

# **AGENDA**

**PANOCHÉ DRAINAGE DISTRICT  
SPECIAL BOARD OF DIRECTORS MEETING**

**June 22, 2021 – ~~9:00 a.m.~~ 10:00 a.m.**

**52027 West Althea Avenue, Firebaugh, CA 93622**

**JOIN THE OPEN SESSION MEETING FROM YOUR COMPUTER, TABLET OR SMARTPHONE  
THROUGH THE FOLLOWING MEANS:**

<https://global.gotomeeting.com/join/478576461>

**AND PLEASE DIAL**

**Conference call in number: 844 783-6236      Passcode: 209 364 6136**

- 1. CALL TO ORDER**
- 2. REVIEW OF AGENDA:** The Board will consider corrections to the Agenda.
- 3. ROLL CALL:** A quorum will be confirmed and the Board will consider appointment of an acting officer(s) in the event the President, Vice-President, and/or Secretary is absent from the Directors' meeting.
- 4. POTENTIAL CONFLICTS OF INTEREST:** Any Board member who has a potential conflict of interest may now identify the Agenda Item and recuse themselves from discussing and voting on the matter. [Government Code Section 87105]
- 5. PUBLIC COMMENT:** The Board of Directors welcomes participation in Board meetings. The public may address matters under the jurisdiction of the Board that have not been posted in the Agenda. The public will be given the opportunity to address the Board on any item in the Agenda at this time or before the Board's consideration of that item. If members of the public desire to address the Board relative to a particular Agenda item at the time it is to be considered, they should so notify the President of the Board at this time. Please note, California Law prohibits the Board from taking action on any matter during a regular meeting that is not on the posted Agenda unless the Board determines that it is an emergency or one of the other situations specified in Government Code Section 54954.2. During a special meeting, the Board may not take action on any matter that is not on the posted Agenda. The President may limit the total amount of time allocated for public comment on particular issues to 3 minutes for each individual speaker.

*At approximately 9:05 a.m., it is anticipated President Bennett will suspend the Panoche Water District and Panoche Drainage District meetings and continue the Panoche Financing Authority -ONLY meeting.*

*At approximately 9:35 a.m., it is anticipated President Bennett will adjourn the Panoche Water District meeting and continue the Panoche Drainage District -ONLY meeting.*

### **ACTION ITEMS**

6. The Board to review and consider request by Sandton Agriculture Investments II to be annexed by the District (Azhderian – Tab 2);
7. The Board to review and consider approving as to form a Pre-Annexation Agreement to govern drainage service during the annexation process (Azhderian – Tab 3);

#### **8. FUTURE MEETING DATES**

- A. Board to Consider Taking Action to Set Special Meeting Date(s): *No staff requests.*
- B. Next Regular Meeting Date: July 13, 2021.

#### **9. ADJOURNMENT**

- ❖ Items on the Agenda may be taken in any order.
- ❖ Action may be taken on any item listed on the Agenda.
- ❖ Writings relating to open session: Agenda items that are distributed to members of the Board of Directors will be available for inspection at the District office, excluding writings that are not public records or are exempt from disclosure under the California Public Records Acts.

Americans with Disabilities Act of 1990: Under this act, a qualifying person may request that the District provide a disability-related modification or accommodation in order to participate in any public meeting of the District. Such assistance includes alternative formats for the agendas and agenda packets used for any public meetings of the District. Requests for assistance shall be made in person, in written form, or via telephone at (209) 364-6136. Requests must be received at least 18 hours prior to a scheduled public meeting.

## **Sandton Agriculture Investments II**

c/o Stapleton Group  
514 Via de la Valle, Suite 210  
Solana Beach, CA 92075

June 9, 2021

Board of Directors  
Panoche Drainage District  
11000 N. Russell Avenue  
Firebaugh, CA 93622

Re: Sandton Agriculture Investments II, LLC – Request for annexation

Dear Sirs,

On April 27, 2021, Sandton Agriculture Investments II, LLC (“Sandton II”) acquired APN: 088-180-051; 088-190-018; 090-130-028; 090-140-048; and 090-140-049, (the “Property”) from 4-S Ranch Partners, LLC. Sandton II is requesting annexation of the Property into the Panoche Drainage District, (the “District”) to improve and ensure compliance with state and local regulatory requirements.

Sandton II has engaged Stapleton Group to initialize this request and to work with the District to facilitate the annexation process.

For any questions or concerns you may have in this regard, please do not hesitate to contact me at (213) 235-0610 or [anefkens@stapletoninc.com](mailto:anefkens@stapletoninc.com).

