLOWING PAGE]

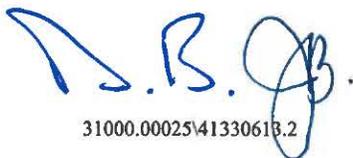
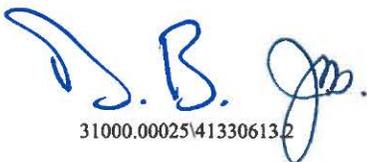

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Exhibit "C"
TEMPLATE SELLERS' PARCELS GRANT DEED

[ON FOLLOWING PAGE]


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Add Exhibit A

Sellers' Parcels Legal Description

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ATTACH NOTARY ACKNOWLEDGEMENT

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Exhibit "D"

TEMPLATE RIGHT OF ENTRY AGREEMENT

[ON FOLLOWING PAGE]

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RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement ("Right of Entry") is entered into by DAVID BAUER AND JULI BAUER, Co-Trustees of the D&J Bauer Family Trust 11-18-04 (referred to herein as "GRANTOR") and the BORREGO WATER DISTRICT (referred to herein as "GRANTEE"). GRANTOR and GRANTEE are sometimes individually referred to as "Party" and collectively as "Parties."

RECITALS

- A. GRANTOR is the owner of certain real property commonly referred to as [INSERT PROPERTY ADDRESS, INCLUDING CITY, COUNTY AND STATE AND ASSESSOR PARCEL NUMBER(S)] (the "Property").
- B. GRANTEE desires to obtain GRANTOR's permission to enter onto the Property for the purpose of [INSERT PURPOSE OF RIGHT OF ENTRY].
- C. The Parties wish to enter into this Right of Entry whereby GRANTOR will allow GRANTEE to enter onto the Property, on a temporary basis, for the above stated purpose.

NOW, THEREFORE, GRANTOR and GRANTEE do hereby agree as follows:

AGREEMENT

1. Right of Entry. GRANTOR hereby grants to GRANTEE and its agents, employees and contractors the temporary right to enter onto the Property for the purpose of [INSERT PURPOSE OF RIGHT OF ENTRY].
2. Term. The term of this Right of Entry shall commence on the date of the last signature on this Right of Entry, assuming that the Right of Entry is executed by all the Parties hereto ("Effective Date") and shall terminate upon GRANTEE's acceptance of ownership of the Property.
3. Indemnification. GRANTEE shall indemnify and hold harmless GRANTOR from claims arising from GRANTEE's, its agent's or its contractor's negligent acts or omissions or willful misconduct related to entry onto the Property pursuant to this Right of Entry.
4. Authority to Enter Agreement. GRANTOR hereby warrants that it is the owner of the Property and that the undersigned is authorized to grant GRANTEE permission to enter onto the Property for the use specified in this Right of Entry. GRANTEE hereby warrants that the undersigned is authorized to execute this Right of Entry on behalf of GRANTEE.
5. Entire Agreement. This Right of Entry is the result of negotiations between the Parties. This Right of Entry is intended by the Parties as a full and final expression of their understanding with respect to the matters contained in this Right of Entry.

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6. Amendment; Modification. No supplement, modification, or amendment of this Right of Entry shall be binding unless executed in writing and signed by both Parties.

7. Attorneys' Fees, Governing Law, Venue. In the event of a dispute between the Parties with respect to the terms or conditions of this Right of Entry, the prevailing Party shall be entitled to collect from the other its reasonable attorneys' fees as established by the judge or arbitrator presiding over such dispute. This Right of Entry shall be governed by the laws of the State of California. Venue shall be in Riverside County.

8. Counterparts. This Right of Entry may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Right of Entry on the date as indicated beside each Party's signature.

