

**Borrego Springs Interim Watermaster Board**  
**Special Meeting**  
**August 13, 2020 @ 4:30 p.m.**  
**OPEN SESSION ITEMS TO BE HEARD AT 5:30**  
**Borrego Water District: 806 Palm Canyon Drive**  
**Borrego Springs, CA 92004**

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- I. 4:30/5:30 PM - OPENING PROCEDURES**
  - A. Call to Order:
  - B. Pledge of Allegiance
  - C. Roll Call
  - D. Approval of Agenda
  - E. Approval of Minutes -None
  - F. Comments from the Public & Requests for Future Agenda Items (may be limited to 3 min)
  - G. Comments from Directors
  - H. Correspondence Received from the Public: None
- II. CLOSED SESSION: PUBLIC EMPLOYEE APPOINTMENT:** Appointment of Watermaster Technical Consultant / Executive Director pursuant to subdivision (b)(1) of Government Code Section 54957
- III. ITEMS FOR BOARD CONSIDERATION AND POSSIBLE ACTION (WILL NOT BE HEARD PRIOR TO 5:30 pm)**
  - A. Draft Agreement, Subject to Discussion/Negotiation, with Wildermuth Environmental Inc for Executive Director/Technical Consultant positions – J Markman (3-18)
    1. Statement from WEI Representatives
  - B. BWD Request for Pumping Fee Credit as Reimbursement for Providing Administrative Support – D Duncan (19)
  - C. Meter Reading and Related Issues (20-33)
    1. Selection of BWD for Meter Reading Services – S Smith
    2. 3<sup>rd</sup> Party Certification of Meter Installations – D Duncan
    3. Right of Entry Form – S Smith

AGENDA: August 13, 2020 All Documents for public review on file with the Borrego Water District General Manager Director located at 806 Palm Canyon Drive, Borrego Springs CA 92004 Any public record provided to a majority of the Board of Directors of the Watermaster Board less than 24 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, located at 806 Palm Canyon Drive, Borrego Springs CA 92004.

The Borrego Springs Watermaster complies with the Americans with Disabilities Act. Persons with special needs should call Geoff Poole – Board Secretary 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 at, or prior to, the public hearing.

#### **IV. STAFF REPORT**

- A. Executive Directors Report: Update on Settlement Agreement/Stipulation Notification of Property Owners in Borrego Springs - G Poole - VERBAL

**CLOSING PROCEDURE:** The next Board Meeting is scheduled for August 27, 2020 at Borrego Water District 806 Palm Canyon Dr, Borrego Springs, CA 92004

- A. Suggested Items for Next Agenda

AGENDA: July 16, 2020 All Documents for public review on file with the Borrego Water District General Manager Director located at 806 Palm Canyon Drive, Borrego Springs CA 92004 Any public record provided to a majority of the Board of Directors of the Watermaster Board less than 24 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, located at 806 Palm Canyon Drive, Borrego Springs CA 92004.

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BORREGO SPRINGS BASIN WATERMASTER  
BOARD OF DIRECTORS MEETING  
AUGUST 13, 2020  
AGENDA ITEM III.A

August 12, 2020

TO: Board of Directors

FROM: Geoffrey Poole

SUBJECT: Agreement with Wildermuth Environmental Inc for Executive Director/Technical Consultant positions – G Poole

1. Statement from WEI Representatives

**RECOMMENDED ACTION:**

Approve Agreement. If changes are made, publish in future Agenda Packet

**ITEM EXPLANATION:**

Attached is a Draft Agreement with Wildermuth Environmental Inc. to serve as the interim Executive Director/Technical Consultant.

The attached Draft is still under discussion/negotiations and if any changes are made the Final Draft will be published in a future Agenda

**NEXT STEPS**

1. Execute Final Draft of Agreement

**FISCAL IMPACT**

N/A

**ATTACHMENTS**

1. Draft Agreement

## **BORREGO SPRINGS WATERMASTER PROFESSIONAL SERVICES AGREEMENT**

This Agreement ("Agreement") is made and entered into as of August 13, 2020 by and between the Borrego Springs Watermaster, an entity Court Agent proposed to be formally activated by entry of a Judgment in Borrego Water District v. All Persons, San Diego County Superior Court, No. 37-2020-00006776-CU-TT-CTL ("Watermaster") and Wildermuth Environmental, Inc., with its principal place of business at 23692 Birtcher, Lake Forest, California, 92630 (hereinafter referred to as "Consultant"). Watermaster and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

### **RECITALS**

A. Watermaster has been operating in accordance with a Settlement Agreement executed during January, 2020 by parties who are owners of land in and interested in finally adjudicating water production rights and managing water resources in the Borrego Springs Subbasin ("the Basin") of the Borrego Valley Groundwater Basin. Those parties, together with Borrego Water District, are prosecuting that adjudication of water rights entitled Borrego Springs Water District v. All Persons..., San Diego County Superior Court Case No. 37-2020-00006776-CU-TT-CTL and are requesting the imposition of a Physical Solution which will be managed by Watermaster. That proposed disposition is embodied by a Judgment ("the Judgment"). Watermaster has been structured and members thereof appointed in accordance with the provisions of the Judgment on an interim basis while entry of the Judgment remains pending with interim funding provided for in the Settlement Agreement. Watermaster requires professional services of an Executive Director and a Technical Consultant, with appropriate support staff for both, to discharge the functions and responsibilities of the Watermaster delineated in the Judgment.

B. Consultant is duly licensed and has the necessary qualifications and personnel to provide the Services referred to herein.

C. The Parties desire by this Agreement to establish the terms for Watermaster to retain Consultant to provide the Services described herein.

