

AGREEMENT FOR THE IMPLEMENTATION OF
A SEASONAL LAND FALLOWING PROGRAM

THIS AGREEMENT (“Program Agreement”) is made and entered into this 20th day of December, 2019, by and between The Metropolitan Water District of Southern California (“MWD”), a public agency organized pursuant to the California Metropolitan Water District Act (1969 Cal. Stats., ch. 209), and Bard Water District (“Bard”), a public agency organized pursuant to the California Water District Act (1951 Cal. Stats., ch. 390). Each of said agencies is at times referred to individually as “Party” and collectively as “Parties”.

RECITALS

A. Pursuant to the Boulder Canyon Project Act (Act of December 21, 1928; 45 Stat. 1057) and Article 6 of the September 28, 1931 Supplementary Contract for Delivery of Water between the United States Department of the Interior and MWD, and other subsequent and supplementary agreements, the United States delivers Colorado River water to MWD in accordance with specified priorities. Those priorities include a first and third priority to Palo Verde Irrigation District (“PVID”) for beneficial use on a gross area of 104,500 acres in the Palo Verde Valley and 16,000 acres on the Lower Palo Verde Mesa, respectively, a second priority to the Yuma Project of the United States Bureau of Reclamation, a third priority to Imperial Irrigation District (“IID”), and other lands now served from the All-American Canal by the Coachella Valley Water District (“CVWD”). The total beneficial consumptive use under those priorities shall not exceed 3,850,000 acre-feet per year (“AFY”). The fourth and fifth priorities totaling 1,212,000 AFY are held by MWD. The priorities specified in Article 6 also included a sixth priority to use of 300,000 AFY by IID, other lands now served from the All-American Canal by CVWD, and PVID. The seventh priority of all remaining water available for use within California is reserved for agricultural use in the Colorado River Basin, as defined, within California. MWD also has a Contract for Delivery of Surplus Flows From the Colorado River with the United States for use of not to exceed 180,000 AFY of surplus flows.

B. The United States delivers Colorado River water to Imperial Dam for diversion into the All-American Canal from which water is diverted into the Bard Unit of the Reservation

Division of the Yuma Project under the second priority for use by certain persons and entities entitled to delivery of water by water right application with the United States.

C. Pursuant to the Quantification Settlement Agreement by and among IID, MWD, and CVWD dated October 10, 2003, and the Colorado River Water Delivery Agreement by and among the United States, IID, CVWD, MWD, and San Diego County Water Authority, dated October 10, 2003, if in any given calendar year that the use of Colorado River water in accordance with Priorities 1 and 2, together with the use of Colorado River water on PVID Mesa lands in accordance with Priority 3(b), exceeds the consumptive use amount of 420,000 AFY, the Secretary of the Interior (“Secretary”) will reduce the amount of water otherwise available to MWD in Priorities 4, 5 or 6(a) by the amount that such use exceeds 420,000 AFY. To the extent that the amount of water used in accordance with Priorities 1, 2 and 3b is less than 420,000 AFY, the Secretary shall deliver to MWD the difference. The Colorado River Water Delivery Agreement provides for the Secretary to deliver the first 38,000 AFY of Priority 6(a) water to MWD.

D. Bard acts as a distributor of the Colorado River water within the perimeter of the Bard Unit lands of the Reservation Division of the Yuma Project. Pursuant to the United States Department of the Interior’s Contract with Bard for the Performance of Operation and Maintenance Activities, dated May 28, 2019, Bard operates and maintains the Bard Unit works of the Reservation Division, charging the landowners for this service.

E.. MWD desires to increase the Colorado River water available to it by contracting with farmers within the Bard Unit for the seasonal fallowing of all or a portion of their lands (“Fallowed Acres”) that otherwise would have been irrigated with Colorado River water, with the water thereby saved (“Saved Water”) being available to MWD.

F. MWD and Bard successfully implemented a pilot seasonal fallowing program within the Bard Unit during the years 2016 and 2017, and now desire to implement a long-term seasonal fallowing program (“Program”) on the terms and conditions set forth in this Program Agreement.

NOW, THEREFORE, in consideration of the covenants and obligations set forth herein, the Parties agree as follows:

ARTICLE I

THE FOLLOWING PROGRAM

1.1 The Program consists of fallowing to be performed on a voluntary basis by farmers on land that is either owned or leased for agricultural use pursuant to agreements to be executed by and between farmers and MWD in the form of Attachment A, hereto (“Fallowing Agreements”).

1.2 Term. The term of the Program shall be seven years commencing in the year 2020 and continuing through year 2026.

1.3 Eligible Lands. Lands eligible for the Program shall be located wholly within Bard and shall have been used for irrigated agriculture during the April 1 through July 31 time period for not less than three of the five years prior to being offered for participation in the Program; provided that lands fallowed under the Pilot Seasonal Fallowing Program in 2016 and/or 2017 shall be eligible for participation. Eligible lands must be irrigated through a Bard Unit water delivery canal. Any farmer (landowner or lessee) may offer to fallow up to all or a portion of their land, provided that land offered for fallowing shall be a minimum of ten contiguous acres.

1.4 Fallowing Calls. MWD shall notify Bard by October 1 of each year of the amount of fallowed acreage for which it is seeking participation for the following year (“Fallowing Call”); provided that the Fallowing Call for the year 2020 shall be given by December 31, 2019. Fallowing Calls shall not exceed a total of 3,000 irrigable acres without the prior consent of Bard.

1.5 Fallowing Offers. Bard shall notify the farmers (landowners and lessees) within its boundaries of the Fallowing Call and request offers of participation. Farmers may offer to participate in the Program on an annual basis by February 1 by executing and returning to Bard a proposed Fallowing Agreement identifying the lands offered for fallowing in that year. Any

farmer who has executed a prior Fallowing Agreement for the Program may execute and return an amendment to the Fallowing Agreement extending the fallowing on all or an eligible portion of their lands for that year.

1.6 Acceptance of Offers. Bard shall provide MWD with the offers of participation, which MWD shall accept in whole or in part. MWD shall accept all offers that meet the Program requirements up to the total amount of acreage in the Fallowing Call. In the event that the offers exceed the acreage in the Fallowing Call, MWD shall reduce each farmer's offered fallowing acreage by a proportionate amount to reduce the total fallowed acreage to the amount of the Fallowing Call; provided that any resulting reduction in a farmer's offered fallowing acreage below ten acres shall cause that offer of participation to be rejected. MWD shall accept the offers by executing and returning the Fallowing Agreement or amendment to a prior Fallowing Agreement.

1.7 Fallowing Period. Fallowing shall be implemented from April 1 through July 31 of each year.

ARTICLE II

PROGRAM COSTS AND FUNDING

2.1 Payments to Farmers. Payments to the farmers for fallowing the lands shall be made by MWD pursuant to the terms and conditions contained in the Fallowing Agreements.

2.2 Payments to Bard.

(a) For fallowing in the year 2020, MWD shall pay Bard the sum of \$113.00 per acre for each acre that is fallowed pursuant to a Fallowing Agreement. The total amount payable using this rate shall be paid in two equal installments, with the first payment due on or before May 15, and the balance (less any reduction due to a failure by farmer(s) to perform fallowing as agreed) due and payable on or before September 15. In the event a farmer fails to comply with all the terms of his or her Fallowing Agreement, MWD shall withhold from the second payment an amount equal to \$56.50 for each acre that has not been fallowed as required.

(b) The rates for payments in paragraph (a), above, shall be adjusted annually by the percentage change over the prior year in the Consumer Price Index for All Urban Consumers last published by the Bureau of Labor Statistics of the United States Department of Labor on or before September 1 for Los Angeles – Riverside – Orange County All Items (1982-84 = 100), not seasonally adjusted. MWD shall calculate the annual change in the rate for these payments and include the adjusted rate in its annual Fallowing Call made on October 1.

(c) MWD shall make an additional payment to Bard on or before May 15 of each year during the term of this Program Agreement in the amount of \$15,000.00. This payment shall only be made in years during which land is fallowed pursuant to the Program and the amount shall not be adjusted over the term of the Program.

(d) The MWD payments to Bard provided for in this Section 2.2 shall compensate Bard for all direct and indirect costs incurred in the oversight and operation of the fallowing during each year, as well as contribute to funding costs related to the Bard capital improvement plan to improve the infrastructure and operations of the Bard water delivery and accounting systems.

(e) Bard shall maintain records pertaining to the expenditures made with the MWD payments for a period of three (3) years following the end of the Program. MWD, at its sole expense, may reasonably audit or otherwise examine the records of expenditures made with or relating to MWD payments under the Program for a period of three (3) years following the end of the Program.

ARTICLE III

ADMINISTRATION

3.1 Fallowing Agreements. MWD will monitor and enforce compliance with, and administration of, the Fallowing Agreements in accordance with their terms. Bard agrees to assist with monitoring and enforcement to the extent necessary.

3.2 Bard Responsibilities. In consideration of the payments set forth in Section 2.2, above, Bard will:

- (a) Act as the lead agency for purposes of the California Environmental Quality Act review of the Program and assist MWD in preparing and filing any necessary environmental documents for the Program.
- (b) Notify farmers of the Program terms and conditions and administer the process of signing up farmers to Fallowing Agreements within the time frames provided in this Program Agreement. Bard shall annually verify the number of the irrigable acreage of lands offered for fallowing and the eligibility of the offered lands by confirming that such lands are comprised of not less than ten contiguous acres, are irrigated through Bard Unit water delivery canals, and have been irrigated (or fallowed pursuant to the Pilot Seasonal Fallowing Program) in at least three of the prior five years.
- (c) Maintain a record of the interest of farmers in Program participation and ensure that the offered lands accepted for fallowing do not exceed three thousand (3,000) acres in any year.
- (d) Develop, process for signatures, and maintain originals of a form of consent by landowners allowing lessee farmers to participate in the fallowing program.
- (e) Regularly monitor fallowed lands during the fallowing period and promptly notify MWD of any violations of the Fallowing Agreements.
- (f) Take reasonable actions in operation of the Bard Unit water delivery system to avoid delivery of water to fallowed lands, and promptly notify MWD of canal breaks or other events affecting water use and corrective actions taken.
- (g) Regularly monitor fallowed lands to ensure proper dust control measures are implemented.
- (h) Provide MWD with available information related to the Program, including information on monthly water applied by customer and lessee and, if requested, by irrigation serial unit in the Bard Unit during the term of the Program.
- (i) Provide MWD with the Bard ten-year capital improvement plan, an annual accounting of the funds expended to implement the plan, and following completion of the

Program, a report summarizing the capital projects funded through payments made by MWD through this Program.

3.3 Reports. MWD, at its cost and with the cooperation of Bard, shall prepare and forward to Bard periodic status reports on the Program, which shall include information on the number of fallowed acres, compliance monitoring, estimated amount of irrigation water conserved by the fallowing, and the amount of water (other than rain falling on the fallowed acres) applied to the fallowed acres for dust control or by an event other than a canal break.

3.4 Records and Data. MWD's records and data related to this Program shall be available to Bard for inspection and copying during MWD's normal business hours at its headquarters building or records storage location, to the extent necessary for the Parties to verify the calculation of irrigation water conserved by the fallowing.

ARTICLE IV

EFFECTIVE DATE AND TERMINATION

4.1 Effective Date. This Program Agreement shall become effective on the date on which the last Party executes it.

4.2 Termination. This Program Agreement shall terminate on the later of December 31, 2026, or thirty (30) days after the day on which the U. S. Bureau of Reclamation publishes its Colorado River Accounting and Water Use Report: Arizona, California, and Nevada for calendar year 2026.

ARTICLE V

MISCELLANEOUS PROVISIONS

5.1 Non-waiver. None of the provisions of this Program Agreement shall be considered waived by either Party except when such waiver is given in writing. The waiver of any breach of any term or condition of this Program Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition.

5.2 No Third-Party Rights. Except as otherwise set forth in the Following Agreements, the Parties do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Program Agreement or of any duty, covenant, obligation or undertaking established hereunder.

5.3 Uncontrollable Forces. Neither of the Parties shall be considered to be in default in the performance of any of their obligations under this Program Agreement when a failure of performance shall be due to an uncontrollable force. The term “uncontrollable force” shall mean anything caused by the action of nature, excluding severe or prolonged low-flow conditions on the Colorado River; the act or threat of any public enemy; acts of God; court order, war and war defense conditions; strikes or other labor disputes; or other causes beyond the control of the Parties. Each Party shall use reasonable diligence to avoid any such delay or default and to resume performance under this Program Agreement as promptly as possible after any such delay or default. However, nothing contained in the Section 5.3 shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. A Party rendered unable to fulfill any of its obligations under this Program Agreement by reason of an uncontrollable force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

5.4 Governing Law. This Program Agreement shall be interpreted, governed by and construed under the laws of the State of California and any applicable federal laws.

5.5 Assignment. This Program Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. No Party may assign or transfer its rights or obligations under this Program Agreement without the prior written consent of the other Party.

5.6 Non-precedent. Except for any legal proceedings relating to the performance of this Program Agreement, the Parties agree that this Program Agreement shall not be used or construed as precedent or for an argument in any negotiation or proceeding, including any negotiation or proceeding related to any other future following program or other water conservation program.

5.7 Notices. All notices, requests, demands, and other communications required or permitted under this Program Agreement shall be in writing and shall be deemed to have been received either when delivered or on the fifth business day following the mailing, by registered or first class mail, with copies by e-mail, addressed as follows:

(a) If to MWD:

The Metropolitan Water District of Southern California
Attn: Kira Alonzo
Post Office Box 54153
Los Angeles, CA 54153
Email: KAlonzo@mwdh2o.com

(b) If to Bard:

Bard Water District
Attn: General Manager
1473 Ross Road
Winterhaven, CA 92283-9715
Email:

Either Party may change the address or addressee to which communications are to be sent by giving written notice of such change.


