

**Borrego Water District Board of Directors**  
**Special Meeting**  
**September 10, 2024 @ 9:00 A.M.**  
**806 Palm Canyon Drive**  
**Borrego Springs, CA 92004**

The Borrego Water District Board of Directors meeting as scheduled will be conducted in person and in an electronic format please note BWD is providing remote attendance options solely as a matter of convenience to the public. BWD will not stop or suspend its in-person public meeting should a technological interruption occur with respect to the GoTo meeting or call-in line listed on the agenda. We encourage members of the public to attend BWD meetings in-person at the address printed on page 1 of this agenda. Anyone who wants to listen to or participate in the meeting remotely is encouraged to observe the GO TO MEETING at:

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**I. OPENING PROCEDURES -**

- A. Call to Order
- B. Pledge of Allegiance
- C. Directors' Roll Call: President Dice, Vice \*President Baker, Sec/Treas Johnson and Directors Duncan & Moran.  
**\* Teleconference Available at: 77 Geary Street 5th Floor, San Francisco, CA 94108**
- D. Approval of Agenda
- E. Comments from the Public & Requests for Future Agenda Items (may be limited to 3 min)
- F. Comments from Directors
- G. Correspondence Received from the Public - None

**II. ITEMS FOR BOARD CONSIDERATION AND POSSIBLE ACTION -**

- A. BWD assuming the role of CIVICWELL on its Proposition 68 Projects-G Poole
  - 1. Assume Professional Services Agreement with Michael Baker International – G Poole
  - 2. Use of Cash Flow Assistance – G Poole
- B. Professional Services Agreement with N2W to continue to use Greg Guillen for ongoing WWTP Studies
- C. BWD Minimum Non Restricted Reserve Fund Levels – G Poole/Finance Committee
- D. Borrego Springs Subbasin Watermaster Board – VERBAL D Duncan/K Dice/T Driscoll
  - 1. Update on Board Activities Including 9-12-24 Agenda Items
  - 2. Update on Technical Advisory Committee Activities
  - 3. Potential Change in BS Basin Sustainable Yield & Its Impacts
    - a. Financial – J Clabaugh
    - b. Hydrological – T Driscoll

AGENDA: September 10, 2024: The Borrego Springs Water District complies with the Americans with Disabilities Act. Persons with special needs should call Geoff Poole, General Manager – at (760) 767 – 5806 at least 48 hours in advance of the start of this meeting, in order to enable the District to make reasonable arrangements to ensure accessibility. If you challenge any action of the Board of Directors in court, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Board of Directors (c/o the Board Secretary) at, or prior to, the public hearing.

All Documents for public review on file with the District's secretary located at 806 Palm Canyon Drive, Borrego Springs CA 92004. Any public record provided to a majority of the Board of Directors less than 72 hours prior to the meeting, regarding any item on the open session portion of this agenda, is available for public inspection during normal business hours at the Office of the Board Secretary, located at 806 Palm Canyon Drive, Borrego Springs CA 92004.

### **III. BOARD COMMITTEE REPORTS, IF NEEDED**

#### **STANDING:**

- A. Operations and Infrastructure: Duncan/Baker
- B. Budget and Audit: Dice/Moran
- C. ACWA/JPIA Insurance: Dice/Johnson

#### **AD HOC:**

- A. Prop 68 Implementation: Baker/Johnson
- B. Public Outreach: Dice/Johnson:
- C. Grants: Dice/Johnson
- D. Cyber Security/Risk Management: Baker
- E. Developer's Agreement: Baker/Duncan
- F. Finance: Baker/Moran
- H. Borrego Springs Basin Water Quality: Moran/Johnson
- I. Automated Metering Implementation: Baker/Moran

### **IV. STAFF REPORTS – VERBAL**

- A. End of Year Water Production and Revenue Report - J Clabaugh
- B. Use of Consulting Firm to provide Temporary Employee at Waste Water Treatment Plant Manager during Roy's Vacation Recap– G Poole
- C. Borrego Days update – Geoff Poole

### **V. CLOSED SESSION:**

- A. Conference with Legal Counsel - Potential Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (Two (2) potential cases)
- B. Conference with Legal Counsel – Existing Litigation (Borrego Water District v. All Persons (Groundwater), Orange County Superior Court Case No. 37-2020-00005776
- C. Conference with Real Property Negotiators (Gov. Code §Section 54956.8) Property APN: 120-020-01 & 252-041-20 Agency Negotiator: Geoff Poole, BWD General Manager Negotiating Parties: BWD and ABF as potential buyer Price and Terms of Payment

### **VI. CLOSING PROCEDURE:**

- A. The next Board Meeting is scheduled for 9:00 AM on September 24, 2024, to be available online and in person at 806 Palm Canyon Drive. See Board Agenda at BorregoWD.org for details, Agenda information available at least 72 hours before the meeting.

