

Received _____
Examined _____

CLASS D
WATER UTILITIES

U# WTD-390

2019
ANNUAL REPORT
OF

LIVE OAK SPRINGS WATER COMPANY

(NAME UNDER WHICH CORPORATION, PARTNERSHIP, OR INDIVIDUAL IS DOING BUSINESS)

P.O. BOX 1241 BOULEVARD, CA 91905

(OFFICIAL MAILING ADDRESS)

ZIP

TO THE
PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
FOR THE YEAR ENDED DECEMBER 31, 2019

REPORT MUST BE FILED NO LATER THAN MARCH 31, 2020

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INSTRUCTIONS

1. Two completed and signed hard copies of this report and one electronic copy must be filed **NO LATER THAN MARCH 31, 2020**, with:

CALIFORNIA PUBLIC UTILITIES COMMISSION
WATER DIVISION
ATTN: BRUCE DEBERRY
505 VAN NESS AVENUE, ROOM 3105
SAN FRANCISCO, CALIFORNIA 94102-3298
bmd@cpuc.ca.gov

2. Failure to file the report on time may subject a utility to the penalties and sanctions provided by the Public Utilities Code.
3. The Declaration on Page 22 must be signed by an authorized officer, partner, or owner.
4. The report must be prepared in accordance with the CPUC Excel annual report template. The Excel file and a PDF of the file is to be submitted to the Commission.
5. The report must be filled in, and every question answered. **LEAVE NO SCHEDULE BLANK.** Insert the words "none" or "not applicable" or "n/a" when appropriate. When entering dollar amounts, enter whole dollars.
6. Certain balance sheet and income statement accounts refer to supplemental schedules. Complete the supplemental schedules **FIRST**. The balances in these schedules will then auto-fill the appropriate boxes in the balance sheet/income statement. Total and subtotal boxes are automatically summed in Excel. Auto-filled and summed boxes are Excel locked and identified by a light coloring of the box. Uncolored boxes can be manually filled. Complete the statements by filling in the uncolored boxes where appropriate.
7. Some schedules provide for a "balance at beginning of year." The amount shown should agree with the "balance at end of year" as shown in the report for the previous year. If there is a difference, it should be explained by footnote.
8. When there is insufficient space in a schedule to permit a complete statement of the requested information, insert sheets should be prepared and identified by the number of the schedule to which it refers. Be certain that the inserts are securely attached to the report. If inserts are needed, prepare all inserts in one separate electronic file in Microsoft Excel format and file it with the electronic file of this report.
9. This report must cover the calendar year from January 1, 2019, through December 31, 2019. Fiscal year reports will not be accepted.

CLASS D WATER UTILITIES
(HAVING LESS THAN 500 SERVICE CONNECTIONS)

LIVE OAK SPRINGS WATER COMPANY

(Name under which corporation, partnership or individual is doing business)

P.O. BOX 1241 BOULEVARD, CA. 91905

(Official mailing address)

(Service Area - Town and County)

Responsible Party (RP): Richard M Kipperman, Chapter 11 Bankruptcy Trustee of Live Oak Holding LLC

Telephone Number of RP: 619-668-4500 **Fax Number:** 619-668-9014

Email Address of RP: rmk@corpmtg.com

GENERAL INFORMATION

(Attach a supplementary statement, if necessary)
RETURN ORIGINAL TO COMMISSION, NO PHOTOCOPIES.

1. If a corporation show:
(A) Date of organization October 18, 2002 incorporated in the State of NEVADA

(B) Names, titles and addresses of principal officers:
Nazar Najor - 37715 Royal Oak Place, P.O. Box 1321, Boulevard, CA 91905; Daniel Najor - 1625 Highland Cove,
Solana Beach, CA 92075; and Lauren Najor - 37715 Royal Oak Place, P.O. Box 1321, Boulevard, CA 91905
(Live Oak Holding LLC)

2. If unincorporated provide the name and address of the owner(s) or the partners:

3. Name, title, and telephone number of:
(A) One person listed above to receive correspondence: NONE - See Disclosure Statement
(B) Person responsible for operations and services: RICHARD M KIPPERMAN, BANKRUPTCY TRUSTEE

4. Were any contracts or agreements in effect with any organization or person covering service, supervision and/or management of your business affairs during the year? (Yes or No) YES
If so, what was the nature and the amount of each payment made under the agreement, to whom were payments made, and to what account was each payment charged?
Payments were made from the bankruptcy general banking account monthly through October 2019 to Rocky Vanderiff.
As noted in disclosure statement, operational management then transitioned to County of San Diego, with
bankruptcy trustee oversight (See also Exhibits A and B).

5. State the names of associated companies or persons which, directly or indirectly, or through one or more intermediaries, control, or are controlled by, or are under common control with respondent:

PUBLIC HEALTH STATUS

- 6. Has state or local health department inspection been made during the year?
- 7. Are routine laboratory tests of water being made?
- 8. Has state health department water supply permit been obtained? (Indicate date)
- 9. If no permit has been obtained, state whether application has been made and when.
- 10. Show expiration date if state permit is temporary.

Yes	No	Latest Date
X		05/07/19 see Exhibit A
X		Unknown
X		Unknown

11. List Name, Grade, and License Number of all Licensed Operators:
Rocky Vandergriff aka Water Treatment Services, grade T3 certified, Class D1 Distribution License no. 16966,
class 3 water treatment license.
Water Quality Specialists, grade T1 certified, Class D1 Distribution License (See Exhibit B)

12. This annual report was prepared by:
Name of firm or consultant: Squar Milner LLP, accountants to Chapter 11 Bankruptcy Trustee
Address of firm or consultant: 3655 Nobel Drive, Suite 300, San Diego, CA 92122
Phone Number of firm or consultant: 858-597-4100

In re: Live Oak Holding, LLC
Live Oak Enterprises, LLC dba Live Oak Springs Water Company
U.S.B.C. Case No.: 13-11672-LT11
Disclosure Statement to 2019 PUC Annual Report

Live Oak Holding, LLC dba Live Oak Enterprises, LLC dba Live Oak Springs Water Company (“Debtor”) filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code (Case No. 13-11672-LT11, on file with the United States Bankruptcy Court in the Southern District of California) on December 3, 2013. On January 30, 2014, Richard M Kipperman (“Trustee”) was appointed chapter 11 trustee.

At the time of the bankruptcy filing, the Debtor owned more than 100 acres of land near Boulevard, California with multiple businesses operating on the property including a gas station and market (operated by third party tenants), campground, resort, restaurant and bar, off-road vehicle race track, RV park and a mobile home park. The Debtor also owned and operated a water utility (“Water Company”) on the property.

Prior to the bankruptcy filing and appointment of the Trustee, the Debtor was involved in multiple litigation cases related to the regulation of the Water Company and contracts regarding the ownership of revenues and related responsibility for the maintenance of land and equipment. On May 23, 2012, the San Diego Superior Court appointed Matthew Semmer (“Receiver”) as receiver over the Debtor and all operations of the businesses. The court’s appointment of the Receiver as well as the litigation issues contributed to the Debtor’s bankruptcy filing.

The Trustee wishes to disclose the following limitations involved in the preparation of the Water Company’s annual report for the year ended December 31, 2019:

- The Trustee commenced oversight of the Debtor’s operations upon his appointment. Pursuant to bankruptcy court approval, certain insiders of the Debtor continued to work in its operations under his supervision. These insiders prepared and filed prior annual reports with the California Public Utilities Commission on behalf of the Debtor. This is the first annual report prepared by the Trustee and his professionals without the involvement of the Debtor’s former representatives.
- As a part of the bankruptcy case, the Trustee provides monthly cash receipts and disbursements reporting to the bankruptcy court. The accompanying 2019 annual report is based upon information included in the Debtor’s monthly operating reports filed in bankruptcy court as well as information obtained from available financial records and data provided by third parties.
- The Trustee has not verified the information carried forward used to report prior income and expense items, and therefore, cannot provide any assurances as to the validity or accuracy of the information carried forward from historical financial information as previously reported on annual reports prepared by, or with the assistance of, representatives of the Debtor.

In re: Live Oak Holding, LLC
Live Oak Enterprises, LLC dba Live Oak Springs Water Company
U.S.B.C. Case No.: 13-11672-LT11
Disclosure Statement to 2019 PUC Annual Report

- The Trustee is in the process of liquidating the Debtor’s remaining assets. In prior years, the Trustee sold real property and business assets on behalf of the Debtor’s bankruptcy estate such that the only remaining significant asset in the bankruptcy estate is the Water Company.
- In October 2019, the bankruptcy court approved an operating agreement entered into between the County of San Diego (“County”) and the Trustee. In March 2020, the bankruptcy court entered an order approving the sale of substantially all of Water Company’s assets to the County pending approval by the California Public Utilities Commission (“CPUC”). Notice of the motion to approve the operating agreement and the sale motion were provided by the Trustee to the CPUC, and counsel for the CPUC attended the bankruptcy court hearing on approval of the operating agreement. See Exhibits A and B for more information.
- Because day-to-day operations of the Water Company were managed first by the Debtor’s insiders, followed by the County, during 2019, certain information has been reported as “unknown” or utilizing prior year information.

This report has been prepared based upon the best information available at this time and has been prepared based on the Trustee’s reasonable good faith efforts under the circumstances. However, the Trustee can provide no assurance as to the completeness or accuracy of the information relied upon in the preparation of this report, other than that obtained from the Trustee’s own records. If the Trustee receives additional and/or more accurate information, an amended report will be prepared, if appropriate.

Excess Capacity and Non-Tariffed Services

NOTE: In D.00-07-018, D.03-04-028, and D. 04-12-023, the CPUC set forth rules and requirements regarding water utilities provision of non-tariffed services using excess capacity. These decisions require water utilities to: 1) file an advice letter requesting Commission approval of that service, 2) provide information regarding non-tariffed goods/services in each companies Annual Report to the Commission.

Based on the information and filings required in D.00-07-018, D.03-04-028, and D.04-12-023, provide the following information by each individual non-tariffed good and service provided in 2019:

Applies to All Non-Tariffed Goods/Services that require Approval by Advice Letter											
Row No.	Description of Non-Tariffed Goods/Services	Active or Passive	Total Revenue Derived from Non-tariffed Goods/ Services (by account)	Revenue Account Number	Total Expenses Incurred to Provide Non-tariffed Goods/ Services (by account)	Expense Account Number	Advice Letter and/or Resolution Number Approving Non-tariffed Goods/ Services	Total Income Tax Liability Incurred Because of Non-tariffed Goods/ Services (by account)	Income Tax Liability Account Number	Gross Value of Regulated Assets Used in the Provision of a Non-tariffed Goods/ Services (by account)	Regulated Asset Account Number
1	n/a										
2											
3											
4											
5											
6											
7											
8											
9											
10											

**SCHEDULE A
BALANCE SHEET
Assets and Other Debits**

Line No.	Acct. No.	Title of Account (a)	Schedule Number (b)	Balance End of Year (c)
1		UTILITY PLANT		
2	101	Water Plant in Service (Excluding SDWBA/SRF, Grant Funds)	A-1, A-1a	\$ 440,943
3	101.1	Water Plant in Service - SDWBA/SRF	A-1, A-1b	-
4	101.2	Water Plant in Service - Grant Funds	A-1, A-1c	-
5	101.3	Water Plant in Service - Other	A-1	-
6	103	Water Plant Held for Future Use	A-1	-
7	104	Water Plant Purchased or Sold	A-1	-
8	105	Construction Work in Progress - Water Plant	A-1	-
9	105.1	Construction Work in Progress - SDWBA/SRF	A-1	-
10	105.2	Construction Work in Progress - Grant Funds	A-1	-
11	105.3	Construction Work in Progress - Other	A-1	-
12	114	Water Plant Acquisition Adjustments	A-1	-
13		Total Utility Plant		\$ 440,943
14	108	Accumulated Depreciation of Water Plant	A-2	(162,046)
15	108.1	Accumulated Amortization of SDWBA/SRF loan	A-2	-
16	108.2	Accumulated Depreciation of Water Plant - Grant Funds	A-2	-
17	108.3	Accumulated Depreciation of Water Plant - Other	A-2	-
18		Total Accumulated Depreciation/Amortization		\$ (162,046)
19		Net Utility Plant		\$ 278,897
20				
21		INVESTMENTS		
22	121	Non-utility Property and Other Assets		322
23	122	Accumulated Depreciation of Non-Water Utility Property	A-2	-
24		Net non-utility property		\$ 322
25	123	Investments in Affiliated Companies		
26	124	Other Investments		
27		Total Investments		\$ 322
28				
29		CURRENT AND ACCRUED ASSETS		
30	131	Cash		10,909
31	132	Cash - Special Deposits		
32	141	Accounts Receivable - Customers		9,333
33	142	Receivables from Affiliated Companies		
34	143	Accumulated Provision for Uncollectible Accounts		
35	151	Materials and Supplies		3,254
36	174	Other Current Assets		1,686
37		Total current and accrued assets		\$ 25,182
38				
39	180	Deferred Charges		
40	181	Accumulated Deferred Income Tax Assets		
41				
42		Total Assets and Other Debits		\$ 304,401

**SCHEDULE A
BALANCE SHEET
Liabilities and Other Credits**

Line No.	Acct. No.	Title of Account (a)	Schedule Number (b)	Balance End of Year (c)
1		CORPORATE CAPITAL AND RETAINED EARNINGS		
2	201	Common Stock	A-3	-
3	204	Preferred Stock	A-4	-
4	206	Subchapter S Corporation Accumulated Adjustments Account	A-6	-
5	211	Other Paid-in Capital	A-7	-
6	215	Retained Earnings	A-8	-
7		Total corporate capital and retained earnings		-
8				
9		PROPRIETARY CAPITAL		
10	218	Proprietary Capital	A-9	117,507
11				
12		LONG TERM DEBT		
13	224	Long-term Debt	A-10	-
14				
15		CURRENT AND ACCRUED LIABILITIES		
16	230	Payables to Affiliated Companies		
17	231	Accounts Payable		
18	232	Short-term Notes Payable		126,818
19	233	Customer Deposits		53,277
20	236	Taxes Accrued		
21	237	Interest Accrued		
22	241	Other Current Liabilities		6,799
23		Total current and accrued liabilities		186,894
24				
25		DEFERRED CREDITS		
26	252	Advances for Construction		-
27	253	Other Credits		
28	255	Accumulated Deferred Investment Tax - Credits		
29	282	Accumulated Deferred Income Taxes - Accel. Tax Depreciation		
30	283	Accumulated Deferred Income Tax Liabilities		
31		Total deferred credits		\$ -
32				
33		CONTRIBUTIONS IN AID OF CONSTRUCTION		
34	265	Contributions in Aid of Construction		
35	272	Accumulated Amortization of Contributions (negative number)		
36		Net Contributions in Aid of Construction		\$ -
37		Total Liabilities and Other Credits		\$ 304,401

**SCHEDULE A-1
UTILITY PLANT**

Line No.	Acct No.	Title of Account (a)	Balance Beg of Year (b)	Plant Additions During year (c)	Plant (Retirements) During year (d)	Other Debits* or (Credits) (e)	Balance End of year (f)
1	101	Water Plant in Service (Sch A-1a)	\$ 440,943	-	-	-	\$ 440,943
2	101.1	Water Plant In Service - SDWBA/SRF (Sch A-1b)	-	-	-	-	-
3	101.2	Water Plant In Service - Grant Funds (Sch A-1c)	-	-	-	-	-
4	101.3	Water Plant In Service - Other					\$ -
5	103	Water Plant Held for Future Use (Sch A-1d)					\$ -
6	104	Water Plant Purchased or Sold					\$ -
7	105	Construction Work in Progress - Water Plant					\$ -
8	105.1	Construction Work in Progress - SDWBA/SRF					\$ -
9	105.2	Construction Work in Progress - Grant Funds					\$ -
10	105.3	Construction Work in Progress - Other					\$ -
11	114	Water Plant Acquisition Adjustments					\$ -
12		Total utility plant	\$ 440,943	\$ -	\$ -	\$ -	\$ 440,943

