

*Please return to:*

*Executive Assistant  
Kennewick Irrigation District  
2015 South Ely Street  
Kennewick, WA 99337*

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## **KENNEWICK IRRIGATION DISTRICT RESOLUTION 2023-45**

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### **Facility Decommissioning Agreement Replacing Irrigation Facility Decommissioning Agreement Signed by KID March 15, 2022 and Replacing Resolution 2022-16**

A **RESOLUTION** of the Board of Directors of Kennewick Irrigation District (KID), Benton County, Washington, for the purpose of approving an agreement to decommission irrigation facilities.

#### **SECTION 1. RECITALS AND FINDINGS.**


- 1.1 The Fairhaven preliminary plat proposes to construct a seventy (70) lot townhome project in Richland, Washington and proposes to impact KID's Pressurized Service Area (PSA) 159 pond and pump station facility, and
- 1.2 Bethel Church and its representatives have approached KID to discuss potential options to decommission the PSA 159, allowing them to develop or sell the land for development, and
- 1.3 KID Staff developed an option to allow the PSA 159 facility to be decommissioned, providing the same level of service to PSA 159 customer, by making improvement to KID's PSA 175 facility, and
- 1.4 The Developer, Stan Nuxal, agreed to an Irrigation Facility Decommissioning Agreement with Kennewick Irrigation District dated March 11, 2022 mitigating improvements made to KID's PSA 175, and
- 1.5 The Fairhaven development has sold to a new Developer, BrickWise Real Estate, and
- 1.6 New Developer, BrickWise Real Estate, has requested an extension of the funds to be reimbursed to KID and/or other obligation as stipulated by the Irrigation Facility Decommissioning Agreement; and
- 1.7 KID Staff has updated the decommissioning agreement to account for the following:

- Updates the developer
- Changes the total amount due to KID to reflect lost interest based on the time when funds should have been received by KID and projected interest on when funds are anticipated to be received by KID.

**SECTION 2. IMPLIMENTATION.** Now, Therefore, be it resolved by the Board of Directors of Kennewick Irrigation District as follows:

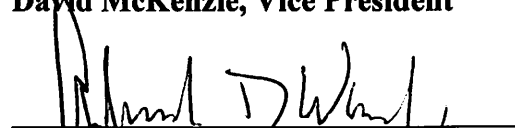
**2.1** Charles Freeman, District Manager, shall be authorized to execute the attached “Irrigation Facilities Decommissioning Agreement Extension, Replacing Irrigation Facility Decommissioning Agreement Signed by KID March 15, 2022”

**RESOLUTION 2023-45 IS HEREBY ADOPTED** by the Board of Directors of Kennewick Irrigation District, Benton County, Washington, at a regular open public meeting thereof this 17<sup>th</sup> day of October 2023.

  
 \_\_\_\_\_  
**Gene Huffman, President**

  
 \_\_\_\_\_  
**David McKenzie, Vice President**

  
 \_\_\_\_\_  
**Kirk Rathbun, Director**

  
 \_\_\_\_\_  
**Arland Ward, Director**

  
 \_\_\_\_\_  
**Griffin Hanberg, Director**

***KENNEWICK IRRIGATION DISTRICT  
IRRIGATION FACILITY DECOMMISSIONING  
AGREEMENT, REPLACING IRRIGATION  
FACILITY DECOMMISSIONING AGREEMENT  
SIGNED BY KID MARCH 15, 2022***

THIS AGREEMENT, made and entered into and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between the parties hereto, who are identified as follows:

\_\_\_\_\_, A Washington Limited Liability company, its successors or assigns (hereinafter "Developer"),

And

**Kennewick Irrigation District**, an irrigation district formed and operated pursuant to RCW Ch. 87.03, referred to herein as "KID,"

Together, "the parties".