5.8 Entire Agreement and Amendment. This Program Agreement contains the entire agreement between the Parties as to the Program. The Parties agree that should any of the terms of the Program Agreement and/or methods of operating the Program need to be changed, any such change shall be done by mutual written agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Program Agreement by and through their authorized officers.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

APPROVED AS TO FORM:

By: 
Marcia Scully
General Counsel

By: 
Jeffrey Kighlinger
General Manager

Date: 12/20/19

BARD WATER DISTRICT

APPROVED AS TO FORM:

By: 
Meghan Scott
General Counsel

By: 
Nick Bahr
General Manager

Date: 12/19/19

ATTACHMENT A

AGREEMENT FOR SEASONAL FALLOWING IN BARD UNIT (FALLOWING AGREEMENT)

THIS AGREEMENT (Fallowing Agreement) is made and entered into this ____ day of _____, 2020, by and between The Metropolitan Water District of Southern California (“MWD”), a public agency organized pursuant to the California Metropolitan Water District Act (1969 Cal. Stats., ch. 209), and _____ (“Farmer”), each of which is at times also referred to individually as “Party” and collectively as “Parties”.

RECITALS

A. MWD delivers, from the Colorado River and the State Water Project, supplemental water to its 26 member agencies situated within the coastal Southern California plain for primarily municipal and domestic uses. Bard Water District (“Bard”), a public agency organized pursuant to the California Water District Act (1951 Cal. Stats., ch. 390), operates and maintains the irrigation works of the Reservation Division of the U. S. Bureau of Reclamation’s Yuma Project. Farmer produces crops on lands located within the Bard Unit of the Reservation Division using Colorado River water provided through Bard Unit water delivery facilities. The lands farmed by Farmer within the Bard Unit that are subject to this Fallowing Agreement are shown on Exhibit A which is attached hereto and incorporated herein as though set forth in full.

B. MWD desires to increase the quantity of Colorado River water available to it by contracting with farmers using Colorado River water within the Bard Unit to undertake seasonal fallowing of all or a portion of the lands (“Fallowed Acres”) that would otherwise have been irrigated with Colorado River water for the growing period from April 1 to July 31. MWD and Bard have agreed to a seasonal fallowing program totaling no more than 3,000 acres each year within the Bard Unit.

C. MWD has agreed to pay Farmer for each Fallowed Acre designated in Exhibit A in accordance with the terms and conditions set forth herein.

D. Farmer is willing to participate in the seasonal fallowing program in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Parties agree as follows:

AGREEMENT

1. Consent to Fallowing.

(a) Farmer represents and warrants to MWD that he/she/it has a legal right to farm the Fallowed Acres specified in Exhibit A, and that these lands are irrigated with Colorado River water delivered through Bard Unit water delivery facilities. Farmer represents and warrants to MWD that the terms of its lease, if any, authorizes participation in the seasonal fallowing program or Landowner does not object to Farmer's participation in the seasonal fallowing program.

(b) Farmer represents and warrants to MWD that no legal impediment exists to prevent him/her/it from entering into and performing the seasonal fallowing commitments under this Fallowing Agreement.

(c) Farmer represents and warrants to MWD that during the term of this Fallowing Agreement, in the event of any change affecting the ownership, leasehold, or other legal status of the Fallowed Acres or Farmer's right to perform the obligations under this Fallowing Agreement, Farmer shall notify MWD in writing within five days of such change.

2. Fallowed Acres.

(a) Farmer represents and warrants to MWD that the Fallowed Acres total no less than ten (10) contiguous irrigable acres, irrigated with Colorado River water delivered through Bard Unit water delivery facilities, have been irrigated during at least three of the prior five years, and are subject to Bard's base rate for water deliveries.

(b) Farmer represents and warrants to MWD that the Fallowed Acres would have been planted and irrigated for agricultural production from April 1 through July 31 had the land not been committed to fallowing pursuant to this Fallowing Agreement.

3. Obligations of Farmer.

(a) Farmer agrees that no agricultural crops shall be grown on the Fallowed Acres for the period from April 1 through July 31 for the term of this Fallowing Agreement, and that no water (other than rain falling naturally on the Fallowed Acres) shall be applied or used on the Fallowed Acres from April 1 through July 31 for the term of this Fallowing Agreement.

(b) During the term of this Fallowing Agreement, Farmer shall comply with all applicable federal, state, county, and other local rules and regulations, including, to the extent necessary, rules and regulations related to controlling wind erosion promulgated by the U. S. Department of Agriculture, Soil Conservation Service. Farmer agrees to take appropriate measures to ensure that the fallowing actions do not cause dust emissions from the Fallowed Acres, and Farmer shall bear all costs incurred in complying with air quality rules and regulations pertaining to the Fallowed Acres.

(c) Farmer shall make the assessment payments applicable to the Fallowed Acres to Bard Water District during the term of this Fallowing Agreement. Farmer acknowledges that Bard Water District will calculate the assessments owed by Farmer in a manner that accounts separately for the Fallowed Acres and lands that are not covered by this Fallowing Agreement.

(d) Farmer acknowledges and agrees that any acreage fallowed will not be included in his/her/its consolidated water acreage. Consolidated acreage will be re-calculated based on participation in the seasonal fallowing program.

(e) Farmer agrees that MWD and Bard shall have the right to enter the Fallowed Acres, and to cross such lands as necessary for access to Fallowed Acres, for the purpose of monitoring compliance and enforcing the terms and conditions of this Fallowing Agreement.

(f) Farmer agrees to provide information to MWD reasonably related to this Fallowing Agreement, including any issues encountered in implementing and adhering to the terms and conditions of this Fallowing Agreement, and information required for the proper accounting and reporting of fallowing payments to the Internal Revenue Service.

4. Obligations of MWD.

(a) With the exception of the Fallowing Call for 2020, on or before October 1 of each year during the term of this Fallowing Agreement, MWD shall issue a Fallowing Call for the number of acres it seeks to fallow during the period April 1 through July 31 of the following year. The Fallowing Call for 2020 shall be made on or before December 31, 2019. Farmer may renew this Fallowing Agreement for such year by submitting an offer of lands to be fallowed in the form of Exhibit A, attached hereto, and subject to any proportionate reduction in the offered acreage needed to maintain the fallowing within the limit of 3,000 acres.

(b) For fallowing in the year 2020, MWD shall pay Farmer the sum of \$339.00 per acre for each acre that is fallowed pursuant to a Fallowing Agreement. The total amount payable using this rate shall be paid in two equal installments, with the first payment due on or before May 15, and the balance (less any reduction due to a failure by Farmer(s) to perform fallowing as agreed) due and payable on or before September 15. In the event Farmer fails to comply with all the terms of his/her/its Fallowing Agreement, MWD shall withhold from the second payment an amount equal to \$169.50 for each acre that has not been fallowed as required.

(c) The rate for payments in paragraph (b), above, shall be adjusted annually during the term of the seasonal fallowing program by the percentage change over the prior year in the Consumer Price Index for All Urban Consumers last published by the Bureau of Labor Statistics of the United States Department of Labor on or before September 1 for Los Angeles – Riverside – Orange County All Items (1982-84 = 100), not seasonally adjusted. MWD shall calculate the annual change in the rate for these payments and include the adjusted rate in its annual Fallowing Call made on October 1.

(d) MWD, in coordination with Bard, shall have oversight and monitoring of compliance with this Fallowing Agreement and the right to enforce the terms and conditions of this Fallowing Agreement.

5. Remedy for Breach.

(a) If, prior to the conclusion of the fallowing season (April 1 through July 31), MWD determines that Farmer is not in compliance with the terms and conditions of this Fallowing Agreement, MWD will give notice to Farmer of such failure and demand for cure of such breach, if possible.

(b) Farmer acknowledges and agrees that growing crops, or irrigating the Fallowed Acres in violation of this Fallowing Agreement will damage MWD, and that it is extremely difficult and impractical to ascertain and determine the monetary value of such damage. Farmer therefore acknowledges and agrees that forfeiture of further payments under the Fallowing Agreement and termination of the Fallowing Agreement shall be proper remedies for MWD in the event of a breach by Farmer.

(c) In the event MWD fails to make a payment by the dates specified in Section 4(b), above, the unpaid amount shall be subject to simple interest at a rate of three percent (3%) per annum from the due date to the date of payment.

6. Term. This Fallowing Agreement shall be effective on the date on which the last Party executes it, and shall remain in effect until December 31, 2026; provided that the annual fallowing during the term of this Fallowing Agreement shall be subject to the amount of Fallowed Acres offered and accepted pursuant to each annual Fallowing Call made by MWD. Farmer shall not be obligated to renew the fallowing in each year of the term, and the failure to offer Fallowed Acres in response to any Fallowing Call shall not be deemed a termination of this Fallowing Agreement. Either Party may terminate this Fallowing Agreement upon thirty (30) days written notice, provided that no termination except for cause shall be effective until the end of the seasonal fallowing period (after July 31) if the Farmer has offered, and MWD has accepted, Fallowed Acres for the year in which the termination notice is given.

7. Governing Law. This Following Agreement shall be interpreted, governed by, and construed under the laws of the State of California and any applicable federal laws.

8. No Third-Party Rights. Except at otherwise set forth in the Program Agreement between MWD and Bard, the Parties do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Following Agreement or of any duty, covenant, obligation or undertaking established hereunder.

9. Assignment. This Following Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. No Party may assign or transfer its rights or obligations under this Following Agreement without the prior written consent of the other Party.

10. Indemnity.

(a) MWD shall indemnify and hold Farmer harmless from and against all claims asserted by a third party or parties for damages arising from an act or omission of MWD, its employees or agents in the performance of its obligations under this Following Agreement.

(b) Farmer shall indemnify and hold MWD, its directors, employees, and agents, harmless from and against all claims asserted by a third party or parties for damages arising from an act or omission of Farmer, his/her/its employees or agents in the performance of his/her/its obligations under this Following Agreement.

11. Non-waiver. None of the provisions of this Following Agreement shall be considered waived by either Party except when such waiver is given in writing. The waiver of any breach of any term or condition of this Following Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition.

12. Non-precedent. Except for any legal proceedings relating to the performance of this Following Agreement, the Parties agree that this Following Agreement shall not be used or construed as precedent or for an argument in any negotiation or proceeding, including any negotiation or proceeding related to any other future following program or other water conservation program.

13. Entire Agreement and Amendment. This Following Agreement constitutes the entire understanding of the Parties hereto related to the seasonal fallowing program and supersedes any previous agreement or understanding. It may not be modified or amended except in writing executed by the Parties.

14. Notices. All notices, requests, demands, and other communications required or permitted under this Following Agreement shall be in writing and shall be deemed to have been received either when delivered or on the fifth business day following the mailing, by registered or first class mail, with copies by e-mail, addressed as follows:

(a) If to MWD:

The Metropolitan Water District of Southern California
Attn: Kira Alonzo
Post Office Box 54153
Los Angeles, CA 54153
Email: KAlonzo@mwdh2o.com

(b) If to Farmer:

[NAME OF FARMER]
[ADDRESS OF FARMER]

Email:

Either Party may change the address or addressee to which communications are to be sent by giving written notice of such change.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Following Agreement by and through their authorized officers.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

APPROVED AS TO FORM:

By: _____
Marcia Scully
General Counsel

By: _____
Jeffrey Kightlinger
General Manager

Date: _____

[FARMER NAME]

By: _____
[NAME]
[TITLE, IF ANY]

Date: _____

FIRST AMENDED AGREEMENT FOR THE IMPLEMENTATION OF
A SEASONAL LAND FALLOWING PROGRAM

THIS FIRST AMENDED AGREEMENT (“First Amended Program Agreement”) is made and entered into this 26 day of May, 2020, by and between The Metropolitan Water District of Southern California (“MWD”), a public agency organized pursuant to the California Metropolitan Water District Act (1969 Cal. Stats., ch. 209), and Bard Water District (“Bard”), a public agency organized pursuant to the California Water District Act (1951 Cal. Stats., ch. 390). Each of said agencies is at times referred to individually as “Party” and collectively as “Parties”.

RECITALS

A. Pursuant to the Boulder Canyon Project Act (Act of December 21, 1928; 45 Stat. 1057) and Article 6 of the September 28, 1931 Supplementary Contract for Delivery of Water between the United States Department of the Interior and MWD, and other subsequent and supplementary agreements, the United States delivers Colorado River water to MWD in accordance with specified priorities. Those priorities include a first and third priority to Palo Verde Irrigation District (“PVID”) for beneficial use on a gross area of 104,500 acres in the Palo Verde Valley and 16,000 acres on the Lower Palo Verde Mesa, respectively, a second priority to the Yuma Project of the United States Bureau of Reclamation, a third priority to Imperial Irrigation District (“IID”), and other lands now served from the All-American Canal by the Coachella Valley Water District (“CVWD”). The total beneficial consumptive use under those priorities shall not exceed 3,850,000 acre-feet per year (“AFY”). The fourth and fifth priorities totaling 1,212,000 AFY are held by MWD. The priorities specified in Article 6 also included a sixth priority to use of 300,000 AFY by IID, other lands now served from the All-American Canal by CVWD, and PVID. The seventh priority of all remaining water available for use within California is reserved for agricultural use in the Colorado River Basin, as defined,

within California. MWD also has a Contract for Delivery of Surplus Flows From the Colorado River with the United States for use of not to exceed 180,000 AFY of surplus flows.

B. The United States delivers Colorado River water to Imperial Dam for diversion into the All-American Canal from which water is diverted into the Bard Unit of the Reservation Division of the Yuma Project under the second priority for use by certain persons and entities entitled to delivery of water by water right application with the United States.

C. Pursuant to the Quantification Settlement Agreement by and among IID, MWD, and CVWD dated October 10, 2003, and the Colorado River Water Delivery Agreement by and among the United States, IID, CVWD, MWD, and San Diego County Water Authority, dated October 10, 2003, if in any given calendar year that the use of Colorado River water in accordance with Priorities 1 and 2, together with the use of Colorado River water on PVID Mesa lands in accordance with Priority 3(b), exceeds the consumptive use amount of 420,000 AFY, the Secretary of the Interior ("Secretary") will reduce the amount of water otherwise available to MWD in Priorities 4, 5 or 6(a) by the amount that such use exceeds 420,000 AFY. To the extent that the amount of water used in accordance with Priorities 1, 2 and 3b is less than 420,000 AFY, the Secretary shall deliver to MWD the difference. The Colorado River Water Delivery Agreement provides for the Secretary to deliver the first 38,000 AFY of Priority 6(a) water to MWD.