* Debit or credit entries should be explained by footnotes or supplementary schedules

**SCHEDULE A-1a
Account 101 - Water Plant in Service (Excluding SDWBA/SRF, Grant Funds)**

Line No.	Acct No.	Title of Account (a)	Balance Beg of Year (b)	Plant Additions During year (c)	Plant (Retirements) During year (d)	Other Debits* or (Credits) (e)	Balance End of year (f)
1		NON-DEPRECIABLE PLANT					
2	301	Intangible Plant					\$ -
3	303	Land	62,872				\$ 62,872
4		Total non-depreciable plant	\$ 62,872	\$ -	\$ -	\$ -	\$ 62,872
5							
6		DEPRECIABLE PLANT					
7	304	Structures	6,083				\$ 6,083
8	307	Wells	54,856				\$ 54,856
9	311	Pumping Equipment	33,165				\$ 33,165
10	317	Other Water Source Plant	17,834				\$ 17,834
11	320	Water Treatment Plant	15,247				\$ 15,247
12	330	Reservoirs, Tanks and Standpipes					\$ -
13	331	Water Mains	160,515				\$ 160,515
14	333	Services and Meter Installations	25,253				\$ 25,253
15	334	Meters	11,932				\$ 11,932
16	335	Hydrants	15,240				\$ 15,240
17	339	Other Equipment	29,950				\$ 29,950
18	340	Office Furniture and Equipment	1,872				\$ 1,872
19	341	Transportation Equipment	6,124				\$ 6,124
20		Total depreciable plant	\$ 378,071	\$ -	\$ -	\$ -	\$ 378,071
21		Total water plant in service	\$ 440,943	\$ -	\$ -	\$ -	\$ 440,943

* Debit or credit entries should be explained by footnotes or supplementary schedules

Footnotes:

SCHEDULE A-1b

Account 101.1 - Water Plant in Service - SDWBA/SRF

NOT APPLICABLE

Line No.	Acct No.	Title of Account (a)	Balance Beg of Year (b)	Plant Additions During year (c)	Plant (Retirements) During year (d)	Other Debits* or (Credits) (e)	Balance End of year (f)
1		NON-DEPRECIABLE PLANT	N/A				
2	301	Intangible Plant					\$ -
3	303	Land					\$ -
4		Total non-depreciable plant	\$ -	\$ -	\$ -	\$ -	\$ -
5							
6		DEPRECIABLE PLANT					
7	304	Structures					\$ -
8	307	Wells					\$ -
9	311	Pumping Equipment					\$ -
10	317	Other Water Source Plant					\$ -
11	320	Water Treatment Plant					\$ -
12	330	Reservoirs, Tanks and Sandpipes					\$ -
13	331	Water Mains					\$ -
14	333	Services and Meter Installations					\$ -
15	334	Meters					\$ -
16	335	Hydrants					\$ -
17	339	Other Equipment					\$ -
18	340	Office Furniture and Equipment					\$ -
19	341	Transportation Equipment					\$ -
20		Total depreciable plant	\$ -	\$ -	\$ -	\$ -	\$ -
21		Total water plant in service	\$ -	\$ -	\$ -	\$ -	\$ -

* Debit or credit entries should be explained by footnotes or supplementary schedules

SCHEDULE A-1c

Account 101.2 - Water Plant in Service - Grant Funds

NOT APPLICABLE

Line No.	Acct No.	Title of Account (a)	Balance Beg of Year (b)	Plant Additions During year (c)	Plant (Retirements) During year (d)	Other Debits* or (Credits) (e)	Balance End of year (f)
1		NON-DEPRECIABLE PLANT	N/A				
2	301	Intangible Plant					\$ -
3	303	Land					\$ -
4		Total non-depreciable plant	\$ -	\$ -	\$ -	\$ -	\$ -
5							
6		DEPRECIABLE PLANT					
7	304	Structures					\$ -
8	307	Wells					\$ -
9	311	Pumping Equipment					\$ -
10	317	Other Water Source Plant					\$ -
11	320	Water Treatment Plant					\$ -
12	330	Reservoirs, Tanks and Sandpipes					\$ -
13	331	Water Mains					\$ -
14	333	Services and Meter Installations					\$ -
15	334	Meters					\$ -
16	335	Hydrants					\$ -
17	339	Other Equipment					\$ -
18	340	Office Furniture and Equipment					\$ -
19	341	Transportation Equipment					\$ -
20		Total depreciable plant	\$ -	\$ -	\$ -	\$ -	\$ -
21		Total water plant in service	\$ -	\$ -	\$ -	\$ -	\$ -

* Debit or credit entries should be explained by footnotes or supplementary schedules

SCHEDULE A-2
Accounts 108, 108.1, 108.2, 108.3, 122 - Depreciation and Amortization Reserves

Line No.	Item (a)	Account 108	Account 108.1	Account 108.2	Account 108.3	Account 122
		Accumulated Depreciation of Water Plant (b)	Accumulated Amortization of SDWBA/SRF (c)	Accumulated Depreciation of Water Plant - Grant Funds (d)	Accumulated Depreciation of Water Plant - Other (e)	Accumulated Depreciation of Non-Water Utility Property (f)
1	Balance in reserves at beginning of year	\$ 162,046				
2	Add: Credits to reserves during year					
3	(a) Charged to Account 272					
4	(b) Charged to Account 403					
5	(c) Charged to Account 407					
6	(d) Charged to Account 426					
7	(e) Charged to clearing accounts.					
8	(f) Salvage recovered					
9	(g) All other credits					
10	Total Credits	\$ -	\$ -	\$ -	\$ -	\$ -
11	Less: Debits to reserves during year					
12	(a) Book cost of property retired	-				
13	(b) Cost of removal					
14	(c) All other debits					
15	Total debits	\$ -	\$ -	\$ -	\$ -	\$ -
16	Balance in reserve at end of year	\$ 162,046	\$ -	\$ -	\$ -	\$ -
17						
18	(1) COMPOSITE DEPRECIATION RATE USED FOR STRAIGHT LINE REMAINING LIFE %					
19						
20	(2) EXPLANATION OF ALL OTHER CREDITS:					
21						
22						
23						
24						
25						
26	(3) EXPLANATION OF ALL OTHER DEBITS:					
27						
28						
29						
30						
31						
32	(4) METHOD USED TO COMPUTE INCOME TAX DEPRECIATION					
33	(a) Straight line					
34	(b) Liberalized					
35	(1) Sum of the years digits					
36	(2) Double declining balance					
37	(3) Other					
38	(c) Both straight line and liberalized					

SCHEDULE A-3
Account 201 - Common Stock

Line No.	Class of Stock (a)	Number of Shares Authorized by Articles of Incorporation (b)	Par Value of Stock Authorized by Articles of Incorporation (c)	Number of Shares Outstanding ¹ (d)	Balance End of Year (e)	Dividends Declared During Year	
						Rate (f)	Amount (g)
1	n/a				\$ -		\$ -
2					\$ -		\$ -
3					\$ -		\$ -
4					\$ -		\$ -
5					\$ -		\$ -
6				Total	\$ -		\$ -

¹ After deduction for amount of reacquired stock held by or for the respondent.

SCHEDULE A-4
Account 204 - Preferred Stock

Line No.	Class of Stock (a)	Number of Shares Authorized by Articles of Incorporation (b)	Par Value of Stock Authorized by Articles of Incorporation (c)	Number of Shares Outstanding ¹ (d)	Balance End of Year (e)	Dividends Declared During Year	
						Rate (f)	Amount (g)
1	n/a						
2							
3							
4							
5							
6				Total	\$ -		\$ -

¹ After deduction for amount of reacquired stock held by or for the respondent.

SCHEDULE A-5
Record of Stockholders at End of Year

Line No.	COMMON STOCK Name (a)	Number Shares (b)	PREFERRED STOCK Name (c)	Number Shares (d)
1	N/A			
2				
3				
4				
5				
6				
7				
8				
9	Total number of shares	-	Total number of shares	-

SCHEDULE A-6 Account 206 - Subchapter S Corporation Accumulated Adjustments Account		
Line No.	NOT APPLICABLE TO LIVE OAK Description of Items (a)	Amount (b)
1	Balance beginning of year	
2	Add: Credits	
3	Net Income	
4	Accounting Adjustments	
5	Total Credits	\$ -
6	Less: Debits	
7	Net Loss	
8	Accounting Adjustments	
9	Dividends	
10	Total Debits	\$ -
11	Balance end of year	\$ -

SCHEDULE A-7 Account 211 - Other Paid in Capital (Corporations only)		
Line No.	Description of Items (a)	Balance End of Year (b)
1	n/a	
2		
3		
4		
5	Total	\$ -

SCHEDULE A-8 Account 215 - Retained Earnings (Corporations Only) NOT APPLICABLE TO LIVE OAK		
Line No.	Item (a)	Amount (b)
1	Balance beginning of year	N/A
2	Add: Credits	
3	Net income	
4	Prior period adjustments	
5	Other credits (detail)	
6	Total Credits	\$ -
7		
8	Less: Debits	
9	Net losses	
10	Prior period adjustments	
11	Dividend appropriations - preferred stock	
12	Dividend appropriations - common stock	
13	Other debits (detail)	
14	Total Debits	-
15	Balance end of year	\$ -

SCHEDULE A-9
Account 218 - Proprietary Capital
(Sole Proprietor or Partnership)

Line No.	Item (a)	Amount (b)
1	Balance beginning of year	\$ 70,833
2	Add: Credits	
3	Net income	(11,212)
4	Additional investments during year	
5	Other credits (detail):	
6		
7		
8	Total Credits	\$ (11,212)
9	Less: Debits	
10	Net losses	
11	218.1 Proprietary Drawings	57,886
12	Other debits (detail):	
13		
14		
15	Total Debits	\$ 57,886
16	Balance end of year	\$ 117,507

SCHEDULE A-10
Account 224 - Long-Term Debt

Line No.	Nature of Obligation (a)	Date of Issue (b)	Date of Maturity (c)	Balance End of Year (d)	Rate of Interest (e)	Interest Accrued During Year (f)	Interest Paid During Year (g)
1	n/a						
2							
3							
4							
5							
6							
7							
8			Total	\$ -		\$ -	\$ -

**SCHEDULE B
INCOME STATEMENT**

Line No.	Acct. No.	Account (a)	Schedule Number (b)	Amount (c)
1		UTILITY OPERATING INCOME		
2	400	Operating Revenues	B-1	92,364
3				
4		OPERATING REVENUE DEDUCTIONS		
5	401	Operating Expenses	B-2	77,428
6	403	Depreciation Expense	A-2	-
7	407	SDWBA Loan Amortization Expense	A-2	-
8	408	Taxes Other Than Income Taxes	B-3	17,748
9	409	State Corporate Income Tax Expense	B-3	800
10	410	Federal Corporate Income Tax Expense	B-3	-
11		Total operating revenue deductions		\$ 95,976
12		Total utility operating income		\$ (3,612)
13				
14		OTHER INCOME AND DEDUCTIONS		
15	421	Non-Utility Income	B-4	-
16	426	Miscellaneous Non-Utility Expense	B-4	7,600
17	427	Interest Expense (excluding SDWBA)	B-5	-
18	427	Interest Expense (SDWBA)	B-5	-
19		Total other income and deductions		\$ (7,600)
20		Net income		\$ (11,212)

SCHEDULE B-1
Account 400 - Operating Revenues

Line No.	Acct. No.	Account (a)	Amount Current Year (b)
1		WATER SERVICE REVENUES	
2	460	Unmetered water revenue	
3		460.1 Residential, Single-family, Multiple Dwelling Units	91,864
4		460.2 Commercial and Miscellaneous	
5		460.3 Large Water Users	
6		460.4 Safe Drinking Water Bond Surcharge	
7		460.5 Other Unmetered Revenue	
8		Subtotal	\$ 91,864
9			
10	462	Fire protection and hydrant revenue	
11		462.1 Public Fire Protection	
12		462.2 Private Fire Protection	
13		Subtotal	\$ -
14			
15	465	Irrigation revenue	
16			
17	470	Metered water revenue	
18		470.1 Residential, Single-family, Multiple Dwelling Units	
19		470.2 Commercial and Multi-residential Master Metered	
20		470.3 Large Water Users	
21		470.4 Safe Drinking Water Bond Surcharge	
22		470.5 Other Metered Revenues	
23		Subtotal	\$ -
24		Total water service revenues	\$ 91,864
25			
26	480	Other water revenue	500
27		Total Operating Revenues	\$ 92,364

SCHEDULE B-2
Account 401 - Operating Expenses

Line No.	Acct. No.	Account (a)	Amount Current Year (b)
1		PLANT OPERATION AND MAINTENANCE EXPENSES	
2		VOLUME RELATED EXPENSES	
3	610	Purchased Water	10,967
4	615	Power	
5	618	Other Volume Related Expenses	3,792
6		Total volume related expenses	\$ 14,759
7			
8		NON-VOLUME RELATED EXPENSES	
9	630	Employee Labor	-
10	640	Materials	
11	650	Contract Work	
12	660	Transportation Expense	4,268
13	664	Other Plant Maintenance Expenses	8,996
14		Total non-volume related expenses	\$ 13,264
15		Total plant operation and maintenance exp.	\$ 28,023
16			
17		ADMINISTRATIVE AND GENERAL EXPENSES	
18	670	Office Salaries	23,421
19	671	Management Salaries	7,014
20	674	Employee Pensions and Benefits	1,128
21	676	Uncollectible Accounts Expense	
22	678	Office Services and Rentals	2,800
23	681	Office Supplies and Expenses	9,071
24	682	Professional Services	
25	684	Insurance	3,653
26	688	Regulatory Compliance Expense	
27	689	General Expenses	2,318
28		Total administrative and general expenses	\$ 49,405
29	800	Expenses Capitalized - Credit (Optional)	
30	900	Clearing Accounts (Optional)	
31		Net administrative and general expense	\$ 49,405
32		Total Operating Expenses	\$ 77,428

SCHEDULE B-3
Accounts 408, 409, 410 - Taxes Charged During the Year

Line No.	Type of Tax (a)	Distribution of Taxes Charged		Total Taxes Charged During Year (d)
		Water (b)	Nonutility (c)	
1	408 Taxes other than income taxes:			
2	408.1 Property taxes	116		\$ 116
3	408.2 Payroll taxes	12,348		\$ 12,348
4	408.3 Other taxes and licenses	5,284		\$ 5,284
5	Total taxes other than income taxes	\$ 17,748	\$ -	\$ 17,748
6				
7	409 State corporate income tax	800		\$ 800
8	410 Federal corporate income tax			\$ -
9	Total income taxes	\$ 800	\$ -	\$ 800
10				
11	Total	\$ 18,548	\$ -	\$ 18,548

SCHEDULE B-4
Accounts 421, 426 - Income and Expense from Non-Utility Operations

Line No.	Description (a)	Non-Utility Income Acct. 421 (b)	Miscellaneous Non-Utility Expense Acct. 426 (c)
1	Bulk water profits		
2	US Trustee fees		2,600
3	Bankruptcy trustee cost		5,000
4			
5	Total	\$ -	\$ 7,600

SCHEDULE B-5
Account 427 - Interest Expense

Line No.	Description (a)	Amount (b)
1	Interest on SDWBA loan	
2	Interest on other (give details below):	
3		
4		
5		
6		
7		
8		
9		
10	Total	\$ -

SCHEDULE F - ADVANCES FOR CONSTRUCTION	
Balance beginning of year	n/a
Additions during year	
Subtotal - Beginning balance plus additions during year	\$ -
Refunds	
Transfers to Acct. 265 - Contributions in Aid of Construction	
Balance end of year	\$ -

SCHEDULE G - TOTAL METERS AND SERVICES (Active and Inactive)		
Size	Meters	Services
5/8 x 3/4-in	98	
3/4-in		
1-in		
-in		
-in		
-in		
Total	98	-

SCHEDULE H - METER TESTING DATA	
Number of meters tested during year	
1 Used, before repair	
2 Used, after repair	
3 Fast, requiring refund	
Numbers of meters in service requiring test per General Order No. 103	

SCHEDULE I - SERVICE CONNECTIONS AT END OF YEAR								
Classification	Active			Inactive			Total connections	
	Metered	Flat	Total	Metered	Flat	Total	Metered	Flat
Residences	92		92	4		4	96	-
Industrial/Commercial	2		2			-	2	-
Irrigation			-			-	-	-
Fire Protection (public)			-			-	-	-
Fire Protection (private)			-			-	-	-
Other (specify)			-			-	-	-
			-			-	-	-
Total	94	-	94	4	-	4	98	-

SCHEDULE J - STORAGE FACILITIES			SCHEDULE K - FOOTAGES OF PIPE (EXCLUDING SERVICE PIPES)					
Description	No.	Combined capacity in gallons	Description	2" and under	2 1/4 to 3 1/4	4"	Other sizes (specify)	Totals
				Concrete			Cast Iron	
Earth			Welded steel					-
Wood			Standard screw	900	1,100			2,000
Steel	3	60,000	Cement-asbestos			4,000		4,000
Other			Plastic			2,360		2,360
			Other (specify)	iron		3,000		3,000
								-
								-
Total	3	60,000	Total	900	1,100	9,360	-	11,360

**SCHEDULE M
FACILITY FEES DATA**

Please provide the following information relating to Facility Fees collected for the calendar year 2018, pursuant to Resolution No. W-4110.