AGENDA: September 10, 2024: The Borrego Springs Water District complies with the Americans with Disabilities Act. Persons with special needs should call Geoff Poole, General Manager – at (760) 767 – 5806 at least 48 hours in advance of the start of this meeting, in order to enable the District to make reasonable arrangements to ensure accessibility. If you challenge any action of the Board of Directors in court, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Board of Directors (c/o the Board Secretary) at, or prior to, the public hearing.

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BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
SEPTEMBER 10, 2024  
AGENDA ITEM II.A

September 5, 2024

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: BWD assuming the role of CIVICWELL on its Proposition 68 Projects-G Poole

1. Assume Professional Services Agreement with Michael Baker International – G Poole
2. Use of Cash Flow Assistance – G Poole

**RECOMMENDED ACTION:**

Assume Contract and receive update on cash flow assistance.

**ITEM EXPLANATION:**

One of the Basins Proposition 68 Grant Projects was submitted by CIVICWELL. The Project consists of Civic Well under the direction of the Borrego Valley Stewardship Council (BVSC) would improve community understanding of socio-ecological systems, increase the community's ability to engage in basin-wide planning and decision-making, and ensure disadvantaged community member concerns are addressed by attending meetings, submitting public comments, and providing recommendations during the Groundwater Management Plan (GMP) implementation process. In Partnership with Civic Well, the Borrego Valley Stewardship Council will help identify, prioritize, and implement initiatives supporting the Borrego Valley GMP "projects and management actions" to minimize undesirable results. This will "help reverse chronic lowering of groundwater levels" by educating stakeholders on the facts of the basin, the timeline for water reduction and anticipated water quality issues; promote water use efficiency and identify potential land-use policy changes to protect recharge areas. The proposal land-use designations for County Sustainable Land Use Framework. The BVSC would identify priorities based on identified strengths, weaknesses, and opportunities shown by the data collected in support of resiliency.

CIVICWELL no longer has the ability/desire to complete the Project. To ensure that all tasks have been completed on the Project, Staff is recommending BWD assume the obligation and work with ABF. Attached is a memo from BBK regarding the Proposed action and the necessary documents.

CIVICWELL also fell behind on Reimbursement submittals and therefore the Prime Consultant had not been paid and was due \$24,500. Using the previous Board approval of \$20 k and the GM Spending Authority of \$5 k, the outstanding invoice was paid. Not paying the past due invoice would have stopped all work by the Consultant and risked not finishing the Project and risking ineligible expenses from Project tasks/deliverables not being completed.

**NEXT STEPS**

1. Execute Contracts
2. Wait for DWR reimbursement.

**FISCAL IMPACT**

1. Project costs will be reimbursed
2. \$24,500 est. Estimated reimbursement date is in early 2025.

**ATTACHMENTS**

1. BBK Memo and proposed documents

**BBK Comments For  
Borrego Water District Special Board Meeting  
Item II.A**

TO: Board of Directors, Borrego Water District

FROM: Geoff Poole, GM  
Steve Anderson, GC

SUBJECT: Assignment and Consent to Assignment Agreement for Independent Contractor Agreement Between Michael Baker International, Inc. and CivicWell, Notice of Assignment

**RECOMMENDED ACTIONS:**

1. Approve the Assignment and Consent to Assignment Agreement for Independent Contractor Agreement Between Michael Baker International, Inc. and CivicWell
2. Approve the Notice of Assignment of Independent Contractor Agreement with CivicWell to Michael Baker International, Inc.
3. Authorize Board President, or designee, to execute the Assignment
4. Authorize the Board President to sign the Notice

**ITEM EXPLANATION:**

On December 13, 2022, Borrego Water District (District) entered into a \$6,115,833 million dollar grant agreement with the California Department of Water Resources (DWR) for Proposition 68 funding awarded to the District (Grant Agreement). The following year, the District entered into a subgrant agreement with CivicWell, under the direction of the Borrego Valley Stewardship Council, to assist in reimbursing CivicWell for implementing Component 5, Resiliency Strategy, of the Grant Agreement (Subgrantee Agreement).