Relating to Property, owned by Developer, located within the City of Richland, County of Benton, and State of Washington, more particularly described as:

**Parcel Number: 122983000006002**

THE WEST 268.37 FEET OF THE EAST 1131.63 FEET OF THE PORTION OF THE WEST 2054.40 FEET OF THE SOUTHWEST ONE FOURTH OF SECTION 22, LYING SOUTH OF THE FOLLOWING DESCRIPTION LINE: BEGINNING AT A POINT ON THE WEST LINE OF SAID SECTION DISTANCE 797.55 FEET NORTH OF THE SOUTHWEST CORNER THEREOF, THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID SECTION 733 FEET, THENCE EASTERLY IN A STRAIGHT LINE TO A POINT ON THE EAST LINE OF SAID WEST 2054.40 FEET WHICH IS 827.10 FEET NORTH OF THE SOUTH LINE OF SAID SECTION AND THE TERM OF SAID DESCRIPTION LINE: EXCEPT THE SOUTH 30 FEET FOR ROADS. (PER SURVEY # 960 1-21-85)

And,

**Parcel Number: 122983000006003**

PORTION OF SOUTHWEST ONE FOURTH DEFINED AS FOLLOWS: THE WEST 284.02 FEET OF THE EAST 845.31 FEET OF THE PORTION OF THE WEST 2054.40 FEET OF THE SOUTHWEST ONE FOURTH OF SECTION 22, LYING SOUTH OF THE FOLLOWING DESCRIPTION LINE: BEGINNING AT A POINT ON THE WEST LINE OF SAID SECTION DISTANCE 797.55 FEET NORTH OF THE SOUTHWEST CORNER THEREOF, THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID SECTION 22, 733 FEET THENCE EASTERLY IN A STRAIGHT LINE TO A POINT OF EAST LINE OF SAID WEST 2054.40 FEET WHICH IS 827.10

NORTH OF THE SOUTH LINE OF SAID SECTION AND THE TERM OF SAID DESCRIPTION LINE: EXCEPT THE SOUTH 30 FEET THEREOF FOR ROADS. (PER SURVEY # 960 1-21-85)

Hereinafter referred to as “Property”

And an KID irrigation pond facility and infrastructure located on the Property, generally shown in **Exhibit A** and hereinafter referred to as the “Irrigation Facility.”

WHEREAS, the Irrigation Facility consists of an irrigation pond, pond overflow, pump station, pipelines, and appurtenant irrigation components; and

WHEREAS, the Irrigation Facility is located on Property owned by Developer; and

WHEREAS, Developer has notified KID of their intent to sell, develop or improve their Property and inquired about the feasibility of KID decommissioning the Irrigation Facility; and

WHEREAS, the KID and Developer have met and discussed the feasibility of KID decommissioning the Irrigation Facility; and

WHEREAS, the decommissioning of the Irrigation Facility on Developer Property coincides with KID’s future service area plans but would require the KID to make other off-site system improvements; and

WHEREAS, Developer requests that KID expedite its future service area plans by making other off-site system improvements; and

WHEREAS, the KID and Developer mutually agree that it is in each of their best interests for Developer to contribute funds to KID, in order for the KID to decommission the Irrigation Facility on Developer Property and make other off-site improvements necessary to provide the level of service provided by the existing Irrigation Facility on the Property; and

WHEREAS, the KID has utilized funds make off-site improvements, adequate to provide irrigation water to the existing and future properties serviced from the decommissioned Irrigation Facility; and

WHEREAS, the Developer has requested to delay payment to KID per the original Decommissioning Agreement; and

WHEREAS, to recover lost opportunity for funds due to the delay in payment KID has revised the total payment based financial projections; and

NOW THEREFORE, THE PARTIES AGREE TO THE FOLLOWING:

1. Developer shall:
  - a. Shall pay to KID a total sum of \$126,695.03, or approximately \$12,669.50 per irrigation service (10) Fairhaven, an amount mutually

agreed upon by KID and the Developer. Payments shall be required upon completion of any one of the following occurring on the lot containing the irrigation service:

- i. Transfer of parcel ownership
  - ii. Building permit application
  - iii. Utilization of irrigation water
  - iv. Three (3) years from the signed date of this agreement.
- b. Pay the costs associated with relocating or reinstalling any KID irrigation pipelines on the Property.
  - c. Provide and dedicate to KID, an irrigation easement 10-feet in width, on the Property, centered over any existing KID irrigation pipelines or relocated irrigation pipeline. The easement shall be prepared by a professional land surveyor in the State of Washington.
  - d. Make any improvements, including the decommissioning and disposal of any irrigation components left after KID has had the opportunity to remove and salvage any of the Irrigation Facility it deems necessary.
  - e. In the event Developer, its successors or assigns, determines to regrade or make improvements on the Property that negatively impact the existing KID pipelines, the developer shall replace the irrigation pipelines on the Property to KID standards and specifications and dedicate and an irrigation easement to KID, prepared by a professional land surveyor in the state of Washington as described in 1b and 1c above.
  - f. Comply with KID's comment letter to the City of Richland dated June 11, 2021 and included as on page 27 through 31 of "Findings, Conclusions and Decision Approving "Fairhaven" Preliminary Plat" in the Hearing Examiner's Decision issued October 21, 2021, with the exception of item 3 regarding decommissioning, which is replaced with this document.

2. KID shall:

- a. Decommission or remove any irrigation components it deems necessary by March 31, 2022. KID may decommission the Property earlier of KID materials (i.e. Pump, fence, electrical components, filter, etc.) and allow for Developer to use the area that was the Irrigation Facility;
- b. Reserve the right to maintain a pipeline on the Property;
- c. Work with Developer, its successors and assigns, to agree on an adequate location to relocate any pipelines on the Property, depending on the future site improvements for the Property.
- d. Reserve the right to make comments related to the any future grading or site plans improvement that may impact KID facilities.

3. Hold Harmless/Indemnification: The parties agree to hold harmless and indemnify each other and their respective boards of directors, officers, agents, consultants, contractors, representatives, attorneys, insurers and employees from any all claims, judgments, damages, penalties, fines, costs, liabilities or losses arising from or related to their respective acts or omissions relating to work performed under this Agreement ("Claims"). This hold harmless and indemnification provision applies to claims of negligence and any other theory of

liability related to or arising out of this Agreement or otherwise raised against KID or the Developer that involve the Property that is the subject of this Agreement. Notwithstanding the foregoing paragraphs, KID shall have no obligation to indemnify or hold harmless Developer for Claims arising from the sole negligence or willful misconduct of the Developer, its agents, officers, and employees; and Developer shall have no obligation to indemnify or hold harmless KID for Claims arising from the sole negligence or willful misconduct of KID, its agents, officials, and employees. Where such Claims result from concurrent acts or omissions of the parties, or their respective agents, employees or contractors, the hold harmless and indemnity provisions herein shall be valid and enforceable only to the extent such Claims are caused by each party's acts or omissions or those of their respective agents, employee and contractors.