D. Bard acts as a distributor of the Colorado River water within the perimeter of the Bard Unit lands of the Reservation Division of the Yuma Project. Pursuant to the United States Department of the Interior's Contract with Bard for the Performance of Operation and Maintenance Activities, dated May 28, 2019, Bard operates and maintains the Bard Unit works of the Reservation Division, charging the landowners for this service.

E.. MWD desires to increase the Colorado River water available to it by contracting with farmers within the Bard Unit for the seasonal fallowing of all or a portion of their lands ("Fallowed Acres") that otherwise would have been irrigated with Colorado River water, with the water thereby saved ("Saved Water") being available to MWD.

F. MWD and Bard successfully implemented a pilot seasonal fallowing program within the Bard Unit during the years 2016 and 2017, and now desire to implement a long-term seasonal fallowing program (“Program”) on the terms and conditions set forth in this Program Agreement.

G. MWD and Bard executed a Program Agreement on December 20, 2019, and now desire to replace and substitute the Program Agreement with this First Amended Program Agreement for the purpose of clarifying the calculation of acreage of the lands fallowed pursuant to the Program.

NOW, THEREFORE, in consideration of the covenants and obligations set forth herein, the Parties agree as follows:

ARTICLE I

THE FALLOWING PROGRAM

1.1 The Program consists of fallowing to be performed on a voluntary basis by farmers on land that is either owned or leased for agricultural use pursuant to agreements to be executed by and between farmers and MWD in the form of Attachment A, hereto (“Fallowing Agreements”).

1.2 Term. The term of the Program shall be seven years commencing in the year 2020 and continuing through year 2026.

1.3 Eligible Lands. Lands eligible for the Program shall be located wholly within Bard and shall have been used for irrigated agriculture during the April 1 through July 31 time period for not less than three of the five years prior to being offered for participation in the Program; provided that lands fallowed under the Pilot Seasonal Fallowing Program in 2016 and/or 2017 shall be eligible for participation. Eligible lands must be irrigated through a Bard Unit water delivery canal. Any farmer (landowner or lessee) may offer to fallow up to all or a portion of their land, provided that land offered for fallowing shall be a minimum of ten contiguous acres. For purposes of the Program, Fallowed Acres or Fallowable Acres shall include the area of land that is used for planting crops and shall exclude areas that are used for

roads, ditches and canals, and buildings. The Allowable Acres and Allowed Acres for each parcel participating in the Program shall be determined using the Department of Water Resources' "Statewide Crop Map" available at <https://data.cnra.ca.gov/dataset/statewide-crop-mapping>.

1.4 Following Calls. MWD shall notify Bard by October 1 of each year of the amount of allowed acreage for which it is seeking participation for the following year ("Following Call"); provided that the Following Call for the year 2020 shall be given by December 31, 2019. Following Calls shall not exceed a total of 3,000 Allowable Acres without the prior consent of Bard.

1.5 Following Offers. Bard shall notify the farmers (landowners and lessees) within its boundaries of the Following Call and request offers of participation. Farmers may offer to participate in the Program on an annual basis by February 1 by executing and returning to Bard a proposed Following Agreement identifying the lands offered for following in that year. Any farmer who has executed a prior Following Agreement for the Program may execute and return an amendment to the Following Agreement extending the following on all or an eligible portion of their lands for that year.

1.6 Acceptance of Offers. Bard shall provide MWD with the offers of participation, which MWD shall accept in whole or in part. MWD shall accept all offers that meet the Program requirements up to the total amount of acreage in the Following Call. In the event that the offers exceed the acreage in the Following Call, MWD shall reduce each farmer's offered following acreage by a proportionate amount to reduce the total allowed acreage to the amount of the Following Call; provided that any resulting reduction in a farmer's offered following acreage below ten acres shall cause that offer of participation to be rejected. MWD shall accept the offers by executing and returning the Following Agreement or amendment to a prior Following Agreement.

1.7 Following Period. Following shall be implemented from April 1 through July 31 of each year.

ARTICLE II

PROGRAM COSTS AND FUNDING

2.1 Payments to Farmers. Payments to the farmers for fallowing the lands shall be made by MWD pursuant to the terms and conditions contained in the Fallowing Agreements.

2.2 Payments to Bard.

(a) For fallowing in the year 2020, MWD shall pay Bard the sum of \$113.00 per acre for each Fallowed Acre, that is fallowed pursuant to a Fallowing Agreement. The total amount payable using this rate shall be paid in two equal installments, with the first payment due on or before May 15, and the balance (less any reduction due to a failure by farmer(s) to perform fallowing as agreed) due and payable on or before September 15. In the event a farmer fails to comply with all the terms of his or her Fallowing Agreement, MWD shall withhold from the second payment an amount equal to \$56.50 for each acre that has not been fallowed as required.

(b) The rates for payments in paragraph (a), above, shall be adjusted annually by the percentage change over the prior year in the Consumer Price Index for All Urban Consumers last published by the Bureau of Labor Statistics of the United States Department of Labor on or before September 1 for Los Angeles – Riverside – Orange County All Items (1982-84 = 100), not seasonally adjusted. MWD shall calculate the annual change in the rate for these payments and include the adjusted rate in its annual Fallowing Call made on October 1.

(c) MWD shall make an additional payment to Bard on or before May 15 of each year during the term of this Program Agreement in the amount of \$15,000.00. This payment shall only be made in years during which land is fallowed pursuant to the Program and the amount shall not be adjusted over the term of the Program.

(d) The MWD payments to Bard provided for in this Section 2.2 shall compensate Bard for all direct and indirect costs incurred in the oversight and operation of the fallowing during each year, as well as contribute to funding costs related to the Bard capital improvement plan to improve the infrastructure and operations of the Bard water delivery and accounting systems.

(e) Bard shall maintain records pertaining to the expenditures made with the MWD payments for a period of three (3) years following the end of the Program. MWD, at its sole expense, may reasonably audit or otherwise examine the records of expenditures made with or relating to MWD payments under the Program for a period of three (3) years following the end of the Program.

ARTICLE III

ADMINISTRATION

3.1 Fallowing Agreements. MWD will monitor and enforce compliance with, and administration of, the Fallowing Agreements in accordance with their terms. Bard agrees to assist with monitoring and enforcement to the extent necessary.

3.2 Bard Responsibilities. In consideration of the payments set forth in Section 2.2, above, Bard will:

(a) Act as the lead agency for purposes of the California Environmental Quality Act review of the Program and assist MWD in preparing and filing any necessary environmental documents for the Program.

(b) Notify farmers of the Program terms and conditions and administer the process of signing up farmers to Fallowing Agreements within the time frames provided in this Program Agreement. Bard shall annually verify the number of Fallowed Acres of lands offered for fallowing, and the eligibility of the offered lands by confirming that such lands are comprised of not less than ten contiguous acres, are irrigated through Bard Unit water delivery canals, and have been irrigated (or fallowed pursuant to the Pilot Seasonal Fallowing Program and/or Pilot System Conservation Program) in at least three of the prior five years.

(c) Maintain a record of the interest of farmers in Program participation and ensure that the offered lands accepted for fallowing do not exceed three thousand (3,000) acres in any year.

- (d) Develop, process for signatures, and maintain originals of a form of consent by landowners allowing lessee farmers to participate in the fallowing program.
- (e) Regularly monitor fallowed lands during the fallowing period and promptly notify MWD of any violations of the Fallowing Agreements.
- (f) Take reasonable actions in operation of the Bard Unit water delivery system to avoid delivery of water to fallowed lands, and promptly notify MWD of canal breaks or other events affecting water use and corrective actions taken.
- (g) Regularly monitor fallowed lands to ensure proper dust control measures are implemented.
- (h) Provide MWD with available information related to the Program, including information on monthly water applied by customer and lessee and, if requested, by irrigation serial unit in the Bard Unit during the term of the Program.
- (i) Provide MWD with the Bard ten-year capital improvement plan, an annual accounting of the funds expended to implement the plan, and following completion of the Program, a report summarizing the capital projects funded through payments made by MWD through this Program.

3.3 Reports. MWD, at its cost and with the cooperation of Bard, shall prepare and forward to Bard periodic status reports on the Program, which shall include information on the number of fallowed acres, compliance monitoring, estimated amount of irrigation water conserved by the fallowing, and the amount of water (other than rain falling on the fallowed acres) applied to the fallowed acres for dust control or by an event other than a canal break.

3.4 Records and Data. MWD's records and data related to this Program shall be available to Bard for inspection and copying during MWD's normal business hours at its headquarters building or records storage location, to the extent necessary for the Parties to verify the calculation of irrigation water conserved by the fallowing.

ARTICLE IV

EFFECTIVE DATE AND TERMINATION

4.1 Effective Date. This First Amended Program Agreement shall become effective on the date on which the last Party executes it. Upon the effective date, the original Program Agreement dated December 20, 2019, shall be terminated and the rights and obligations of the Parties shall be governed by this First Amended Program Agreement.

4.2 Termination. This First Amended Program Agreement shall terminate on the later of December 31, 2026, or thirty (30) days after the day on which the U. S. Bureau of Reclamation publishes its Colorado River Accounting and Water Use Report: Arizona, California, and Nevada for calendar year 2026.

ARTICLE V

MISCELLANEOUS PROVISIONS

5.1 Non-waiver. None of the provisions of this First Amended Program Agreement shall be considered waived by either Party except when such waiver is given in writing. The waiver of any breach of any term or condition of this First Amended Program Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition.

5.2 No Third-Party Rights. Except as otherwise set forth in the Following Agreements, the Parties do not intend to create rights in or to grant remedies to any third party as a beneficiary of this First Amended Program Agreement or of any duty, covenant, obligation or undertaking established hereunder.

5.3 Uncontrollable Forces. Neither of the Parties shall be considered to be in default in the performance of any of their obligations under this First Amended Program Agreement when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" shall mean anything caused by the action of nature, excluding severe or prolonged low-flow conditions on the Colorado River; the act or threat of any public enemy; acts of God; court order, war and war defense conditions; strikes or other labor disputes; or other causes

beyond the control of the Parties. Each Party shall use reasonable diligence to avoid any such delay or default and to resume performance under this First Amended Program Agreement as promptly as possible after any such delay or default. However, nothing contained in the Section 5.3 shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. A Party rendered unable to fulfill any of its obligations under this First Amended Program Agreement by reason of an uncontrollable force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

5.4 Governing Law. This First Amended Program Agreement shall be interpreted, governed by and construed under the laws of the State of California and any applicable federal laws.

5.5 Assignment. This First Amended Program Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. No Party may assign or transfer its rights or obligations under this First Amended Program Agreement without the prior written consent of the other Party.

5.6 Non-precedent. Except for any legal proceedings relating to the performance of this First Amended Program Agreement, the Parties agree that this First Amended Program Agreement shall not be used or construed as precedent or for an argument in any negotiation or proceeding, including any negotiation or proceeding related to any other future fallowing program or other water conservation program.

5.7 Notices. All notices, requests, demands, and other communications required or permitted under this First Amended Program Agreement shall be in writing and shall be deemed to have been received either when delivered or on the fifth business day following the mailing, by registered or first class mail, with copies by e-mail, addressed as follows:

(a) If to MWD:

The Metropolitan Water District of Southern California

Attn: Kira Alonzo

Post Office Box 54153

Los Angeles, CA 54153

Email: KAlonzo@mwdh2o.com

(b) If to Bard:

Bard Water District

Attn: Nick Bahr, General Manager

1473 Ross Road

Winterhaven, CA 92283-9715

Email: nbahr@bardwaterdistrict.com

Either Party may change the address or addressee to which communications are to be sent by giving written notice of such change.

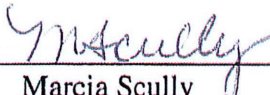
5.8 Entire Agreement and Amendment. This First Amended Program Agreement contains the entire agreement between the Parties as to the Program. The Parties agree that should any of the terms of the First Amended Program Agreement and/or methods of operating the Program need to be changed, any such change shall be done by mutual written agreement.

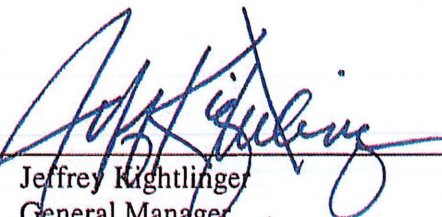
[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Program Agreement by and through their authorized officers.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

APPROVED AS TO FORM:


By: 
Marcia Scully
General Counsel


By: 
Jeffrey Kightlinger
General Manager

Date: 5/26/2020

BARD WATER DISTRICT

APPROVED AS TO FORM:

By: 
Meghan Scott
General Counsel

By: 
Nick Bahr
General Manager

Date: 5/27/20

ATTACHMENT A

AGREEMENT FOR SEASONAL FALLOWING IN BARD UNIT
(FALLOWING AGREEMENT)

THIS AGREEMENT (Fallowing Agreement) is made and entered into this ____ day of _____, 2020, by and between The Metropolitan Water District of Southern California (“MWD”), a public agency organized pursuant to the California Metropolitan Water District Act (1969 Cal. Stats., ch. 209), and _____ (“Farmer”), each of which is at times also referred to individually as “Party” and collectively as “Parties”.

RECITALS

A. MWD delivers, from the Colorado River and the State Water Project, supplemental water to its 26 member agencies situated within the coastal Southern California plain for primarily municipal and domestic uses. Bard Water District (“Bard”), a public agency organized pursuant to the California Water District Act (1951 Cal. Stats., ch. 390), operates and maintains the irrigation works of the Reservation Division of the U. S. Bureau of Reclamation’s Yuma Project. Farmer produces crops on lands located within the Bard Unit of the Reservation Division using Colorado River water provided through Bard Unit water delivery facilities. The lands farmed by Farmer within the Bard Unit that are subject to this Fallowing Agreement are shown on Exhibit A which is attached hereto and incorporated herein as though set forth in full.