To assist CivicWell in completing Component 5, CivicWell entered into an Independent Contractor Agreement with Michael Baker International, Inc. (Consultant) on January 1, 2024 (Consultant Agreement), a copy of which is attached hereto and incorporated by reference as Attachment "A." The Agreement provides for Consultant's assistance for the planning, development, and production of a Borrego Springs strategic plan for a community and water resilient future.

1. Assignment and Notice

Because of extenuating circumstances, CivicWell is no longer capable of fulfilling the terms of the Consultant Agreement. In accordance with section V(H) of the Agreement, CivicWell now wishes to assign its rights and obligations under the Consultant Agreement to the District. If accepted, the District would be step into CivicWell's shoes and be bound to fulfill its rights and obligations under the Consulting Agreement.

Section V(H) of the Consulting Agreement does not require prior written consent to any assignment by the Consultant. However, in the spirit of transparency and fairness, a Notice of Assignment of Independent Contractor Agreement with CivicWell to Michael Baker International, Inc. (Notice) has been prepared to be sent to the Consultant, attached hereto and incorporated by reference as Attachment "B." The Assignment also acknowledges the Consultant's consent to this assignment and requires Consultant's signature for execution.

2. Staff requests that the Board of Directors authorize the Board President to execute the Assignment.
3. Staff requests that the Board of Directors authorize the Board President to sign the Notice.

Attachments:

A - Assignment and Consent to Assignment Agreement for Independent Contractor Agreement Between Michael Baker International, Inc. and CivicWell

B - Notice of Assignment of Independent Contractor Agreement with CivicWell to Michael Baker International, Inc.

**ASSIGNMENT AND CONSENT TO ASSIGNMENT AGREEMENT  
FOR  
INDEPENDENT CONTRACTOR AGREEMENT BETWEEN  
MICHAEL BAKER INTERNATIONAL, INC. AND CIVICWELL**

**THIS ASSIGNMENT AND CONSENT TO ASSIGNMENT AGREEMENT** (“Consent”) is made as of this [REDACTED] day of [REDACTED], 2024 (“Effective Date”), by and between Michael Baker International, Inc. (“Consultant”), CivicWell, a California nonprofit public benefit corporation (“Assignor”), and Borrego Water District, water district duly organized and validly existing under the laws of the State of California (“Assignee”). Consultant, Assignor and Assignee may be individually referred to herein as a “Party,” and collectively referred to as the “Parties.”

**RECITALS**

- A. Consultant and Assignor have entered into the Independent Contract Agreement, dated January 1, 2024 (the “ Agreement”), for Consultant’s assistance for the planning, development, and production of a Borrego Springs strategic plan for a community and water resilient future. A copy of the Agreement is attached hereto as Exhibit “A” and incorporated herein by this reference.
- B. Assignor now desires to assign to Assignee all of its rights, duties, and obligations in, to, and under the Agreement (“Assignment”).
- C. Assignor and Assignee desire to obtain Consultant’s consent to the Assignment and Consultant is willing to consent to the Assignment on the following terms and conditions.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Consent, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows.

**AGREEMENT**

1. **Assignment, Assumption and No Release.** Assignor hereby assigns all of Assignor’s rights, title and interest in and to the Agreement to Assignee. Assignee expressly assumes, acknowledges and agrees to be bound by, and to perform and comply with, every obligation of Assignor under the Agreement. Consultant shall have the same rights and remedies as against the Assignee as Consultant under the terms and provisions of the Agreement has against Assignor with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. Assignee shall have the same rights and remedies as against the Consultant as Assignor under the terms and provisions of the Agreement has against Consultant with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full

2. **References.** All references and meaning assigned to the term “CivicWell” in the Agreement shall be understood to mean Assignee and shall include all of the corresponding rights, obligations and benefits thereof as provided by this Consent and the Agreement.

