

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Supervisor John J. Benoit

SUBMITTAL DATE:
July 26, 2016

SUBJECT: Exclusive Negotiation Agreement, Berger Foundation, 67 acres vacant land near Palm Desert, [\$50,000] RUHS Enterprise Fund 100%

RECOMMENDED MOTION: That the Board of Supervisors approve the Exclusive Negotiation Agreement with the H.N. and Frances C. Berger Foundation, and authorize the Chairman to execute the agreement on behalf of the Board.

BACKGROUND: The H.N. and Frances C. Berger Foundation (the "Berger Foundation") is a Delaware corporation whose purpose is to encourage and offer financial and real estate support to provide educational, health and social services. The Berger Foundation is the owner of real property located near the City of Palm Desert, identified by Assessor's Parcel Numbers 694-120-007 and 694-120-008 which consists of approximately 67 acres of vacant land, is generally depicted on the map attached hereto (the "Property").

(Continued)


John J. Benoit
4th District Supervisor

FORM APPROVED COUNTY COUNSEL
BY:  MARSHAL L. VICTOR
DATE: 7/26/16

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 50,000	\$ 25,000	\$ 75,000	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 50,000	\$ 25,000	\$ 75,000	\$ 0	
SOURCE OF FUNDS: RUHS Enterprise Fund 100%				Budget Adjustment: Yes	
				For Fiscal Year: 2016/17	

C.E.O. RECOMMENDATION:

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.:

District: 4

Agenda Number:

3-62

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Board of Supervisors

FORM 11: Exclusive Negotiation Agreement, Berger Foundation, 67 acres vacant land near Palm Desert, [\$50,000] RUHS Enterprise Fund 100%

DATE: July 26, 2016

PAGE: 2 of 2

BACKGROUND:

Summary (Continued)

The County of Riverside on behalf of Riverside University Health System ("RUHS") desires to consider acquiring the Property by entering into this proposed Exclusive Negotiation Agreement ("ENA") which provides for a negotiation, due diligence and a contract formation process. The ENA will also allow time for RUHS and County staff to analyze and evaluate the property and the proposed construction and operational aspects of healthcare related facilities at this location. It is proposed that this location will serve the families and communities in the Eastern region of the County by providing a convenient and centralized site for future RUHS facilities in the Coachella Valley.

The Negotiation and Due Diligence Period shall be one (1) year, commencing on the Effective Date. County may extend the Negotiation Period for an additional six (6) months by providing the Berger Foundation a written notice of sixty (60) days prior to expiration of the initial Period (the "Extension"). If an Acquisition Agreement has not been executed by the Parties prior to the expiration of the Negotiation Period or the Extension thereof, then this Agreement shall terminate, and neither Party shall have any further rights or obligations under this Agreement. If an Acquisition Agreement is executed by the Parties, then, upon such execution, this ENA shall terminate and all rights and obligations of the Parties shall be as set forth in the executed Acquisition Agreement.

In return for the Berger Foundation's execution of this Agreement, the County will tender fifty thousand (\$50,000.00) dollars to the Berger Foundation within thirty (30) days of full execution of this Agreement and an additional twenty-five thousand dollars (\$25,000) within thirty (30) days of the one (1) year anniversary of this Agreement if the County extends the Period an additional six (6) months as provided above. All such funds shall be referred to hereinafter as "Consideration" for the extended negotiation, analysis and due diligence timeline afforded by the ENA. The Consideration tendered will be non-refundable but applicable to any purchase or acquisition price.

This agreement is not subject to CEQA because the action of approving the ENA does not commit the County to any course of action, is not a project as defined in CEQA State Guidelines Section 15378 and therefore will not result in a physical change in the environment pursuant to CEQA State Guidelines Section 15060(c)(2).