B. MWD desires to increase the quantity of Colorado River water available to it by contracting with farmers using Colorado River water within the Bard Unit to undertake seasonal fallowing of all or a portion of their lands, excluding areas that are used for roads, ditches and canals, and buildings, (“Fallowed Acres”) that would otherwise have been irrigated with Colorado River water for the growing period from April 1 to July 31. The Fallowed Acres for

each parcel offered by a Farmer shall be determined using Department of Water Resources' "Statewide Crop Map" available at <https://data.cnra.ca.gov/dataset/statewide-crop-mapping>. MWD and Bard have agreed to a seasonal fallowing program totaling no more than 3,000 acres each year within the Bard Unit.

C. MWD has agreed to pay Farmer for each Fallowed Acre designated in Exhibit A in accordance with the terms and conditions set forth herein.

D. Farmer is willing to participate in the seasonal fallowing program in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Parties agree as follows:

AGREEMENT

1. Consent to Fallowing.

(a) Farmer represents and warrants to MWD that he/she/it has a legal right to farm the Fallowed Acres specified in Exhibit A, and that these lands are irrigated with Colorado River water delivered through Bard Unit water delivery facilities. Farmer represents and warrants to MWD that the terms of its lease, if any, authorizes participation in the seasonal fallowing program or Landowner does not object to Farmer's participation in the seasonal fallowing program.

(b) Farmer represents and warrants to MWD that no legal impediment exists to prevent him/her/it from entering into and performing the seasonal fallowing commitments under this Fallowing Agreement.

(c) Farmer represents and warrants to MWD that during the term of this Fallowing Agreement, in the event of any change affecting the ownership, leasehold, or other legal status of the Fallowed Acres or Farmer's right to perform the obligations under this Fallowing Agreement, Farmer shall notify MWD in writing within five days of such change.

2. Fallowed Acres.

(a) Farmer represents and warrants to MWD that the Fallowed Acres total no less than ten (10) contiguous irrigable acres, irrigated with Colorado River water delivered through Bard Unit water delivery facilities, have been irrigated during at least three of the prior five years (or fallowed pursuant to the Pilot Seasonal Fallowing Program and/or Pilot System Conservation Program), and are subject to Bard's base rate for water deliveries.

(b) Farmer represents and warrants to MWD that the Fallowed Acres would have been planted and irrigated for agricultural production from April 1 through July 31 had the land not been committed to fallowing pursuant to this Fallowing Agreement.

3. Obligations of Farmer.

(a) Farmer agrees that no agricultural crops shall be grown on the Fallowed Acres for the period from April 1 through July 31 for the term of this Fallowing Agreement, and that no water (other than rain falling naturally on the Fallowed Acres) shall be applied or used on the Fallowed Acres from April 1 through July 31 for the term of this Fallowing Agreement.

(b) During the term of this Fallowing Agreement, Farmer shall comply with all applicable federal, state, county, and other local rules and regulations, including, to the extent necessary, rules and regulations related to controlling wind erosion promulgated by the U. S. Department of Agriculture, Soil Conservation Service. Farmer agrees to take appropriate measures to ensure that the fallowing actions do not cause dust emissions from the Fallowed Acres, and Farmer shall bear all costs incurred in complying with air quality rules and regulations pertaining to the Fallowed Acres.

(c) Farmer shall make the assessment payments applicable to the Fallowed Acres to Bard Water District during the term of this Fallowing Agreement.

(d) Farmer acknowledges and agrees that any acreage fallowed will not be included in his/her/its consolidated water acreage, but appurtenant areas that are used for roads, ditches and canals, and buildings will continue to be included in his/her/its consolidated water

acreage. Consolidated acreage will be re-calculated based on participation in the seasonal fallowing program.

(e) Farmer agrees that MWD and Bard shall have the right to enter the Fallowed Acres, and to cross such lands as necessary for access to Fallowed Acres, for the purpose of monitoring compliance and enforcing the terms and conditions of this Fallowing Agreement.

(f) Farmer agrees to provide information to MWD reasonably related to this Fallowing Agreement, including any issues encountered in implementing and adhering to the terms and conditions of this Fallowing Agreement, and information required for the proper accounting and reporting of fallowing payments to the Internal Revenue Service.

4. Obligations of MWD.

(a) With the exception of the Fallowing Call for 2020, on or before October 1 of each year during the term of this Fallowing Agreement, MWD shall issue a Fallowing Call for the number of acres it seeks to fallow during the period April 1 through July 31 of the following year. The Fallowing Call for 2020 shall be made on or before December 31, 2019. Farmer may renew this Fallowing Agreement for such year by submitting an offer of lands to be fallowed in the form of Exhibit A, attached hereto, and subject to any proportionate reduction in the offered acreage needed to maintain the fallowing within the limit of 3,000 acres.

(b) For fallowing in the year 2020, MWD shall pay Farmer the sum of \$339.00 per acre for each Fallowed Acre that is fallowed pursuant to a Fallowing Agreement. The total amount payable using this rate shall be paid in two equal installments, with the first payment due on or before May 15, and the balance (less any reduction due to a failure by Farmer(s) to perform fallowing as agreed) due and payable on or before September 15. In the event Farmer fails to comply with all the terms of his/her/its Fallowing Agreement, MWD shall withhold from the second payment an amount equal to \$169.50 for each Fallowed Acre that has not been fallowed as required.

(c) The rate for payments in paragraph (b), above, shall be adjusted annually during the term of the seasonal fallowing program by the percentage change over the prior year

in the Consumer Price Index for All Urban Consumers last published by the Bureau of Labor Statistics of the United States Department of Labor on or before September 1 for Los Angeles – Riverside – Orange County All Items (1982-84 = 100), not seasonally adjusted. MWD shall calculate the annual change in the rate for these payments and include the adjusted rate in its annual Fallowing Call made on October 1.

(d) MWD, in coordination with Bard, shall have oversight and monitoring of compliance with this Fallowing Agreement and the right to enforce the terms and conditions of this Fallowing Agreement.

5. Remedy for Breach.

(a) If, prior to the conclusion of the fallowing season (April 1 through July 31), MWD determines that Farmer is not in compliance with the terms and conditions of this Fallowing Agreement, MWD will give notice to Farmer of such failure and demand for cure of such breach, if possible.

(b) Farmer acknowledges and agrees that growing crops, or irrigating the Fallowed Acres in violation of this Fallowing Agreement will damage MWD, and that it is extremely difficult and impractical to ascertain and determine the monetary value of such damage. Farmer therefore acknowledges and agrees that forfeiture of further payments under the Fallowing Agreement and termination of the Fallowing Agreement shall be proper remedies for MWD in the event of a breach by Farmer.

(c) In the event MWD fails to make a payment by the dates specified in Section 4(b), above, the unpaid amount shall be subject to simple interest at a rate of three percent (3%) per annum from the due date to the date of payment.

6. Term. This Fallowing Agreement shall be effective on the date on which the last Party executes it, and shall remain in effect until December 31, 2026; provided that the annual fallowing during the term of this Fallowing Agreement shall be subject to the amount of Fallowed Acres offered and accepted pursuant to each annual Fallowing Call made by MWD. Farmer shall not be obligated to renew the fallowing in each year of the term, and the failure to offer Fallowed Acres in response to any Fallowing Call shall not be deemed a termination of this

Fallowing Agreement. Either Party may terminate this Fallowing Agreement upon thirty (30) days written notice, provided that no termination except for cause shall be effective until the end of the seasonal fallowing period (after July 31) if the Farmer has offered, and MWD has accepted, Fallowed Acres for the year in which the termination notice is given.

7. Governing Law. This Fallowing Agreement shall be interpreted, governed by, and construed under the laws of the State of California and any applicable federal laws.

8. No Third-Party Rights. Except at otherwise set forth in the First Amended Program Agreement between MWD and Bard, the Parties do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Fallowing Agreement or of any duty, covenant, obligation or undertaking established hereunder.

9. Assignment. This Fallowing Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. No Party may assign or transfer its rights or obligations under this Fallowing Agreement without the prior written consent of the other Party.

10. Indemnity.

(a) MWD shall indemnify and hold Farmer harmless from and against all claims asserted by a third party or parties for damages arising from an act or omission of MWD, its employees or agents in the performance of its obligations under this Fallowing Agreement.

(b) Farmer shall indemnify and hold MWD, its directors, employees, and agents, harmless from and against all claims asserted by a third party or parties for damages arising from an act or omission of Farmer, his/her/its employees or agents in the performance of his/her/its obligations under this Fallowing Agreement.

11. Non-waiver. None of the provisions of this Fallowing Agreement shall be considered waived by either Party except when such waiver is given in writing. The waiver of any breach of any term or condition of this Fallowing Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition.

12. Non-precedent. Except for any legal proceedings relating to the performance of this Following Agreement, the Parties agree that this Following Agreement shall not be used or construed as precedent or for an argument in any negotiation or proceeding, including any negotiation or proceeding related to any other future following program or other water conservation program.

13. Entire Agreement and Amendment. This Following Agreement constitutes the entire understanding of the Parties hereto related to the seasonal following program and supersedes any previous agreement or understanding. It may not be modified or amended except in writing executed by the Parties.

14. Notices. All notices, requests, demands, and other communications required or permitted under this Following Agreement shall be in writing and shall be deemed to have been received either when delivered or on the fifth business day following the mailing, by registered or first class mail, with copies by e-mail, addressed as follows:

(a) If to MWD:

The Metropolitan Water District of Southern California
Attn: Kira Alonzo
Post Office Box 54153
Los Angeles, CA 54153
Email: KAlonzo@mwdh2o.com

(b) If to Farmer:

[NAME OF FARMER]
[ADDRESS OF FARMER]

Email:

Either Party may change the address or addressee to which communications are to be sent by giving written notice of such change.

IN WITNESS WHEREOF, the Parties hereto have executed this Following Agreement
by and through their authorized officers.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

APPROVED AS TO FORM:

By: _____
Marcia Scully
General Counsel

By: _____
Jeffrey Kightlinger
General Manager

Date: _____

[FARMER NAME]

By: _____
[NAME]
[TITLE, IF ANY]

Date: _____

AGREEMENT FOR SEASONAL FALLOWING IN BARD UNIT
(FALLOWING AGREEMENT)

THIS AGREEMENT (Fallowing Agreement) is made and entered into this 19th day of March, 2020, by and between The Metropolitan Water District of Southern California (“MWD”), a public agency organized pursuant to the California Metropolitan Water District Act (1969 Cal. Stats., ch. 209), and Amigo Farms, Inc. (“Farmer”), each of which is at times also referred to individually as “Party” and collectively as “Parties”.

RECITALS

A. MWD delivers, from the Colorado River and the State Water Project, supplemental water to its 26 member agencies situated within the coastal Southern California plain for primarily municipal and domestic uses. Bard Water District (“Bard”), a public agency organized pursuant to the California Water District Act (1951 Cal. Stats., ch. 390), operates and maintains the irrigation works of the Reservation Division of the U. S. Bureau of Reclamation’s Yuma Project. Farmer produces crops on lands located within the Bard Unit of the Reservation Division using Colorado River water provided through Bard Unit water delivery facilities. The lands farmed by Farmer within the Bard Unit that are subject to this Fallowing Agreement are shown on Exhibit A which is attached hereto and incorporated herein as though set forth in full.

B. MWD desires to increase the quantity of Colorado River water available to it by contracting with farmers using Colorado River water within the Bard Unit to undertake seasonal fallowing of all or a portion of their lands, excluding areas that are used for roads, ditches and canals, and buildings, (“Fallowed Acres”) that would otherwise have been irrigated with Colorado River water for the growing period from April 1 to July 31. The Fallowed Acres for each parcel offered by a Farmer shall be determined using Department of Water Resources’ “Statewide Crop Map” available at <https://data.cnra.ca.gov/dataset/statewide-crop-mapping>.

MWD and Bard have agreed to a seasonal fallowing program totaling no more than 3,000 acres each year within the Bard Unit.

C. MWD has agreed to pay Farmer for each Fallowed Acre designated in Exhibit A in accordance with the terms and conditions set forth herein.

D. Farmer is willing to participate in the seasonal fallowing program in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Parties agree as follows:

AGREEMENT

1. Consent to Fallowing.

(a) Farmer represents and warrants to MWD that he/she/it has a legal right to farm the Fallowed Acres specified in Exhibit A, and that these lands are irrigated with Colorado River water delivered through Bard Unit water delivery facilities. Farmer represents and warrants to MWD that the terms of its lease, if any, authorizes participation in the seasonal fallowing program or Landowner does not object to Farmer's participation in the seasonal fallowing program.

(b) Farmer represents and warrants to MWD that no legal impediment exists to prevent him/her/it from entering into and performing the seasonal fallowing commitments under this Fallowing Agreement.

(c) Farmer represents and warrants to MWD that during the term of this Fallowing Agreement, in the event of any change affecting the ownership, leasehold, or other legal status of the Fallowed Acres or Farmer's right to perform the obligations under this Fallowing Agreement, Farmer shall notify MWD in writing within five days of such change.

2. Fallowed Acres.

(a) Farmer represents and warrants to MWD that the Fallowed Acres total no less than ten (10) contiguous irrigable acres, irrigated with Colorado River water delivered through Bard Unit water delivery facilities, have been irrigated during at least three of the prior five years (or fallowed pursuant to the Pilot Seasonal Fallowing Program and/or Pilot System Conservation Program), and are subject to Bard's base rate for water deliveries.

(b) Farmer represents and warrants to MWD that the Fallowed Acres would have been planted and irrigated for agricultural production from April 1 through July 31 had the land not been committed to fallowing pursuant to this Fallowing Agreement.

3. Obligations of Farmer.

(a) Farmer agrees that no agricultural crops shall be grown on the Fallowed Acres for the period from April 1 through July 31 for the term of this Fallowing Agreement, and that no water (other than rain falling naturally on the Fallowed Acres) shall be applied or used on the Fallowed Acres from April 1 through July 31 for the term of this Fallowing Agreement.

(b) During the term of this Fallowing Agreement, Farmer shall comply with all applicable federal, state, county, and other local rules and regulations, including, to the extent necessary, rules and regulations related to controlling wind erosion promulgated by the U. S. Department of Agriculture, Soil Conservation Service. Farmer agrees to take appropriate measures to ensure that the fallowing actions do not cause dust emissions from the Fallowed Acres, and Farmer shall bear all costs incurred in complying with air quality rules and regulations pertaining to the Fallowed Acres.