3. **Subsequent Assignments.** This Consent does not constitute a consent to any subsequent assignment. Notwithstanding the foregoing, Assignee may consent to subsequent assignments of the Agreement.

4. **Termination.** Notwithstanding the parties’ desire, intent and agreement to modify the Agreement through the Assignment and this Consent, should the Consultant or Assignee, at its sole discretion, wish to cancel, void or terminate the Agreement at any future time, the terminating party may do so by providing written notice of termination to the other party in accordance with the termination provisions of the Agreement. In such an event, simultaneously upon the giving of written notice of termination in accordance with the terms of the Agreement, the Agreement and this Consent shall be deemed canceled, voided and terminated.

5. **Effect of Execution.** Assignee’s execution of this Consent shall be deemed an execution by Assignee of the Agreement. Upon execution of this Consent, Assignee shall be deemed a signatory and party to the Agreement as if Assignee had directly executed the Agreement. Assignee agrees to be firmly bound by all covenants, obligations and conditions of the Agreement by its execution hereunder.

6. **General Provisions.**

6.1 **Invalidity.** If this Consent or the Assignment is determined by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, the Agreement as originally executed shall nevertheless be deemed to remain in full force and effect as if this Consent and the Assignment had not been made or attempted.

6.2 **Severability.** If any term or other provision of this Consent is determined by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Consent shall remain in full force and effect.

6.3 **Governing Law.** This Consent will be construed in accordance with and will be governed by the laws of the State of California. Venue shall be in Riverside County, California.

6.4 **Notices.** Notices, offers, requests or other communications required or permitted to be given by the parties pursuant to the terms of this Consent shall be given in writing to the respective parties.

6.5 **Counterparts.** This Consent may be executed in counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

**6.6 Binding Effect; Assignment.** This Consent shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors, and nothing in this Consent, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Consent. Consultant may not assign this Consent nor any rights or obligations hereunder, without the prior written consent of Assignee, and any such assignment shall be void.

**6.7 Authority.** Each of the parties hereto represents to the other parties that (a) it has the requisite power and authority to execute, deliver and perform this Consent; (b) the execution, delivery and performance of this Consent by it have been duly authorized by all necessary corporate or other actions; (c) it has duly and validly executed and delivered this Consent; and (d) this Consent is a legal, valid and binding obligation, enforceable against it in accordance with its terms.

**6.8 Interpretation.** The headings to sections contained in this Consent are included for reference purposes only and shall not affect or modify in any way the meaning or interpretation of this Consent.

**6.9 Waiver.** Except as explicitly stated in this Consent, nothing contained in this Consent will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in the Agreement.

**6.10 Entire Agreement; Amendment.** This Consent constitutes the final, complete and exclusive statement between the parties to this Consent pertaining to the terms of Consultant's consent to the Assignment, and supersedes all prior and contemporaneous written and oral agreements. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Consent. Any agreement made after the date of this Consent is ineffective to modify, waive or terminate this Consent, in whole or in part, unless that agreement is in writing, is signed by the Consultant and Assignee, and specifically states that agreement modifies this Consent.

**[SIGNATURES ON FOLLOWING PAGE]**



**SIGNATURE PAGE TO  
ASSIGNMENT AND CONSENT TO ASSIGNMENT AGREEMENT  
FOR  
INDEPENDENT CONTRACTOR AGREEMENT BETWEEN  
MICHAEL BAKER INTERNATIONAL, INC. AND CIVICWELL**

**WHEREFORE**, the City, Assignor and Assignee have executed this Consent as of the Effective Date first set forth above.

**FOR MICHAEL BAKER INTERNATIONAL, INC.:**      **FOR CIVICWELL:**

APPROVED BY:

\_\_\_\_\_  
**[INSERT NAME/POSITION]**

APPROVED AS TO FORM:

\_\_\_\_\_  
**[INSERT NAME/POSITION]**

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

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

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

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

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

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

**FOR ASSIGNEE:**

**BORREGO WATER DISTRICT**

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

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

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

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

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

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

**EXHIBIT "A"**

**INDEPENDENT CONTRACTOR AGREEMENT BETWEEN  
MICHAEL BAKER INTERNATIONAL, INC. AND CIVICWELL**

## EXHIBITS

Exhibit A – Services

Exhibit B – Description of Compensation

Exhibit C – Reimbursable Expenses

Exhibit D – Timeline

### **EXHIBIT A – SCOPE OF SERVICES**

The Consultant will lead a community visioning and planning process and develop and produce a Borrego Springs strategic plan for a community- and water-resilient future. Plan components will include:

- Summary of existing conditions
- Summary of community and stakeholder engagement, input, and feedback
- Framework plan with strategies and recommendations for water-efficient and sustainable land use, transportation, and community design
- Illustrative concepts for a cohesive community center with incremental infill and well-connected neighborhoods
- A community vision statement with goals, objectives, recommendations, and actions to support groundwater and community resiliency and sustainability. Actions will include next steps for projects, policies, and improvements, both short and long-term, to advance the strategic plan

CivicWell, in close coordination and collaboration with the Borrego Valley Stewardship Council (BVSC), will assist with project management, lead outreach, meeting, and event planning, timing, and logistics, assist with agendas, outreach, and education materials, and assist with facilitation and documentation.

The Consultant will perform the following services to develop the plan:

#### **Task 1: Community Visioning & Engagement Planning**

The Consultant, with organizing and facilitation support from CivicWell, will be responsible for leading a community visioning process focused on sustainable groundwater and overall community development and design. The visioning process will include at a minimum 3 Town Halls to support interactive community engagement and identification of issues of community-wide importance.

Deliverable(s)

- Final plan and design for Town Hall series, including goals and desired outcomes, agendas, formats, activities, and materials.
- A report summarizing findings, and recommendations resulting from the community visioning process.

#### **Task 2: Existing Conditions/Basin Characterization White Paper**

Description: The consultant, in coordination with CivicWell, will support the development of a basin characterization white paper summarizing research by the region's experts. The consultant

will inventory and review local and regional plans, policies, and projects that address natural resources/environmental characteristics, planning, and governance to inform the community visioning process and the identification and prioritization of issues, opportunities, and community priorities for Borrego Springs and the groundwater basin. The consultant will compile and examine the built environment in Borrego Springs (e.g. existing infrastructure and local and regional development patterns impacting Borrego Springs and the basin).

Deliverable(s)

- Summary of the local and regional built environment
- Summary of land use policy and regulatory framework
- Documentation of basin monitoring and evaluation roles, responsibilities, and decision-making protocols from authorities such as BWD, the GMP, technical consultants to parties in the basin, and other key federal, state, and San Diego County entities.

**Task 4: Agency Coordination**

The consultant will support CivicWell with meetings and presentations to the Borrego Springs Community Sponsor Group, Water Master Board, and County staff (agency and supervisor)

Deliverable(s)

- Participation in approximately 2 to 3 meetings
- Presentation of findings from the community visioning process and basin characterization

**Task 5: Coordination with Land Use Planning**

The consultant will assist CivicWell with the development of one or more surveys for distribution to a representative spectrum of interested parties (homeowners and renters, business owners, property owners, utilities, visitors, etc.) to inform a community vision data set and narrative. The consultant will prepare materials and facilitate Town Halls related to community visioning, an overview of existing conditions based on Task 2 and other research and documentation, and the draft and final versions of the strategic plan.

Deliverable(s)

- Survey questions
- Draft and final plans

**EXHIBIT B – DESCRIPTION OF COMPENSATION**

Consultant will receive no more than \$53, 200.00 for performance of the Services.

<b>Tasks</b>	<b>Budget</b>
Task 1. Planning	\$3,600.00
Task 2. Watershed/Basin Characterization	\$20,000.00
Task 4. Sponsor Group Coordination	\$4,600.00
Task 5. Coordination with Land Use Planning	\$25,000.00
<b>Total</b>	<b>\$53,200.00</b>

**EXHIBIT C – REIMBURSABLE EXPENSES**

There are no reimbursable expenses under this Agreement. All costs related to transportation, reproduction, and other expenses are to be paid by the Consultant.

**EXHIBIT D – TIMELINE**

All Services enumerated under Task 1 and Task 2 in Exhibit A are to be completed by **4/30/2024**.

Services enumerated under Task 4 and Task 5 are to be completed by **3/31/2025**.