Attachment:

Exclusive Negotiation Agreement

Aerial Map

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (the "Agreement") is entered into as of _____, 2016 ("Effective Date") by and between the County of Riverside, a political subdivision of the State of California (the "County"), and the H.N. and Frances C. Berger Foundation, a Delaware corporation ("Berger Foundation"), on the basis of the following purposes, intentions, and facts:

RECITALS

The Berger Foundation is a Delaware corporation whose potential purpose is to encourage and offer financial and real estate support for educational, health and social services; and

The County desires to acquire real property and enter into such agreement as the Parties may deem appropriate to specify the rights and obligations of the parties with respect to the disposition of the Property for the purpose of constructing and operating Health Care related Facilities for the benefit of the communities in and around the Coachella Valley region and beyond (the "Acquisition Agreement"); and

The Berger Foundation is the owner of real property located near the City of Palm Desert, identified with Assessor's Parcel Numbers 694-120-007 and 694-120-008 which consists of approximately 67 acres of vacant land, is generally depicted on the map attached hereto and incorporated herein by reference as Exhibit A and is further described by the legal description included therein (the "Property"); and

The County and the Berger Foundation (which may be referred to hereinafter individually as "Party" or collectively as the "Parties") desire to enter into this Agreement in order to permit the Parties to negotiate the terms and conditions of an Acquisition Agreement, or such other type of agreement as the Parties may deem appropriate to specify the rights and obligations of the parties with respect to the disposition of the Property.

NOW, THEREFORE, the County and the Berger Foundation hereby mutually agree as follows:

I. Negotiation

A. Good Faith Negotiations. The County and the Berger Foundation agree for the Negotiation and Due Diligence Period (the "Negotiation Period") to negotiate diligently and in good faith with respect to the disposition of the Property. The Berger Foundation agrees for the Negotiation Period, and any extension of the Negotiation Period, not to negotiate with any other person or entity or to enter into any agreement regarding the acquisition, disposition, lease, use or development of the Property (the "Acquisition Agreement"). "Good faith negotiations" shall mean that the County and the Berger Foundation shall use their best efforts to communicate frequently and follow reasonable negotiation procedures to develop the terms and conditions for an agreement mutually acceptable to the Parties.

B. Negotiations Period. The Negotiation Period shall be one (1) year, commencing on the Effective Date. County may extend the Negotiation Period for an additional six (6) months by providing the Berger Foundation of written notice sixty (60) days prior to expiration of the initial Period (the "Extension").

If an Acquisition Agreement has not been executed by the Parties prior to the expiration of the Negotiation Period or the Extension thereof, then this Agreement shall terminate, and neither Party shall have any further rights or obligations under this Agreement except as set forth in Section IV. If an Acquisition Agreement is executed by the Parties, then, upon such execution, this Agreement shall terminate and all rights and obligations of the Parties shall be as set forth in the executed Acquisition Agreement.

C. Consideration from County. In return for the Berger Foundation's execution of this Agreement, the County will tender fifty thousand (\$50,000.00) dollars to the Berger Foundation within thirty (30) days of full execution of this Agreement and an additional twenty-five thousand dollars (\$25,000) within thirty (30) days of the one (1) year anniversary of this Agreement if the County extends the Period an additional six (6) months as provided above. All such funds shall be referred to hereinafter as the "Consideration". The Consideration tendered will be considered non-refundable but applicable to any purchase or acquisition price.

D. Limitations on Effect of Agreement. This Agreement shall not obligate the County or the Berger Foundation to enter into an Acquisition Agreement for the Property. By executing this Agreement, the County is not committing itself to or agreeing to undertake any acquisition, disposition, lease or exercise of control over the Property. Execution of this Agreement by the County is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent Riverside County Board of Supervisors ("Board of Supervisors") action the final discretion and approval regarding the execution of any Acquisition Agreement, and all proceedings and decisions in connection therewith. Any Acquisition Agreement resulting from negotiations pursuant to this Agreement shall become effective only if and after such Acquisition Agreement has been considered and approved by the Board of Supervisors following the conduct of all legally required procedures, and executed by the Chairman of the Board of Supervisors. Until and unless an Acquisition Agreement is approved by the Board of Supervisors executed by the Chairman, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to enter into or support entering into an Acquisition Agreement or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document. The County's decision on whether to enter into an Acquisition Agreement with the Berger Foundation shall be final and conclusive and shall not be subject to review.