Sincere regards,



Audrey Nefkens  
Stapleton Group

BACK



RECORDING REQUESTED BY

**Panoche Drainage District**

AND WHEN RECORDED MAIL TO:

Panoche Drainage District  
52027 West Althea Ave  
Firebaugh, CA 93622

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**PRE-ANNEXATION AGREEMENT**

This Pre-Annexation Agreement (“Agreement”) is made and entered into as of the day last written below (the “Effective Date”) by and between the Panoche Drainage District (the “District”) and \_\_\_\_\_ (the “Landowner”). The District and the Landowner are sometimes each individually referred to in this Agreement as “Party” and collectively as the “Parties.”

**WITNESSETH**, that:

A. WHEREAS, the District is a Drainage District formed and governed pursuant to the Drainage District Act of 1903 and general laws covering and governing local agencies, and provides lands within its jurisdiction with services related to the management and treatment of drainage water (“Drainage Services”); and

B. WHEREAS, the District is a member of the San Luis & Delta-Mendota Water Authority, a Joint Exercise of Powers Agency formed and governed in accordance with the Joint Exercise of Powers Act (Gov. Code, §§ 6500, *et seq.*); and

C. WHEREAS, the District is a member of the Grassland Basin Authority, a Joint Exercise of Powers Agency formed and governed in accordance with the Joint Exercise of Powers Act (Gov. Code, §§ 6500, *et seq.*); and

D. WHEREAS, the Landowner is the record owner of the property identified in Exhibit A attached hereto (the “Property”); and

E. WHEREAS, the Property is adjacent and contiguous to the District’s boundaries; and

F. WHEREAS, the District and the Landowner desire to have the Property annexed into the District (the “Annexation”); and

G. WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Gov. Code, §§ 56000, *et seq.*) (“CKH”) provides for the procedures that govern annexations of land; and

H. WHEREAS, the Fresno Local Agency Formation Commission (“Fresno LAFCo”) has the sole authority to approve or deny the Annexation; and

I. WHEREAS, the Property is within the District’s Sphere of Influence or, if it is not, the Parties acknowledge that any annexation application to the Local Agency Formation Commission may also require an application to amend the District’s Sphere of Influence; and

J. WHEREAS, on November 10, 2020, the District has adopted an Annexation Policy whose terms, as amended, are incorporated herein and which is attached as Exhibit B; and

K. WHEREAS, the Landowner has submitted to the District the Annexation Request Form, and that Annexation Request Form has been approved as complete by the District; and

L. WHEREAS, the Landowner acknowledges that, should the Property be annexed into the District, the Property and the Landowner will be subject to all District Bylaws, Rules and Regulations, and Policies; and

M. WHEREAS, the Landowner acknowledges that, through the Annexation, the Landowner and the Property will benefit from the District’s provision of Drainage Services; and

N. WHEREAS, the District acknowledges that, through the Annexation of the Property, the District will benefit from any levies it may impose related to the provision of Drainage Services and from increased coordination of the management and treatment of drainage water in the region.

**NOW, THEREFORE**, the Parties agree as follows:

1. Incorporation of Recitals. The above Recitals are true and correct and are hereby incorporated into this Agreement.

2. General Terms and Conditions of Annexation.

a. In exchange for the promises contained below, the District shall initiate, through a Resolution of Application, and pursue annexation proceedings with Fresno LAFCo up to and through a final determination by the Fresno LAFCo Commission. The District shall not, through this Agreement, be required to challenge Fresno LAFCo's disapproval or approval with conditions of the Annexation. Any decision by a Party or the Parties to challenge Fresno LAFCo's determination shall be made at the time and shall be governed by any subsequent agreement.

b. The Landowner shall assist and cooperate with the District as the District pursues the Annexation and shall execute any additional documentation necessary to complete the Annexation.

c. The Landowner agrees to pay the District for any and all costs and fees associated with the Annexation, to include any and all surveying, engineering, or legal work, any environmental analyses required, application costs, and other administrative expenses required by Fresno LAFCo for the Annexation.

d. The Landowner shall pay to the District a non-refundable initial deposit of \$2,000.00 (two thousand dollars and no cents) (the “Initial Deposit”).

e. If any costs or fees are greater than the Initial Deposit, then the Landowner shall pay the additional amount prior to completion of the Annexation, upon the District’s written request identifying the costs or fees incurred (each, a “Deposit”). Within five (5) business days after the Annexation has been approved by LAFCo or other land use authority, Landowner(s) shall pay to the District any remaining costs and fees not covered by the Deposit(s). In the event of approval of the Annexation by Fresno LAFCo, any Deposits held by the District in excess of the final total costs shall be returned to the Landowner(s).

f. In the event of denial of the Annexation by Fresno LAFCo, any remainder of the Initial Deposit or Deposit(s) made shall not be refunded to the Landowner.

g. Upon District acceptance of the Annexation Request Form for Annexation into the District, the Landowner and all Landowner representative, agents, employees, successors, or assignees shall comply with and be subject to all laws, statutes, policies, plans, conditions, resolutions, ordinances, assessments, and fees, and any other requirement(s) applicable to the services provided by the District to the Property, including without limitation, any fees, charges, other levies, or conservation requirements imposed by the District, the San Luis & Delta-Mendota Water Authority, and/or the Grassland Basin Authority related to the District and the provision of Drainage Services.

h. Where any term in this Agreement conflicts with that of the Annexation Policy, the term in this Agreement shall control.