The anticipated project timeline with major milestones is as follows, subject to change in timing and format for stakeholder and community engagement due to COVID-19:

<b>Deliverables</b>	<b>Category Start</b>	<b>Category End</b>	<b>Deliverable Due</b>
<b>(b) Environmental/Engineering/Design</b>	10/01/2023	5/30/2024	
Final plan and design for Town Hall series, including goals and desired outcomes, agendas, formats, activities, and materials			4/30/2024
Summary of the local and regional built environment Summary of land use policy and regulatory framework			5/30/2024
Documentation of Basin Monitoring & Evaluation Roles, Etc.			4/30/2024
<b>(e) Education / Outreach</b>	10/01/2023	4/30/2025	
Participation in approximately 2 to 3 meetings			3/31/2025
Presentation of basin characterization and findings from the community visioning process			3/31/2025
Survey questions			3/31/2025
Draft and final plans			3/31/2025
Copy of Town Hall Presentation Materials			3/31/2025

[INSERT BWD LETTERHEAD]

August [REDACTED], 2024

Howard Blackson  
Project Manager  
Michael Baker International Inc.  
100 Airside Drive  
Moon Township, PA 15108  
[Howard.blackson@mbakerintl.com](mailto:Howard.blackson@mbakerintl.com)

**Re: Notice of Assignment of Independent Contractor Agreement with CivicWell**

Dear Mr. Blackson,

As you know, Michael Baker International Inc. (Consultant) entered into a certain Independent Contractor Agreement with CivicWell, dated January 1, 2024, for Consultant's assistance for the planning, development, and production of a Borrego Springs strategic plan for a community and water resilient future (Agreement). A copy of this Agreement is attached hereto as Exhibit "A" and incorporated by reference.

The purpose of this letter is to provide formal notice to Consultant that CivicWell will assign its rights under the Agreement to Borrego Water District (District), a water district duly organized and validly existing under the laws of the State of California. The District will be stepping into the shoes of CivicWell in performance of the Agreement. As such, the terms of the Agreement shall not be amended as a result of this assignment.

As set forth in Section H of the Agreement, such an assignment does not require the express consent of the Consultant. Nevertheless, we would like to extend the opportunity to Consultant to consent to this subsequent assignment. Please see the Assignment and Consent to Assignment Agreement for the Independent Contractor Agreement between Michael Baker International, Inc. and CivicWell, attached hereto as Exhibit "B" and incorporated by reference, for your review and signature.

The District looks forward to working with you in these future endeavors. Should you have any questions, please feel free to contact me.

Sincerely,

Geoff Poole

**[INSERT BWD LETTERHEAD]**

**EXHIBIT A**

**[INSERT BWD LETTERHEAD]**

**EXHIBIT B**



BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
SEPTEMBER 10, 2024  
AGENDA ITEM II.B

September 5, 2024

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Professional Services Agreement with N2W to continue to use Greg Guillen for ongoing WWTP Studies

**RECOMMENDED ACTION:**  
Approve Proposed Contract

**ITEM EXPLANATION:**

BWD Waste Water Treatment Plant (WWTP) Consultant, Greg Guillen, is no longer with Dudek and has moved to N2W. Due to Gregs expertise on our specific WWTP and the current process to study various issues associated with our existing Discharge Permit (TDS and Nitrogen Studies), staff is recommending we transition from Dudek to N2W for Project completion. The rates for N2W are very close to Dudeks and actually slightly lower on most classifications we would be using.

**NEXT STEPS**

1. Sign Contract and continue working on TDS and Nitrogen studies. Greg will be present an October Board Meeting.

**FISCAL IMPACT**

1. \$15,000.00

**ATTACHMENTS**

1. BORREGO WATER DISTRICT – N2W ENGINEERING, INC. PROFESSIONAL SERVICES AGREEMENT

**BORREGO WATER DISTRICT – N2W ENGINEERING, INC.  
PROFESSIONAL SERVICES AGREEMENT**

1. Parties and Date.

This Agreement is made and entered into this \_\_\_\_\_ day of [insert month], 2024, by and between Borrego Water District (“BWD”) and N2W ENGINEERING, INC. (N2W), a California corporation] (“Consultant”), whose address is Corporate Office: 3240 El Camino Real, Suite 150, Irvine, California 92602 Mail: PO Box 60472, Irvine, California 92602. BWD and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

a. Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by BWD on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing engineering support for the WDR Special Provisions 2 and 3 Project (“Project”), is licensed in the State of California, and is familiar with the plans of BWD.

b. Project.