### **AGREEMENT**

#### **NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

##### **1. Services.**

Consultant shall provide Watermaster with the services generally described in the Statement of Work attached hereto as Exhibit "A", and as required herein. The Parties contemplate that additional statements of work will be agreed to in writing. Upon execution by both Parties, upon Watermaster Board approval, the work described therein will become a part of the Statement of Work and subject to the terms and conditions of this Agreement without further amendment to the Agreement. The services to be provided by Consultant pursuant to this Agreement are collectively referred to herein as the "Services." The Consultant shall take direction only from the Watermaster Board and not from an individual member of the Watermaster Board.

2. Compensation.

a. Subject to paragraph 2(b) below, Watermaster shall pay for the Services in accordance with the WEI Fee Proposal set forth in Exhibit "B" attached hereto or as described in the Statement of Work. In the event of a conflict between Exhibit B and the Statement of Work, the Statement of Work will control.

b. Periodic payments for work performed shall be made within thirty (30) days of receipt of an approved invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis. Whenever a specified period of a number of days is delineated herein, "days" shall mean consecutive calendar days. The Watermaster will appoint a director to approve invoices subject to the ratification by the Watermaster at its next scheduled meeting.

3. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available for review by Watermaster at all reasonable times during the term of this Agreement and for four (4) years from the date of final payment by Watermaster.

4. Term; Time of Performance.

The term of this Agreement shall commence on the date first set forth above and expire on December 31, 2022, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established and agreed upon schedules and deadlines for any particular item or items of service. Consultant represents that it has the professional and technical personnel required to satisfactorily perform the Services as required by this Agreement. Upon Watermaster's request, Consultant shall provide a more detailed schedule of anticipated performance to meet any requested Performance Schedule requested by Watermaster. All applicable indemnification provisions of this Agreement shall survive and remain in effect following the termination of this Agreement.

5. Delays in Performance.

a. Consultant shall not be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of Consultant. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, Consultant shall, within a reasonable time of being prevented from performing, give written notice to Watermaster describing the circumstances preventing continued performance and the efforts being made to resume performance of any delayed item of Service.

6. Compliance with Law.

Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements in discharging its obligations hereunder.

7. Standard of Care.

Consultant's Services will be performed in accordance with the generally accepted professional standard(s) of practice and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. Consultant shall, at all times herein, possess any and all professional licenses and certifications required to lawfully perform the Services.

8. Assignment and Subcontracting.

Consultant shall not assign, subcontract, or transfer this Agreement, or any rights or obligations under, or any interest in this Agreement without the prior, written consent of Watermaster, which may be withheld for any reason. The Services required to be performed by Consultant are personal to Consultant. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Authorized subcontracts, if any, shall contain a provision making the subcontractor subject to all provisions stipulated in this Agreement.

9. Independent Contractor.

Consultant is retained as an independent contractor and is not an employee of Watermaster. No employee or agent of Consultant is or shall become an employee of Watermaster. The work to be performed shall be in accordance with the Statement of Work described in this Agreement, subject to such general directions and amendments from Watermaster as herein provided.

a. All work and other Services provided pursuant to this Agreement shall be performed by Consultant or by Consultant's employees or other personnel under Consultant's supervision, and Consultant and all of Consultant's personnel shall possess the qualifications, permits, and licenses required by State and local law to perform the Services. Consultant will determine the means, methods, and details by which Consultant's personnel will perform the Services. Consultant shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the Services and compliance with the customary professional standards.

b. All of Consultant's employees and other personnel performing any of the Services under this Agreement on behalf of Consultant shall also not be employees of Watermaster and shall at all times be under Consultant's exclusive direction and control. Consultant and Consultant's personnel shall not supervise any of Watermaster employees, if any, or other consultants; and Watermaster's employees shall not supervise Consultant's personnel. Consultant's personnel shall not wear or display any Watermaster uniform, badge, identification number, or other information identifying such individual as an employee of Watermaster. Consultant shall acquire and maintain at its sole cost and expense such vehicles, equipment and supplies as Consultant's personnel require to perform any of the Services required by this Agreement.

c. Consultant shall be responsible for and pay all wages, salaries, benefits and other amounts due to Consultant's personnel in connection with their performance of any Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment

insurance, disability insurance, and workers' compensation insurance. Notwithstanding any other agency, State, or federal policy, rule, regulation, statute or ordinance to the contrary, Consultant and its officers, employees, agents, and subcontractors providing any of the Services under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit or any incident of employment by Watermaster, including but not limited to, eligibility to enroll in, or reinstate to membership in any public retirement program, as an employee of Watermaster or San Diego County Superior Court, and entitlement to any contribution to be paid by Watermaster for employer contributions or employee contributions for any retirement benefits.

d. Consultant shall indemnify, defend and hold harmless Watermaster and its officials, officers, employees, servants, and agents serving as independent contractors in the role of Watermaster officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Consultant's violation of any provisions of this Section 9, or any of Consultant's personnel practices. The duty of indemnification set forth in this Section is in addition to all other indemnification provisions of this Agreement.

10. Insurance. Consultant shall not commence work for Watermaster until it has secured all insurance required under this section and provided evidence thereof that is acceptable to Watermaster. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to Watermaster.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Contract

(8) Broad Form Property Damage

(9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall be endorsed to name Watermaster, its officials, officers, employees, and agents as additional insureds using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability coverage may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by Watermaster, and provided that such deductibles shall not apply to Watermaster as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to Watermaster.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall be endorsed to name Watermaster, its officials, officers, employees, and agents as additional insureds.