1. Trust Account Information:

Bank Name: n/a
 Address: _____
 Account Number: _____
 Date Opened: _____

2. Facilities Fees collected for new connections during the calendar year:

A. Commercial

<u>NAME</u>	<u>AMOUNT</u>
<u>n/a</u>	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

B. Residential

<u>NAME</u>	<u>AMOUNT</u>
<u>n/a</u>	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

3. Summary of the bank account activities showing:

	<u>AMOUNT</u>
Balance at beginning of year	\$ _____
Deposits during the year	\$ _____
Interest earned for calendar year	\$ _____
Withdrawals from this account	\$ _____
Balance at end of year	\$ _____ -

4. Reason or Purpose of Withdrawal from this bank account:

DECLARATION

(PLEASE VERIFY THAT ALL SCHEDULES ARE ACCURATE AND COMPLETE BEFORE SIGNING)

I, the undersigned _____ Richard M Kipperman, Chapter 11 Bankruptcy Trustee
Officer, Partner, or Owner (Please Print)

of _____ Live Oak Springs Water Company
Name of Utility

under penalty of perjury do declare that this report has been prepared by me, or under my direction, from the books, papers and records of the respondent; that I have carefully examined the same, and declare the same to be a complete and correct statement of the business and affairs of the above-named respondent and the operations of its property for the period of January 1, 2019, through December 31, 2019. This report has been prepared based upon the best information available at the time of preparation and has been prepared based upon my reasonable good faith efforts.

Solely, but not individually, as Trustee

Richard M Kipperman, Chapter 11 Bankruptcy Trustee
Title (Please Print)

Signature

619-668-4500
Telephone Number

Date

1 THOMAS E. MONTGOMERY, County Counsel
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3 San Diego, California 92101-2469
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(Exempt From Filing Fees (Gov't Code § 6103)
5
6 Attorneys for County of San Diego
(Department of Environmental Health)

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 In re:) Chapter 13
12 LIVE OAK HOLDING, LLC.,) Case No. 13-11672-lt11
13) Chapter 11
14) **DECLARATION OF LARS SEIFERT IN**
15 Debtor.) **SUPPORT OF COUNTY'S**
16) **OPPOSITION TO TRUSTEE'S**
17) **EMERGENCY MOTION FOR ORDER**
18) **DISMISSING BANKRUPTCY CASE**
19)
Date: May 28, 2019
Time: 3:00 p.m.
Dept: 3
Judge: Hon. Laura S. Taylor

20 I, Lars Seifert, declare as follows:

21 1. I am Chief of the Land and Water Quality Division within the County of San
22 Diego Department of Environmental Health (DEH). I have been employed with the County of
23 San Diego for approximately 2 years. I have personal knowledge of the following facts and, if
24 called as a witness, could and would testify truthfully thereto.

25 2. The State Water Resources Control Board ("State Water Board") has authorized
26 DEH to act as the Local Primacy Agency to regulated public water systems in this county that
27 have [fewer than/not more than] 200 service connections. DEH regulates the Live Oak Springs
28 Water Company ("Water Company"), in an effort to ensure compliance with the federal and

1 State Safe Drinking Water Acts, applicable regulations in Titles 17 and 22 of the California
2 Code of Regulations (CCR); and California Well Standards (DWR Bulletins 74-81 and 74-90).

3 3. The Water Company is a “small water system” that is defined as a “community
4 water system” in State law. It is a “small community water system” for purposes of State
5 financial assistance programs that use that term. The system serves approximately 300 people
6 through 96 service connections.

7 4. On May 24, DEH issued a comprehensive inspection of the Water Company
8 infrastructure and operations (the “Sanitary Survey”) that catalogs deficiencies in the Water
9 Company’s infrastructure, based on a May 7, 2019 inspection. The Trustee and Nazar Najor
10 were present during that inspection. That survey is attached as Exhibit “1” to this Declaration.

11 5. The Sanitary Survey documents that the Water Company’s system lacks required
12 infrastructure to show adequate capacity, and is in disrepair. It is also in violation of operating
13 standards, operator certification requirements, recordkeeping requirements, water testing
14 requirements, and treatment system maintenance requirements, and has an improper cross
15 connection between the potable water system and a well not approved for potable water use. At
16 the time of the DEH inspection, the required disinfection contact time to be achieved in the
17 water storage tank prior to distribution had been bypassed. Numerous other deficiencies that are
18 violations of State law and regulations are noted in the Sanitary Survey.

19 6. Many of the deficiencies noted in the Sanitary Survey have been long-standing
20 and have been noted by DEH in previous inspections. DEH has previously directed that these
21 deficiencies be corrected, but the Nazar family LLC, the Trustee, and Nazar Najor in his
22 capacity as the Trustee’s chosen “water company manager” have failed to correct the
23 deficiencies.

24 7. The Sanitary Survey records at pages 2 and 3 state that the Trustee has failed to
25 comply with a DEH directive to secure a legally-required second source of potable water for the
26 community water system.

27 ///

28 ///

1 8. The Sanitary Survey contains 18 directives and compliance schedules for the
2 correction of noted deficiencies. These are summarized at page 5 of the survey. Nine of these
3 directives require immediate correction.

4 9. DEH has previously informed the State Water Board of concerns regarding the
5 ability of the Water Company to provide a consistent and adequate supply of safe drinking water
6 to its customers. The Sanitary Survey confirms that this concern is warranted.

7 10. The Trustee's Memorandum of Points and Authorities at page 5 includes an email
8 from Dean Wilson of Axiom Devco to the Trustee in this case. In that email Mr. Wilson alleges
9 that \$4,500 in repair costs recently incurred by the Water Company were caused by "a big leak
10 of suspicious origins" in a water main. Through legal counsel, I have asked the County District
11 Attorney's office to investigate this allegation. The District Attorney's office has agreed to do
12 so.

13 11. DEH is not aware of any application for financial assistance being submitted to the
14 State Water Board, Division of Financial Assistance related to the Water Company. Water
15 companies seeking such assistance will routinely notify DEH so that related compliance
16 schedules can be coordinated with the State's funding processes.

17 I declare under penalty of perjury under the laws of the State of California that the
18 forgoing is true and correct, and that this declaration is executed on this 24th day of May, 2019,
19 at San Diego, California.

20 
21 LARS SEIFERT



COUNTY OF SAN DIEGO
 DEPARTMENT OF ENVIRONMENTAL HEALTH
 Land and Water Quality Division
 5500 Overland Avenue, Suite 210 • San Diego, CA • 92123
 Phone (858) 694-3113 • FAX (858) 514-6583

SMALL PUBLIC WATER SYSTEM INSPECTION REPORT

WATER SYSTEM ID NUMBER 3700922	INSPECTION DATE 05/07/2019	SYSTEM CLASSIFICATION Community	For Official LPA Use Only [Empty Box] <input checked="" type="checkbox"/> Attachments Included
Source Classification <input type="radio"/> Surface Water <input checked="" type="radio"/> Ground Water (W/ Treatment) <input type="radio"/> Ground Water (No Treatment)	Time In: [Empty Box] Time Out: [Empty Box]	Inspection Time 11:00 AM – 2:30 PM	
Water System Name Live Oak Springs Water Company	Name of Certified Operator Rocky Vandergriff		
Site Address 37820 Old Highway 80, Boulevard, CA 91905	Name of Owner Live Oak Enterprises, LLC		
Inspector Jamelle K. McCullough, SEHS & Victoria Y. Nguyen, EHS II	Also Present (Name) Richard Kipperman (Court Appointed Trustee) & Nazar Najor (Water Company Manager)		

VIOLATION REPORT: The small water system inspection was conducted to determine compliance with the California Health and Safety Code (H&SC); Titles 17 and 22 of the California Code of Regulations (CCR); and California Well Standards (DWR Bulletins 74-81 and 74-90). The items checked below are **NOT** in compliance with stated sections of the H&SC, CCR, DWR Bulletins 74-81 and 74-90, and/or Local Ordinances and need to be corrected.

<p>PERMITS</p> <input type="checkbox"/> Health Permit - §8.02.040 <input type="checkbox"/> Public Water System Permit - §116525(a) <input type="checkbox"/> Technical Report - §116530 <input type="checkbox"/> Source Water Assessment - §64560 <input type="checkbox"/> Change of Ownership - §116525(a) <input type="checkbox"/> Permit Amendment - §116550(a), §64556 <p>OPERATING CRITERIA</p> <input checked="" type="checkbox"/> Operator Certification - §106885 <input type="checkbox"/> Operational Requirements - §116555 <input type="checkbox"/> Standby Sources - §64414 <input checked="" type="checkbox"/> Source Capacity - §64554(a) <input type="checkbox"/> Source Flow Meter - §64561 <input checked="" type="checkbox"/> Operation and Maintenance Plan - §64600 <input type="checkbox"/> Surface Water Operations Plan - §64661 <p>RECORDS/REPORTING</p> <input checked="" type="checkbox"/> Routine Sample Siting Plan - §64422 <input type="checkbox"/> Bacteriological Reporting - §64423.1(c) <input type="checkbox"/> Analytical / EDT Reporting - §64469 <input checked="" type="checkbox"/> Record Maintenance - §64470 <input type="checkbox"/> Disinfection Residual/By-Product Monitoring Plan - §64534.8 <input type="checkbox"/> Surface Water Treatment Records - §64662 <input type="checkbox"/> LPA Notification - §64663 <input type="checkbox"/> Surface Water Monthly Report - §64664 <input type="checkbox"/> Groundwater Monthly Report <input type="checkbox"/> Electronic Annual Report - §116530 <p>PUBLIC NOTIFICATION</p> <input type="checkbox"/> Public Notification §116450, §64463, §64666 <input type="checkbox"/> Emergency Notification Plan - §116460	<p>WATER QUALITY MONITORING</p> <input type="checkbox"/> Bacteriological Standards - §64421, §64426.1 <input type="checkbox"/> Bacteriological Monitoring - §64423, §64424 <input type="checkbox"/> Inorganic Chemical Standards - §64431 <input checked="" type="checkbox"/> Inorganic Chemical Monitoring - §64432 <input type="checkbox"/> Organic Chemical Standards - §64444 <input type="checkbox"/> Organic Chemical Monitoring - §64445.1 <input type="checkbox"/> Nitrate/Nitrite Standards - §64432.1 <input type="checkbox"/> Radionuclide Standards - §64442, §64443 <input checked="" type="checkbox"/> Secondary MCL Monitoring/Standards - §64449 <input type="checkbox"/> Disinfection Residuals/By-Product Rule - §64530 (Ch. 15.5) <input type="checkbox"/> Lead and Copper Rule - §64675 (Ch. 17.5) <p>SURFACE WATER TREATMENT</p> <input type="checkbox"/> Surface Water Treatment Rule - §64652 <input type="checkbox"/> Filtration - §64653 <input type="checkbox"/> Disinfection Treatment - §64654 <input type="checkbox"/> Source Water Monitoring - §64655 <input type="checkbox"/> Turbidity Monitoring - §64655 <input type="checkbox"/> Disinfection Monitoring and Contact Time - §64656 <input type="checkbox"/> LT2 ESWTR Monitoring - 40 CFR §141.70 <p>TREATMENT SYSTEM</p> <input type="checkbox"/> Additives (NSF 60/61 Approval) - §64590-§64591 <input type="checkbox"/> Chlorinator Functioning - §64650(b) <input type="checkbox"/> Filter Functioning - §64650(b) <input checked="" type="checkbox"/> Treatment System Maintenance - §64600 <input type="checkbox"/> Sampling of Treated Water Sources - §64432.8 <p>RESERVOIR/STORAGE</p> <input type="checkbox"/> Storage Capacity - §64554(a)(2) <input type="checkbox"/> Reservoir Coating/Lining - §64585(a)(1)
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<p><input type="checkbox"/> Consumer Confidence Report - §116470, §64480-§64483</p> <p><u>SURFACE WATER SOURCE PROTECTION</u> (H&SC, Title 22 CCR)</p> <p><input type="checkbox"/> Intake vulnerable to contamination <input type="checkbox"/> Intake pipe screened or otherwise protected from debris <input type="checkbox"/> Area clear of brush, debris, waste, vectors <input type="checkbox"/> Standby source available</p> <p><u>GROUND WATER SOURCE PROTECTION</u> (DWR Bulletins 74-81 and 74-90, H&SC)</p> <p><input type="checkbox"/> Enclosure of well and appurtenances <input type="checkbox"/> Well/well casing with cover or lock <input type="checkbox"/> Well cap watertight <input type="checkbox"/> Well access openings sealed <input type="checkbox"/> Well marked for identification <input type="checkbox"/> Concrete base/well slab constructed properly <input type="checkbox"/> Check valve installed at well head <input type="checkbox"/> Backflow prevention protection <input checked="" type="checkbox"/> Area clear of brush, debris, waste, rodent activity <input checked="" type="checkbox"/> Well vulnerable to possible contaminating activity <input type="checkbox"/> Insufficient well protection zone <input type="checkbox"/> Well construction - §64560(c) <input type="checkbox"/> Well destruction - §64560.5 <input type="checkbox"/> Groundwater Rule - §64430, §141.400</p>	<p><input type="checkbox"/> Contaminant Exclusion - §64585(a)(2) <input type="checkbox"/> Sampling Tap - §64585(a)(3) <input type="checkbox"/> Reservoir Design and Construction - §64585(b) <input checked="" type="checkbox"/> Area clear of brush and debris</p> <p><u>DISTRIBUTION SYSTEM</u></p> <p><input checked="" type="checkbox"/> Distribution System Layout - §64604 <input type="checkbox"/> Minimum Pressure - §64602 <input checked="" type="checkbox"/> Water Mains and Valves - §64570-§64578 <input type="checkbox"/> Flushing Pipelines - §64575 <input checked="" type="checkbox"/> Equipment Maintenance (pumps, pipes, valves)</p> <p><u>CROSS CONNECTION CONTROL</u></p> <p><input checked="" type="checkbox"/> Cross Connection Control Program - §7584 <input type="checkbox"/> Adequate Protection Maintained - §7604 <input type="checkbox"/> Testing Backflow Prevention Devices - §7605 <input type="checkbox"/> Maintenance of Records - §7605</p> <p><u>OTHER</u></p> <p><input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____</p>
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OBSERVATIONS/VIOLATION REPORT:

The following observations were noted during the inspection of the drinking water system. Additional detail on each of the identified violations of the California Code of Regulations, California Health and Safety Code, and California Well Standards are provided below.