E. Berger Foundation's Obligations. The Berger Foundation shall within the Negotiation Period (and any mutually agreed upon extensions): Negotiate exclusively through its staff with the County for the Acquisition of the Property by the County; Grant County entry onto the Property for the purpose of completing all due diligence deemed necessary by the County; Cooperate fully in providing the County with appropriate information and assistance; and Deliver

to the County not later than thirty (30) days after the Effective Date of this Agreement any of the following documents related to the Property which are in possession of the Berger Foundation: a. Any existing surveys; b. Any government permits, licenses and approvals; c. Any contracts or leases or other agreements relating to the Property or any operations thereon; d. Other written documents in the Berger Foundation's possession regarding physical condition of the Property or the improvements thereof or the use or development of the Property.

F. Determination of Property Valuation for Purposes of Negotiation. The Parties desire to address the determination of Property valuation and negotiation of price in the manner provided below:

Within one hundred and twenty (120) days from the full execution of the Agreement, the Parties will work diligently and will independently obtain separate, independent appraisals to be used as a basis for negotiations in developing a fair and reasonable price for the Property. If after obtaining the independent appraisals and negotiating, the Parties cannot reach a mutually acceptable Property valuation then the Parties may mutually hire a third appraiser to conduct an independent review of the two appraisals and the Parties may continue negotiations until a mutually acceptable price or valuation is agreed upon.

Notwithstanding the foregoing, in no event shall the appraisers' determinations of valuation be binding upon the Parties nor shall those determinations obligate the Parties to complete the transaction.

II. Assignment. County shall not assign all or any part of this Agreement without the prior written approval of the Berger Foundation which shall not be unreasonably withheld, delayed or conditioned.

III. Right of Entry. The Berger Foundation hereby grants to County and its employees, agents, representatives and contractors the nonexclusive right to enter upon the Property at any time during the Negotiation Period to perform due diligence activities including, but not limited to, survey and certain work, consisting of geotechnical investigation, a Phase I Environmental Assessment prepared in compliance with the most recent published American Society for Testing and Materials Phase I Environmental Property Assessment Standard, a Phase II Environmental Investigation and Report, if required, and other due diligence related activities (collectively, the "Work").

County will require any third parties, agents or contractors to procure and maintain, for the time the right of entry is being utilized, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of due diligence on behalf of the County. Such insurance shall name the Berger Foundation as an additional insured.

IV. Default and Remedies. Failure by either party to negotiate in good faith as provided in this Agreement shall constitute an event of default under this Agreement. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the

default and the required action to cure the default. If a default remains uncured fifteen (15) days after receipt by the defaulting party of such notice, the non-defaulting Party may exercise the remedies set forth below.

(a) Remedies.

(1) Berger Foundation Default; Liquidated Damages. THE PARTIES EACH AGREE THAT IN THE EVENT OF A MATERIAL DEFAULT OR BREACH HEREUNDER BY THE BERGER FOUNDATION THE DAMAGES TO SELLER WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN, AND THAT THEREFORE, IN THE EVENT OF A MATERIAL DEFAULT OR BREACH BY THE BERGER FOUNDATION THE PORTION(S) OF THE CONSIDERATION TENDERED TO THE BERGER FOUNDATION PURSUANT TO THE PROVISIONS OF SECTION I(C) (THE "TENDERED CONSIDERATION AMOUNT") SHALL SERVE AS LIQUIDATED DAMAGES, AS A REASONABLE ESTIMATE OF THE DAMAGES TO THE COUNTY, INCLUDING COSTS OF NEGOTIATING AND DRAFTING THIS AGREEMENT, COSTS OF DUE DILIGENCE AND OTHER COSTS INCURRED IN CONNECTION HEREWITH. DELIVERY TO AND REFUND OF THE TENDERED CONSIDERATION AMOUNT TO THE COUNTY SHALL BE COUNTY'S SOLE AND EXCLUSIVE REMEDY AGAINST THE BERGER FOUNDATION, AND COUNTY WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST THE BERGER FOUNDATION, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE. THE PAYMENT AND RETENTION OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE COUNTY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. COUNTY HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. UPON ANY SUCH BREACH OR DEFAULT BY THE BERGER FOUNDATION HEREUNDER, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER, EXCEPT FOR THE RIGHT OF COUNTY TO A REFUND OF SUCH LIQUIDATED DAMAGES.