4. Entire Agreement; Severability; Modification; Waiver: This Agreement contains the entire agreement of the parties and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, express or implied, between the parties concerning the subject matter of this Agreement. Should any term or provision of this Agreement, or any part thereof, be held unenforceable for any reason, such unenforceable term or provision, or part thereof, shall not affect the remainder of this contract, it being agreed the provisions hereof are severable. This Agreement shall not be subject to modification except by written agreement signed by both parties. Failure of either party to enforce any of the provisions of this Agreement shall not be construed as a waiver by that party of any such provisions or of the right of such party to thereafter strictly enforce each and every provision of this Agreement.
5. Injunctive Relief: The Parties agree and stipulate that irreparable injury will result if a party fails to fully perform all of its obligations, and agree that if a party breaches this Agreement or fails to fully perform an obligation hereunder, the non-defaulting party shall be entitled to an injunction to restrain further breach and/or to force performance. Said injunctive relief shall be in addition to any other remedies either party may have at law or in equity.
6. Personal Warranty of Representative Authority: Each person signing this Agreement in a representative capacity covenants, represents and warrants that he or she has full authority to bind his or her principal to the terms of the Agreement, and hereby promises to hold the other parties hereto harmless from any claim or allegation that said person lacked such authority.
7. Attorney's Fees: In case litigation or arbitration is instituted arising directly or indirectly out of this Agreement, the substantially prevailing party or parties shall be awarded its reasonable attorney's fees, costs (including witness fees, expert witness fees and court reporter fees), at trial and on any appeal. In addition, in the event of arbitration, the substantially prevailing party shall be awarded its share of the arbitrator's fee.
8. Disputes, Default, Breach, Mediation and Arbitration: In the event any party alleges any default or breach against the other arising out of this Agreement and they are unable to resolve the same by direct negotiation within thirty (30) days of written notification of same, then the following mediation and arbitration

provisions shall apply. In the event of any such claims or disputes over this Agreement, and as a condition precedent to the commencing of any legal action on said Agreement, the parties agree that they will first submit said dispute to mediation and arbitration in Kennewick, Washington. Upon demand for mediation by either party, a single mediator shall be selected by agreement of the parties or, if the parties are unable to agree, by the presiding judge of Benton County Superior Court. Within ten (10) days of demand for mediation by a party, a mediator shall be selected by the parties. If the parties cannot agree on a mediator, either party may submit a request to the Benton County Superior Court presiding judge to appoint a mediator in compliance with this Agreement. The mediation shall held within forty-five (45) days of selection of the mediator. If mediation is not successful, the mediator shall thereafter become an arbitrator and shall make a decision on the dispute within ten (10) days of the mediation. The mandatory arbitration rules of the Benton/Franklin County Superior Courts shall be binding as to procedure, except as to the unique right of appeal which is not applicable. The limited right of appeal under the general arbitration laws of the State of Washington shall apply.

9. Jurisdiction and Venue: Any litigation arising under, related to, or in connection with this Agreement shall occur solely in the state court of appropriate subject matter jurisdiction for Benton County, State of Washington, and in no other court.
10. Agreement is binding: The terms of this Agreement are intended to be and shall constitute a binding agreement and a covenant running with the land. The benefits and obligations herein shall benefit and bind the parties and their successors and assigns in interest unless otherwise terminated by the parties hereto.
11. Recording: A copy of this agreement shall be filed at the KID offices.
12. Scrutiny: This Agreement has been submitted to the scrutiny of all parties and their respective legal counsel and shall be given a fair and reasonable interpretation in accordance with the words hereof without consideration or weight being given to its being drafted by or for one of the parties. If in fact one of the parties has not submitted this Agreement to the scrutiny of their legal counsel, such party stipulates that, despite having had the opportunity to do so, they waived the same and elected to proceed without the benefit of such legal review.

IN WITNESS WHEREOF, the parties execute this Agreement as follows.

**DEVELOPER**

BY \_\_\_\_\_  
AUTHORIZED MEMBER/MANAGER

Date Signed: \_\_\_\_\_, 2023

STATE OF WASHINGTON )

: ss

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
NOTARY PUBLIC,  
State of Washington  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_



**KENNEWICK IRRIGATION DISTRICT:**

By: \_\_\_\_\_  
Charles Freeman, its Secretary Manager

Date: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Gene Huffman, President of the Board of Directors

Date: \_\_\_\_\_, 2023

As approved by Resolution of the Board of Directors in a regularly scheduled Board meeting on \_\_\_\_\_, 2023.

STATE OF WASHINGTON )

: ss

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared \_\_\_\_\_, to me known to be the president of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
NOTARY PUBLIC,  
State of Washington  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_