GRANTOR:

DAVID BAUER AND JULI BAUER,
Co-Trustees of the D&J Bauer Family Trust 11-18-04

By: _____ Date: _____

Its: _____

GRANTEE:

BORREGO WATER DISTRICT

By: _____ Date: _____

Its: _____

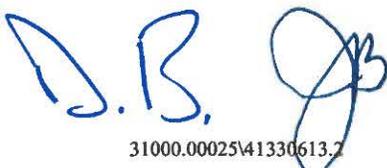

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Exhibit "E"

FALLOWING SCHEDULE

YEAR 2023-2024 FALLOWING

- 1) 55 acres of grafts at 282 Di Giorgio Road, Borrego Springs, CA (APN 140-010-11)
- 2) 35 acres at 705 Di Giorgio Road (APN 140-070-18) (~~DB40~~^{SB-40} Grove)
- 3) 110 acres (William Bauer Parcel) at 282 Di Giorgio Road (APN 140-010-08)

YEAR 2024 FALLOWING

- 1) 35 acres at 705 Di Giorgio Road (DB40 Ranch) (APN 140-070-17)
- 2) 16 acres at 808 Di Giorgio Road (~~DB40~~^{SB20} Ranch) (APN 140-070-27)

YEAR 2025 FALLOWING

- 1) 80 acres at 282 Di Giorgio Road (Small Trees Ranch) (APN 140-010-11)

YEAR 2026 FALLOWING

- 1) 33 acres at 904 Di Giorgio Road (Chapple Ranch) (portion of APN 140-110-14)

YEAR 2027 FALLOWING

- 1) 33 acres at 904 Di Giorgio Road (Chapple Ranch) (second portion of APN 140-110-14)

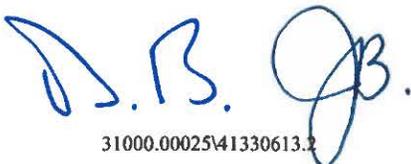

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EXHIBIT E.1.

FALLOWING PAYMENT SCHEDULE

(To be paid in Escrow)

Sellers Following Completion Date	Buyer Following Payment Amount*	Buyer Following Payment Due Date to Escrow**
<u>Year 2023-2024 Following completed by 6/1/2024</u> a) 55 acres of grafts at 282 Di Giorgio Road (APN 140-010-11) b) 35 acres at 705 Di Giorgio Road (SB 40 Grove) c) 110 acres (William Bauer Parcel) 282 Di Giorgio	\$134,475 \$85,575 \$268,950	Within 30 days of completion of each parcel and no later than 6/15/2024
<u>Year 2024 Following completed by 12/1/2024</u> a) 35 acres at 705 Di Giorgio Road (DB40 Ranch) b) 16 acres at 808 Di Giorgio Road (DB20 Ranch) (APN 140-070-27)	\$85,575 \$39,120	Within 30 days of completion of each parcel and no later than 12/15/2024
<u>Year 2025 Following completed by 12/1/2025</u>	\$195,600	12/15/2025
<u>Year 2026 Following completed by 12/1/2026</u>	\$80,855	12/15/2026
<u>Year 2027 Following completed by 12/1/2027</u>	\$80,855	12/15/2027

* Subject to potential increase in payment per later, written agreement of the Parties under Article IV(C)

** Subject to timely completion of following described in Exhibit E

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EXHIBIT "F"

PAYMENT SCHEDULE AND TIMELINE FOR CONVEYANCE OF BPA
AND SELLERS' PARCELS TO BUYER

(Following Payments Not Included)