(iv) Subject to written approval by Watermaster, the automobile liability coverage may utilize deductibles, provided that such deductibles shall not apply to Watermaster as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, Consultant shall maintain full compensation insurance for all persons employed directly by it to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subcontractors to obtain and maintain, for the period required by this



Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to Watermaster and with the limits indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Workers' Compensation	In the amount required by California law.
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Proof of Insurance

Prior to execution of the Agreement, Consultant shall file with Watermaster evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the

insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide Watermaster at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to Watermaster at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General and Automobile Liability Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by Watermaster or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. If a "claims-made" professional liability policy is provided, it shall include an extended reporting period of not less than three (3) years.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of Watermaster, its officials, officers, employees, and agents or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against Watermaster, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve Consultant from liability in excess of such coverage, nor shall it limit Consultant's indemnification obligations to Watermaster and shall not preclude Watermaster from taking such other actions available to Watermaster under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by Watermaster, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted and authorized to transact the business of insurance in the State of California.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by Watermaster, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise

assumed by Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Watermaster has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Watermaster will be promptly reimbursed by Consultant or Watermaster will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Watermaster may cancel this Agreement.

(iii) Watermaster may require Consultant to provide complete copies of all insurance policies in effect for the duration of this Agreement.

(iv) Neither Watermaster nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(v) The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to Consultant; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to Watermaster. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Consultant under this Agreement.

j. Subcontractor Insurance Requirements. Consultant shall not allow any subcontractors to commence work on any subcontract until they have provided evidence satisfactory to Watermaster that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors shall be endorsed to name Watermaster as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, Watermaster may approve different scopes or minimum limits of insurance for particular subcontractors.

#### 11. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably approved by Watermaster), indemnify and hold Watermaster, its officials, officers, attorneys, agents, employees, successors, assigns and those Watermaster agents serving as independent contractors in the role of Watermaster officials (collectively "Indemnitees" in this Section 13 free and harmless with respect to any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages and/or injury of any kind, in law or equity, to property or persons, including personal injury and wrongful death, in any manner arising out of, pertaining to, or incidental to any acts, errors, omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of Consultant's Services, this Agreement or any specific item of the Services, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, or any of the Indemnitees.

b. For Design Professional Services: If Consultant's Services hereunder include the performance of professional services by a "design professional," as the term is defined

under California Civil Code § 2782.8(c), then to the fullest extent permitted by law, Consultant shall, at its sole cost and expense, indemnify and hold harmless the Indemnitees, and each of them, from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants and other professionals, and all costs associated therewith, and reimbursement of attorneys' fees and costs of defense, whether actual, alleged or threatened, to the extent arising out of, pertaining to, or relating to, in whole or in part, the negligence, recklessness or willful misconduct of Consultant, and/or its officers, agents, servants, employees, subcontractors, contractors or their officers, agents, servants or employees (or any entity or individual for whom Consultant shall bear legal liability) in the performance of design professional services under this Agreement. Notwithstanding the foregoing and as required by Civil Code § 2782.8(a), in no event shall the cost to defend the Indemnitees that is charged to Consultant, exceed Consultant's proportionate percentage of fault.

For purposes of this subsection "b", and in accordance with Civil Code Section 2782.8(a), "design professional" means only the following and only while performing professional design services: (i) an individual licensed as an architect pursuant to Business and Professions Code Section 5500, et seq., and a business entity offering architectural services in accordance with that Code section; (ii) an individual licensed as a landscape architect pursuant to Business and Professions code Section 5615, et seq., and a business entity offering landscape architectural services in accordance with that Code section; (iii) an individual registered as a professional engineer pursuant to Business and Professions Code Section 6700, et seq., and a business entity offering professional engineering services in accordance with that Code section; and (iv) an individual licensed as a professional land surveyor pursuant to Business and Professions Code Section 8700, et seq., and a business entity offering professional land surveying services in accordance with that Code section.

c. The provisions of this Section 13 shall survive the termination of this Agreement.

## 12. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California without regard for change of venue laws. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California.

## 13. Termination or Abandonment.

a. Watermaster has the right to terminate or abandon any portion or all of the work under this Agreement by giving thirty (30) days' prior, written notice to Consultant. In such event, Watermaster shall be immediately given title and possession to all Work Product and original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. Provided Consultant is not then in breach, Watermaster shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of any item or items of specified work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon one hundred twenty (120) calendar days' prior, written notice to Watermaster.

c. If this Agreement is terminated, Consultant shall promptly convert Watermaster's database from the HydroDaVE system suggested and implemented by Consultant back to the ERSI platform for a not to exceed cost of \$2,500.00.

14. Ownership of Work Product.

a. Except as otherwise provided in "Termination or Abandonment," above, and unless otherwise agreed upon in writing, all draft and final reports, documents, and other written material, and any and all images, ideas, concepts, designs including website designs, source code, object code, electronic data and files, and/or other media whatsoever created or developed by Consultant in the performance of this Agreement (collectively, "Work Product") shall be considered to be "works made for hire" for the benefit of Watermaster. All Work Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of Watermaster without restriction or limitation upon their use, duplication or dissemination by Watermaster upon final payment being made. Consultant shall not obtain or attempt to obtain copyright protection as to any of the Work Product.

b. Consultant hereby assigns to Watermaster all rights of ownership to the Work Product, including any and all related intellectual property and proprietary rights that are not otherwise vested in Watermaster pursuant to subsection (a), above.

c. Consultant warrants and represents that it has secured all necessary licenses, consents or approvals necessary to the production of the Work Product, and that upon final payment, Watermaster shall have full legal title to the Work Product, and full legal authority and the right to use and reproduce the Work Product for any purpose. Consultant shall defend, indemnify and hold Watermaster, and its officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of Watermaster officials, harmless from any loss, claim or liability in any way related to a claim that Watermaster's use of any of the Work Product is violating federal, state or local laws, or any contractual provisions, or any rights or laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights and/or interests in products, ideas or inventions. Consultant shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the Work Product produced under this Agreement. In the event the use of any of the Work Product or other deliverables hereunder by Watermaster is held to constitute an infringement and the use of any of the same is enjoined, Consultant, at its expense, shall: (a) secure for Watermaster the right to continue using the Work Product and other deliverables by suspension of any injunction, or by procuring a license or licenses for Watermaster; or (b) modify the Work Product and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Agreement. This covenant shall survive the termination of this Agreement.