(c) Farmer shall make the assessment payments applicable to the Fallowed Acres to Bard Water District during the term of this Fallowing Agreement.

(d) Farmer acknowledges and agrees that any acreage fallowed will not be included in his/her/its consolidated water acreage, but appurtenant areas that are used for roads, ditches and canals, and buildings will continue to be included in his/her/its consolidated water acreage. Consolidated acreage will be re-calculated based on participation in the seasonal fallowing program.

(e) Farmer agrees that MWD and Bard shall have the right to enter the Fallowed Acres, and to cross such lands as necessary for access to Fallowed Acres, for the purpose of monitoring compliance and enforcing the terms and conditions of this Fallowing Agreement.

(f) Farmer agrees to provide information to MWD reasonably related to this Fallowing Agreement, including any issues encountered in implementing and adhering to the terms and conditions of this Fallowing Agreement, and information required for the proper accounting and reporting of fallowing payments to the Internal Revenue Service.

4. Obligations of MWD.

(a) With the exception of the Fallowing Call for 2020, on or before October 1 of each year during the term of this Fallowing Agreement, MWD shall issue a Fallowing Call for the number of acres it seeks to fallow during the period April 1 through July 31 of the following year. The Fallowing Call for 2020 shall be made on or before December 31, 2019. Farmer may renew this Fallowing Agreement for such year by submitting an offer of lands to be fallowed in the form of Exhibit A, attached hereto, and subject to any proportionate reduction in the offered acreage needed to maintain the fallowing within the limit of 3,000 acres.

(b) For fallowing in the year 2020, MWD shall pay Farmer the sum of \$339.00 per acre for each Fallowed Acre that is fallowed pursuant to a Fallowing Agreement. The total amount payable using this rate shall be paid in two equal installments, with the first payment due on or before May 15, and the balance (less any reduction due to a failure by Farmer(s) to perform fallowing as agreed) due and payable on or before September 15. In the event Farmer fails to comply with all the terms of his/her/its Fallowing Agreement, MWD shall withhold from the second payment an amount equal to \$169.50 for each Fallowed Acre that has not been fallowed as required.

(c) The rate for payments in paragraph (b), above, shall be adjusted annually during the term of the seasonal fallowing program by the percentage change over the prior year in the Consumer Price Index for All Urban Consumers last published by the Bureau of Labor Statistics of the United States Department of Labor on or before September 1 for Los Angeles –

Riverside – Orange County All Items (1982-84 = 100), not seasonally adjusted. MWD shall calculate the annual change in the rate for these payments and include the adjusted rate in its annual Fallowing Call made on October 1.

(d) MWD, in coordination with Bard, shall have oversight and monitoring of compliance with this Fallowing Agreement and the right to enforce the terms and conditions of this Fallowing Agreement.

5. Remedy for Breach.

(a) If, prior to the conclusion of the fallowing season (April 1 through July 31), MWD determines that Farmer is not in compliance with the terms and conditions of this Fallowing Agreement, MWD will give notice to Farmer of such failure and demand for cure of such breach, if possible.

(b) Farmer acknowledges and agrees that growing crops, or irrigating the Fallowed Acres in violation of this Fallowing Agreement will damage MWD, and that it is extremely difficult and impractical to ascertain and determine the monetary value of such damage. Farmer therefore acknowledges and agrees that forfeiture of further payments under the Fallowing Agreement and termination of the Fallowing Agreement shall be proper remedies for MWD in the event of a breach by Farmer.

(c) In the event MWD fails to make a payment by the dates specified in Section 4(b), above, the unpaid amount shall be subject to simple interest at a rate of three percent (3%) per annum from the due date to the date of payment.

6. Term. This Fallowing Agreement shall be effective on the date on which the last Party executes it, and shall remain in effect until December 31, 2026; provided that the annual fallowing during the term of this Fallowing Agreement shall be subject to the amount of Fallowed Acres offered and accepted pursuant to each annual Fallowing Call made by MWD. Farmer shall not be obligated to renew the fallowing in each year of the term, and the failure to offer Fallowed Acres in response to any Fallowing Call shall not be deemed a termination of this Fallowing Agreement. Either Party may terminate this Fallowing Agreement upon thirty (30) days written notice, provided that no termination except for cause shall be effective until the end

of the seasonal fallowing period (after July 31) if the Farmer has offered, and MWD has accepted, Fallowed Acres for the year in which the termination notice is given.

7. Governing Law. This Fallowing Agreement shall be interpreted, governed by, and construed under the laws of the State of California and any applicable federal laws.

8. No Third-Party Rights. Except at otherwise set forth in the First Amended Program Agreement between MWD and Bard, the Parties do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Fallowing Agreement or of any duty, covenant, obligation or undertaking established hereunder.

9. Assignment. This Fallowing Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. No Party may assign or transfer its rights or obligations under this Fallowing Agreement without the prior written consent of the other Party.

10. Indemnity.

(a) MWD shall indemnify and hold Farmer harmless from and against all claims asserted by a third party or parties for damages arising from an act or omission of MWD, its employees or agents in the performance of its obligations under this Fallowing Agreement.

(b) Farmer shall indemnify and hold MWD, its directors, employees, and agents, harmless from and against all claims asserted by a third party or parties for damages arising from an act or omission of Farmer, his/her/its employees or agents in the performance of his/her/its obligations under this Fallowing Agreement.

11. Non-waiver. None of the provisions of this Fallowing Agreement shall be considered waived by either Party except when such waiver is given in writing. The waiver of any breach of any term or condition of this Fallowing Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition.

12. Non-precedent. Except for any legal proceedings relating to the performance of this Fallowing Agreement, the Parties agree that this Fallowing Agreement shall not be used or construed as precedent or for an argument in any negotiation or proceeding, including any

negotiation or proceeding related to any other future fallowing program or other water conservation program.

13. Entire Agreement and Amendment. This Fallowing Agreement constitutes the entire understanding of the Parties hereto related to the seasonal fallowing program and supersedes any previous agreement or understanding. It may not be modified or amended except in writing executed by the Parties.

14. Notices. All notices, requests, demands, and other communications required or permitted under this Fallowing Agreement shall be in writing and shall be deemed to have been received either when delivered or on the fifth business day following the mailing, by registered or first class mail, with copies by e-mail, addressed as follows:

(a) If to MWD:

The Metropolitan Water District of Southern California

Attn: Kira Z. Alonzo

Post Office Box 54153

Los Angeles, CA 54153

Email: KAlonzo@mwdh2o.com

(b) If to Farmer:

Amigo Farms, Inc.

Attn: William Scott

4245 E. 32nd St.

Yuma, AZ 85365

Either Party may change the address or addressee to which communications are to be sent by giving written notice of such change.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Following Agreement
by and through their authorized officers.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

APPROVED AS TO FORM:

By: M. Scully
Marcia Scully
General Counsel

By: Jeffrey Knightlinger
Jeffrey Knightlinger
General Manager

Date: MARCH 27, 2020

AMIGO FARMS, INC.

By: William Scott
William Scott

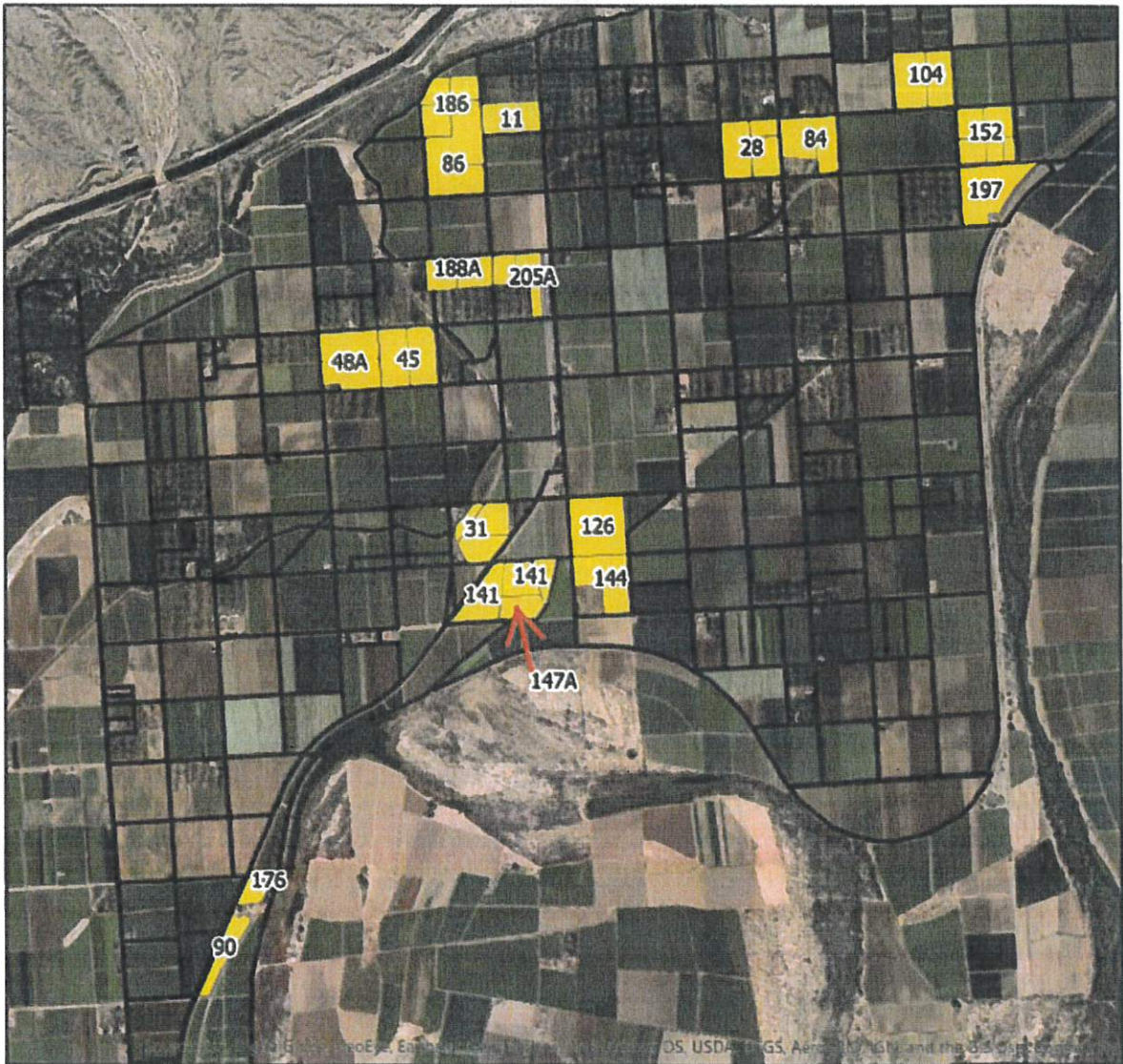
Date: 3/31/2020


Exhibit A

Bard Unit Seasonal Fallowing Program, 2020 Amigo Farms, Inc.

BWD Serial Number	Area (fallowable acres)	APN	Lateral	Landowner
104	37.48	050-160-025	Bannock	Costa & Sons
152	33.89	050-160-030	RC	Costa & Sons
197	34.00	050-160-031	Mohave	Costa & Sons
188A	22.62	056-400-059	Cocopah #1	Costa & Sons
205A	19.00	056-400-059	Cocopah	Costa & Sons
45	37.73	056-400-023	Yaqui #1	Costa & Sons
28	35.87	050-150-005	Apache	Costa & Sons
126	36.99	056-160-044	Cocopah #4	Costa & Sons
11	19.50	050-150-066	Apache #2	Costa & Sons
144	27.16	056-160-041	Hopi	Costa & Sons
31	26.25	056-510-010	Cocopah	Amigo Farms
147A	10.43	056-510-014	Cocopah	Richard Johnson
141	36.70	056-510-014	Cocopah	Richard Johnson
48A	36.90	056-400-046	Yaqui	Richard Johnson
86	36.98	050-150-026	Apache	Charles Land
186	35.78	050-150-027	Apache	Charles Land
84	30.20	050-160-035	RC/Apache #1	Charles Land
176	6.87	056-340-028	Cocopah	Santa Fe Farms
90	6.88	056-340-028	Cocopah	Santa Fe Farms
Total Fallowed Acreage:	531.23			

The map below shows, the fallowed fields, or partial fields, as shaded:



	Bard Water District / Metropolitan Water District
	Bard Unit Seasonal Fallowing Program 2020
	Amigo Farms
	Total Fallowing Acres: 531.23
	April 1, 2020 through July 31, 2020

0 0.25 0.5 0.75 1 Miles

AGREEMENT FOR SEASONAL FALLOWING IN BARD UNIT
(FALLOWING AGREEMENT)

THIS AGREEMENT (Fallowing Agreement) is made and entered into this 19th day of March, 2020, by and between The Metropolitan Water District of Southern California (“MWD”), a public agency organized pursuant to the California Metropolitan Water District Act (1969 Cal. Stats., ch. 209), and Bill and Vicky Scott (“Farmer”), each of which is at times also referred to individually as “Party” and collectively as “Parties”.

RECITALS

A. MWD delivers, from the Colorado River and the State Water Project, supplemental water to its 26 member agencies situated within the coastal Southern California plain for primarily municipal and domestic uses. Bard Water District (“Bard”), a public agency organized pursuant to the California Water District Act (1951 Cal. Stats., ch. 390), operates and maintains the irrigation works of the Reservation Division of the U. S. Bureau of Reclamation’s Yuma Project. Farmer produces crops on lands located within the Bard Unit of the Reservation Division using Colorado River water provided through Bard Unit water delivery facilities. The lands farmed by Farmer within the Bard Unit that are subject to this Fallowing Agreement are shown on Exhibit A which is attached hereto and incorporated herein as though set forth in full.

B. MWD desires to increase the quantity of Colorado River water available to it by contracting with farmers using Colorado River water within the Bard Unit to undertake seasonal fallowing of all or a portion of their lands, excluding areas that are used for roads, ditches and canals, and buildings, (“Fallowed Acres”) that would otherwise have been irrigated with Colorado River water for the growing period from April 1 to July 31. The Fallowed Acres for each parcel offered by a Farmer shall be determined using Department of Water Resources’ “Statewide Crop Map” available at <https://data.cnra.ca.gov/dataset/statewide-crop-mapping>. MWD and Bard have agreed to a seasonal fallowing program totaling no more than 3,000 acres each year within the Bard Unit.