BWD desires to engage Consultant to render provide engineering support for the WDR Special Provisions 2 and 3 Project (“Project”). (“Project”) on behalf of BWD (“District”).

3. Terms.

a. Services. Consultant will provide to BWD consulting services related to those customarily performed by a water agency District Engineer and general engineering services to BWD. *The scope of these services will be developed, in writing, with consent of BWD and Consultant.*

b. Term. The term of this Agreement shall be for an unlimited term unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

c. Compensation. BWD agrees to compensate Consultant for their services as outlined in the Fee Schedule described in Exhibit “A” attached hereto and incorporated herein by reference.

d. Insurance. BWD shall require the Consultant to procure and maintain, at its own expense, for the duration of the Agreement a general liability insurance policy in the amount of two million dollars against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the

Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall give both BWD and the Consultant insured status.

e. General Provisions.

i. Termination of Agreement. BWD may terminate the whole or any part of this Agreement at any time and without cause by giving written notice of such termination, and specifying the effective date thereof, which shall be at least thirty (30) days before the effective date of such termination. Consultant may terminate this Agreement by giving written notice of such termination, and specifying the effective date thereof, which shall be at least one hundred twenty days (120) days before the effective date of such termination, or less if jointly agreed upon by the Parties.

ii. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:** N2W Engineering, Inc.  
**Corporate Office:** 3240 El Camino Real, Suite 150, Irvine, CA 92602

**Mail:** PO Box 60472, Irvine, California 92602  
Mobile: (909) 557-0852

**BWD:** Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, CA 92004  
Attn: Geoff Poole, General Manager  
Phone: (760) 767-5806

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

iii. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

iv. Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

v. Indemnification. Consultant agrees to defend, indemnify and hold BWD, its officials, officers, employees, volunteers and agents free and harmless from any

and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to the Services provided by the Consultant under the Project.

vi. Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

vii. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

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

ix. Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of BWD. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

x. Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to the Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to BWD include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

xi. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

xii. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

xiii. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

xiv. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

xv. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

xvi. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

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

**BORREGO WATER DISTRICT**

**N2W Engineering, Inc.**

By: \_\_\_\_\_  
Geoff Poole  
General Manager

By: \_\_\_\_\_  
Greg Guillen  
Ph.D., P.E., Principal

**EXHIBIT A**

**Rate Sheet**

**Attached**



BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
SEPTEMBER 10, 2024  
AGENDA ITEM II.C

September 5, 2024

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: BWD Minimum Non Restricted Reserve Fund Levels – G Poole/Finance Committee

**RECOMMENDED ACTION:**

Review Updated Cash Flow, discuss related issues and direct staff as deemed appropriate

**ITEM EXPLANATION:**

Using conservative/worst case scenario estimates, BWDs Non Restricted Reserves dip to approximately \$500 k in the next 5 yrs, due to \$5.5 M in water right purchases, declining water sales and increased expenses. The biggest impact is from water right purchases that include initial cash payments of approximately \$2.5 M plus future annual payments of \$3 M dramatically impacts BWD Reserves. BWD created a Tier 3 in its rate structure and plans to use it as the primary funding source to pay back the money internally borrowed from existing BWD Reserves and used on water right purchases.

Due to the extremely low levels of the total reserves, Staff would like to consider adding a component in the upcoming rate changes to accelerate payback. By increasing rates for this purpose, the future minimum reserve fund levels would not be as low. The vital question is, what are the rate impacts from accelerating the payback?

Staff and Raftelis have begun to update and provide inputs to the complex model that will be used for rate setting as part of Prop 218 process. In the next 45-60 days, the first version of the Model will be available and allow for us to look at the estimated rate impacts of various Reserve Fund replenishment rates, ranging from nothing up to whatever scenario we feel should be evaluated.

Using the Model will allow us to answer the question at hand: What are the acceptable minimum reserves in future years that . If \$500 k is OK, then theoretically BWD would not need to raise rates to accelerate the payback and build up reserves. However, if the acceptable minimum is higher than \$500 k, a rate increase would be needed and the Model can provide an accurate estimate.