15. Designation of Representative.

Consultant shall assign Samantha Adams and Andy Malone as Consultant's Primary Representatives who shall have authority to make day to day decisions which shall be binding on

Consultant. Samantha Adams shall be and perform the duties of Watermaster's Executive Director and Andy Malone shall be and perform the duties of Watermaster's Lead Technical Consultant pursuant to this Agreement. Consultant's Representative shall not be removed from providing the Services, reassigned, or replaced without the prior written consent of Watermaster.

16. Notices.

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

WATERMASTER:

c/o Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, California 92004  
Attn: General Manager

WILDERMUTH ENVIRONMENTAL, INC.:

23692 Birtcher  
Lake Forest, California 92630  
Attn: Samantha Adams, Chief Executive  
Borrego Springs Watermaster

With a copy to: Richards, Watson & Gershon  
P.O. Box 1059  
Brea, California 92822-1059  
Attention: James L. Markman

and shall be effective upon receipt thereof.

17. Third Party Rights.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Watermaster and Consultant.

18. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

19. Entire Agreement.

This Agreement, with its exhibits, represents the entire understanding of Watermaster and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or

altered except in writing signed by both Parties hereto. This is an integrated Agreement. In the event of any conflict or inconsistency between the provisions of this Agreement and any exhibit hereto, the provisions of this Agreement shall govern.

20. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

21. Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of Watermaster. Any attempted assignment without such consent shall be invalid and void.

22. Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

23. Time of Essence.

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

24. Interest of Consultant.

Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement. Consultant certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of Watermaster.

25. Interest of Subcontractors.

Consultant further covenants that, in the performance of this Agreement, no subcontractor or person having any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement shall be employed.

26. Prohibited Interests.

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Watermaster shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of Watermaster, during the term of his or her service with Watermaster, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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

BORREGO SPRINGS WATERMASTER

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

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

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

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

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

WILDERMUTH ENVIRONMENTAL, INC.

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

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

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

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

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

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

**(Two signatures required for corporations pursuant to California Corporations Code Section 313, unless corporate documents authorize only one person to sign this Agreement on behalf of the corporation.)**

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Watermaster General Counsel



## Exhibit A – Statement of Work

Amounts billed for the Work below are based upon the rate schedule in Exhibit B and is approved for the following scope of work, but no other work.

**Task 1 – Meetings and Court Hearings.** Prepare for and attend Watermaster Board (Board) Meetings, TAC Meetings, Environmental Working Group (EWG) Meetings, and Court Hearings. This includes coordinating with the Board, legal counsel, TAC members, and EWG members and preparing the agenda packages, preparing presentation materials, leading the meetings, and preparing minutes. Cost not to exceed \$10,000.

**2.5 Watermaster website and Notifications.** This includes procuring a website domain, hosting the website, setting up the website, maintaining the website, posting notices, determinations, requests, demands, objections, reports, and other papers pursuant to the Judgment; also includes providing electronic notification to Stipulated Agreement Parties when noticing required by the Judgment. Cost not to exceed \$4,521.

**2.10 Other general administration and project managements tasks.** This includes, but is not limited to, managing staff and subconsultants, tracking task schedules and progress, and tracking budget progress. Cost not to exceed \$3,000.

**3.1 Implement HydroDaVE as centralized Watermaster database for all groundwater, surface water, and climate data.** This includes converting the existing Data Management System (DMS) to HydroDaVE managed services to manage the Watermaster data sets. The work involves collecting all relevant environmental data, including GIS shapefiles, cataloging them, and loading sites and legacy data. Cost not to exceed \$22,248.

**3.2 Collect and track data for annual water rights accounting.** This includes collecting, QA/QC, and uploading/storing the following information: Annual Pumping Reports; information on BPA transfers, leases, and assignments (including following data); and annual meter calibration and accuracy reports. Prepare recommendation to WMB for meter calibration certification gathering and documentation and revisions to water meter reading policy. Cost not to exceed \$3,424.

## Exhibit B – WEI Fee Proposal

### WEI Hourly Rate Sheet for Professional Services

Staff Type	Key Personnel	Hourly Rates
Principal Engineer III/Scientist III	Mark Wildermuth	\$285
Principal Engineer II/Scientist II	Samantha Adams, Andy Malone	\$267
Principal Engineer I /Scientist I	Eric Chiang, Wenbin Wang	\$253
Supervising Engineer/Scientist II		\$236
Supervising Engineer/Scientist I	Mike Blazevic, Veva Weamer	\$230
Senior Engineer II/Scientist II	Carolina Sanchez	\$206
Senior Engineer I/Scientist I		\$193
Staff Engineer/Scientist II	Emily McCord	\$167
Staff Engineer/Scientist I		\$155
CFO	Larry Stahlhoefer	\$230
Technical Editor		\$132
Field Technician		\$84
Admin Assistant		\$132

*Preparation of testimonial material is billed at the normal hourly rate. Witness preparation, depositions, and testimony are billed at twice the normal rate - with a minimum charge of one day.*

DRAFT

BORREGO SPRINGS BASIN WATERMASTER  
BOARD OF DIRECTORS MEETING  
AUGUST 13, 2020  
AGENDA ITEM III.B

August 12, 2020

TO: Board of Directors

FROM: Geoffrey Poole

SUBJECT: BWD Request for Pumping Fee Credit as Reimbursement for Providing Administrative Support  
– D Duncan

**RECOMMENDED ACTION:**

Discuss and Direct Staff as Deemed Appropriate.