BACKGROUND

The Live Oak Springs Water Company (LOS) water system is classified as a treated, small community public water system and is designed to provide potable water to 92 residential homes, a recreational vehicle park with 45 spaces, 26 mobile home spaces, 10 motel cabins, a restaurant, laundry facility and a deli/market. The total number of metered service connections the LOS water system has is 96, with an approximate daily population of 300 people. The County of San Diego Local Primacy Agent (LPA) last issued the Domestic Water Supply Permit on October 24, 2008.

WATER SOURCE

Well 1 was ordered offline as a water supply source by the LPA approximately 13 years ago due to bacterial contamination and it is not currently approved for potable use. The California Public Utilities Commission (CPUC) has also established conditions that must be met by LOS prior to any bulk water sales from Well 1. During the inspection, Well 1 was physically disconnected from any piping; however, above grade piping must be removed to avoid contamination of the potable water supply. Photo 1 identifies a yellow valve in the open position and grey PVC pipe that was open to atmosphere at the time of the inspection, which is a potential source of water system contamination. When asked whether the pipes were connected to the potable distribution system, Mr. Kipperman was not able to answer or provide documentation to confirm they were not. Immediately remove all above ground piping adjacent to the well enclosure for Well 1.

LOS water system has **only one approved active ground water source (Well 2) in violation of the State Water Supply Permit and source capacity requirements in 22 CCR §64554(c)**. Community water systems must have two active sources. A Well Driller’s Report is also not available for Well 2 that demonstrates the depth of seal for water supply protection. At the ground surface, the well discharge line is equipped with a check valve and a water meter. During the inspection, significant amounts of rodent feces was observed within the well house enclosure and on the well head. Immediately remove rodent droppings and exclude rodents from the well house near the well head.

When the State Domestic Water Supply Permit was issued in October of 2008, Wells 2 and Well 5 were listed as approved active sources for the LOS community water system. During the previous sanitary survey (dated December 9, 2015), Well 5 was physically disconnected from the distribution system. The Trustee was directed to provide a written plan

within sixty (60) days that outlines how the LOS will return to compliance and secure a second water source, and has failed to do so. The water system manager in 2015 indicated that Well 5 was no longer in use as the power supply from SDG&E had been terminated during the Live Oak Springs Resort foreclosure process. The LOS water system must immediately return to compliance and identify and/or construct a second approved ground water source to supply the community.

LOS is not approved to bulk sale water from Well 2 and/or from the potable distribution system. Immediately remove all gravity water lines (including non-NSF approved black pipe) and infrastructure in place that may facilitate the filling of water trucks from the horizontal storage tanks supplied by Well 2 (See Photo 2 and 3), and that currently serve as an unprotected cross connection to the potable water distribution system.

TREATMENT PROCESS

The LOS water system disinfects the groundwater with NSF approved sodium hypochlorite (liquid chlorine). The water is volumetrically dosed with liquid chlorine via a diaphragm style chlorine injection pump downstream of the check valve at Well 2. Water is manually transferred to the storage tanks which allows for proper contact time for disinfection of the water. At the time of the inspection, the valve to the horizontal tanks was closed and water was being fed to the distribution system directly from Well 2. During the inspection, no documentation was available to determine whether chlorinated water that directly enters the distribution system is achieving proper contact time for disinfection.

At the time of the inspection, required daily chlorine residual logs, including water system maintenance and operation logs, could not be produced and were not available for review in violation of 22 CCR §64470 (Record Maintenance). Both Mr. Kipperman and Mr. Najor were unable to demonstrate or provide record of the frequency of water system visits by Rocky Vandergriff, Certified Water Operator of record. A chlorine residual of 0.5 ppm was measured at 2425 Buckthorn Trail during the inspection.

STORAGE FACILITIES

The LOS water system has three 20,000 gallon above ground tanks, for a combined total of 60,000 gallons of potable water storage. The tanks are manually filled by opening a valve at the well house. The two horizontal tanks (one slightly higher than the other) are intertied with a bottom fill. The fill line and draw line are the same for the slightly higher in elevation horizontal tank. Each horizontal tank is equipped with an elbowed vent. A ladder was not available during the inspection and therefore it was undetermined whether the vents were properly protected with a fine mesh screen. The tanks lack sample taps, water level indicators, and proper overflow pipes. At the time of the inspection, significant vegetation growth was observed at the base of the horizontal storage tanks, in addition to leaks at the exposed above-ground water lines (Photo 4 and 5). The tanks lack any security measures and are prone to tampering and vandalism. During the inspection graffiti was documented on the side of the storage tank (Photo 6). The third storage tank (vertical orientation) is located to the east of Well 2 and is equipped with a top fill and bottom draw. The sample tap is located on the fill line, no water level indicator or overflow piping is available. The top of the tank was unable to be inspected and therefore the condition of the top of the tank and vent is unknown. The tank is approximately 24 feet in height and lacks any safety straps required for a tank of this height and width (Photo 7). No documentation was available on the most recent cleaning and inspections that have occurred for any of the storage tanks. The tanks appear to be in poor condition and require upgrades to be brought up to AWWA Standards. Immediately remove all above ground piping in place that used to be connected to the former storage tank located adjacent to the vertical storage tank (Photo 8). This pipe still appears to be connected to the distribution system.

DISTRIBUTION SYSTEM

Water is pumped uphill from Well 2 to the horizontal storage tanks to the west, or to the vertical storage tank to the east, when a valve at the well head is manually opened. From the tanks, the system is gravity fed. According to Mr. Najor, if the valve is not open, and there is system demand for water, the water is delivered directly into the system via a 7hp pressure pump in conjunction with a 119 gallon Challenger (model APC366) diaphragm tank. Mr. Najor, system manager, claims system pressure ranges from 30 psi – 70 psi depending on the location of the service connection. The buried distribution system is made up with a combination of 4" and 6" steel and concrete pipe. PVC pipe has been added to the distribution system when replacement of distribution line is necessary. According to Mr. Najor, in the past 2 months, approximately 260 feet on new schedule 80 water line has been installed by DD Axiom due to recent water line breaks.

During the inspection, pooling of water at the base of a fire hydrant/stand pipe and at a valve box between the well house enclosure and booster pump station (Photo 9 and 10) was observed that require immediate repair. Exposed electrical lines

were observed adjacent to the leak at the valve box, located in between well house enclosure and pump room enclosure, that poses a significant safety hazard (Photo 11).

During the inspection, a semi submerged water line was observed at the pond near the resort entrance (Photo 12). The filling of the pond from the potable water supply has not been identified within the water system demand calculations for source capacity and is a source of potential cross contamination for the community water system.

The water supplier shall protect the public water supply from contamination by implementation of a cross-connection control program. The LOS water system has failed to implement a cross connection control program as required by 17 CCR §7584. Within 45 days submit a cross connection control survey report for the entire LOS water system, performed by a Certified Cross Connection Control Specialist. Any identified cross connections will require immediate corrective action, including installation of proper backflow protection devices or elimination of the cross connection.

PUMP FACILITIES

The LOS water system uses and maintains a total of two pumps; a submersible well pump and the 7hp booster pump used to maintain system pressure for water that directly enters the distribution from well 2.

MANAGEMENT & OPERATIONS

All personnel associated with the operation, maintenance and management of the LOS water system shall have a copy of and be familiar with the conditions contained within the 2008 State Domestic Water Supply Permit.

OPERATOR CERTIFICATION

The LOS water system has identified Earl G. Vandergriff also known as “Rocky” as the Chief Water Operator. Mr. Vandergriff is a D2 (#27255, Expiration 05/01/2020) and T3 (#2521, Expiration 10/01/2020) Certified Water Operator. Immediately provide documentation of a service contract between Mr. Rocky Vandergriff and LOS. This contract shall identify the level of service provided and the frequency of visits that Mr. Vandergriff and his employees provide each month.

WATER QUALITY & DATA MONITORING

The LOS water system is required to submit quarterly results for each active source (Well 2) and monthly results within the distribution system for bacteriological water quality to the LPA according to the approved sample plan that was created by Mr. Najor on September 1, 2016. The Bacteriological Sample Siting Plan (BSSP) identifies Tim Bennett, Nazar Najor or Clinical Laboratory of San Bernardino as sample collectors. From October 2016 to present, the approved BSSP on file with the LPA has not been followed and representative samples from the distribution system have not been collected from varying locations as specified. Immediately begin following the approved BSSP and ensure sample identification matches the approved BSSP.

Along with submitting all water quality sample results to the LPA, the certified laboratory performing the water quality analysis must also submit the results electronically to the State Water Resources Control Board (SWRCB) – Division of Drinking Water. It is the responsibility of the LOS water system to ensure that the laboratory submits the sample results through Electronic Data Transfer (EDT) to the SWRCB using the prescribed electronic deliverable format. When submitting the water quality data, the lab must use the following Primary Source Codes to properly identify the LOS water system:

Primary Source Code – To Be Reported by Laboratory to SWRCB	
SOURCE NAME	PRIMARY SOURCE CODE (PS CODE)
Well 2	3700922-002

NAME of WATER SYSTEM: Live Oak Springs Water Company DATE: 5/07/2019 SYSTEM No. 3700922

OBSERVATIONS/VIOLATION REPORT Continued:

SUMMARY OF ACTION ITEMS REQUIRED FOR THE LIVE OAK SPRINGS WATER COMPANY

1. Well 2 is the only active source for LOS. Well 5 and property it was constructed on was transferred with the sale of the Live Oak Springs Resort, which was separated from the Live Oak Springs Water Company. **Within 60 days** submit a written plan that outlines how LOS will return to compliance and secure a second approved drinking water source. The plan shall include the timeline and financial mechanism that will be used to secure the required second source to meet source capacity. **Source Capacity - §64554(a)**
2. **Within 30 days**, reconfigure flow of chlorinated water from Well 2 to the horizontal storage tanks to ensure required contact time and approved chlorine residuals for the distribution system. Currently water has the ability to directly enter the distribution system immediately following chlorine injection.
3. Maintain water system records as required and available for review during inspections. Daily chlorine residuals shall be monitored and recorded daily from the distribution system to ensure levels are maintained within the approved range of 0.2 ppm – 4.0 ppm. **Record Maintenance - §64470**
4. **Immediately** remove all above ground piping adjacent to the well enclosure for Well 1.
5. **Immediately** remove any rodent droppings at Well 2 and take measures to prevent reoccurrence.
6. **Immediately** remove all water lines and infrastructure currently in place that facilitates the filling of water trucks from the horizontal storage tanks, supplied by Well 2. LOS is unapproved to bulk sale water from Well 2.
7. **Immediately** follow the approved BSSP on file with the LPA. **Routine Sample Siting Plan - §64422**
8. **Immediately** submit required Inorganic chemical testing from Well #2. These results are presently past due. **Inorganic Chemical Monitoring - §64432**
9. **Immediately** submit required Secondary chemical testing from Well #2. These results are presently past due. **Secondary MCL Monitoring/Standards - §64449**
10. **Within 60 days** provide a Water System Operation and Maintenance Plan. This plan is required for all public water systems that provide treatment (including disinfection). **Operation and Maintenance Plan - §64600**
11. **Immediately** provide the service contract between LOS and the Certified Water Operator of record – Rocky Vandergriff. The contract shall identify the level of service and frequency of visits by Mr. Vandergriff and his staff. **Operator Certification - §106885**
12. **Within 30 days** clear base of water storage tanks. Observed heavy vegetation that should be manually removed from base of horizontal tanks. Never apply herbicides to remove vegetation near the drinking water system. Provide documentation that the area has been cleared.
13. **Immediately** provide documentation on the last inspection and cleaning for each storage tank. If inspections and cleaning took place more than 5 years ago, immediately schedule tank maintenance and cleaning. When complete, submit tank inspection and cleaning reports to the LPA.
14. **Immediately** remove all above ground piping in place that used to be connected to the former storage tank located adjacent to the vertical storage tank. This pipe still appears to be connected to the distribution system.
15. Above ground water lines are vulnerable to vandalism and accelerated deterioration. Observed above ground water line piping near horizontal storage tanks must be reconfigured and protected below grade. A vulnerable section of distribution line was observed that extended over the creek near Well 2. This above ground pipe appears to be unsupported and requires proper installation following American Water Works Association Standards. **Water Mains and Valves - §64570-§64578**
16. **Within 15 days** provide documentation that the leaks observed during the inspection have been repaired. Leak at valve box between well enclosure and pump room, at above ground piping at horizontal storage tanks (contributes to the growth of vegetation) and at base of fire hydrant near the residence of Mr. Najor. Email photographs to document the repair. **Water Mains and Valves - §64570-§64578**
17. **Within 45 days** submit to the LPA a cross connection control survey report to the LPA for the entire LOS water system, performed by a Cross Connection Control Specialist. **Cross Connection Control Program - §7584**
18. **Within 60 days** provide a detailed distribution system map. Identify location of water lines, valves, testable backflow devices and all pertinent water system infrastructure.

NAME of WATER SYSTEM: Live Oak Springs Water Company DATE: 5/07/2019 SYSTEM No. 3700922

The following chart(s) detail required water quality monitoring. If analyses have been completed and are not recorded below, please submit a copy to the attention of Jamelle McCullough at the address listed on the cover of this inspection report or email jamelle.mccullough@sdcounty.ca.gov.

Please ensure that required tests are complete for all constituents that make up the panel. Please see the attached standards list.

Source: DISTRIBUTION SYSTEM				
CHEMICAL	LAST TEST	TEST DUE	FREQUENCY	WAIVER
Disinfection By-products	10/18/2018	3 rd Quarter 2019	Annual	N/A
Lead and Copper Rule	07/11/2016	June, July, August or September of 2019	Every 3 years	N/A

Source: GROUNDWATER – WELL 2 (ACTIVE)				
CHEMICAL	LAST TEST	TEST DUE	FREQUENCY	WAIVER
Inorganic Chemical Standard	01/30/2016	PAST DUE	Every 3 years	N/A
Nitrate Standard	04/18/2019	PAST DUE	Annual	N/A
Nitrite Standard	01/30/2016	PAST DUE	Every 3 years	N/A
Secondary MCL Standards	01/30/2016	PAST DUE	Every 3 years	N/A
Volatile Organic Chemical (VOC) Standard	10/18/2018	2024	Every 6 years	Y
Synthetic Organic Chemical (SOC) Standard	02/16/2017	2026	Every 9 years	Y
Radioactivity Standard (Gross Alpha)	10/20/2016	10/2022	Every 6 years	Y
Radioactivity Standard (Uranium)	10/20/2016	10/2022	Every 6 years	Y

**McCullough
h, Jamelle**

Digitally signed by
McCullough, Jamelle
Date: 2019.05.24
10:41:42 -07'00'

May 24, 2019

Jamelle McCullough, SEHS
Local Primacy Agency

Date

INSPECTION PHOTOS

Photo 1:



Photo 2:

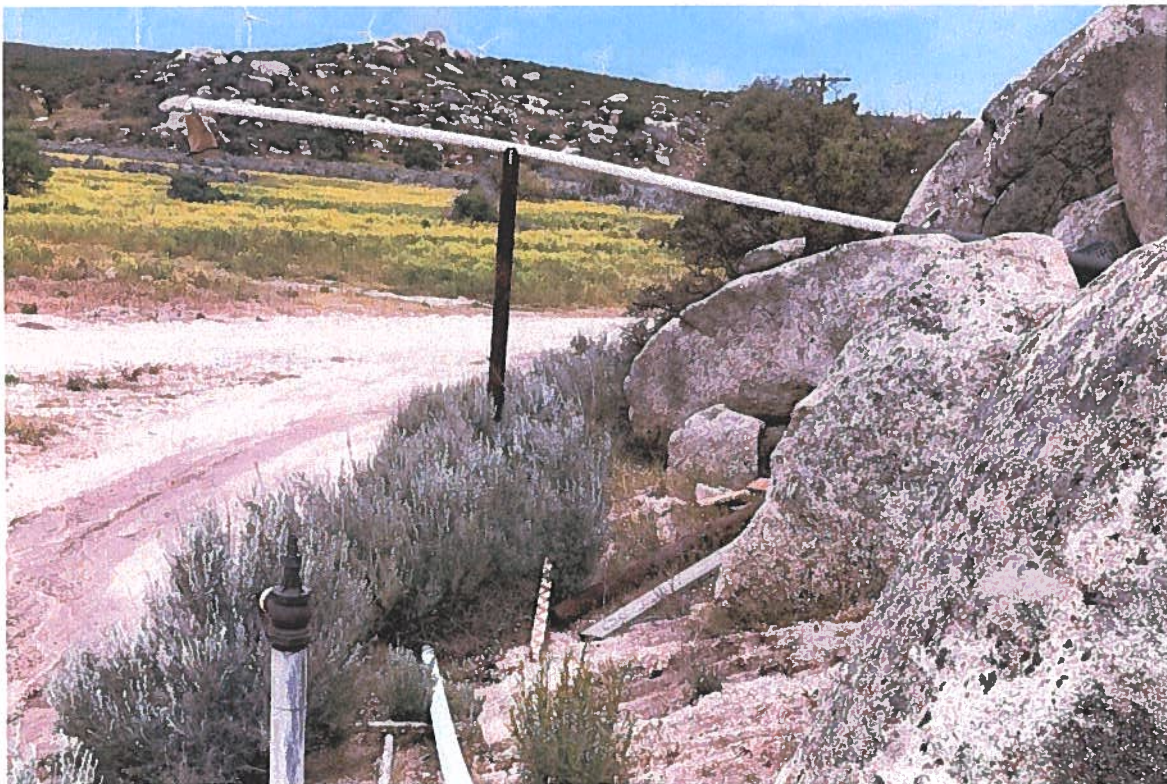


Photo 3:



Photo 4:



Photo 5:



Photo 6:



Photo 7:



Photo 8:



Photo 9:



Photo 10:



Photo 11:



Photo 12:



1 Abigail V. O'Brient (SBN 265704)
aobrient@mintz.com
2 Andrew B. Levin (SBN 290209)
ablevin@mintz.com
3 **MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.**
3580 Carmel Mountain Road, Suite 300
4 San Diego, CA 92130
Tel: 858-314-1500
5 Fax: 858-314-1501

6 Attorneys for
Richard M Kipperman, Chapter 11 Trustee

8 UNITED STATES BANKRUPTCY COURT
9 Southern District of California

11 In re
12 LIVE OAK HOLDING, LLC,
13 Debtor.

Case No. 13-11672-LT11
Chapter 11

DECLARATION OF RICHARD E. CROMPTON, P.E., IN SUPPORT OF MOTION FOR ORDER (1) AUTHORIZING CHAPTER 11 TRUSTEE TO ENTER INTO OPERATING AGREEMENT WITH THE COUNTY OF SAN DIEGO; AND (2) WAIVING STAY UNDER FRBP 6004(H)

Date: October 17, 2019
Time: 10:00 a.m.
Dept.: 3
Judge: Laura S. Taylor

21 I, Richard E. Crompton, P.E., declare:

22 1. I am the Director of the County of San Diego (the "County") Department of Public
23 Works ("DPW"). I have been employed with the County for 13 years. I make this declaration in
24 support of the Motion for Order (1) Authorizing Chapter 11 Trustee to Enter into Operating
25 Agreement with the County of San Diego; and (2) Waiving Stay under FRBP 6004(h) (the
26 "Motion") filed by Richard M Kipperman, the chapter 11 trustee (the "Trustee") of Live Oak
27 Holding, LLC (the "Debtor"). I have personal knowledge of the facts stated herein, and if called as a
28 witness, I would testify competently thereto.

1 2. In my capacity as the Director of DPW, I oversee all aspects of the infrastructure and
2 transportation needs of the County. This involves the design, construction, maintenance, and repair
3 of water and wastewater facilities, flood control systems, roads, bridges, and airports, as well as
4 managing any related contracts, including selecting contractors, overseeing work conducted,
5 reviewing and paying invoices, and monitoring costs. One such contract is the contract to operate the
6 Debtor's water company (the "Water Company").

7 3. The Trustee and the County have agreed the County should begin operating the Water
8 Company as soon as possible pursuant to the terms of the Operating Agreement attached to the
9 Declaration of Richard M Kipperman filed concurrently herewith. The County and the Trustee
10 contemplate that the County will retain a licensed water utility operator to manage the Water
11 Company and to furnish all employees necessary to operate the Water Company pursuant to the
12 Operating Agreement.

13 4. Water Quality Specialists, a California corporation, has been selected to manage day-
14 to-day operations of the Water Company after solicitation through the County's Request for
15 Quotations process, which sought proposals from water operators in the County that possess a grade
16 1 State of California Water Distribution license (D1) and State of California Water Treatment license
17 (T1), without any record of suspension or termination of such licenses, experience with small
18 community water systems supplied by groundwater wells, and the ability to perform daily operation
19 and maintenance of the Water Company and provide emergency services as needed.

20 5. Water Quality Specialists was selected to handle operations at the Water Company
21 due to its technical expertise, experience with similar water systems, and capacity to meet
22 operational and scheduling requirements. Water Quality Specialists has 27 years of experience
23 operating water systems and employs operators qualified to operate such systems, including
24 operators with the requisite licenses to operate the Water Company, as well as higher grade licenses.

25 6. If the Court approves the Motion, the County is prepared to execute a contract with
26 Water Quality Specialists for operation of the Water Company, in substantially the form attached
27 hereto as **Exhibit A**.

28

EXHIBIT A

CONTRACT NUMBER 560849
COUNTY OF SAN DIEGO - DEPARTMENT OF PUBLIC WORKS
AGREEMENT WITH WATER QUALITY SPECIALISTS
FOR WATER SYSTEM OPERATION SERVICES FOR LIVE OAK SPRINGS WATER SYSTEM

This agreement ("Agreement") is made and entered into effective as of the date of the last signature on the signature page by and between the County of San Diego, a political subdivision of the State of California ("County") and Water Quality Specialists, a California corporation, located at 511 Venture St. Escondido, CA 92029 ("Contractor"), with reference to the following facts:

RECITALS

- A. Pursuant to Administrative Code section 401, the County's Director of the Department of Purchasing and Contracting is authorized to award a contract for Water System Operation Services for Live Oak Springs Water System.
- B. Contractor is specially trained and possesses certain skills, experience, education and competency to perform these services.
- C. The Chief Administrative Officer made a determination that Contractor can perform the services more economically and efficiently than the County, pursuant to Section 703.10 of the County Charter.
- D. The Agreement shall consist of this document, Exhibit A Statement of Work, Exhibit B Insurance Requirements and Exhibit C, Payment Schedule. In the event that any provision of the Agreement or its Exhibits, A, B or C, conflicts with any other term or condition, precedence shall be: First (1st) the Agreement; Second (2nd) Exhibit B; Third (3rd) Exhibit A; and Fourth (4th) Exhibit C.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1
PERFORMANCE OF WORK

- 1.1 **Standard of Performance.** Contractor shall, in good and workmanlike manner and in accordance with the highest professional standards, at its own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, training, facilities, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by County, necessary or proper to perform and complete the work and provide the services required of Contractor by this Agreement.
- 1.2 **Contractor's Representative.** The person identified on the signature page ("Contractor's Representative") shall ensure that Contractor's duties under this Agreement shall be performed on behalf of the Contractor by qualified personnel; Contractor represents and warrants that (1) Contractor has fulfilled all applicable requirements of the laws of the State of California to perform the services under this Agreement and (2) Contractor's Representative has full authority to act for Contractor hereunder. Contractor and County recognize that the services to be provided by Contractor's Representative pursuant to this Agreement are unique: accordingly, Contractor's Representative shall not be changed during the Term of the Agreement without County's written consent. County reserves the right to terminate this Agreement pursuant to Clause 7.1 "Termination for Default", if Contractor's Representative should leave Contractor's employ, or if, in County's judgment, the work hereunder is not being performed by Contractor's Representative.
- 1.3 **Contractor as Independent Contractor.** Contractor is, for all purposes of this Agreement, an independent contractor, and neither Contractor nor Contractor's employees or subcontractors shall be deemed to be employees of the County. Contractor shall perform its obligations under this Agreement according to the Contractor's own means and methods of work, which shall be in the exclusive charge and under the control of the Contractor, and which shall not be subject to control or supervision by County except as to the results of the work. County hereby delegates to Contractor any and all responsibility for the safety of Contractor's employees, which shall include inspection of property to identify potential hazards. Neither Contractor nor Contractor's employees or subcontractors shall be entitled to any benefits to which County employees are entitled, including without limitation, overtime, retirement benefits, workers' compensation benefits and injury leave.
- 1.4 **Contractor's Agents and Employees or Subcontractors.** Contractor shall obtain, at Contractor's expense, all agents, employees and subcontractors required for Contractor to perform its duties under this Agreement, and all such services shall be performed by Contractor's Representative, or under Contractor's Representatives' supervision, by persons authorized by law to perform such services. Retention by Contractor of any agent, employee or subcontractor shall be at Contractor's sole cost and expense, and County shall have no obligation to pay Contractor's agents, employees or subcontractors; to support any such person's or entity's claim against the Contractor; or to defend Contractor against any such claim.

Any subcontract or consultant agreement that is in excess of fifty thousand dollars (\$50,000) or twenty five percent (25%) of the value of the contract, whichever is less, or a combination of subcontracts or consultant agreements to the same individual or firm for the agreement period, or any subcontract or consultant agreement for professional medical or mental health services, regardless of value, must have prior concurrence of the Contracting Officer's Representative ("COR"). Contractor

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shall provide Contracting Officer Representative with copies of all other subcontracts relating to this Agreement entered into by Contractor within 30 days after the effective date of the subcontract. Such subcontractors of Contractor shall be notified of Contractor's relationship to County. "Subcontractor" means any entity, other than County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.

- 1.4.1 Contractor Responsibility. In the event any subcontractor is utilized by Contractor for any portion of the project, Contractor retains the prime responsibility for carrying out all the terms of this Agreement, including the responsibility for performance and insuring the availability and retention of records of subcontractors in accordance with this Agreement. No subcontract utilizing funds from this Agreement shall be entered into if it has a term extending beyond the ending date of this Agreement.
- 1.4.2 Mandated Clause. All subcontracts shall include the Standard Terms and Conditions required of Contractor Articles 3, 7, 8, 9, 10, 11, 12, 13, 14 and 16 herein.
- 1.4.3 County Approval. As identified above, all subcontracts under this Agreement shall have prior written approval of the Contracting Officer Representative.
- 1.5 Off Shore Prohibition. Except where Contractor obtains the County's prior written approval, Contractor shall perform the work of this Agreement only from or at locations within the United States. Any County approval for the performance of work outside of the United States shall be limited to the specific instance and scope of such written approval, including the types of work and locations involved. Notwithstanding the foregoing, this Section shall not restrict the country or countries of origin of any assets purchased to provide the work hereunder; provided that when such assets are used to provide the work, such assets shall be used only from or at locations within the geographic boundaries of the United States.

ARTICLE 2
SCOPE OF WORK

- 2.1 Statement of Work. Contractor shall perform the work described in the "Statement of Work" attached as Exhibit "A" to this Agreement, and by this reference incorporated herein, except for any work therein designated to be performed by County.
- 2.2 Right to Acquire Equipment and Services. Nothing in this Agreement shall prohibit the County from acquiring the same type or equivalent equipment and/or service from other sources, when deemed by the County to be in its best interest.
- 2.3 Responsibility for Equipment. For cost reimbursement agreements, County shall not be responsible nor be held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by Contractor or any of Contractor's employees, even though such equipment may be furnished, rented, or loaned to Contractor by County. The acceptance or use of any such equipment by Contractor or Contractor's employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify and hold harmless County from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment, whether such damage be to the employee or property of Contractor, other Contractors, County, or other persons. Equipment includes, but is not limited to material, computer hardware and software, tools, or other things.
 - 2.3.1 Contractor shall repair or replace, at Contractor's expense, all County equipment or fixed assets that are damaged or lost as a result of Contractor negligence.
- 2.4 Non-Expendable Property Acquisition. County retains title to all non-expendable property provided to Contractor by County, or which Contractor may acquire with funds from this Agreement if payment is on a cost reimbursement basis, including property acquired by lease purchase Agreement. Contractor may not expend funds under this Agreement for the acquisition of non-expendable property having a unit cost of \$5,000 or more and a normal life expectancy of more than one year without the prior written approval of Contracting Officer Representative. Contractor shall maintain an inventory of non-expendable equipment, including dates of purchase and disposition of the property. Inventory records on non-expendable equipment shall be retained, and shall be made available to the County upon request, for at least three years following date of disposition. Non-expendable property that has value at the end of the Agreement (e.g. has not been depreciated so that its value is zero), and to which the County may retain title under this paragraph, shall be disposed of at the end of the Agreement as follows: At County's option, it may: 1) have Contractor deliver to another County contractor or have another County contractor pick up the non-expendable property; 2) allow the contractor to retain the non-expendable property provided that the contractor submits to the County a written statement in the format directed by the County of how the non-expendable property will be used for the public good; or 3) direct the Contractor to return to the County the non-expendable property.

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ARTICLE 3
DISENTANGLEMENT

3.1 General Obligations.

At County's discretion, Contractor shall accomplish a complete transition of the services as set forth in Exhibit A to this Agreement (for purposes of this Article 3.1, these shall be referred to as the "Disentangled Services") being terminated from Contractor and the Subcontractors to County, or to any replacement provider designated by County, without any interruption of or adverse impact on the Disentangled Services or any other services provided by third parties. This process shall be referred to as the Disentanglement. Contractor shall fully cooperate with County and any new service provider and otherwise promptly take all steps, including, but not limited to providing to County or any new service provider all requested information or documentation, required to assist County in effecting a complete Disentanglement. Contractor shall provide all information or documentation regarding the Disentangled Services or as otherwise needed for Disentanglement, including, but not limited to, data conversion, client files, interface specifications, training staff assuming responsibility, and related professional services. Contractor shall provide for the prompt and orderly conclusion of all work required under the Agreement, as County may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to County or the County's designee of the Disentangled Services. All Contractor work done as part of the Disentanglement shall be performed by Contractor and will be reimbursed by the County at no more than Contractor's costs, up to the total amount of this Agreement. Contractor shall not receive any additional or different compensation for the work otherwise required by the Agreement. Contractor's obligation to provide the Services shall not cease until the earlier of the following: 1) The Disentanglement is satisfactory to County, including the performance by Contractor of all asset-transfers and other obligations of Contractor provided in this Paragraph, has been completed to the County's reasonable satisfaction or 2) twelve (12) months after the Expiration Date of the Agreement.

3.2 Disentanglement Process.

The Disentanglement process shall begin on any of the following dates: (i) the date County notifies Contractor that no funds or insufficient funds have been appropriated so that the Term shall be terminated pursuant to the Agreement, Article 7; (ii) the date designated by County not earlier than sixty (60) days prior to the end of any initial or extended term that County has not elected to extend pursuant to the Agreement's, Signature Page, Agreement Term; or (iii) the date any Termination Notice is delivered, if County elects to terminate any or all of the Services pursuant to the Agreement, Article 7. Subject to Exhibit A Contractor's obligation to perform Disentangled Services, and County's obligation to pay for Disentangled Services, shall expire: (A) when funds appropriated for payment under this Agreement are exhausted, as provided in this Agreement, Article 7; (B) at the end of the initial or extended term set forth in this Agreement's, Signature Page, Agreement Term; or (C) on the Termination Date, pursuant to this Agreement, Article 7 (with the applicable date on which Contractor's obligation to perform the Services expires being referred to herein as the "Expiration Date"). Contractor and County shall discuss in good faith a plan for determining the nature and extent of Contractor's Disentanglement obligations and for the transfer of the Disentangled Services in process provided, however, that Contractor's obligation under this Agreement to provide all Disentangled Services shall not be lessened in any respect.

3.3 Specific Obligations.

The Disentanglement shall include the performance of the following specific obligations:

3.3.1 No Interruption or Adverse Impact

Contractor shall cooperate with County and all of the County's other service providers to ensure a smooth transition at the time of Disentanglement, with no interruption of Disentangled Services or other work required under the Agreement, no adverse impact on the provision of Disentangled Services or other work required under the Agreement or County's activities, no interruption of any services provided by third parties, and no adverse impact on the provision of services provided by third parties.