County

Berger Foundation

(2) County Default. In the event of an uncured default by the County under this Agreement, the Berger Foundation shall be entitled to terminate this Agreement. Following such termination, neither Party shall have any right, remedy or obligation under this Agreement.

V. Non-Recourse to Agents. No member, official, employee, agent, or consultant of any Party to this Agreement shall be personally liable to any other Party, or any successor in interest or person claiming by, through or under any Party, in the event of any default or breach, or for or on account of any amount which may be or become due, or in any claim, cause or obligation whatsoever under the terms of this Agreement.

VI. Real Estate Commissions. The County shall not be liable for any finder's fees, real estate commissions or brokerage fees which may arise herefrom. The County and the Berger Foundation each represents that it has engaged no broker, agent or finder in connection with this transaction and each party agrees to hold the other party harmless from any claim by any broker, agent or finder which it has retained.

VII. Authority to Execute. The persons executing this Agreement or exhibits attached hereto on behalf of the parties to this Agreement hereby warrant and represent that they have the authority to execute this Agreement and warrant and represent that they have the authority to bind the respective parties to this Agreement to the performance of its obligations hereunder.

VIII. Notices. Any notice to any of the parties required or permitted under this Agreement shall be delivered by E-mail together with delivery by a nationally recognized "overnight" delivery service, addressed to the other party as follows:

If to County:
Vincent Yzaguirre
Real Estate Division/EDA
3403 10th Street, Suite 400
Riverside, CA 92501
Phone: (951) 955-4820
E-mail: VYzaguirre@rivcoeda.org

If to the Berger Foundation:
Douglass A. Vance
The H.N. and Frances C. Berger Foundation
P.O. Box 13390
Palm Desert, CA 92255
Phone: (760) 341-5293
E-mail: doug@hnberger.org

IX. Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matter of this Agreement.

X. Severability. In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

XI. Waiver. Failure by a party to enforce the performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's rights to enforce or assert and claims against the other party under the terms of this Agreement thereafter.

XII. Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed in Riverside County, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.

XIII. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California. This

Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

XIV. Counterparts. This Agreement may be signed by the different parties hereto in counterparts, each of which shall be an original but all of which together shall constitute one and the same agreement.

XV. Modification This Agreement shall not be changed, modified, or amended except upon the written consent of the Parties hereto.

SIGNATURE PROVISIONS FOLLOW

IN WITNESS WHEREOF, County and the Berger Foundation have executed this Agreement as of the date first above written.

COUNTY:
County of Riverside, a political
subdivision of the State of California

BERGER FOUNDATION:
H.N. and Frances C. Berger Foundation, a
Delaware corporation

By: _____
John J. Benoit
Chairman, Board of Supervisors

By: _____
Its: _____

ATTEST:
KECIA HARPER-IHEM
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:
Gregory P. Priamos

By:  _____
R. Todd Frahm
Deputy County Counsel

EXHIBIT A
Property



EXHIBIT A

Legal Description

All that certain real property situated in the County of Riverside, State of California, described as follows:

PARCEL A:

That portion of the East one-half of the Southeast one-quarter of Section 28, Township 4 South, Range 8 East, San Bernardino Base and Meridian, in the County of Riverside, State of California, described as follows:

Beginning at the Northeast corner of said East one-half of the Southeast one-quarter of Section 28;

Thence South $00^{\circ} 18' 37''$ East along the Easterly line of said East one-half of the Southeast one-quarter of Section 28 a distance of 1130.07 feet;

Thence South $89^{\circ} 56' 40''$ West a distance of 1324.06 feet to a point on the Westerly line of said East one-half of the Southeast one-quarter of Section 28;

Thence North $00^{\circ} 17' 28''$ West along said Westerly line a distance of 1130.59 feet to the Northwest corner of said East one-half of the Southeast one-quarter of Section 28;

Thence North $89^{\circ} 58' 02''$ East along the Northerly line of said East one-half of the Southeast one-quarter of Section 28 a distance of 1323.85 feet to the Point of Beginning.