C. MWD has agreed to pay Farmer for each Fallowed Acre designated in Exhibit A in accordance with the terms and conditions set forth herein.

D. Farmer is willing to participate in the seasonal fallowing program in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Parties agree as follows:

AGREEMENT

1. Consent to Fallowing.

(a) Farmer represents and warrants to MWD that he/she/it has a legal right to farm the Fallowed Acres specified in Exhibit A, and that these lands are irrigated with Colorado River water delivered through Bard Unit water delivery facilities. Farmer represents and warrants to MWD that the terms of its lease, if any, authorizes participation in the seasonal fallowing program or Landowner does not object to Farmer's participation in the seasonal fallowing program.

(b) Farmer represents and warrants to MWD that no legal impediment exists to prevent him/her/it from entering into and performing the seasonal fallowing commitments under this Fallowing Agreement.

(c) Farmer represents and warrants to MWD that during the term of this Fallowing Agreement, in the event of any change affecting the ownership, leasehold, or other legal status of the Fallowed Acres or Farmer's right to perform the obligations under this Fallowing Agreement, Farmer shall notify MWD in writing within five days of such change.

2. Fallowed Acres.

(a) Farmer represents and warrants to MWD that the Fallowed Acres total no less than ten (10) contiguous irrigable acres, irrigated with Colorado River water delivered

through Bard Unit water delivery facilities, have been irrigated during at least three of the prior five years (or fallowed pursuant to the Pilot Seasonal Fallowing Program and/or Pilot System Conservation Program), and are subject to Bard's base rate for water deliveries.

(b) Farmer represents and warrants to MWD that the Fallowed Acres would have been planted and irrigated for agricultural production from April 1 through July 31 had the land not been committed to fallowing pursuant to this Fallowing Agreement.

3. Obligations of Farmer.

(a) Farmer agrees that no agricultural crops shall be grown on the Fallowed Acres for the period from April 1 through July 31 for the term of this Fallowing Agreement, and that no water (other than rain falling naturally on the Fallowed Acres) shall be applied or used on the Fallowed Acres from April 1 through July 31 for the term of this Fallowing Agreement.

(b) During the term of this Fallowing Agreement, Farmer shall comply with all applicable federal, state, county, and other local rules and regulations, including, to the extent necessary, rules and regulations related to controlling wind erosion promulgated by the U. S. Department of Agriculture, Soil Conservation Service. Farmer agrees to take appropriate measures to ensure that the fallowing actions do not cause dust emissions from the Fallowed Acres, and Farmer shall bear all costs incurred in complying with air quality rules and regulations pertaining to the Fallowed Acres.

(c) Farmer shall make the assessment payments applicable to the Fallowed Acres to Bard Water District during the term of this Fallowing Agreement.

(d) Farmer acknowledges and agrees that any acreage fallowed will not be included in his/her/its consolidated water acreage, but appurtenant areas that are used for roads, ditches and canals, and buildings will continue to be included in his/her/its consolidated water acreage. Consolidated acreage will be re-calculated based on participation in the seasonal fallowing program.

(e) Farmer agrees that MWD and Bard shall have the right to enter the Fallowed Acres, and to cross such lands as necessary for access to Fallowed Acres, for the

purpose of monitoring compliance and enforcing the terms and conditions of this Fallowing Agreement.

(f) Farmer agrees to provide information to MWD reasonably related to this Fallowing Agreement, including any issues encountered in implementing and adhering to the terms and conditions of this Fallowing Agreement, and information required for the proper accounting and reporting of fallowing payments to the Internal Revenue Service.

4. Obligations of MWD.

(a) With the exception of the Fallowing Call for 2020, on or before October 1 of each year during the term of this Fallowing Agreement, MWD shall issue a Fallowing Call for the number of acres it seeks to fallow during the period April 1 through July 31 of the following year. The Fallowing Call for 2020 shall be made on or before December 31, 2019. Farmer may renew this Fallowing Agreement for such year by submitting an offer of lands to be fallowed in the form of Exhibit A, attached hereto, and subject to any proportionate reduction in the offered acreage needed to maintain the fallowing within the limit of 3,000 acres.

(b) For fallowing in the year 2020, MWD shall pay Farmer the sum of \$339.00 per acre for each Fallowed Acre that is fallowed pursuant to a Fallowing Agreement. The total amount payable using this rate shall be paid in two equal installments, with the first payment due on or before May 15, and the balance (less any reduction due to a failure by Farmer(s) to perform fallowing as agreed) due and payable on or before September 15. In the event Farmer fails to comply with all the terms of his/her/its Fallowing Agreement, MWD shall withhold from the second payment an amount equal to \$169.50 for each Fallowed Acre that has not been fallowed as required.

(c) The rate for payments in paragraph (b), above, shall be adjusted annually during the term of the seasonal fallowing program by the percentage change over the prior year in the Consumer Price Index for All Urban Consumers last published by the Bureau of Labor Statistics of the United States Department of Labor on or before September 1 for Los Angeles – Riverside – Orange County All Items (1982-84 = 100), not seasonally adjusted. MWD shall

calculate the annual change in the rate for these payments and include the adjusted rate in its annual Fallowing Call made on October 1.

(d) MWD, in coordination with Bard, shall have oversight and monitoring of compliance with this Fallowing Agreement and the right to enforce the terms and conditions of this Fallowing Agreement.

5. Remedy for Breach.

(a) If, prior to the conclusion of the fallowing season (April 1 through July 31), MWD determines that Farmer is not in compliance with the terms and conditions of this Fallowing Agreement, MWD will give notice to Farmer of such failure and demand for cure of such breach, if possible.

(b) Farmer acknowledges and agrees that growing crops, or irrigating the Fallowed Acres in violation of this Fallowing Agreement will damage MWD, and that it is extremely difficult and impractical to ascertain and determine the monetary value of such damage. Farmer therefore acknowledges and agrees that forfeiture of further payments under the Fallowing Agreement and termination of the Fallowing Agreement shall be proper remedies for MWD in the event of a breach by Farmer.

(c) In the event MWD fails to make a payment by the dates specified in Section 4(b), above, the unpaid amount shall be subject to simple interest at a rate of three percent (3%) per annum from the due date to the date of payment.

6. Term. This Fallowing Agreement shall be effective on the date on which the last Party executes it, and shall remain in effect until December 31, 2026; provided that the annual fallowing during the term of this Fallowing Agreement shall be subject to the amount of Fallowed Acres offered and accepted pursuant to each annual Fallowing Call made by MWD. Farmer shall not be obligated to renew the fallowing in each year of the term, and the failure to offer Fallowed Acres in response to any Fallowing Call shall not be deemed a termination of this Fallowing Agreement. Either Party may terminate this Fallowing Agreement upon thirty (30) days written notice, provided that no termination except for cause shall be effective until the end

of the seasonal fallowing period (after July 31) if the Farmer has offered, and MWD has accepted, Fallowed Acres for the year in which the termination notice is given.

7. Governing Law. This Fallowing Agreement shall be interpreted, governed by, and construed under the laws of the State of California and any applicable federal laws.

8. No Third-Party Rights. Except at otherwise set forth in the First Amended Program Agreement between MWD and Bard, the Parties do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Fallowing Agreement or of any duty, covenant, obligation or undertaking established hereunder.

9. Assignment. This Fallowing Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. No Party may assign or transfer its rights or obligations under this Fallowing Agreement without the prior written consent of the other Party.

10. Indemnity.

(a) MWD shall indemnify and hold Farmer harmless from and against all claims asserted by a third party or parties for damages arising from an act or omission of MWD, its employees or agents in the performance of its obligations under this Fallowing Agreement.

(b) Farmer shall indemnify and hold MWD, its directors, employees, and agents, harmless from and against all claims asserted by a third party or parties for damages arising from an act or omission of Farmer, his/her/its employees or agents in the performance of his/her/its obligations under this Fallowing Agreement.

11. Non-waiver. None of the provisions of this Fallowing Agreement shall be considered waived by either Party except when such waiver is given in writing. The waiver of any breach of any term or condition of this Fallowing Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition.

12. Non-precedent. Except for any legal proceedings relating to the performance of this Fallowing Agreement, the Parties agree that this Fallowing Agreement shall not be used or construed as precedent or for an argument in any negotiation or proceeding, including any

negotiation or proceeding related to any other future fallowing program or other water conservation program.

13. Entire Agreement and Amendment. This Fallowing Agreement constitutes the entire understanding of the Parties hereto related to the seasonal fallowing program and supersedes any previous agreement or understanding. It may not be modified or amended except in writing executed by the Parties.

14. Notices. All notices, requests, demands, and other communications required or permitted under this Fallowing Agreement shall be in writing and shall be deemed to have been received either when delivered or on the fifth business day following the mailing, by registered or first class mail, with copies by e-mail, addressed as follows:

(a) If to MWD:

The Metropolitan Water District of Southern California

Attn: Kira Z. Alonzo

Post Office Box 54153

Los Angeles, CA 54153

Email: KAlonzo@mwdh2o.com

(b) If to Farmer:

Bill Scott and Vicky Scott

Attn: William Scott

4247 W. Co. 13th St.

Yuma, AZ 85365

Either Party may change the address or addressee to which communications are to be sent by giving written notice of such change.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Following Agreement by and through their authorized officers.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

APPROVED AS TO FORM:

By: M. Scully
Marcia Scully
General Counsel

By: J. Kightlinger
Jeffrey Kightlinger
General Manager

Date: March 27, 2020

BILL AND VICKY SCOTT

By: W. Scott
William Scott

Date: 3/31/2020

Exhibit A

Bard Unit Seasonal Fallowing Program, 2020 Bill & Vicky Scott

BWD Serial Number	Area (fallowable acres)	APN	Lateral	Landowner
12	37.00	050-150-028	Apache #3/Wilson	Bill & Vicky Scott
154A	18.54	056-410-022	Yaqui #2	Costa & Sons
154B	0.60	056-410-021	Yaqui #2	Costa & Sons
163	37.15	056-410-003	Yaqui #2	Bill & Vicky Scott
168A	10.65	056-510-003	O'Sullivan	Costa & Sons
71B	15.00	056-510-004	O'Sullivan	Costa & Sons
71	11.00	056-510-005	Paiute	Costa & Sons
71A	8.00	056-510-005	Paiute	Costa & Sons
190	36.95	050-160-029	RC	Larry Mitchell
AP124	11.23	050-160-049	RC	Larry Mitchell
2B	16.75	050-160-014	Acoma	Bill & Vicky Scott
2C	10.05	050-160-058	Acoma	Bill & Vicky Scott
Total Fallowed Acreage:	212.92			

The map below shows, the fallowed fields, or partial fields, as shaded:



0 0.25 0.5 0.75 1
Miles

Bard Water District / Metropolitan Water District

Bard Unit Seasonal Fallowing Program
2020

Bill & Vicky Scott

Total Fallowing Acres: 212.92
April 1, 2020 through July 31, 2020

AGREEMENT FOR SEASONAL FALLOWING IN BARD UNIT
(FALLOWING AGREEMENT)

THIS AGREEMENT (Fallowing Agreement) is made and entered into this 19th day of March, 2020, by and between The Metropolitan Water District of Southern California (“MWD”), a public agency organized pursuant to the California Metropolitan Water District Act (1969 Cal. Stats., ch. 209), and NexGen Farm Management (“Farmer”), each of which is at times also referred to individually as “Party” and collectively as “Parties”.

RECITALS

A. MWD delivers, from the Colorado River and the State Water Project, supplemental water to its 26 member agencies situated within the coastal Southern California plain for primarily municipal and domestic uses. Bard Water District (“Bard”), a public agency organized pursuant to the California Water District Act (1951 Cal. Stats., ch. 390), operates and maintains the irrigation works of the Reservation Division of the U. S. Bureau of Reclamation’s Yuma Project. Farmer produces crops on lands located within the Bard Unit of the Reservation Division using Colorado River water provided through Bard Unit water delivery facilities. The lands farmed by Farmer within the Bard Unit that are subject to this Fallowing Agreement are shown on Exhibit A which is attached hereto and incorporated herein as though set forth in full.

B. MWD desires to increase the quantity of Colorado River water available to it by contracting with farmers using Colorado River water within the Bard Unit to undertake seasonal fallowing of all or a portion of their lands, excluding areas that are used for roads, ditches and canals, and buildings, (“Fallowed Acres”) that would otherwise have been irrigated with Colorado River water for the growing period from April 1 to July 31. The Fallowed Acres for each parcel offered by a Farmer shall be determined using Department of Water Resources’ “Statewide Crop Map” available at <https://data.cnra.ca.gov/dataset/statewide-crop-mapping>. MWD and Bard have agreed to a seasonal fallowing program totaling no more than 3,000 acres each year within the Bard Unit.

C. MWD has agreed to pay Farmer for each Fallowed Acre designated in Exhibit A in accordance with the terms and conditions set forth herein.

D. Farmer is willing to participate in the seasonal fallowing program in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Parties agree as follows:

AGREEMENT

1. Consent to Fallowing.

(a) Farmer represents and warrants to MWD that he/she/it has a legal right to farm the Fallowed Acres specified in Exhibit A, and that these lands are irrigated with Colorado River water delivered through Bard Unit water delivery facilities. Farmer represents and warrants to MWD that the terms of its lease, if any, authorizes participation in the seasonal fallowing program or Landowner does not object to Farmer's participation in the seasonal fallowing program.

(b) Farmer represents and warrants to MWD that no legal impediment exists to prevent him/her/it from entering into and performing the seasonal fallowing commitments under this Fallowing Agreement.

(c) Farmer represents and warrants to MWD that during the term of this Fallowing Agreement, in the event of any change affecting the ownership, leasehold, or other legal status of the Fallowed Acres or Farmer's right to perform the obligations under this Fallowing Agreement, Farmer shall notify MWD in writing within five days of such change.