Annual Escrow Open Date	Buyer Payment into Escrow Due Date	Buyer Payment Amount	BPA Amount Conveyed to Buyer	BPA Conveyance Dates	Buyer Due Diligence Investigation Date Start	Sellers' Parcels	Sellers' Parcels Conveyance Dates	Annual Escrow Close Date
No later than 20 days Following Agreement Execution	8/1/2023	\$756,818	415 acre feet (AF)	8/3/2023	6/1/2023	APN 140-070-18	8/3/2023	6/15/2024
8/1/2024	10/1/2024	\$361,956	200 AF	10/1/2024			N/A	12/15/2024
8/1/2025	10/1/2025	\$361,956	200 AF	10/2/2025	7/1/2025	APNs 140-070-17 and 140-070-27	10/2/2025	12/15/2025
8/3/2026	10/1/2026	\$361,956	200 AF	10/2/2026			N/A	12/15/2026
8/2/2027	10/4/2027	\$361,956	200 AF	10/5/2027	7/1/2027	APNs 140-070-25	10/5/2027	12/15/2027
8/1/2028	10/2/2028	\$361,956	200 AF	10/2/2028			N/A	12/15/2028
8/1/2029	10/1/2029	\$361,956	200 AF	10/1/2029			N/A	12/15/2029
8/1/2030	10/1/2030	\$361,956	206 AF	10/2/2030	7/1/2030	APN 140-110-14	10/2/2030	10/9/2030

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EXHIBIT G

SELLERS' RETAINED PROPERTY

282 Di Giorgio Ranch

- 40' x 100' shed
- Green metal airplane hangar
- Two 2,500 gallon poly water tanks
- All electrical equipment to drive wells, irrigation clocks, UFD's, and power panel, et al, provided that meter will stay in BWD's discretion if the district desires to have power to the parcel
- 5,000 gallon metal fuel tank
- Well #1 next to sub sand filters, screen filters, clay valves; provided that the associated submersible well will remain with the parcel.
- Electric gate opener at top and bottom of ranch rolling gates at bottom and top
- Well #2 300 horsepower (hp) electric motor, valves and power panel
- New Well #3 at bottom of ranch, diesel motor, 200 hp electric motor, valves

705 Di Gorgio Road (DB40 and SB 40)

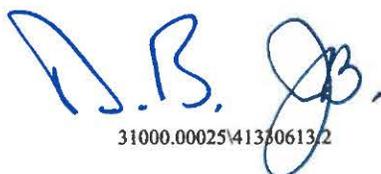
- Two 125 hp electric motors; one from each ranch
- Large 400 Amp power panel, time clocks (SDG&E meter and panel will remain on parcel)
- Two blue screen filters
- Clay valves, miscellaneous lever valves, water meter with telemetry

904 Di Gorgio Road (Chapple Ranch)

- 250 hp electric motor
- Blue screen filter
- Clay valves, miscellaneous butterfly valves
- Water meter with telemetry
- VFD, electric clock
- Eight wind machines

808 Di Gorgio Road (DB20)

- 175 hp electric motor
- Sand filters
- Water meter
- Clay valves, miscellaneous lever valves
- Two wind machines


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SIGNATURE PAGE TO THE PURCHASE AND SALE AGREEMENT BY AND BETWEEN DAVID BAUER AND JULI BAUER, CO-TRUSTEES OF THE D&J BAUER FAMILY TRUST DATED NOVEMBER 18, 2004 AND BORREGO WATER DISTRICT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

BUYER:

BORREGO WATER DISTRICT,
a California Water District

By: Kathy Dice

Name: KATHY DICE

Title: BOARD PRESIDENT

Date: 5/31/2023

SELLERS:

DAVID BAUER AND JULI BAUER, Co-Trustees
of the D&J Bauer Family Trust 11-18-04

By: [Signature]
David Bauer

Date: 5-29-2023

By: [Signature]
Juli Bauer

Date: 5-29-23

Recorded at request of and return to:

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

FREE RECORDING

This instrument is for the benefit of the Borrego Water District, and is entitled to be recorded without fee. (Govt. Code 27383)

(Space above this line reserved for Recorder's use)

APNs: 140-070-27, 140-110-14, 140-070-18, 140-070-17 and 140-010-11

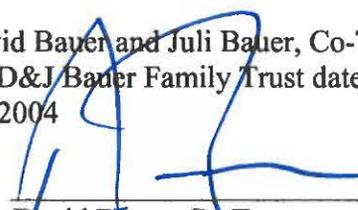
GRANT DEED

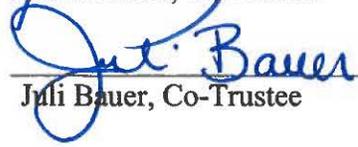
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, David Bauer and Juli Bauer, Co-Trustees of the D&J Bauer Family Trust dated November 18, 2004, herein called "Grantor", hereby GRANTS to BORREGO WATER DISTRICT, a California public agency organized and operated pursuant to Division 13 of the California Water Code ("Grantee"), the real property in the County of Riverside, State of California, described as:

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

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of the ___th day of _____, 20__.