3.3.2 Third-Party Authorizations.

Without limiting the obligations of Contractor pursuant to any other clause in Exhibit A herein, Contractor shall, subject to the terms of any third-party agreements, procure at no charge to County any third-party authorizations necessary to grant County the use and benefit of any third-party agreements between Contractor and third-party contractors used to provide the Disentangled Services, pending their assignment to County. Similarly, at County's direction, Contractor shall obtain all legally necessary client consents or authorizations legally necessary to transfer client data to County or any new service provider.

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AGREEMENT WITH WATER QUALITY SPECIALISTS
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3.3.3 Return, Transfer and Removal of Assets.

3.3.3.1 Contractor shall return to County all County assets in Contractor's possession, pursuant to Paragraph 2.4 of the Agreement.

3.3.3.2 County shall be entitled to purchase at net book value those Contractor assets used for the provision of Disentangled Services to or for County, other than those assets expressly identified by the Parties as not being subject to this provision. Contractor shall promptly remove from County's premises, or the site of the work being performed by Contractor for County, any Contractor assets that County, or its designee, chooses not to purchase under this provision.

3.3.4 Transfer of Leases, Licenses, and Agreements.

Contractor, at its expense, shall convey or assign to County or its designee such fully-paid leases, licenses, and other agreements used by Contractor, County, or any other Person in connection with the Disentangled Services, as County may select, when such leases, licenses, and other agreements have no other use by Contractor. Contractor's obligation described herein, shall include Contractor's performance of all obligations under such leases, licenses, and other agreements to be performed by it with respect to periods prior to the date of conveyance or assignment and Contractor shall reimburse County for any losses resulting from any claim that Contractor did not perform any such obligations.

3.3.5 Delivery of Documentation.

Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, the County Data and client files, held by Contractor, and Contractor shall destroy all copies thereof not turned over to County, all at no charge to County. Notwithstanding the foregoing, Contractor may retain one (1) copy of the documentation and data, excluding County Data, for archival purposes or warranty support.

3.4 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement that the County requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

3.5 Publication, Reproduction or Use of Materials. No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The County shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. All reports, data and other materials prepared under this Agreement shall be the property of the County upon completion of this Agreement.

ARTICLE 4
COMPENSATION

The Payment Schedule, and/or budget are in Exhibit C and the compensation is on the Signature page. County will pay Contractor the agreed upon price(s), pursuant to Exhibit C for the work specified in Exhibit A, Statement of Work. The County is precluded from making payments prior to receipt of services (advance payments). Contractor shall provide and maintain an accounting and financial support system to monitor and control costs to assure the Agreements completion. Invoices are subject to the requirements below.

4.1 Fiscal for Fixed Pricing. (Rev. 7/1/17)

4.1.1 General Principles. Contractor shall, comply with generally accepted accounting principles and good business practices, including all applicable cost principles published by the [Federal Office of Management and Budget \(OMB\)](#), including 2 CFR 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS "The Uniform Guidance", which can be viewed at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl. Contractor shall comply with all federal, State and other funding source requirements. Contractor shall, at its own expense, furnish all cost items associated with this Agreement except as herein otherwise specified in the budget or elsewhere to be furnished by County. Contractor shall submit annually to the County a cost allocation plan in accordance with The Uniform Guidance.

4.1.2 Invoices. Payment for the services performed under this Agreement shall be in accordance with Exhibit C, unless other payment methodologies are negotiated and agreed to by both Contractor and County. Contractor shall submit approved invoices monthly to the Contracting Officer's Representative ("COR") for work performed in the monthly period, accordingly. Contractor's monthly invoices shall be completed and submitted in accordance with written

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COUNTY OF SAN DIEGO - DEPARTMENT OF PUBLIC WORKS
AGREEMENT WITH WATER QUALITY SPECIALISTS
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- COR instructions and shall include a statement certifying whether it is in compliance with Paragraph 8.16 of this Agreement
- 4.1.3 Payments. County agrees to pay Contractor in arrears only after receipt and approval by COR of properly submitted, detailed and itemized original invoice referencing the Agreement. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated.
- 4.1.4 Full Compensation. Pending any adjustments by the COR, each invoice approved and paid shall constitute full and complete compensation to the Contractor for all work completed during the billing period pursuant to Exhibit A and Exhibit C. Contractor shall be entitled only to compensation, benefits, reimbursements or ancillary services specified in this Agreement. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated.
- 4.1.5 Prompt Payment for Vendors and Subcontractors
- 4.1.5.1 Prompt payment for vendors and subcontractors.
- 4.1.5.1.1 Unless otherwise set forth in this paragraph, Contractor shall promptly pay its vendors and subcontractor(s) for satisfactory performance under its subcontract(s) to this Agreement. Such prompt payment shall be no later than thirty (30) days after Contractor receives payment for such services from County and shall be paid out of such amounts as are paid to Contractor under this Agreement.
- 4.1.5.1.2 Contractor shall include a payment clause conforming to the standards set forth in Paragraph 4.1.5.2.3 of this Agreement in each of its subcontracts, and shall require each of its subcontractors to include such a clause in their subcontracts with each lower-tier subcontractor or supplier.
- 4.1.5.2 If Contractor, after submitting a claim for payment to County but before making a payment to a vendor or subcontractor for the goods or performance covered by the claim, discovers that all or a portion of the payment otherwise due such vendor or subcontractor is subject to withholding from the vendor or subcontractor in accordance with the vendor or subcontract agreement, then the Contractor shall:
- 4.1.5.2.1 Furnish to the vendor or subcontractor and the COR within three (3) business days of withholding funds from its vendor or subcontractor a notice stating the amount to be withheld, the specific causes for the withholding under the terms of the subcontract or vendor agreement; and the remedial actions to be taken by the vendor or subcontractor in order to receive payment of the amounts withheld.
- 4.1.5.2.2 Contractor shall reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph 4.1.5.2.1 of this Agreement and Contractor may not claim from the County this amount until its subcontractor has cured the cause of Contractor withholding funds;
- 4.1.5.2.3 Upon the vendor's or subcontractor's cure of the cause of withholding funds, Contractor shall pay the vendor or subcontractor as soon as practicable, and in no circumstances later than ten (10) days after the Contractor claims and receives such funds from County.
- 4.1.5.3 Contractor shall not claim from County all of or that portion of a payment otherwise due to a vendor or subcontractor that Contractor is withholding from the vendor or subcontractor in accordance with the subcontract agreement where Contractor withholds the money before submitting a claim to County. Contractor shall provide its vendor or subcontractor and the COR with the notice set forth in Paragraph 4.1.5.2.1 of this Agreement and shall follow Paragraph 4.1.5.2.3 of this Agreement when vendor or subcontractor cures the cause of Contractor withholding its vendors or subcontractor's funds.
- 4.1.5.4 Overpayments. If Contractor becomes aware of a duplicate contract financing or invoice payment or that County has otherwise overpaid on a contract financing or invoice payment, Contractor shall immediately notify the COR and request instructions for disposition of the overpayment.
- 4.1.6 Conditions Prerequisite To Payments. County may elect not to make a particular payment if any of the following exists:
- 4.1.6.1 Misrepresentation. Contractor, with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to County.
- 4.1.6.2 Unauthorized Actions by Contractor. Contractor took any action pertaining to this Agreement, which required County approval, without having first received said County approval.

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- 4.1.6.3 Default. Contractor was in default under any terms and conditions of this Agreement.
- 4.1.7 Withholding Of Payment. County may withhold payment until reports, data, audits or other information required for Agreement administration or to meet County or State reporting or auditing requirements are received and approved by COR or designee. The County may also withhold payment if, in the County's opinion, Contractor is in non-compliance with this Agreement.
- 4.1.8 Availability of Funding. The County's obligation for payment of any Agreement beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year unless funds are designated by the County and are made available for such performance.
- County shall, in its sole discretion, have the right to terminate or suspend Agreement or reduce compensation and service levels proportionately upon thirty (30) days' written notice to Contractor in the event that Federal, State or County funding for this Agreement ceases or is reduced prior to the ordinary expiration of the term of this Agreement. In the event of reduction of funding for the Agreement, County and Contractor shall meet within ten (10) days of written notice to renegotiate this Agreement based upon the modified level of funding. In this case if no agreement is reached between County and Contractor within 10 days of the first meeting, either party shall have the right to terminate this Agreement within ten (10) days written notice of termination.
- In the event of termination of this Agreement in accordance with the terms of this Section, Contractor shall be entitled to retain all sums paid as of the effective date of such termination, subject to any payment offset to which County may be entitled, for damages or otherwise, under the terms of this Agreement. In the event of termination of this Agreement pursuant to this Section, in no event shall Contractor be entitled to any loss of profits on the portion of this Agreement so terminated, or to other compensation, benefits, reimbursements or ancillary services other than as herein expressly provided.
- 4.1.9 Disallowance. In the event the Contractor receives payment for services under this Agreement which is later disallowed by the County, Contractor shall promptly refund the disallowed amount to County on request, or at its option, County may offset the amount disallowed from any payment due or to become due to Contractor under any Agreement with the County.
- 4.1.10 Maximum Price. During the performance period of this Agreement, the maximum price for the same or similar items and/or services shall not exceed the lowest price at which Contractor then offers the items and/or services to its most favored customer.

ARTICLE 5
AGREEMENT ADMINISTRATION

- 5.1 County's Agreement Administrator. The Director of Purchasing and Contracting is designated as the Contracting officer ("Contracting Officer") and is the only County official authorized to make any Changes to this Agreement. The County has designated the individual identified on the signature page as the Contracting Officer's Representative ("COR")
- 5.1.1 County's COR will chair Contractor progress meetings and will coordinate County's Agreement administrative functions. The COR is designated to receive and approve Contractor invoices for payment, audit and inspect records, inspect Contractor services, and provide other technical guidance as required. The COR is not authorized to change any terms and conditions of this Agreement. Only the Contracting Officer, by issuing a properly executed amendment to this Agreement, may make changes to the scope of work or total price.
- 5.1.2 Notwithstanding any provision of this Agreement to the contrary, County's COR may make Administrative Adjustments ("AA") to the Agreement, such as line item budget changes or adjustments to the service requirements that do not change the purpose or intent of the Statement of Work, the Terms and Conditions, the Agreement Term or the total Agreement price. Each AA shall be in writing and signed by COR and Contractor. All inquiries about such AA will be referred directly to the COR.
- 5.2 Agreement Progress Meeting. The COR and other County personnel, as appropriate, will meet periodically with the Contractor to review the Agreement performance. At these meetings the COR will apprise the Contractor of how the County views the Contractor's performance and the Contractor will apprise the County of problems, if any, being experienced. The Contractor shall also notify the Contracting Officer (in writing) of any work being performed, if any, that the Contractor considers being over and above the requirements of the Agreement. Appropriate action shall be taken to resolve outstanding issues. The minutes of these meetings will be reduced to writing and signed by the COR and the Contractor. Should the Contractor not concur with the minutes,

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the Contractor shall set out in writing any area of disagreement. Appropriate action will be taken to resolve any areas of disagreement.

ARTICLE 6
CHANGES

- 6.1 **Contracting Officer.** The Contracting Officer may at any time, by a written order, make changes ("Changes"), within the general scope of this Agreement, in the definition of services to be performed, and the time (i.e.) hours of the day, days of the week, etc. and place of performance thereof. If any such Change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Agreement, whether changed or not changed by such an order, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Such changes may require Board of Supervisors approval.
- 6.2 **Claims.** Contractor must assert any claim for adjustment under this clause within thirty (30) days from the date of receipt by the Contractor of the notification of Change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Agreement. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Agreement entitled "Disputes" (Article 15). However, nothing in this clause shall excuse the Contractor from proceeding with this Agreement as changed.

ARTICLE 7
SUSPENSION, DELAY AND TERMINATION

- 7.1 **Termination for Default.** Upon Contractor's breach of this Agreement, County shall have the right to terminate this Agreement, in whole or part. Prior to termination for default, County will send Contractor written notice specifying the cause. The notice will give Contractor ten (10) days from the date the notice is issued to cure the default or make progress satisfactory to County in curing the default, unless a different time is given in the notice. If County determines that the default contributes to the curtailment of an essential service or poses an immediate threat to life, health or property, County may terminate this Agreement immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In the event of termination under this Article, all finished or unfinished documents, and other materials, prepared by Contractor under this Agreement shall become the sole and exclusive property of County.

In the event of such termination, the County may purchase or obtain the supplies or services elsewhere, and Contractor shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to the County. The prevailing market price shall be considered the fair repurchase price. Notwithstanding the above, Contractor shall not be relieved of liability to County for damages sustained by County by virtue of any breach of this Agreement by Contractor, and County may withhold any reimbursement to Contractor for the purpose of off-setting until such time as the exact amount of damages due County from Contractor is determined.

If, after notice of termination of this Agreement under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall, if this Agreement contains a clause providing for termination for convenience of the County, be the same as if the notice of termination had been issued pursuant to such clause.

- 7.2 **Damages for Delay.** If Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall ensure its completion within the time specified in this Agreement, or any extension thereof, or fails to complete said work within such time, County will be entitled to the resulting damages caused by the delay. Damages will be the cost to County incurred as a result of continuing the current level and type of service over that cost that would be incurred had the Agreement segments been completed by the time frame stipulated and any other damages suffered by County.
- 7.3 **County Exemption from Liability.** In the event there is a reduction of funds made available by County to Contractor under this or subsequent agreements, the County of San Diego and its Departments, officers and employees shall incur no liability to Contractor and shall be held harmless from any and all claims, demands, losses, damages, injuries, or liabilities arising directly or from such action.
- 7.4 **Full Cost Recovery Of Investigation And Audit Costs.** Contractor shall reimburse County of San Diego for all direct and indirect expenditures incurred in conducting an audit/investigation when Contractor is found in violation (material breach) of the terms of the Agreement.

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At the sole discretion of the County, and subject to funding source restrictions and federal and State law, County may (1) withhold reimbursement for such costs from any amounts due to Contractor pursuant to the payment terms of the Agreement, (2) withhold reimbursement for such costs from any other amounts due to Contractor from County, and/or (3) require Contractor to remit a check for the total amount due (or a lesser amount specified by the County) to County within thirty (30) days of request by County. Alternatively, at the County's sole discretion, County and Contractor may enter into a written repayment plan for the reimbursement of the audit/investigation costs.

- 7.5 Termination for Convenience. The County may, by written notice stating the extent and effective date terminate this Agreement for convenience in whole or in part, at any time. The County shall pay the Contractor as full compensation for work performed in accordance with the terms of this Agreement until such termination:
- 7.5.1 The unit or pro rata price for any delivered and accepted portion of the work.
 - 7.5.2 A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the Contractor as approved by the County, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price.
 - 7.5.3 In no event shall the County be liable for any loss of profits on the resulting order or portion thereof so terminated.
 - 7.5.4 County's termination of this Agreement for convenience shall not preclude County from taking any action in law or equity against Contractor for:
 - 7.5.4.1 Fraud, waste or abuse of Agreement funds, or
 - 7.5.4.2 Improperly submitted claims, or
 - 7.5.4.3 Any failure to perform the work in accordance with the Statement of Work, or
 - 7.5.4.4 Any breach of any term or condition of the Agreement, or
 - 7.5.4.5 Any actions under any warranty, express or implied, or
 - 7.5.4.6 Any claim of professional negligence, or
 - 7.5.4.7 Any other matter arising from or related to this Agreement, whether known, knowable or unknown before, during or after the date of termination.
- 7.6 Suspension of Work. The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time that the Contracting Officer determines appropriate for the convenience of the Government. County reserves the right to prohibit, without prior notice, contractor or contractor's employees, directors, officers, agents, subcontractors, vendors, consultants or volunteers from 1) accessing County data systems and County owned software applications, including websites, domain names, platforms, physical files, 2) treating County's patients, clients, or facility residents, or 3) providing any other services under this Agreement.
- 7.7 Remedies Not Exclusive. The rights and remedies of County provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law, equity, or under resulting order.