Assessor's Parcel No: 694-120-008

PARCEL B:

That portion of the East half of the Southeast one-quarter of Section 28, Township 4 South, Range 6 East, San Bernardino Base and Meridian, in the County of Riverside, State of California, described as follows:

Commencing at the Northeast corner of said East one-half of the Southeast one-quarter of Section 28;

Thence South $00^{\circ} 18' 37''$ East along the Easterly line of said East one-half of the Southeast one-quarter of Section 28 a distance of 1130.07 feet to the True Point of Beginning;

Thence continuing along said Easterly line South $00^{\circ} 18' 37''$ East a distance of 200.00 feet;

EXHIBIT A

Thence South $89^{\circ} 56' 40''$ West a distance of 100.00 feet;

Thence South $00^{\circ} 18' 37''$ East parallel with said Easterly line a distance of 100.00 feet;

Thence North $89^{\circ} 56' 40''$ East a distance of 100.00 feet to a point on said Easterly line;

Thence South $00^{\circ} 18' 37''$ East along said Easterly line a distance of 509.19 feet to a point on the Northerly line of Parcel 0382-002A as conveyed to the City of Palm Desert per instrument No. 238139, recorded July 24, 1995 and re-recorded September 15, 2005 as Instrument No. 2005-763223 both of Official Records: Thence

along said Northerly line the following courses:

South $89^{\circ} 41' 23''$ West a distance of 55.00 feet to the beginning of a nontangent curve, concave Westerly, having a radius of 1545.00 feet, a radial line passing through said point bears North $89^{\circ} 41' 23''$ East;

Thence Southerly along the arc of said curve through a central angle of $05^{\circ} 19' 45''$, an arc distance of 143.70 feet to a point, a radial line passing through said point bears North $84^{\circ} 58' 52''$ West;

Thence nontangent to last curve, South $47^{\circ} 20' 40''$ West a distance of 30.48 feet to the beginning of a nontangent curve, concave Southerly, having a radius of 1068.00 feet, a radial line passing through said point bears North $00^{\circ} 40' 20''$ West;

Thence Westerly along the arc of said curve through a central angle of $23^{\circ} 05' 15''$, an arc distance of 430.35 feet;

Thence tangent to last mentioned curve, South $66^{\circ} 14' 25''$ West a distance of 126.30 feet to the beginning of a tangent curve, concave Northerly, having a radius of 806.00 feet;

Thence Westerly along the arc of said curve, through a central angle of $25^{\circ} 09' 52''$, an arc distance of 354.00 feet to the beginning of a compound curve, concave Northerly, having a radius of 956.00 feet, a radial line passing through said point bears South $01^{\circ} 24' 17''$ West;

Thence Westerly along the arc of said curve through a central angle of $22^{\circ} 21' 41''$, an arc distance of 373.11 feet to a point on the Westerly line of said East one-half of the Southeast one-quarter of Section 28, a radial line passing through said point bears North $23^{\circ} 45' 58''$ East;