2. Fallowed Acres.

(a) Farmer represents and warrants to MWD that the Fallowed Acres total no less than ten (10) contiguous irrigable acres, irrigated with Colorado River water delivered

through Bard Unit water delivery facilities, have been irrigated during at least three of the prior five years (or fallowed pursuant to the Pilot Seasonal Fallowing Program and/or Pilot System Conservation Program), and are subject to Bard's base rate for water deliveries.

(b) Farmer represents and warrants to MWD that the Fallowed Acres would have been planted and irrigated for agricultural production from April 1 through July 31 had the land not been committed to fallowing pursuant to this Fallowing Agreement.

3. Obligations of Farmer.

(a) Farmer agrees that no agricultural crops shall be grown on the Fallowed Acres for the period from April 1 through July 31 for the term of this Fallowing Agreement, and that no water (other than rain falling naturally on the Fallowed Acres) shall be applied or used on the Fallowed Acres from April 1 through July 31 for the term of this Fallowing Agreement.

(b) During the term of this Fallowing Agreement, Farmer shall comply with all applicable federal, state, county, and other local rules and regulations, including, to the extent necessary, rules and regulations related to controlling wind erosion promulgated by the U. S. Department of Agriculture, Soil Conservation Service. Farmer agrees to take appropriate measures to ensure that the fallowing actions do not cause dust emissions from the Fallowed Acres, and Farmer shall bear all costs incurred in complying with air quality rules and regulations pertaining to the Fallowed Acres.

(c) Farmer shall make the assessment payments applicable to the Fallowed Acres to Bard Water District during the term of this Fallowing Agreement.

(d) Farmer acknowledges and agrees that any acreage fallowed will not be included in his/her/its consolidated water acreage, but appurtenant areas that are used for roads, ditches and canals, and buildings will continue to be included in his/her/its consolidated water acreage. Consolidated acreage will be re-calculated based on participation in the seasonal fallowing program.

(e) Farmer agrees that MWD and Bard shall have the right to enter the Fallowed Acres, and to cross such lands as necessary for access to Fallowed Acres, for the

purpose of monitoring compliance and enforcing the terms and conditions of this Fallowing Agreement.

(f) Farmer agrees to provide information to MWD reasonably related to this Fallowing Agreement, including any issues encountered in implementing and adhering to the terms and conditions of this Fallowing Agreement, and information required for the proper accounting and reporting of fallowing payments to the Internal Revenue Service.

4. Obligations of MWD.

(a) With the exception of the Fallowing Call for 2020, on or before October 1 of each year during the term of this Fallowing Agreement, MWD shall issue a Fallowing Call for the number of acres it seeks to fallow during the period April 1 through July 31 of the following year. The Fallowing Call for 2020 shall be made on or before December 31, 2019. Farmer may renew this Fallowing Agreement for such year by submitting an offer of lands to be fallowed in the form of Exhibit A, attached hereto, and subject to any proportionate reduction in the offered acreage needed to maintain the fallowing within the limit of 3,000 acres.

(b) For fallowing in the year 2020, MWD shall pay Farmer the sum of \$339.00 per acre for each Fallowed Acre that is fallowed pursuant to a Fallowing Agreement. The total amount payable using this rate shall be paid in two equal installments, with the first payment due on or before May 15, and the balance (less any reduction due to a failure by Farmer(s) to perform fallowing as agreed) due and payable on or before September 15. In the event Farmer fails to comply with all the terms of his/her/its Fallowing Agreement, MWD shall withhold from the second payment an amount equal to \$169.50 for each Fallowed Acre that has not been fallowed as required.

(c) The rate for payments in paragraph (b), above, shall be adjusted annually during the term of the seasonal fallowing program by the percentage change over the prior year in the Consumer Price Index for All Urban Consumers last published by the Bureau of Labor Statistics of the United States Department of Labor on or before September 1 for Los Angeles – Riverside – Orange County All Items (1982-84 = 100), not seasonally adjusted. MWD shall

calculate the annual change in the rate for these payments and include the adjusted rate in its annual Fallowing Call made on October 1.

(d) MWD, in coordination with Bard, shall have oversight and monitoring of compliance with this Fallowing Agreement and the right to enforce the terms and conditions of this Fallowing Agreement.

5. Remedy for Breach.

(a) If, prior to the conclusion of the fallowing season (April 1 through July 31), MWD determines that Farmer is not in compliance with the terms and conditions of this Fallowing Agreement, MWD will give notice to Farmer of such failure and demand for cure of such breach, if possible.

(b) Farmer acknowledges and agrees that growing crops, or irrigating the Fallowed Acres in violation of this Fallowing Agreement will damage MWD, and that it is extremely difficult and impractical to ascertain and determine the monetary value of such damage. Farmer therefore acknowledges and agrees that forfeiture of further payments under the Fallowing Agreement and termination of the Fallowing Agreement shall be proper remedies for MWD in the event of a breach by Farmer.

(c) In the event MWD fails to make a payment by the dates specified in Section 4(b), above, the unpaid amount shall be subject to simple interest at a rate of three percent (3%) per annum from the due date to the date of payment.

6. Term. This Fallowing Agreement shall be effective on the date on which the last Party executes it, and shall remain in effect until December 31, 2026; provided that the annual fallowing during the term of this Fallowing Agreement shall be subject to the amount of Fallowed Acres offered and accepted pursuant to each annual Fallowing Call made by MWD. Farmer shall not be obligated to renew the fallowing in each year of the term, and the failure to offer Fallowed Acres in response to any Fallowing Call shall not be deemed a termination of this Fallowing Agreement. Either Party may terminate this Fallowing Agreement upon thirty (30) days written notice, provided that no termination except for cause shall be effective until the end

of the seasonal fallowing period (after July 31) if the Farmer has offered, and MWD has accepted, Fallowed Acres for the year in which the termination notice is given.

7. Governing Law. This Fallowing Agreement shall be interpreted, governed by, and construed under the laws of the State of California and any applicable federal laws.

8. No Third-Party Rights. Except at otherwise set forth in the First Amended Program Agreement between MWD and Bard, the Parties do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Fallowing Agreement or of any duty, covenant, obligation or undertaking established hereunder.

9. Assignment. This Fallowing Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. No Party may assign or transfer its rights or obligations under this Fallowing Agreement without the prior written consent of the other Party.

10. Indemnity.

(a) MWD shall indemnify and hold Farmer harmless from and against all claims asserted by a third party or parties for damages arising from an act or omission of MWD, its employees or agents in the performance of its obligations under this Fallowing Agreement.

(b) Farmer shall indemnify and hold MWD, its directors, employees, and agents, harmless from and against all claims asserted by a third party or parties for damages arising from an act or omission of Farmer, his/her/its employees or agents in the performance of his/her/its obligations under this Fallowing Agreement.

11. Non-waiver. None of the provisions of this Fallowing Agreement shall be considered waived by either Party except when such waiver is given in writing. The waiver of any breach of any term or condition of this Fallowing Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition.

12. Non-precedent. Except for any legal proceedings relating to the performance of this Fallowing Agreement, the Parties agree that this Fallowing Agreement shall not be used or construed as precedent or for an argument in any negotiation or proceeding, including any

negotiation or proceeding related to any other future fallowing program or other water conservation program.

13. Entire Agreement and Amendment. This Fallowing Agreement constitutes the entire understanding of the Parties hereto related to the seasonal fallowing program and supersedes any previous agreement or understanding. It may not be modified or amended except in writing executed by the Parties.

14. Notices. All notices, requests, demands, and other communications required or permitted under this Fallowing Agreement shall be in writing and shall be deemed to have been received either when delivered or on the fifth business day following the mailing, by registered or first class mail, with copies by e-mail, addressed as follows:

(a) If to MWD:

The Metropolitan Water District of Southern California

Attn: Kira Z. Alonzo

Post Office Box 54153

Los Angeles, CA 54153

Email: KAlonzo@mwdh2o.com

(b) If to Farmer:

NexGen Farm Management

Attn: Jerry Nakasawa Jr.

1644 S. Engler Ave.

Yuma, AZ 85365

Either Party may change the address or addressee to which communications are to be sent by giving written notice of such change.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Following Agreement
by and through their authorized officers.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

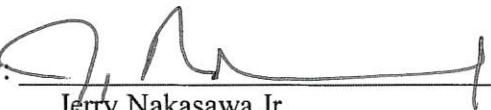
APPROVED AS TO FORM:

By: 
Marcia Scully
General Counsel

By: 
Jeffrey Kighlinger
General Manager

Date: March 27, 2020

NEXGEN FARM MANAGEMENT

By: 
Jerry Nakasawa Jr.

Date: 3/31/20



Exhibit A

Bard Unit Seasonal Fallowing Program, 2020 NexGen Farms

BWD Serial Number	Area (fallowable acres)	APN	Lateral	Landowner
94	38.80	056-380-023	Mohave	Johnny Cloud
102	39.33	056-380-031	Moqui #1	Johnny Cloud
142	42.82	056-380-031	Moqui #1	Johnny Cloud
39	33.57	056-420-014	Zuni	NexGen Farms
87	40.00	056-430-003	Yaqui #3	NexGen Farms
135	33.12	056-430-008	Yaqui	NexGen Farms
136	28.93	056-430-008	Yaqui #3	NexGen Farms
54A	9.65	056-490-014	Yaqui	NexGen Farms
195B	37.41	050-160-061	Moqui	Santa Fe Farms
6	36.96	056-390-005	Moqui	T&A
7A	39.70	056-390-026	Moqui	T&A
10	36.88	056-390-021	Moqui	T&A
13	40.92	056-390-003	Moqui	T&A
43	41.45	056-390-002	Moqui #2	T&A
60	38.55	050-160-027	RC	T&A
63A	35.31	056-390-020	Cocopah #2	T&A
72	20.20	056-390-027	Moqui	T&A
72A	20.08	056-390-038	Moqui	T&A
89	34.85	056-390-006	Moqui	T&A
124A	33.26	050-150-054	Apache	T&A
127	36.32	050-150-054	Apache	T&A
133	40.45	050-160-010	RC	T&A
143	37.00	050-380-011	Kawia	T&A
194A	38.12	050-160-056	Mohave	T&A
199	38.70	050-160-011	Acoma	T&A
200	51.41	050-160-028	RC	T&A
Total Fallowed Acreage:	923.78			

The map below shows, the fallowed fields, or partial fields, as shaded:



	<p>Bard Water District / Metropolitan Water District</p>
	<p>Bard Unit Seasonal Fallowing Program 2020</p>
	<p>NexGen Farm Management</p>
	<p>Total Fallowing Acres: 923.78 April 1, 2020 through July 31, 2020</p>
<p>0 0.25 0.5 0.75 1  Miles</p>	

AGREEMENT FOR SEASONAL FALLOWING IN BARD UNIT
(FALLOWING AGREEMENT)

THIS AGREEMENT (Fallowing Agreement) is made and entered into this 19th day of March, 2020, by and between The Metropolitan Water District of Southern California (“MWD”), a public agency organized pursuant to the California Metropolitan Water District Act (1969 Cal. Stats., ch. 209), and TopFlavor Farms, Inc. (“Farmer”), each of which is at times also referred to individually as “Party” and collectively as “Parties”.

RECITALS

A. MWD delivers, from the Colorado River and the State Water Project, supplemental water to its 26 member agencies situated within the coastal Southern California plain for primarily municipal and domestic uses. Bard Water District (“Bard”), a public agency organized pursuant to the California Water District Act (1951 Cal. Stats., ch. 390), operates and maintains the irrigation works of the Reservation Division of the U. S. Bureau of Reclamation’s Yuma Project. Farmer produces crops on lands located within the Bard Unit of the Reservation Division using Colorado River water provided through Bard Unit water delivery facilities. The lands farmed by Farmer within the Bard Unit that are subject to this Fallowing Agreement are shown on Exhibit A which is attached hereto and incorporated herein as though set forth in full.

B. MWD desires to increase the quantity of Colorado River water available to it by contracting with farmers using Colorado River water within the Bard Unit to undertake seasonal fallowing of all or a portion of their lands, excluding areas that are used for roads, ditches and canals, and buildings, (“Fallowed Acres”) that would otherwise have been irrigated with Colorado River water for the growing period from April 1 to July 31. The Fallowed Acres for each parcel offered by a Farmer shall be determined using Department of Water Resources’ “Statewide Crop Map” available at <https://data.cnra.ca.gov/dataset/statewide-crop-mapping>. MWD and Bard have agreed to a seasonal fallowing program totaling no more than 3,000 acres each year within the Bard Unit.

C. MWD has agreed to pay Farmer for each Fallowed Acre designated in Exhibit A in accordance with the terms and conditions set forth herein.

D. Farmer is willing to participate in the seasonal fallowing program in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Parties agree as follows:

AGREEMENT

1. Consent to Fallowing.

(a) Farmer represents and warrants to MWD that he/she/it has a legal right to farm the Fallowed Acres specified in Exhibit A, and that these lands are irrigated with Colorado River water delivered through Bard Unit water delivery facilities. Farmer represents and warrants to MWD that the terms of its lease, if any, authorizes participation in the seasonal fallowing program or Landowner does not object to Farmer's participation in the seasonal fallowing program.

(b) Farmer represents and warrants to MWD that no legal impediment exists to prevent him/her/it from entering into and performing the seasonal fallowing commitments under this Fallowing Agreement.

(c) Farmer represents and warrants to MWD that during the term of this Fallowing Agreement, in the event of any change affecting the ownership, leasehold, or other legal status of the Fallowed Acres or Farmer's right to perform the obligations under this Fallowing Agreement, Farmer shall notify MWD in writing within five days of such change.

2. Fallowed Acres.

(a) Farmer represents and warrants to MWD that the Fallowed Acres total no less than ten (10) contiguous irrigable acres, irrigated with Colorado River water delivered

through Bard Unit water delivery facilities, have been irrigated during at least three of the prior five years (or fallowed pursuant to the Pilot Seasonal Fallowing Program and/or Pilot System Conservation Program), and are subject to Bard's base rate for water deliveries.

(b) Farmer represents and warrants to MWD that the Fallowed Acres would have been planted and irrigated for agricultural production from April 1 through July 31 had the land not been committed to fallowing pursuant to this Fallowing Agreement.