David Bauer and Juli Bauer, Co-Trustees of the D&J Bauer Family Trust dated November 18, 2004

By: 
David Bauer, Co-Trustee

By: 
Juli Bauer, Co-Trustee

CERTIFICATE OF ACCEPTANCE

This is to certify that the real property conveyed by _____, on the Grant Deed dated _____, 20__ to the **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 the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 20__

GRANTEE:

BORREGO WATER DISTRICT, a California
public agency

By: _____

Print Name: _____

Title: _____

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RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

BORREGO WATER DISTRICT
806 Palm Canyon Drive
Borrego Springs, CA 92004
Attn: General Manager

(Space Above For Recorder's Use)

EXEMPT FROM RECORDING FEES PURSUANT TO GOV. CODE §§ 6103 and 27383
EXEMPT FROM DOCUMENTARY TRANSFER TAX PURSUANT TO REV. & TAX. CODE § 11922

WATER RIGHTS GRANT DEED

For valuable consideration, the receipt and adequacy of which is hereby acknowledged, David Bauer and Juli Bauer, Co-Trustees of the D&J Bauer Family Trust 11-18-04 (“Grantor”), hereby grant to BORREGO WATER DISTRICT, a California public agency organized and operated pursuant to Division 13 of California Water Code (“Grantee”), all of Grantor's right, title and interest in and to the following (“Water Rights Grant Deed”):

_____ acre-feet of Baseline Pumping Allocation Right in the Borrego Springs Subbasin of the Borrego Valley Groundwater Basin, together with all Carryover Rights associated therewith (the “Sellers’ BPA”) as adjudicated to the Grantor in the Stipulated Judgment dated April 8, 2021 executed as part of a complaint filed for a Comprehensive Adjudication of Groundwater rights of the basin pursuant to California Code of Civil Procedure sections 830 et seq., *Borrego Water District v. All Persons Who Claim a Right to Extract Groundwater Subbasin No. 7.024-01 Whether Based on Appropriation, Overlying Right, or Other Basis of Right, and/or Who Claim a Right to Use of Storage Space in the Subbasin, et al.*, Case No. 37-2020-00005776 in the Superior Court of the County of Orange, California (“Judgment”).

Under the Judgment, the Sellers’ BPA is associated with real property presently referred to as Assessor Parcel Numbers 140-070-27, 140-110-14, 140-070-18, 140-070-17, and 140-010-11 by the San Diego County Assessor. The BPA being transferred by this Water Rights Grant Deed shall remain attached to APN 140-070-18.

This Water Rights Grant Deed shall take effect only upon its recordation in the Official Records of San Diego County, California.

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[SIGNATURE PAGE]

IN WITNESS WHEREOF, the GRANTOR has executed this Water Rights Grant Deed as of the day and year indicated below.

“GRANTOR”

DAVID BAUER AND JULI BAUER, Co-Trustees
of the D&J Bauer Family Trust 11-18-04

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

ATTACH NOTARY ACKNOWLEDGEMENTS

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CERTIFICATE OF ACCEPTANCE

This is to certify that the water rights conveyed by _____, on the WATER RIGHTS GRANT DEED dated _____, 20__ to the **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 the Grantee consents to recordation thereof by its duly authorized officer.