**ITEM EXPLANATION:**

At its August 11<sup>th</sup> Meeting, the BWD Board approved a request for reimbursement from the Watermaster Board as specified below:

To support the Borrego Springs Subbasin interim WaterMaster, the BWD Board graciously agreed to provide administrative support until the WaterMaster hired an Executive Director. In the past months, the direct and indirect costs to date of this BWD administrative support has been in the range of \$12,000 - \$20,000. At this time, due to the COVID-19 Emergency and the requirement of BWD to provide continuance of service to its customers as a critical infrastructure sector under the auspices of the Critical Infrastructure Security Agency (CISA) of the US Department of Homeland Security (DHS), the BWD Board hereby requests that the WaterMaster agree to BWD applying the costs for providing administrative assistance to the interim WaterMaster as a credit against its 2020 pumping fee due the WaterMaster. BWD Board has already enacted a no-shut off policy for non-payment during the COVID-19 Emergency. However, this no-shut off policy is still a legal receivable that is due BWD. In order to assist customers that have accrued a sizable past due amount for nonpayment during the COVID-19 Emergency, the BWD Board may be required to develop appropriate debt management payoff plans with customers to avoid water service shutoffs even after the no-shut off policy ceases. 15 As Proposition 218 prohibits cross subsidies, the cash flow requirements for the no-shut off policy and any debt management plans must be covered by ad-valorem tax revenues. These ad-valorem tax revenues are the very same revenues that BWD is using to provide administrative support to the WaterMaster. Thus, due to the uncertainties related to the COVID-19 Emergency and the limitations imposed on BWD for certain expenditures, the BWD Board requests consideration for its request by the interim WaterMaster.

BORREGO SPRINGS BASIN WATERMASTER  
BOARD OF DIRECTORS MEETING  
AUGUST 13, 2020  
AGENDA ITEM III.C

August 12, 2020

TO: Board of Directors

FROM: Geoffrey Poole

SUBJECT: Meter Reading and Related Issues

1. Selection of BWD for Meter Reading Services – S Smith
2. 3<sup>rd</sup> Party Certification of Meter Installations – D Duncan
3. Right of Entry Form – S Smith

**RECOMMENDED ACTION:**

Discuss and Direct Staff as Deemed Appropriate

**ITEM EXPLANATION:**

- A. Director Smith has requested a discussion and possible action on the selection BWD as the meter reading service provider, under the terms of the Proposal presented at the previous Watermaster Board Meeting.

*Meter Reading Hourly \$45.63 = \$34.57(Hourly + 49% EE Burden) + \$11.06 (32% Overhead)  
Plus: + 10% on total invoice + expenses.*

- B. Director Duncan has requested a discussion on the timing for a 3<sup>rd</sup> party confirmation new meters are installed within industry standards.
- C. Director Smith has also requested a discussion and possible action on the use of the attached Right of Entry Form

**NEXT STEPS**

TBD

**FISCAL IMPACT**

N/A

**ATTACHMENTS**

1. Draft Right of Entry Form

**ENTRY PERMIT**  
**(Meter Reading for Manual Read Meters)**

This Entry Permit is dated as of \_\_\_\_\_, 20\_\_, and is made by \_\_\_\_\_ (“**Property Owner**”) and the Interim Borrego Valley Groundwater Basin Watermaster (“**Watermaster**”) appointed under that certain Settlement Agreement dated January 29, 2020 for the Borrego Springs Sub-basin (“**Settlement Agreement**”). Where appropriate, Property Owner and Watermaster are referred to collectively as “Parties” and individually as “Party.” References to a Party include, bind, and inure to the benefit of that Party’s Boardmembers, officers, agents, employees, successors in interest and assigns.

**RECITALS**

A. The Property Owner is a party to the Settlement Agreement. Attached as Exhibit “C” to the Settlement Agreement is a proposed stipulated judgment (“**Stipulated Judgment**”) that the parties to the Settlement Agreement will seek to have entered by the court as the final judgment in the pending action entitled *All Persons Who Claim a Right to Extract Groundwater in the Borrego Valley Groundwater Subbasin, etc.*, Orange County Superior Court Case No. 37-2020-00005776 (“**Adjudication Action**”). The parties to the Settlement Agreement including Property Owner agreed to be bound by and operate under the provisions of the Stipulated Judgment on an interim basis pending entry of judgment in the Adjudication Action. The Stipulated Judgment, including Exhibits 1 through 8 thereto, is posted at the following link: <http://www.bvgsp.org/judgment.html>.

B. Property Owner is the owner of that certain real property commonly known as Assessor’s Parcel Number(s) \_\_\_\_\_ within the County of San Diego, depicted on Exhibit “A” attached hereto and incorporated herein by reference (“**Property**”).

C. Property Owner installed Watermaster approved, manual read meters on its wells that cannot electronically transmit a recording of the amount of groundwater pumped from a well and other data to the Watermaster in real time. The Stipulated Judgment contemplates the Watermaster will physically read such meters on the schedule determined by the Watermaster under the approved Meter Program attached hereto as Exhibit “B” and incorporated by reference, as that Meter Program may be amended by the Watermaster from time to time. Watermaster has requested that Property Owner provide access to the well(s) (“**Well(s)**”) located on the portion(s) of the Property referenced as the “**Well Site(s)**” on Exhibit “A” so that Watermaster may read each Well meter under the Meter Program pursuant to the terms of this Permit (the “**Activities**”).

D. The Property is used by Property Owner for residential, commercial or other business purposes, including but not limited to extensive agricultural business uses. Unrestricted entry by Watermaster could interfere with those uses and expose Property Owner, and Property Owner’s agents, employees and invitees, Watermaster’s employees and contractors, and others on the Property to risk of injury.