EXHIBIT A

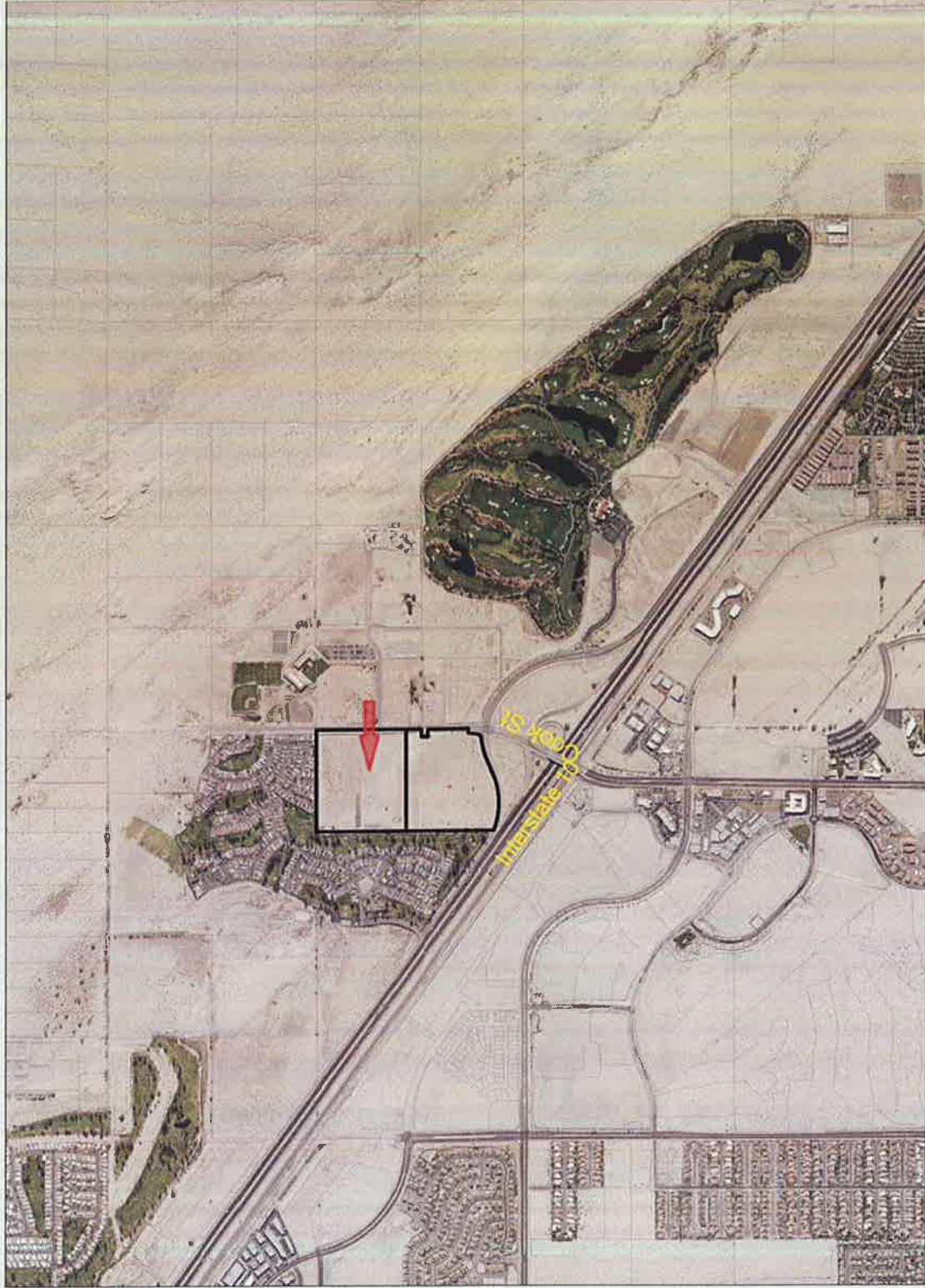
Thence leaving said Northerly line, nontangent to last mentioned curve and along said Westerly line of the East one-half of the Southeast one-quarter, North $00^{\circ} 17' 28''$ West a distance of 1101.01 feet;

Thence North $89^{\circ} 56' 40''$ East, a distance of 1324.06 feet to the True Point of Beginning.

Assessor's Parcel No: 694-120-007

Berger Foundation

Exclusive Negotiation Agreement



Legend

Notes

APNs 694-120-007 & 008

IMPORTANT Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.



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