3. Automatic Renewal. This Agreement shall automatically renew every year unless revoked in writing by either Party; provided, however, that this Agreement shall terminate upon: 1) the termination of annexation proceedings for any reason; or 2) upon final approval or denial of the Annexation by Fresno LAFCo; or 3) ten years after the Effective Date, whichever occurs first.

4. Breach. In the event of breach or default of any term, condition, covenant or obligation of this Agreement by either party, the other party may exercise any rights available at law or in equity, including an action for specific performance, damages, or other injunctive relief, and all such remedies shall be cumulative. This Agreement shall be enforceable, unless lawfully terminated or cancelled, by any party to the Agreement or any party's successor in interest, notwithstanding any subsequent changes in any applicable bylaw, rule, regulation, or policy adopted by the District which alters or amends the bylaws, rules, regulations, or policies in effect at the time this Agreement was executed.

5. Indemnification. The Landowner agrees to indemnify and hold harmless the District and the District's officers, employees, agents, and contractors from and against all claims, demands, or damages including reasonable attorney's which arise out of this Agreement or its operation, or with any other action reasonably determined necessary by the District to effectuate the Annexation.

6. Binding Effect and Covenants Run with Land. The Parties agree to be bound by this Agreement. This Agreement shall be binding upon and shall inure to the benefit of heirs, transferees, successors and assigns of the Parties. The terms and conditions stated herein shall constitute covenants running with the land.

7. Non-Assignable. Neither Party shall assign, delegate, or transfer their rights and duties in this Agreement without the written consent of the other Party; provided, however, that any such consent shall not be unreasonably withheld.

8. Warranty of Authority to Bind. The individuals executing this Agreement on behalf of their respective Party warrant that they are authorized to bind their respective Party to the terms of this Agreement.

9. Notice. All notices under this Agreement shall be effective upon actual receipt or upon three (3) days after deposit in the United States Mail, postage fully paid, and addressed to the respective Party as follows:

To the District: Panoche Drainage District  
Attn: General Manager  
52027 W. Althea Ave.  
Firebaugh, CA 93622

To the Landowner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the Annexation and no prior or written understanding shall be of any force or affect. The Parties intend this paragraph to be a conclusive recital of fact pursuant to Section 622 of the California Evidence Code. This Agreement is intended to be a final expression of the agreement of the Parties and is an integrated agreement within the meaning of Section 1856 of the California Code of Civil Procedure. This Agreement was negotiated by both Parties, with neither Party having unequal bargaining power relative to the other Party.

11. Modification and Amendment. No part of this Agreement may be modified without the written consent of both Parties. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties. The District’s General Manager has the authority

to execute any such amendment on the District's behalf upon the review and approval of any such amendment by the District's General Counsel, although the General Manager retains the discretion to refer any such amendment to the District's Board of Directors.

12. No Third-Party Beneficiaries. Except as provided herein, the Parties do not intend to provide any other entity with any benefit or enforceable legal or equitable right or remedy.

13. Headings. Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the heading.

14. Conflict with Laws or Regulations/ Severability. This Agreement is subject to all applicable laws and regulations. If any provision(s) of this Agreement is found by a competent court or other legal authority, or is agreed by the Parties, to be in conflict with any code or regulation governing the Annexation, the conflicting provision(s) shall be considered null and void. If the effect of nullifying any conflicting provision(s) is such that a material benefit of the Agreement to either Party is lost, the Agreement may be terminated at the option of the Party which has lost the benefit. In all other cases the remainder of this Agreement shall continue in full force and effect.

15. Waiver. A waiver of any breach of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision of this Agreement.

16. Choice of Law and Venue. This Agreement shall be governed by the laws of the State of California and any questions arising hereunder shall be construed or determined according to such law. This Agreement was executed in Fresno County, California, and venue for any legal action arising from or in connection with this Agreement or the Property shall be in Fresno County, California.

17. Attorney Fees. In the event either Party commences any action or legal proceedings for the enforcement of this Agreement, the prevailing Party, as determined by a final judgment of a court, shall be entitled to recovery of its reasonable fees and costs, including reasonable attorney fees.