ARTICLE 8
COMPLIANCE WITH LAWS AND REGULATIONS

- 8.1 Compliance with Laws and Regulations. Contractor shall at all times perform its obligations hereunder in compliance with all applicable federal, State, County, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all licenses, permits, notices and certificates as are required. Contractor shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.
- 8.2 Contractor Permits and License. Contractor certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to the County, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder. The County reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.

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- 8.3 Equal Opportunity. Contractor shall comply with the provisions of Title VII of the Civil Rights Act of 1964 in that it will not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment nor shall Contractor discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
- 8.4 Affirmative Action. Each Contractor of services and supplies employing fifteen (15) or more full-time permanent employees, shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated herein by reference. A copy of this Affirmative Action Program will be furnished upon request by COR or from the County of San Diego Internet web-site (www.co.san-diego.ca.us).
- 8.5 Non Discrimination. Contractor shall ensure that services and facilities are provided without regard to ethnic group identification, race, color, nation origin, creed, religion, age, sex, physical or mental disability, political affiliation or marital status in accordance with applicable laws, including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C 200-d), Section 162 (a) of the Federal-Aid Highway Act of 1973 (23 U.S.C 324), Section 504 of the Rehabilitation Act of 1973, The Civil Rights Restoration Act of 1987 (P.L. 100-209), Executive Order 12898 (February 11, 1994), Executive Order 13166 (August 16, 2000), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000-d), the Age Discrimination of 1975 (42 U.S.C. 6101), Article 9.5, Chapter 1, Part 1, Division 2, Title 2 (Section 11135, et seq) of the California Government Code, Title 9, Chapter 4, Subchapter 6 (Section 10800, et seq) of the CCR and California Dept of Social Services Manual of Policies and Procedures (CDSS MPP) Division 21.
- 8.6 AIDS Discrimination. Contractor shall not deny any person the full and equal enjoyment of, or impose less advantageous terms, or restrict the availability of, the use of any County facility or participation in any County funded or supported service or program on the grounds that such person has Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS) as those terms are defined in Title 3, Division 2, Chapter 8, Section 32.803, of the San Diego County Code of Regulatory Ordinances.
- 8.7 American with Disabilities Act (ADA) 1990. Contractor shall not discriminate against qualified people with disabilities in employment, public services, transportation, public accommodations and telecommunications services in compliance with the Americans with Disabilities Act (ADA) and California Administrative Code Title 24.
- 8.8 Political Activities Prohibited. None of the funds, provided directly or indirectly, under this Agreement shall be used for any political activities or to further the election or defeat of any candidate for public office. Contractor shall not utilize or allow its name to be utilized in any endorsement of any candidate for elected office. Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities, or activities for or against the election of a candidate for an elected office.
- 8.9 Lobbying. Contractor agrees to comply with the lobbying ordinances of the County and to assure that its officers and employees comply before any appearance before the County Board of Supervisors. Except as required by this Agreement, none of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before State and federal Legislatures, the Board of Supervisors of the County, or before any other local governmental entity. This provision shall not preclude Contractor from seeking necessary permits, licenses and the like necessary for it to comply with the terms of this Agreement.
- 8.9.1
- 8.10 Religious Activity Prohibited. There shall be no religious worship, instructions or proselytization as part of or in connection with the performance of this Agreement.
- 8.11 Drug and Alcohol-Free Workplace. The County of San Diego, in recognition of individual rights to work in a safe, healthful and productive work place, has adopted a requirement for a drug and alcohol free work place, County of San Diego Drug and Alcohol Use Policy C-25, available on the County of San Diego website. This policy provides that all County-employed Contractors and Contractor employees shall assist in meeting this requirement.
- 8.11.1 As a material condition of this Agreement, the Contractor agrees that the Contractor and the Contractor employees, while performing service for the County, on County property, or while using County equipment:
- 8.11.1.1 Shall not be in any way impaired because of being under the influence of alcohol or a drug.

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- 8.11.1.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
- 8.11.1.3 Shall not sell, offer, or provide alcohol or an illegal drug to another person; provided, however, that the foregoing restriction shall not be applicable to a Contractor or Contractor employee who as part of the performance of normal job duties and responsibilities prescribes or administers medically prescribed drugs.
- 8.11.2 Contractor shall inform all employees who are performing service for the County on County property or using County equipment of the County objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.
- 8.11.3 The County may terminate for default or breach this Agreement, and any other agreement the Contractor has with the County, if the Contractor, or Contractor employees are determined by the Contracting Officer not to be in compliance with the conditions listed herein.
- 8.12 Board of Supervisors' Policies. Contractor represents that it is familiar, and shall use its best efforts to comply, with the following policies of the Board of Supervisors, available on the County of San Diego website:
- 8.12.1 Board Policy B-67, which encourages the County's Contractors to offer products made with recycled materials, reusable products, and products designed to be recycled to the County in response to the County's requirements; and
- 8.12.2 Board Policies B-53 and B-39a, which encourage the participation of small and disabled veterans' business enterprises in County procurements; and
- 8.12.3 Zero Tolerance for Fraudulent Conduct in County Services. Contractor shall comply with County of San Diego Board of Supervisors Policy A-120 "Zero Tolerance for Fraudulent Conduct in County Services." There shall be "Zero Tolerance" for fraud committed by contractors in the administration of County programs and the provision of County services. Upon proven instances of fraud committed by independent contractors in connection with their performance under the Agreement, said contractor shall be subject to corrective action up to and including termination of the Agreement; and
- 8.12.4 Interlocking Directorate. In recognition of Board Policy A-79, available on the County of San Diego Website, not-for-profit Contractors shall not subcontract with related for-profit subcontractors for which an interlocking relationship exist unless specifically authorized in writing by the Board of Supervisors; and
- 8.12.5 Zero Tolerance in Coaching Medi-Cal or Welfare Clients (Including Undocumented Immigrants). The County of San Diego in recognition of its unique geographical location and the utilization of the Welfare and Medi-Cal systems by foreign nationals who are not legal residents of this county or country, has adopted a Zero Tolerance policy and shall aggressively prosecute employees and Contractors who coach Medi-Cal or Welfare clients (including undocumented immigrants), to obtain services for which they are not otherwise entitled.
- As a material condition of this Agreement, Contractor agrees that the Contractor and Contractor's employees, while performing service for the County, on County property or while using County equipment shall not:
- (a) in any way coach, instruct, advise, or guide any Medi-Cal or Welfare clients or prospective clients who are undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance, for which they are not otherwise entitled.
- (b) support or provide funds to any organization engaged directly or indirectly in advising undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance, for which they are not otherwise entitled.
- Contractor shall inform all employees that are performing service for the County on County property or using County equipment of County's Zero Tolerance Policy as referenced herein.
- County may terminate for default or breach this Agreement and any other agreement Contractor has with County, if Contractor or Contractor employees are determined not to be in compliance with the conditions stated herein.
- 8.13 Cartwright Act. Following receipt of final payment under the Agreement, Contractor assigns to the County all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright act (Chapter 2) (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County under this Agreement.

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- 8.14 Hazardous Materials. Contractor shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Contractor agrees that it will not store any Hazardous Materials at any County facility for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by Environmental Law. Contractor agrees to take, at its expense, all actions necessary to protect third parties, including, without limitation, employees and agents of the County, from any exposure to Hazardous Materials generated or utilized in its performance under this Agreement. Contractor agrees to report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the County of it. Contractor shall not be liable to the County for the County's failure to comply with, or violation of, any Environmental Law. As used in this section, the term "Environmental Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including, but not limited to, the Resource Conservation and Recovery Act, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws, or (d) is any other material or substance giving rise to any liability, responsibility or duty upon the County or Lessee with respect to any third person under any Environmental Laws.
- 8.15 Clean Air Act and Federal Water Pollution Control Act.
- 8.15.1 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Contractor agrees to report each violation to the USDA and the appropriate EPA Regional Office.
- 8.15.2 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 et seq.). Contractor agrees to report each violation to the USDA and the appropriate EPA Regional Office.
- 8.16 Debarment, Exclusion, Suspension, and Ineligibility.
- 8.16.1 Contractor certifies that, except as disclosed to County and acknowledged in writing by County prior to the execution of this Agreement, Contractor, its employees, directors, officers, agents, subcontractors, vendors, consultants, and volunteers:
- 8.16.1.1 Are not presently debarred, excluded, suspended, declared ineligible, voluntarily excluded, or proposed for debarment, exclusion, suspension or ineligibility by any federal, state, or local department or agency; and
- 8.16.1.2 Have not within a 3-year period preceding this Agreement been convicted of, or had a civil or administrative judgment rendered against them for, the commission of fraud or a criminal offense or civil action in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction; violation of federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property; physical, financial or sexual abuse or misconduct with a patient or client, or medical negligence or malpractice;
- 8.16.1.3 Are not presently indicted or otherwise criminally, civilly or administratively charged by a government entity (federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and
- 8.16.1.4 Have not within a 3-year period preceding this Agreement had one or more public transaction (federal, State, or local) terminated for cause or default.
- 8.16.2 Contractor shall have an ongoing duty during the term of this Agreement to disclose to the County any occurrence that would prevent Contractor from making the certifications contained in this Section 8.16 on an ongoing basis. Such disclosure shall be made in writing to the COR and the County Office of Ethics and Compliance within five (5) business days of when Contractor discovers or reasonably believes there is a likelihood of such occurrence.
- 8.16.3 Contractor invoices shall include the following language:

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I certify that the above deliverables and/or services were delivered and/or performed specifically for this Agreement in accordance with the terms and conditions set forth herein.

- 8.17 Display of Fraud Hotline Poster(s). As a material term and condition of this Agreement, Contractor shall:
- 8.17.1 Prominently display in common work areas within all business segments performing work under this Agreement County of San Diego Office of Ethics and Compliance Ethics Hotline posters;
 - 8.17.2 Posters may be downloaded from the County Office of Ethics and Compliance website at: <http://www.sandiegocounty.gov/content/sdc/cao/oec.html>. Additionally, if Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website;
 - 8.17.3 If Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, the Contractor need not display the County poster;
 - 8.17.4 In the event Contractor subcontracts any of the work performed under this Agreement, Contractor include this clause in the subcontract(s) and shall take appropriate steps to ensure compliance by the subcontractor(s).
- 8.18 False Claims Act Training. Contractor shall, not less than annually, provide training on the Federal False Claims Act (31 USC 3729-3730) and State False Claims Act (California Government Code 12650-12653) to all employees, directors, officers, agents, subcontractors, consultants or volunteers providing services under this Agreement. Contractor shall maintain verification of this training. Contractor shall retain these forms, or an electronic version, in accordance with the Agreement requirement for retention of records. For the purposes of this section, "Subcontractor" shall include any entity, other than County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.
- 8.19 Code of Ethics. As a material term and condition of this Agreement, Contractor shall develop and implement a Code of Ethics or similar document and maintain it during the term of this Agreement. Additionally, Contractor shall train all employees and volunteers on the Code of Ethics, and all employees, volunteers, directors, officers, and agents shall certify that they have received training and have been provided an opportunity to ask questions of their employer regarding the Code of Ethics. Contractor shall retain these certifications in accordance with the Agreement's provision regarding retention of records. Contractor shall pass this requirement down to its subcontractors in its entirety. For purposes of this section, "Subcontractor" shall mean any entity, other than County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.
- 8.20 Compliance Program. Contractors with an agreement that exceeds more than \$250,000 in value annually shall establish, and maintain for the duration of this Agreement, a compliance program that meets the standards of Federal Sentencing Guidelines section 8B2.1 and 42 CFR 438.608 (b)(1) – (b) (7) regardless of funding source or services.
- 8.21 Investigations. Unless prohibited by an investigating government authority, Contractor shall cooperate and participate fully in any investigation initiated by County relative to this Agreement. Upon County's request, Contractor shall promptly provide to County any and all documents, including any and all communications or information stored digitally, and make available for interviews any employee(s) of Contractor identified by County. Contractor further agrees to immediately notify County if any employee, director, officer, agent, subcontractor, vendor, consultant or volunteer of Contractor comes under investigation by any federal, State or local government entity with law enforcement or oversight authority over the Agreement or its funding for conduct arising out of, or related to, performance under this Agreement.

Contractor shall promptly make available to County all internal investigative results, findings, conclusions, recommendations and corrective action plans pertaining to the investigation in its possession as requested by the County, unless otherwise protected by applicable law or privilege.

ARTICLE 9
CONFLICTS OF INTEREST; CONTRACTOR'S CONDUCT

- 9.1 Conflicts of Interest. Contractor presently has no interest, including but not limited to other projects or independent agreements, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor shall not employ any person having any such interest in the performance of this Agreement. Contractor shall not hire County's employees to perform any portion of the work or services provided for herein including secretarial, clerical and similar incidental services except upon the

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written approval of County. Without such written approval, performance of services under this Agreement by associates or employees of County shall not relieve Contractor from any responsibility under this Agreement.

9.1.1 California Political Reform Act and Government Code Section 1090 Et Seq. Contractor acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that Contractors hired by a public agency, such as County, may be deemed to be a "public official" subject to the Act if the Contractor advises the agency on decisions or actions to be taken by the agency. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act. In addition, Contractor acknowledges and shall abide by the conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.

9.2 Conduct of Contractor.

9.2.1 Contractor shall inform the County of all Contractor's interests, if any, that are, or that Contractor believes to be, incompatible with any interests of the County.

9.2.2 Contractor shall not, under circumstances that might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or organizations with whom the Contractor is doing business or proposing to do business, in accomplishing the work under this Agreement.

9.2.3 Contractor shall not use for personal gain or make other improper use of confidential information, which is acquired in connection with his employment. In this connection, the term "confidential information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or pricing actions; and knowledge of selections of Contractors or subcontractors in advance of official announcement.

9.2.4 Contractor, its employees, directors, officers, agents, subcontractors, vendors, consultants, and volunteers shall not offer, directly or indirectly, any unlawful gift, gratuity, favor, entertainment, or other item(s) of monetary value to an employee or official of the County.

9.2.5 Referrals. Contractor further covenants that no referrals of clients through Contractor's intake or referral process shall be made to the private practice of any person(s) employed by the Contractor.

9.3 Prohibited Agreements. As required by Section 67 of the San Diego County Administrative Code, Contractor certifies that it is not in violation of the provisions of Section 67, and that Contractor is not, and will not subcontract with, any of the following:

9.3.1. Persons employed by County or of public agencies for which the Board of Supervisors is the governing body;

9.3.2. Profit-making firms or businesses in which employees described in sub-section 9.3.1, above, serve as officers, principals, partners, or major shareholders;

9.3.3. Persons who, within the immediately preceding twelve (12) months came within the provisions of the above sub-sections and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Agreement, or (2) participated in any way in developing the Agreement or its service specifications; and

9.3.4. Profit-making firms or businesses, in which the former employees described in sub-section 9.3.3 above, serve as officers, principals, partners, or major shareholders.

9.4 Limitation of Future Agreements or Grants. It is agreed by the parties to the Agreement that Contractor shall be restricted in its future contracting with the County to the manner described below. Except as specifically provided in this clause, Contractor shall be free to compete for business on an equal basis with other companies.

9.4.1 If Contractor, under the terms of the Agreement, or through the performance of tasks pursuant to this Agreement, is required to develop specifications or statements of work and such specifications or statements of work are to be incorporated into a solicitation, Contractor shall be ineligible to perform the work described within that solicitation as a prime or subcontractor under an ensuing County agreement. It is further agreed, however, that County will not, as additional work, unilaterally require Contractor to prepare such specifications or statements of work under this Agreement.

9.4.2 Contractor may not apply for nor accept additional payments for the same services contained in the Statement of Work.