3. Obligations of Farmer.

(a) Farmer agrees that no agricultural crops shall be grown on the Fallowed Acres for the period from April 1 through July 31 for the term of this Fallowing Agreement, and that no water (other than rain falling naturally on the Fallowed Acres) shall be applied or used on the Fallowed Acres from April 1 through July 31 for the term of this Fallowing Agreement.

(b) During the term of this Fallowing Agreement, Farmer shall comply with all applicable federal, state, county, and other local rules and regulations, including, to the extent necessary, rules and regulations related to controlling wind erosion promulgated by the U. S. Department of Agriculture, Soil Conservation Service. Farmer agrees to take appropriate measures to ensure that the fallowing actions do not cause dust emissions from the Fallowed Acres, and Farmer shall bear all costs incurred in complying with air quality rules and regulations pertaining to the Fallowed Acres.

(c) Farmer shall make the assessment payments applicable to the Fallowed Acres to Bard Water District during the term of this Fallowing Agreement.

(d) Farmer acknowledges and agrees that any acreage fallowed will not be included in his/her/its consolidated water acreage, but appurtenant areas that are used for roads, ditches and canals, and buildings will continue to be included in his/her/its consolidated water acreage. Consolidated acreage will be re-calculated based on participation in the seasonal fallowing program.

(e) Farmer agrees that MWD and Bard shall have the right to enter the Fallowed Acres, and to cross such lands as necessary for access to Fallowed Acres, for the

purpose of monitoring compliance and enforcing the terms and conditions of this Fallowing Agreement.

(f) Farmer agrees to provide information to MWD reasonably related to this Fallowing Agreement, including any issues encountered in implementing and adhering to the terms and conditions of this Fallowing Agreement, and information required for the proper accounting and reporting of fallowing payments to the Internal Revenue Service.

4. Obligations of MWD.

(a) With the exception of the Fallowing Call for 2020, on or before October 1 of each year during the term of this Fallowing Agreement, MWD shall issue a Fallowing Call for the number of acres it seeks to fallow during the period April 1 through July 31 of the following year. The Fallowing Call for 2020 shall be made on or before December 31, 2019. Farmer may renew this Fallowing Agreement for such year by submitting an offer of lands to be fallowed in the form of Exhibit A, attached hereto, and subject to any proportionate reduction in the offered acreage needed to maintain the fallowing within the limit of 3,000 acres.

(b) For fallowing in the year 2020, MWD shall pay Farmer the sum of \$339.00 per acre for each Fallowed Acre that is fallowed pursuant to a Fallowing Agreement. The total amount payable using this rate shall be paid in two equal installments, with the first payment due on or before May 15, and the balance (less any reduction due to a failure by Farmer(s) to perform fallowing as agreed) due and payable on or before September 15. In the event Farmer fails to comply with all the terms of his/her/its Fallowing Agreement, MWD shall withhold from the second payment an amount equal to \$169.50 for each Fallowed Acre that has not been fallowed as required.

(c) The rate for payments in paragraph (b), above, shall be adjusted annually during the term of the seasonal fallowing program by the percentage change over the prior year in the Consumer Price Index for All Urban Consumers last published by the Bureau of Labor Statistics of the United States Department of Labor on or before September 1 for Los Angeles – Riverside – Orange County All Items (1982-84 = 100), not seasonally adjusted. MWD shall

calculate the annual change in the rate for these payments and include the adjusted rate in its annual Following Call made on October 1.

(d) MWD, in coordination with Bard, shall have oversight and monitoring of compliance with this Following Agreement and the right to enforce the terms and conditions of this Following Agreement.

5. Remedy for Breach.

(a) If, prior to the conclusion of the fallowing season (April 1 through July 31), MWD determines that Farmer is not in compliance with the terms and conditions of this Following Agreement, MWD will give notice to Farmer of such failure and demand for cure of such breach, if possible.

(b) Farmer acknowledges and agrees that growing crops, or irrigating the Fallowed Acres in violation of this Following Agreement will damage MWD, and that it is extremely difficult and impractical to ascertain and determine the monetary value of such damage. Farmer therefore acknowledges and agrees that forfeiture of further payments under the Following Agreement and termination of the Following Agreement shall be proper remedies for MWD in the event of a breach by Farmer.

(c) In the event MWD fails to make a payment by the dates specified in Section 4(b), above, the unpaid amount shall be subject to simple interest at a rate of three percent (3%) per annum from the due date to the date of payment.

6. Term. This Following Agreement shall be effective on the date on which the last Party executes it, and shall remain in effect until December 31, 2026; provided that the annual fallowing during the term of this Following Agreement shall be subject to the amount of Fallowed Acres offered and accepted pursuant to each annual Following Call made by MWD. Farmer shall not be obligated to renew the fallowing in each year of the term, and the failure to offer Fallowed Acres in response to any Following Call shall not be deemed a termination of this Following Agreement. Either Party may terminate this Following Agreement upon thirty (30) days written notice, provided that no termination except for cause shall be effective until the end

of the seasonal fallowing period (after July 31) if the Farmer has offered, and MWD has accepted, Fallowed Acres for the year in which the termination notice is given.

7. Governing Law. This Fallowing Agreement shall be interpreted, governed by, and construed under the laws of the State of California and any applicable federal laws.

8. No Third-Party Rights. Except at otherwise set forth in the First Amended Program Agreement between MWD and Bard, the Parties do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Fallowing Agreement or of any duty, covenant, obligation or undertaking established hereunder.

9. Assignment. This Fallowing Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. No Party may assign or transfer its rights or obligations under this Fallowing Agreement without the prior written consent of the other Party.

10. Indemnity.

(a) MWD shall indemnify and hold Farmer harmless from and against all claims asserted by a third party or parties for damages arising from an act or omission of MWD, its employees or agents in the performance of its obligations under this Fallowing Agreement.

(b) Farmer shall indemnify and hold MWD, its directors, employees, and agents, harmless from and against all claims asserted by a third party or parties for damages arising from an act or omission of Farmer, his/her/its employees or agents in the performance of his/her/its obligations under this Fallowing Agreement.

11. Non-waiver. None of the provisions of this Fallowing Agreement shall be considered waived by either Party except when such waiver is given in writing. The waiver of any breach of any term or condition of this Fallowing Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition.

12. Non-precedent. Except for any legal proceedings relating to the performance of this Fallowing Agreement, the Parties agree that this Fallowing Agreement shall not be used or construed as precedent or for an argument in any negotiation or proceeding, including any

negotiation or proceeding related to any other future fallowing program or other water conservation program.

13. Entire Agreement and Amendment. This Fallowing Agreement constitutes the entire understanding of the Parties hereto related to the seasonal fallowing program and supersedes any previous agreement or understanding. It may not be modified or amended except in writing executed by the Parties.

14. Notices. All notices, requests, demands, and other communications required or permitted under this Fallowing Agreement shall be in writing and shall be deemed to have been received either when delivered or on the fifth business day following the mailing, by registered or first class mail, with copies by e-mail, addressed as follows:

(a) If to MWD:

The Metropolitan Water District of Southern California

Attn: Kira Z. Alonzo

Post Office Box 54153

Los Angeles, CA 54153

Email: KAlonzo@mwdh2o.com

(b) If to Farmer:

TopFlavor Farms, Inc.

Attn: Steve Alameda

Postal Office Box 2784

Yuma, AZ 85366

Either Party may change the address or addressee to which communications are to be sent by giving written notice of such change.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Following Agreement by and through their authorized officers.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

APPROVED AS TO FORM:

By: *mscully*
Marcia Scully
General Counsel

By: *Jeffrey Knightlinger*
Jeffrey Knightlinger
General Manager

Date: *March 27, 2020*

TOPFLAVOR FARMS, INC.

By: *Steve Alameda*
Steve Alameda

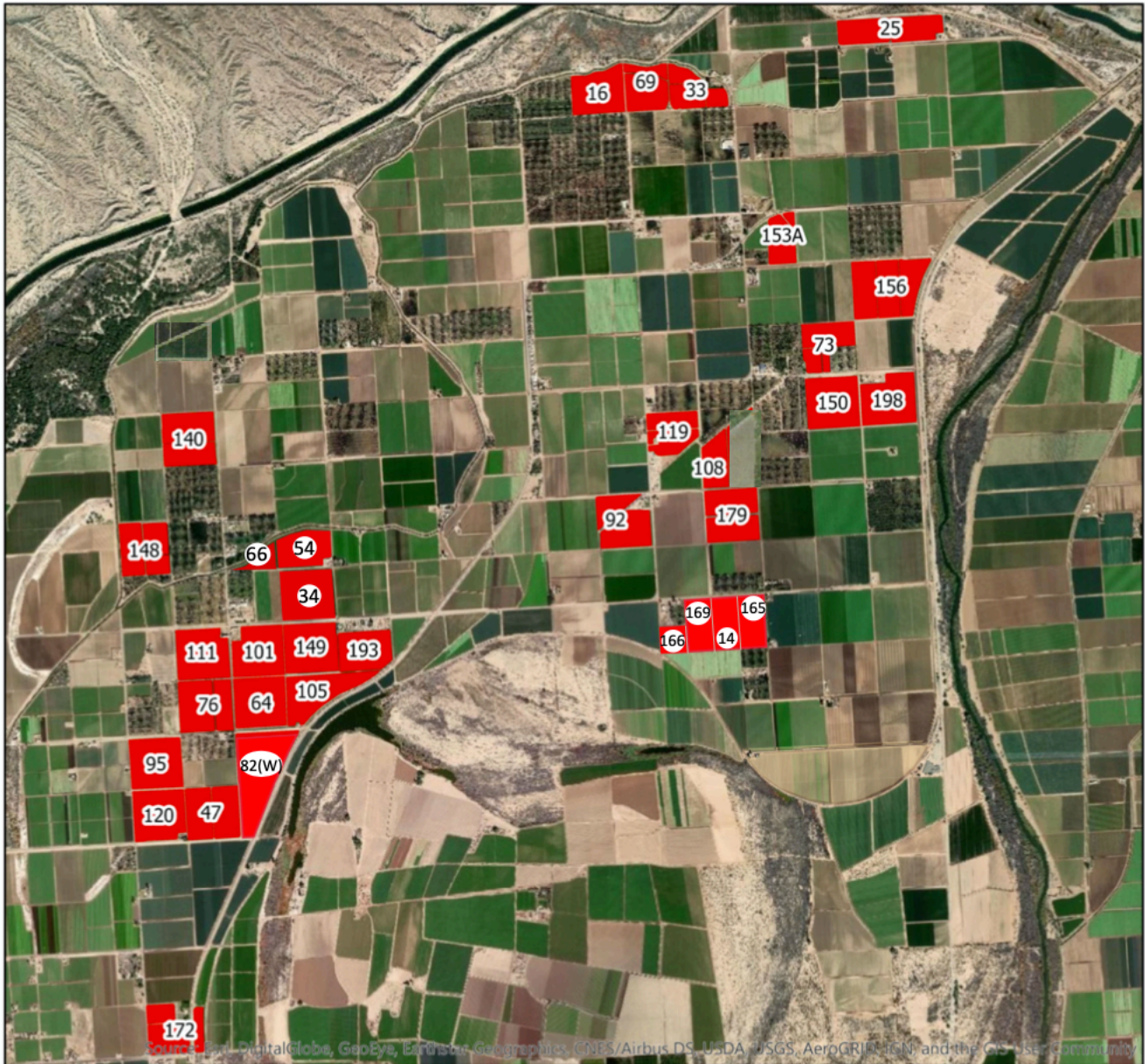
Date: *3/31/20*

Exhibit A

Bard Unit Seasonal Fallowing Program, 2020 TopFlavor Farms

BWD Serial Number	Area (fallowable acres)	APN	Lateral	Landowner
148	34.39	056-490-001	Zuni #2	T&A
111	35.90	056-500-004	Pauite	T&A
101	34.79	056-500-004	Cocopah	T&A
149	36.63	056-500-004	Cocopah	T&A
76	37.76	056-500-005	Papago	T&A
64	36.18	056-500-005	Cocopah	T&A
105	33.97	056-500-005, 056-520-010	Cocopah	T&A
193	30.00	056-520-004	Cocopah	T&A
92	40.70	056-160-045	Hopi	Charlie Nelson
108	18.53	056-390-041	Hopi	Charlie Nelson
73	26.86	056-380-035	Hopi	Santa Fe Farms
119	26.60	056-390-012	Moqui	Santa Fe Farms
153A	18.53	050-190-045	RC	Santa Fe Farms
137A	15.55	056-400-020	Cocopah	Santa Fe Farms
140	38.81	056-430-002	Zuni #2/Yaqui	Blackwell
16	31.12	050-150-014	Apache	David Wallace
69	32.65	050-150-012	Acoma	Carol Land
33	18.00	050-150-003	Acoma/Titsink	Carol Land
95	36.49	056-340-001	Papago	T&A
120	35.82	056-340-020	Pima	T&A
47	38.36	056-340-007	Pima/Cocopah	T&A
82(W)	51.17	056-340-026	Cocopah	T&A
172	32.51	056-330-016	Cocopah	T&A
179	37.20	056-160-004	Modoc	EDB Family Trust
156	54.40	056-380-002	Mohave	Harley Berryman
150	37.25	056-380-008	Hopi	T&A
198	35.42	056-380-029	Hopi/Mohave	T&A
25	35.70	050-160-053	Acoma	T&A
166	8.86	056-160-019	Modoc	EDB Family Trust
169	18.55	056-160-020	Modoc	EDB Family Trust
14	19.42	056-160-021	Modoc	EDB Family Trust
165	19.42	056-160-022	Modoc	EDB Family Trust
66	8.70	056-490-015	Pauite	Evelyn Berryman
54	26.27	056-490-015	Pauite	Evelyn Berryman
34	38.35	056-490-015	Pauite	Evelyn Berryman
Total Fallowed Acreage:	1,080.86			

The map below shows, the fallowed fields, or partial fields, as shaded:



0 0.25 0.5 0.75 1
Miles

Bard Water District / Metropolitan Water District

Bard Unit Seasonal Fallowing Program
2020

Top Flavor Farms

Total Fallowing Acres: 1,080.9
April 1, 2020 through July 31, 2020