18. Excusable Delays; Extension of Time of Performance. In the event of delays due to strikes, inability to obtain materials, civil commotion, fire, war, terrorism, lockouts, third-party litigation or other legal challenges regarding the Annexation, riots, floods, earthquakes, epidemic, quarantine, freight embargoes, failure of contractors to perform, or other circumstances beyond the reasonable control of the Parties and which substantially interfere with the ability of either Party to perform its obligations under this Agreement, then the time for performance of any such obligation shall be extended for such period of time as the cause of such delay shall exist but in any event not longer than for such period of time.

19. Recordation of Agreement and Conditions. This Agreement shall be recorded by either Party in the Official Records of the County Recorder in the County in which the annexing parcels are located. This Agreement may be executed in counterparts and, when all counterparts are combined, shall constitute the executed Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date indicated next to their respective signatures.

PANOCHE WATER DISTRICT

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Ara Azhderian, General Manager

Attest: \_\_\_\_\_

By: \_\_\_\_\_  
District Secretary

Approved as to Form:

Date: \_\_\_\_\_

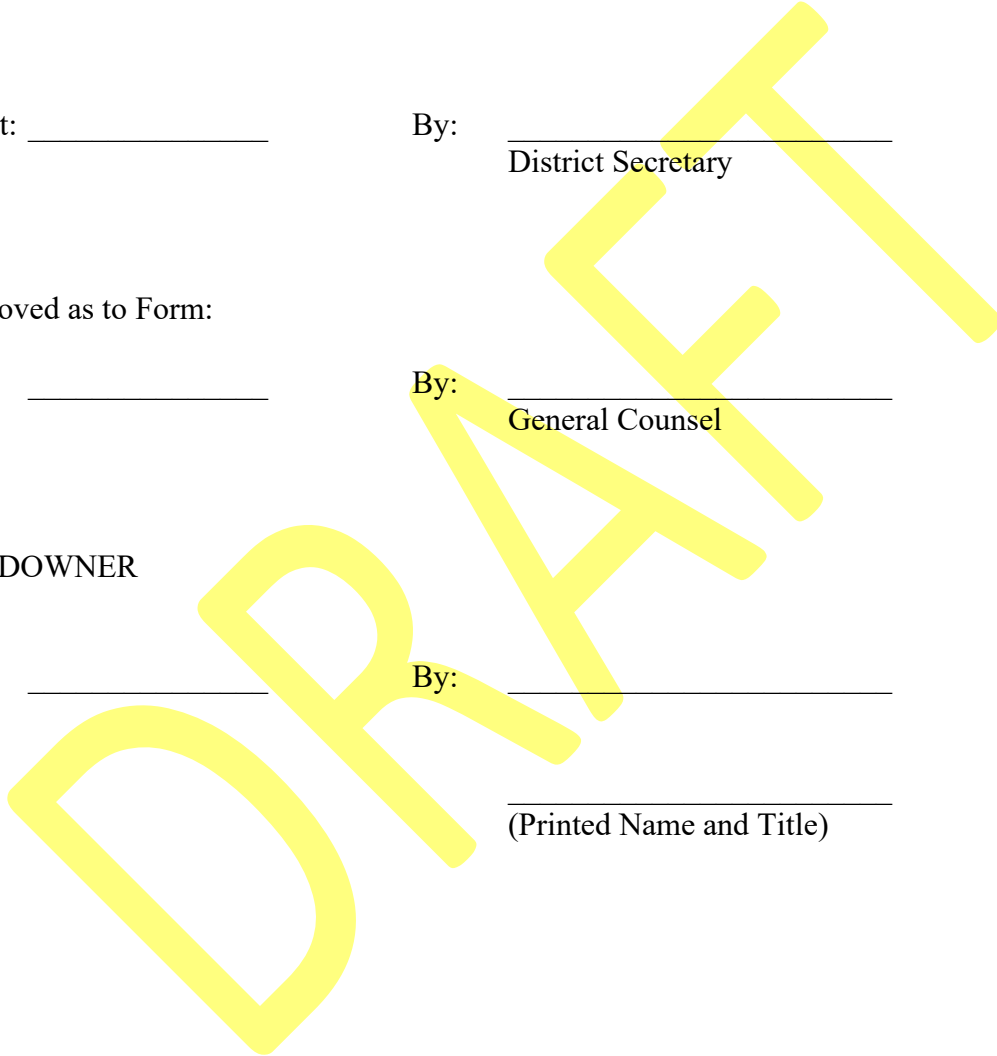
By: \_\_\_\_\_  
General Counsel

LANDOWNER

Date: \_\_\_\_\_

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

\_\_\_\_\_  
(Printed Name and Title)



**EXHIBIT A  
DESCRIPTION OF PROPERTY**

**DRAFT**

**EXHIBIT B**  
**PANOCHÉ WATER DISTRICT ANNEXATION POLICY**

DRAFT