E. Property Owner desires to allow Watermaster to enter onto the Well Site as necessary for Watermaster to access the Well(s) and carry out the Activities pursuant to the terms of this Permit.

## TERMS

This Entry Permit is issued subject to the following terms and conditions:

1. Purpose and Scope.

(a) For the Term of this Permit, as defined in Section 2 below, Property Owner hereby provides Watermaster a limited, non-exclusive license to enter onto the Well Site(s), under the terms and conditions set forth in this Entry Permit, solely in order to carry out the Activities.

(b) Only Watermaster's employees and contractors covered by Watermaster's or such contractors' comprehensive liability insurance, automobile insurance and workers compensation insurance consistent with the requirements of Section 7 below are permitted to enter the Well Site and conduct the Activities.

(c) Watermaster shall not enter onto the Well Site(s) other than as necessary to conduct the Activities and shall not enter onto any other portion of the Property. Watermaster's request to enter onto any other portions of the Property in connection with Activities shall be considered by the Property Owner on a case by case basis and shall be subject to a new written entry permit agreement with Property Owner.

(d) Each entry shall be limited to the hours between \_\_\_\_\_ a.m. and \_\_\_\_\_ p.m., Monday through Friday, excluding holidays, unless otherwise agreed to in advance and in writing by Property Owner.

(e) At the sole election of Property Owner, Property Owner or its representative may accompany Watermaster in any or all of the Activities. Upon Property Owner's request, Watermaster shall provide the meter reading(s) from each Well to Property Owner or its representative without cost to the Property Owner. Property Owner shall have no responsibility or obligation whatsoever in connection with the Activities, except as provided in Section 6 below.

(f) Failure to comply with the terms and conditions contained herein shall be cause for immediate termination of this Entry Permit.

2. Term of this Entry Permit.

(a) The term of this Entry Permit shall commence upon its full execution by the Parties (the "***Effective Date***") and shall remain in effect through the period that the meters installed on the Well(s) are required to be read under the Meter Program (the "***Termination Date***").

(b) Watermaster's entry and the Activities must cease on the Termination Date.

(c) The Parties' rights and obligations under Sections 4, 6, 7, 8, 9, 10, 11, 18 and 19 below shall survive the termination of this Entry Permit and continue in effect until all claims against the Property Owner, Watermaster and the Property related to this Entry Permit are absolutely barred by the applicable statutes of limitation.

3. Notice of Entry.

(a) Watermaster shall notify Property Owner by telephone \_\_\_\_\_ and email \_\_\_\_\_, at least seventy-two (72) hours prior to each entry onto the Well Site(s). The notice shall contain all of the following information:

- 1) The date, time and duration of the entry;
- 2) The Watermaster personnel who will be conducting the Activities during the entry; and
- 3) Watermaster's certification that the Watermaster personnel who will be conducting the Activities have been provided with a copy of this Entry Permit and are covered by Watermaster's comprehensive liability insurance, automobile insurance and workers compensation insurance.

4. Government Permits and Authorizations.

Watermaster shall comply with all Applicable Legal Requirements (defined in Section 10 below) and shall be solely responsible for and obtain at its expense all governmental permits and authorizations required by all Applicable Authorities (defined in Section 10 below) for Watermaster to perform the Activities and the restoration of the Property pursuant to this Entry Permit.

5. Non-Interference with Property Owner's Use of Property.

(a) Watermaster shall not modify the Property or the Well(s) without the Property Owner's prior written consent. No ground disturbances are permitted without the Property Owner's prior written consent.

(b) Watermaster's entry upon and use of the Well Site(s) shall at all times be subject to the rights of Property Owner to use the Property and the Well(s) located thereon. Watermaster shall not interfere with or disrupt the residential, agricultural, commercial or other business activities on the Property, and shall not endanger the health, safety or welfare of the Property Owner or Property Owner's agents, employees, invitees, or Watermaster's employees or contractors, or others on the Property.

6. Assumption of Risk, Release and Indemnity.

(a) Watermaster assumes all risk of loss, damage and injury to itself, its employees and contractors which in any manner may arise out of entry upon or use of the Property under this Entry Permit. Property Owner shall not have any liability to Watermaster, its employees or contractors or to any insurer, by way of subrogation or otherwise, on account of any loss, damage or injury to Watermaster's property, or to Watermaster's employees or contractors, regardless of whether such loss or damage is caused by any negligence of Property Owner or Watermaster, unless Watermaster affirmatively demonstrates that Property Owner acted with willful misconduct, and that such willful misconduct is the proximate cause of such loss, damage or injury. Any award of damages following such a showing of willful misconduct shall be limited to the actual amount of the monetary injury. If any dispute is not resolved following compliance with the dispute resolution procedures specified in Section VII.A of the Judgment, either Party may seek declaratory relief, specific performance and/or monetary damages for willful misconduct in accordance with the procedures set forth in Section VII.A of the Judgment, but no other remedies in law or equity.

(b) Watermaster shall keep the Property free of mechanic's liens and claims resulting from or in any way related to Watermaster's entry onto the Property or the Activities. Watermaster shall defend Property Owner and the Property against, and indemnify and hold Property Owner and the Property harmless from all liens, claims, losses, liabilities and expenses asserted against or incurred by the Property Owner or the Property and caused by Watermaster's entry or the Activities or in any way related to such entry or Activities, including the actual expense of legal representation whether by special counsel or by Property Owner's attorneys, and expert witness fees, arising out of or resulting from injury to or death of any person, or damage to any property or damage to any other interest of Property Owner, including, but not limited to, suit alleging noncompliance with any applicable Legal Requirements by Watermaster. Watermaster's duty to defend as described above shall arise immediately upon the making of any claim, the assertion of any cause of action, the initiation of any regulatory proceeding or other action against Property Owner, and shall not be dependent upon a finding of any wrongdoing or fault on the part of Watermaster. The Parties' rights and obligations under this Section 6 shall survive termination of this Entry Permit and shall continue until all claims against Property Owner, Watermaster, and the Property are absolutely barred by the applicable statutes of limitation.