To put rate increase impacts into perspective, 1,400 afy in sales equals approx. 600,000 units per year, so a \$1.00 rate increase would generate \$600,000/yr. The existing Reserve Policy will not change in the future as part of this Process. BWD will keep all of our existing “cookie jars” for various Reserve Funds, its just most jars will be low/empty for a while. How to allocate the cookies we have left over as we spend as well as how to allocate the incoming cookies during replenishment are other issues for future discussion.

BWD will take all appropriate measures to avoid going as low as \$500 K, but we need to be prepared. If BWD reached the point where reserves could not support expenses, the use of traditional financial markets is a possibility. Information from our Financial Advisor, Fieldman Rolapp re: options for “emergency” funding from the traditional markets follows.

No decision is being requested at this time. The intent of this Agenda item is to outline the issue, update the Board on the suggested process going forward and begin the discussion.



Hi Geoff

I have completed some additional research into your questions and attached a few items for consideration.

The first three attachments relate to the potential issuance of long-term debt in the private placement market; this process would take around three months to complete with fees of around \$140,000. I spoke with BB&K and depending on the amount of work involved with the land acquisition agreement with David Bauer, the fees for Counsel may need to be higher than currently projected (if the debt issuance is to fund the water purchase). Recent research has identified the District can issue 15-year debt ranging from 4.35% - 4.60% or 20-year debt ranging from 4.50% - 4.75% to finance tax-exempt capital projects; please see attached for the estimated numbers for a 15-year debt issuance at 4.6% and 20-year debt issuance at 4.75% to fund \$3 million in capital projects.

I spoke with a few banks regarding a line of credit to fund tax-exempt eligible capital projects; the size of the line of credit being \$3 - \$5 million was a constraining factor. Some banks would not be able to provide bids and others would offer higher rates. The fees for the LOC would be similar to the long-term debt at around \$140,000 but would cost around 5.6% - 5.7% based on the current SOFR variable rate with an additional fee ranging from 0.50% - 0.65% for any unutilized principal. The line of credit would take between 60-90 days – please see fourth attachment. We should discuss the amount of capital needs for the District and if there are other projects that would benefit from debt financing.

It may be helpful to go through the District's options over the phone. Let us know your availability over the next couple weeks.

Thank you and have a good weekend!

**Lora Nichols (previously Carpenter)**

Vice President

Fieldman, Rolapp & Associates, Inc.

This information above is valuable for estimating future costs of issuance and interest rates, if needed. Staff feels its premature to pursue the traditional markets at this time. The short term goal is to take steps now to minimizing the future dip in Reserves 5 years away. The steps we can take now include consider replenishing BWD Reserves as part of the ongoing Prop 218 process, pursues waiver of 20% cost share on EPA Grant #2 in 2025, minimize cash expenses where possible and others steps. In addition, Staff is evaluating other options to using traditional markets and will share with the Board if the concepts prove to be worthy of consideration.

#### **NEXT STEPS**

1. Continue to Monitor Revenues and Expenses and Report to the Board monthly.
2. In 45-60 days, provide model runs to show the impact of accelerating Reserve Fund repayment
3. Staff continue to evaluate alternatives to traditional markets and inform the Board of viable alternatives

#### **FISCAL IMPACT**

1. TBD

#### **ATTACHMENTS**

1. None

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
SEPTEMBER 10, 2024  
AGENDA ITEM II.D

September 5, 2024

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Borrego Springs Subbasin Watermaster Board – VERBAL D Duncan/K Dice/T Driscoll

1. Update on Board Activities Including 9-12-24 Agenda Items
2. Update on Technical Advisory Committee Activities
3. Potential Change in BS Basin Sustainable Yield & Its Impacts
  - a. Financial – J Clabaugh
  - b. Hydrological – T Driscoll

**RECOMMENDED ACTION:**

Discuss upcoming Watermaster related activities

**ITEM EXPLANATION:**

BWD Representatives from the Watermaster and TAC will provide a review of recent events and an update on upcoming meetings including a review of the Agenda for September 12.

Jessica and Trey will also share their thoughts on the proposed increase in Sustainable Yield.

**NEXT STEPS**

1. TBD

**FISCAL IMPACT**

1. TBD

**ATTACHMENTS**

1. None