“GRANTEE”

BORREGO WATER DISTRICT,
a California public agency

By: _____

Name: _____

Title: _____

Date: _____



May 04, 2023 03:45 PM

OFFICIAL RECORDS
JORDAN Z. MARKS,
SAN DIEGO COUNTY RECORDER
FEES: \$0.00 (SB2 Atkins: \$0.00)
PCOR: YES PAGES: 4

TICOR TITLE
00940225

Recorded at request of and return to:
Borrego Water District
806 Palm Canyon Drive
Borrego Springs, California 92004
ATTN: General Manager

APN: 140-010-08-00

Recording fees waived pursuant to Gov. Code, §27383

(Space above this line reserved for Recorder's use)

The undersigned Grantor(s) declare(s): Borrego Water District is exempt from property taxes.
(Rev & Tax Code 11922)

Documentary transfer tax is \$ -0-.

- Computed on full value of property conveyed, or
- Computed on full value less value of liens and encumbrances remaining at time of sale.
- Unincorporated area City of Borrego Springs, and

GRANT DEED WITH WATER RIGHTS

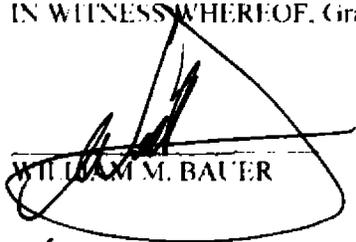
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, William M. Bauer, herein called "Grantor", hereby GRANTS to **BORREGO WATER DISTRICT**, a public agency under Division 13 of the California Water Code ("Grantee"), the real property in the County of San Diego State of California, ("Property") described as:

See Exhibit A attached hereto

Together with all appurtenances and fixtures associated with the Property.

Together with all rights, title, interest, claim and demand, both in law and in equity, to all water rights, whether surface or subsurface waters, or any other kind, including without limitation contractual, appropriative, prescriptive and appurtenant water rights, and any other water rights, in each case to the extent related to the Property or used thereon or in connection therewith, including but not limited to six hundred seventy (670) acre feet of Baseline Production Allocation (BPA) owned by Seller as described in the Stipulated Judgment, including in Exhibit 4 thereto, entered by the Orange County Superior Court on or about April 8, 2021 in the case of *Borrego Water District v. All Persons Who Claim a Right to Extract Groundwater in the Borrego Valley Groundwater Subbasin No. 7-024-01 Whether Based on Appropriation, Overlying Right, or other Basis of Right, and/or Who Claim a Right to Use of Storage Space in the Subbasin, et al.*, Case No. 37-2020-00005776.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of the 20th day of April, 2023.


WILLIAM M. BAUER

WILLIAM M. BAUER

MAIL TAX STATEMENT TO
SAME AS ABOVE

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 Orange)

On April 20, 2023 before me, Brittany R. Eichin, Notary Public
(insert name and title of the officer)

personally appeared William M. Bauer
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 Brittany R. Eichin (Seal)

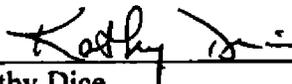
CERTIFICATE OF ACCEPTANCE

This is to certify that the real property conveyed by WILLIAM M. BAUER, on the Grant Deed dated 4 20 2023, to the **BORREGO WATER DISTRICT** (Grantee), is hereby accepted by the undersigned officer on behalf of the Grantee, pursuant to authority conferred by resolution of the Board of Directors, and the Grantee consents to recordation thereof by its duly authorized officer.

GRANTEE:

Date: 4 25, 2023

BORREGO WATER DISTRICT

By: 
Kathy Dice
President, Board of Directors

ATTEST:

By: 
Secretary, Board of Directors

EXHIBIT "A" to Grant Deed with Water Rights

LEGAL DESCRIPTION

APN 140-010-08-00

Vacant Land on DiGiorgio Road
Borrego Springs, CA
APN; 140-010-08-00

A parcel of land located in the State of California, County of San Diego, with a situs address of DiGiorgio Road, Borrego Springs, California, and being the same property more fully described as the SE 1/4 of NW 1/4 and South 1/2 of NE 1/4 in Section 5, Township 10 South, Range 6 East and described in Document No. 1992-0301943 dated April 1992 and recorded May 19, 1992.

*Aerial Photos









*Surface Irrigation Removal









*Tree Removal