7. Insurance.

(a) Scope of Insurance. Watermaster shall, prior to any entry onto the Property, acquire and keep in full force and effect comprehensive liability insurance with a combined single limit coverage limit of not less than Two Million Dollars (\$2,000,000.00) covering bodily injury, personal injury, death and property damage liability per occurrence and in the aggregate, insuring the Property Owner against any and all liability with respect to or arising out of the entry or Activities. No policies issued on a "claims made" basis will be acceptable and no policies will have any deductible provision in excess of five percent (5%) of the total coverage maintained by the Watermaster. Watermaster shall also obtain and maintain all automobile and workers compensation insurance required by law with respect to the



Activities. Watermaster shall provide the Property Owner with a certificate evidencing such coverage prior to Watermaster's entry onto the Property.

(b) Policy Form. All such liability insurance policies shall name the Property Owner as an additional insured. All public liability, property damage, and other casualty policies shall be written as primary policies and any insurance carried by the additional insureds on such policies shall not be contributing with such policies. All policies of insurance under this Entry Permit shall be issued by reputable insurance companies with general policy holder's ratings of not less than A-, and which are qualified to do business in California.

(c) Blanket Policies. Notwithstanding anything to the contrary contained in this Section 7, Watermaster's obligation to carry insurance may be satisfied by coverage under a so-called blanket policy of insurance, provided, that the requirements set forth in this Section 7 are otherwise satisfied.

(d) Failure by Watermaster to Maintain Insurance. If Watermaster fails to secure and maintain insurance policies complying with the provisions of this Section 7, then the Property Owner may secure the appropriate insurance policy or policies, and Watermaster shall pay, upon demand, the cost of same to the Property Owner, plus a service fee equal to fifteen percent (15%) of the total annual premium cost of the policy or policies.

#### 8. Remedies.

(a) If the Property suffers any damage by reason of the acts or omissions of Watermaster, Watermaster shall be solely responsible for restoring the Property to its condition existing immediately prior to the occurrence of such damage to the satisfaction of the Property Owner, and shall compensate the Property Owner for any damages caused by reason of the acts or omissions of Watermaster, including but not limited to the market value of any crops damaged or destroyed by Watermaster.

(b) Watermaster shall be liable to Property Owner for all damage to any person or property which in any manner may be caused by Watermaster. Property Owner's remedies for any such damage shall include, without limitation:

1) requiring that Watermaster immediately pay for the cost of repair and other losses to Property Owner (including without limitation, consequential damages) caused by Watermaster; and

2) requiring that Watermaster restore any damaged property, including without limitation the Property Owner's Wells, to a condition as near as reasonably possible to that which existed immediately prior to Watermaster's entry. If Property Owner elects to require that Watermaster make such repairs and restoration and Watermaster does not timely perform such repairs and restoration, then Watermaster shall be liable to Property Owner for the cost of restoring the damaged property to such condition, and shall further be liable to Property Owner for all damages (including, without limitation, consequential damage) resulting from Watermaster's activities on the Property, and any and all associated costs Property Owner incurs in its related restoration/repair activities.

9. Removal of Materials.

(a) Watermaster hereby warrants and represents that it will not cause the presence, use, storage or disposal of any Hazardous Substances (defined in Section 10 below) on or about the Property without the prior written consent of Property Owner. Excluded from this provision are substances necessary to carry out the Activities, provided that said substances are labeled, packaged, stored, contained, handled, managed, transported, documented and disposed of by Watermaster in full compliance with all Applicable Legal Requirements.

(b) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the Applicable Legal Requirements that Watermaster releases to the Property must be removed and properly disposed of by Watermaster in compliance with the Applicable Legal Requirements and all negative impacts remediated at the sole expense of Watermaster. Said remediation shall restore the Property to the condition existing immediately prior to the Effective Date of this Entry Permit.

(c) Watermaster agrees to immediately notify Property Owner when Hazardous Substances have been released on the Property. Watermaster further agrees to properly notify all Applicable Authorities in the event of a release of Hazardous Substances on the Property. If Watermaster discovers any materials suspected to be hazardous in nature in or around the Watermaster's work area during the course of its Activities, it shall halt all Activities until Property Owner, or its agent, can determine the nature of the material and the proper remediation, if any, that is required.

(d) All conditions and stipulations of this Section 9 shall be carried out to the satisfaction of both Property Owner and the California Regional Water Quality Control Board — Colorado River Region.

(e) Failure by Watermaster to comply with any of the above provisions within ninety (90) days of written notification of default shall give Property Owner authority to have said default cured and remediated, and Watermaster agrees to pay Property Owner all direct and indirect costs of said default.

(f) The Parties' rights and obligations under this Section 9 shall survive the termination of this Entry Permit and continue in effect until all claims against the Property Owner, Watermaster and Property related to this Entry Permit are absolutely barred by the applicable statutes of limitation.

10. Defined Terms.

For purposes of this Entry Permit, the following capitalized terms shall be defined as follows:

(a) Applicable Authorities: The Court administering the Stipulated Judgment, County of San Diego and any other applicable federal, state, regional or local governmental or quasi-governmental agency, body or authority having jurisdiction over the Property or the Meter Program.

(b) Applicable Legal Requirements: Environmental Laws (as defined below), Stipulated Judgment, and any other statutes, ordinances, rules, codes, requirements, permits, regulations, standards (including any standards or requirements now or hereafter applicable to residential use or development of the Property), judgments, orders, writs, injunctions or decrees or the like, of Applicable Authorities.

(c) Environmental Laws: Any federal, state, regional or local statute, regulation, ordinance, rules, codes, requirements, permits, standards or requirements (including any standards or requirements now or hereafter applicable to residential use or development of the Property), judgments, regulations, orders, writs, injunctions or decrees or the like, relating to environmental conditions on, under or about the Property that could affect use or development of the Property for residential purposes, including, without limitation, soil and groundwater conditions underlying the Property, and environmental conditions pertaining to wetlands, waters of the United States, waters of the State of California, and listed state- or federally-, threatened or endangered species.

(d) Hazardous Materials: Any materials or substances (a) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code; (b) defined as a “hazardous substance” under Section 26316 of the California Health and Safety Code; (c) defined as a “hazardous material,” “hazardous substance” or “hazardous waste” under Section 25501 of the California Health and Safety Code, or under Section 25281 of the California Health and Safety Code; (d) petroleum or any other hydrocarbon substance or by-product; (e) asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (f) polychlorinated biphenyls; (g) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code; (h) designated as a “hazardous substance” pursuant to the Clean Water Act (33 U.S.C. § 1251 et seq.); (i) defined as a hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 6901 et seq.); (j) listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8(a) of the California Health and Safety Code; or (k) found to be a pollutant, contaminant, toxic or hazardous waste or toxic or hazardous substance by any Applicable Authorities or in any reported decision of a federal or state court, or which may give rise to liability under any federal or state common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court.

#### 11. Successors and Assigns.

Watermaster shall not assign any of its rights under this Entry Permit without the prior written consent of Property Owner, which consent may be withheld for any reason or for no reason. Any assignment by Watermaster of this Entry Permit shall not release Watermaster from its obligations under this Entry Permit without an express release executed by Property Owner.

12. Authorized Signatories.

The individuals executing this Entry Permit represent and warrant that they are authorized to execute this permit entry on behalf of the Party for whom each individual purports to sign and that when executed and delivered to the Parties, this Permit shall be a valid and binding obligation of the Parties.

13. No Business or Agency Relationship.

Property Owner and Watermaster acknowledge and agree that (i) nothing contained in this Entry Permit shall be construed to constitute the Parties as participants in a joint or common undertaking, (ii) nothing contained in this Entry Permit shall create any agency relationship between Property Owner and Watermaster, and (iii) no Party shall have any right or authority to act on behalf of the other Party.

14. No Third Party Beneficiary.

This Entry Permit is not intended for the benefit of any third party and shall not be enforceable by any party who is not a Party.

15. Counterparts.

This Permit may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Entry Permit.

16. Waiver of Covenants and Conditions; No Waiver of Claims.

No covenant, condition, right or remedy under this Entry Permit shall be waived unless the waiver is in writing and signed by the Party claimed to have made the waiver. One waiver shall not be interpreted as a continuing waiver. The waiver by one Party of the performance of any covenant or condition under this Entry Permit shall not invalidate this Entry Permit nor shall it be considered a waiver by it of any other covenant or condition under this Entry Permit. By entering into this Entry Permit, Property Owner does not waive any legal rights with respect to potential claims or causes of action Watermaster has (or may have in the future) against Watermaster or against any other person or entity not a Party to this Entry Permit and all such claims are expressly reserved.

17. Governing Law.

The interpretation and enforcement of this Entry Permit shall be governed by the laws of the State of California. This Entry Permit shall be interpreted to give effect to its fair meaning and shall be construed as though it was prepared by both Parties. This Entry Permit contains the entire agreement of the Parties with respect to Watermaster's entry on and investigation of the Property, and all prior negotiations, documents, and discussions regarding the Watermaster's entry and Activities herein are superseded by this Entry Permit. Section headings in this Entry Permit are for convenience only and shall not be used in interpreting its provisions.

18. Venue.

Any controversy or claim arising out of or relating to this Entry Permit, or the breach thereof, shall be brought in the Court administering the Stipulated Judgment in the manner specified in Section VII.A of the Stipulated Judgment for a party to appeal a decision by the Watermaster Board.

19. Attorney's Fees.

In the event any Party to this Entry Permit initiates proceedings to enforce the terms of this Permit, the Party not substantially prevailing in such proceedings shall pay to the substantially prevailing Party all attorneys' fees incurred by the substantially prevailing Party, together with all costs of such proceeding.

20. Severability.

In the event that any provision of this Entry Permit is deemed unenforceable, the remaining provisions shall remain in full force and effect. In the event any provision of this Entry Permit is so held invalid, the Parties shall promptly renegotiate in good faith new provisions to restore this Entry Permit as nearly as possible to its original intent and effect.

21. Notice.

Unless otherwise specified herein, all notices or other communications between the Parties required or permitted hereunder shall be in writing and personally delivered, or sent by certified United States mail, postage prepaid, return receipt requested, or sent via overnight air courier (example, Federal Express) to the following addresses:

If to Property Owner, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

If to Watermaster, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

A notice shall be effective on the date of personal delivery if personally delivered, the next business day after deposit with the overnight air courier, or two (2) business days following the date the notice is postmarked, if mailed via certified mail as set forth above. Either Party may change the address to which notice is to be given to it by giving notice of such change of address in the manner set forth above for giving notice.

22. Watermaster Acceptance.

Watermaster shall indicate its acceptance of the terms and conditions of the permission granted under this Entry Permit by signing in the space provided below and returning the original executed copy of this Entry Permit to Property Owner.

*[Signatures on the following page]*

IN WITNESS WHEREOF, the Parties have caused this Entry Permit to be executed as of the latest day and year written below.

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

WATERMASTER

\_\_\_\_\_

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

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

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

PROPERTY OWNER

\_\_\_\_\_

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

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

**EXHIBIT A**  
PLAT DEPICTING AND DESCRIBING PROPERTY



**EXHIBIT B**  
METER PROGRAM