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ARTICLE 10
INDEMNITY AND INSURANCE

- 10.1 **Indemnity.** County shall not be liable for, and Contractor shall defend and indemnify County and the employees and agents of County (collectively "County Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement or the work covered by this Agreement and arising either directly or indirectly from any act, error, omission or negligence of Contractor or its Contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of County Parties. Contractor shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.
- 10.2 **Insurance.** Prior to execution of this Agreement, Contractor must obtain at its own cost and expense, and keep in force and effect during the term of this Agreement, including all extensions, the insurance specified in Exhibit "B," "Insurance Requirements," attached hereto.

ARTICLE 11
AUDIT AND INSPECTION OF RECORDS

The County shall have the audit and inspection rights described in this section.

- 11.1 **Audit and Inspection.** Contractor agrees to maintain and/or make available within San Diego County accurate books and accounting records relative to all its activities under this Agreement. Authorized federal, State or County representatives shall have the right to monitor, assess, or evaluate Contractor's performance pursuant to this Agreement, said monitoring, assessments, or evaluations to include but not limited to audits, inspection of premises, reports, and interviews of project staff and participants. Contractor assertions of confidentiality shall not be a bar to full access to the records.

At any time during normal business hours and as often as County may deem necessary, Contractor shall make available to County, State or federal officials for examination all of its records with respect to all matters covered by this Agreement and will permit County, State or federal officials to audit, examine and make excerpts or transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel, information regarding clients receiving services, and other data relating to all matters covered by this Agreement. If an audit is conducted, it will be done in accordance with generally accepted government auditing standards as described in "Government Auditing Standards," published for the United States General Accountability Office or the institute of Internal Auditors International Standards for the Professional Practice of Internal Auditing.

If any services performed hereunder are not in conformity with the specifications and requirements of this Agreement, County shall have the right to require the Contractor to perform the services in conformity with said specifications and requirements at no additional increase in total Agreement amount. When the services to be performed are of such nature that the difference cannot be corrected, County shall have the right to (1) require Contractor immediately to take all necessary steps to ensure future performance of the services in conformity with requirements of the Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services performed. In the event Contractor fails to perform the services promptly or to take necessary steps to ensure future performance of the service in conformity with the specifications and requirements of the Agreement, County shall have the right to either (1) by agreement or to otherwise have the services performed in conformity with the Agreement specifications and charge to Contractor any cost occasioned to County that is directly related to the performance of such services, or (2) terminate this Agreement for default as provided in the Termination clause.

- 11.2 **External Audits.** Contractors will provide the following to the COR:
- 11.2.1 Contractor shall provide COR a copy of all notifications of audits or pending audits by federal or State representatives regarding contracted services identified in this Agreement no later than three (3) business days of Contractor receiving notice of the audit.
- 11.2.2 Contractor shall provide COR with a copy of the draft and final State or federal audit reports within twenty four (24) hours of receiving them (Health and Human Services Agency (HHS) Contractors shall also provide electronic copies to Agency Contract Support (ACS) at ACS.HHS@sdcounty.ca.gov).
- 11.2.3 Contractor shall provide COR a copy of the contractor's response to the draft and final State or federal audit reports at the same time as response provided to the State or federal representatives.

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- 11.2.4 Unless prohibited by the government agency conducting the audit, Contractor shall provide COR a copy of all responses made by the federal or State audit representative to the contractors' audit response no later than three (3) business days of receiving it. This will continue until the federal or State auditors have accepted and closed the audit.
- 11.3 Cost or Pricing Data. If the Contractor submitted cost or pricing data in connection with the pricing of this Agreement or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities of the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the County or its agent shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation pricing or performance of such Agreement, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.
- 11.4 Availability. The materials described above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit or reproduction, until the expiration of three (3) years from the date of final payment under this Agreement, or by section 11.4.1 and 11.4.2, below:
- 11.4.1 If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.
- 11.4.2 Record that relate to appeals under the "Disputes" clause of this Agreement, or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of, or three years after Agreement completion, whichever is longer. County shall keep the materials described above confidential unless otherwise required by law.
- 11.5 Subcontract. The Contractor shall insert a clause containing all the provisions of this Article 11 in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the contracting officer.

ARTICLE 12
INSPECTION OF SERVICE

- 12.1 Subject to Inspection. All performance (including services, materials, supplies and equipment furnished or utilized in the performance of this Agreement, and workmanship in the performance of services) shall be subject to inspection and test by the County at all times during the term of this Agreement. Contractor shall cooperate with any inspector assigned by the County to permit the inspector to determine whether Contractor's performance conforms to the requirements of this Agreement. County shall perform such inspection in a manner as not to unduly interfere with Contractor's performance.
- 12.2 Specification and Requirements. If any services performed by Contractor do not conform to the specifications and requirements of this Agreement, County may require Contractor to re-perform the services until they conform to said specifications and requirements, at no additional cost, and County may withhold payment for such services until Contractor correctly performs them. When the services to be performed are of such a nature that Contractor's cannot correct its performance, the County shall have the right to (1) require the Contractor to immediately take all necessary steps to ensure future performance of services conforms to the requirements of this Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services received by County. In the event Contractor fails to promptly re-perform the services or to take necessary steps to ensure that future performance of the service conforms to the specifications and requirements of this Agreement, the County shall have the right to either (1) without terminating this Agreement, have the services performed, by agreement or otherwise, in conformance with the specifications of this Agreement, and charge Contractor, and/or withhold from payments due to Contractor, any costs incurred by County that are directly related to the performance of such services, or (2) terminate this Agreement for default.

ARTICLE 13
USE OF DOCUMENTS AND REPORTS

- 13.1 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement that the County requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.
- 13.2 Ownership, Publication, Reproduction and Use of Material. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other material or properties produced under this Agreement shall be the sole and exclusive property of County. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written

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consent of County. County shall have unrestricted authority to publish, disclose, distribute and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.

- 13.3 **Confidentiality.** Contractor agrees to maintain the confidentiality of and take industry appropriate and legally required measures to prevent the unlawful disclosure of any information that is legally required to be kept confidential. Except as otherwise allowed by local, State or federal law or regulation and pursuant to this Section 13.3, Contractor agrees to only disclose confidential records where the holder of the privilege, whether the County, or a third party, provides written permission authorizing the disclosure.
- 13.4 **Public Records Act.** The California Public Records Act (“CPRA”) requires County to disclose “public records” in its actual or constructive possession unless a statutory exemption applies. This generally includes contracts and related documents. If County receives a CPRA request for records relating to the Agreement, County may, at its sole discretion, either determine its response to the request without notifying Contractor or notify Contractor of the request. If County determines its response to the request without notifying Contractor, Contractor shall hold County harmless for such determination. If County notifies Contractor of the request, Contractor may request that County withhold or redact records responsive to the request by submitting to County a written request within five (5) business days after receipt of the County’s notice. Contractor’s request must identify specific records to be withheld or redacted and applicable exemptions. Upon timely receipt of Contractor’s request, County will review the request and at its sole discretion withhold and/or redact the records identified by Contractor. Contractor shall hold County harmless for County’s decision whether to withhold and/or redact pursuant to Contractor’s written request. Contractor further agrees that its defense and indemnification obligations set forth in Section 10.1 of this Agreement extend to any Claim (as defined in Section 10.1) against the County Parties (as defined in Section 10.1) arising out of County’s withholding and/or redacting of records pursuant to Contractor’s request. Nothing in this section shall preclude Contractor from bringing a “reverse CPRA action” to prevent disclosure of records. Nothing in this section shall prevent the County or its agents or any other governmental entity from accessing any records for the purpose of audits or program reviews if that access is legally permissible under the applicable local, State or federal laws or regulations. Similarly, County or its agent or designee may take possession of the record(s) where legally authorized to do so.
- 13.5 **Maintenance of Records.** Contractor shall maintain all records relating to its performance under this Agreement, including all records of costs charged to this Agreement, and shall make them available within San Diego County for a minimum of five (5) years from the ending date of this Agreement, or longer where required by funding source or while under dispute under the terms of this Agreement, unless County agrees in writing to an earlier disposition. Contractor shall provide any requested records to County within two (2) business days of request.
- 13.6 **Custody of Records.** County, at its option, may take custody of Contractor's client records upon Agreement, termination, expiration, or at such other time as County may deem necessary. County agrees that such custody will conform to applicable confidentiality provisions of State and federal law. Said records shall be kept by County in an accessible location within San Diego County and shall be available to Contractor for examination and inspection.
- 13.7 **Audit Requirement.**
- (a) Contractor shall annually engage a Licensed Certified Public Accountant licensed to perform audits and attests in the State of California to conduct an annual audit of its operations. Contractors that expend \$750,000 or more of federal grant funds per year shall also have an audit conducted in compliance with Government Auditing Standards, which includes Single Audit Act Amendments and the Compliance Supplement (2 CFR part 200 App. XI). Contractors that are commercial organizations (for-profit) are required to have a non-federal audit if, during its fiscal year, it expended a total of \$750,000 or more under one or more HHS awards. 45 CFR part 74.26(d) incorporates the threshold and deadlines of the Compliance Supplement but provides for-profit organizations two options regarding the type of audit that will satisfy the audit requirements. Contractor shall include a clause in any agreement entered into with an audit firm, or notify the audit firm in writing prior to the audit firm commencing its work for Contractor, that the audit firm shall, pursuant to 31 U.S.C. 7503, and to the extent otherwise required by law, provide access by the federal government or other legally required entity to the independent auditor’s working papers that were part of the independent auditor’s audit of Contractor. Contractor shall submit two (2) copies of the annual audit report, the audit performed in accordance with the Compliance Supplement, and the management letter to the County fifteen (15) days after receipt from the independent Certified Public Accountant but no later than nine (9) months after the Contractor’s fiscal year end.
- (b) Contractor shall immediately notify County upon learning that Contractor’s independent Certified Public Accountant may or will issue a disclaimer of opinion due to substantial doubt of Contractor’s ability to continue as a going concern.

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- 13.8 Reports. Contractor shall submit reports required in Exhibit A and additional reports as may be requested by the COR and agreed to by the Contractor. Format for the content of such reports may be developed by County. The timely submission of these reports is a necessary and material term and condition of this Agreement and Contractor agrees that failure to meet specified deadlines will be sufficient cause to withhold payment. Contractor shall submit to County within thirty (30) days of the termination of this Agreement a report detailing all work done pursuant to this Agreement by Contractor.
- 13.9 Evaluation Studies. Contractor shall participate as requested by the County in research and/or evaluative studies designed to show the effectiveness and/or efficiency of Contractor services or to provide information about Contractor's project.

ARTICLE 14
(RESERVED)

ARTICLE 15
DISPUTES

Notwithstanding any provision of this Agreement to the contrary, the Contracting Officer shall decide any dispute concerning a question of fact arising out of this Agreement that is not otherwise disposed of by the parties within a reasonable period of time. The decision of the Contracting Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Contractor shall proceed diligently with its performance hereunder pending resolution by the Contracting Officer of any such dispute. Nothing herein shall be construed as granting the Contracting Officer or any other administrative official, representative or board authority to decide questions of law, or issues regarding the medical necessity of treatment or to pre-empt any medical practitioners' judgment regarding the medical necessity of treatment of patients in their care. The foregoing does not change the County's ability to refuse to pay for services rendered if County disputes the medical necessity of care.

ARTICLE 16
GENERAL PROVISIONS

- 16.1 Assignment and Subcontracting. Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County; County's consent shall not be unreasonably withheld. The Contractor shall make no agreement with any party for furnishing any of the work or services herein contained without the prior written consent of the COR, pursuant to Paragraph 1.4.
- 16.2 Contingency. This Agreement shall bind the County only following its approval by the Board of Supervisors or when signed by the Purchasing and Contracting Director.
- 16.3 Entire Agreement. This Agreement, together with all Exhibits attached hereto and other agreements expressly referred to herein, constitute the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Contractor and requests for proposals from County, are superseded.
- 16.4 Sections and Exhibits. All sections and exhibits referred to herein are attached hereto and incorporated by reference.
- 16.5 Further Assurances. Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.
- 16.6 Governing Law. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.
- 16.7 Headings. The Article captions, Clause and Section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
- 16.8 Modification Waiver. Except as otherwise provided in Article 6, "Changes," above, no modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by both parties.
- 16.9 Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Agreement or played the greater role in the physical preparation of subsequent drafts, neither party shall be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.
- 16.10 No Other Inducement. The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressed herein.

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- 16.11 Notices. Notice to either party shall be in writing and personally delivered; sent by certified mail, postage prepaid, return receipt requested; or emailed to the County's or Contractor's designated representative (or such party's authorized representative). Any such notice shall be deemed received by the party (or such party's authorized representative) on the earliest of the date of personal delivery, three (3) business days after deposit in the U.S. Mail, or upon sending of an email from which an acknowledgement of receipt has been received other than an out of office, unavailable, or undeliverable reply.
- 16.12 Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 16.13 Successors. Subject to the limitations on assignment set forth in Clause 16.1 above, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
- 16.14 Time. Time is of the essence for each provision of this Agreement.
- 16.15 Time Period Computation. All periods of time referred to in this Agreement shall be calendar days, unless the period of time specifies business days. Calendar days shall include all days of the week, including holidays. Business days shall be Monday through Friday, excluding County observed holidays.
- 16.16 Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.
- 16.17 Third Party Beneficiaries Excluded. This Agreement is intended solely for the benefit of the County and its Contractor. Any benefit to any third party is incidental and does not confer on any third party to this Agreement any rights whatsoever regarding the performance of this Agreement. Any attempt to enforce provisions of this Agreement by third parties is specifically prohibited.
- 16.18 Publicity Announcements and Materials. All public announcements, including those issued on Contractor letterhead, and materials distributed to the community shall identify the County of San Diego as the funding source for contracted programs identified in this Agreement. Copies of publicity materials related to contracted programs identified in this Agreement shall be filed with the COR. County shall be advised at least twenty four (24) hours in advance of all locally generated press releases and media events regarding contracted services identified in this Agreement. Alcohol and Drug Prevention Services Contractors shall notify COR or designee at least five (5) business days in advance of all Contractor generated media releases and media events regarding contracted services identified in this Agreement.
- 16.19 Critical Incidents. Contractor shall have written plans or protocols and provide employee training for handling critical incidents involving: external or internal instances of violence or threat of violence directed toward staff or clients; loss, theft or unlawful accessing of confidential client, patient or facility resident Personal Information (PI), Personally Identifiable Information (PII) and/or Personal Health Information (PHI); fraud, waste and/or abuse of Agreement funds; unethical conduct; or violation of any portion of San Diego County Board of Supervisors Policy C-25 "Drug & Alcohol Use" while performing under this Agreement. Contractor shall report all such incidents to the COR within one business day of their occurrence. However, if this Agreement includes Article 14, Contractor must adhere to the timelines and processes contained in Article 14.
- 16.20 Responsiveness to Community Concerns. Unless prohibited by applicable State or federal law, Contractor shall notify County within one business day of receipt of any material complaints including but not limited to complaints referring to issues of abuse or quality of care, submitted to Contractor orally or in writing, regarding the operation of Contractor's program or facility under this Agreement. Contractor shall take appropriate steps to acknowledge receipt of said complaint(s) from individuals or organizations. Contractor shall take appropriate steps to utilize appropriate forums to address or resolve any such complaints received. Nothing in this provision shall be interpreted to preclude Contractor from engaging in any legally authorized use of its facility, property or business as approved, permitted or licensed by the applicable authority.
- 16.21 Criminal Background Check Requirements. Contractor shall ensure that criminal background checks are required and completed prior to employment or placement of any employee, director, officer, agent, subcontractor, consultant or volunteer in compliance with any licensing, certification, funding, or Agreement requirements, including the Statement of Work, which

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may be higher than the minimum standards described herein. At a minimum, background checks shall be in compliance with Board of Supervisors Policy C-28, available on the County of San Diego website, and are required for any individuals identified above who will be providing services under this Agreement or who will be assigned to sensitive positions funded by this Agreement. Sensitive positions are those that: (1) physically supervise minors or vulnerable adults; (2) have unsupervised physical contact with minors or vulnerable adults; and/or (3) have a fiduciary responsibility to any County client, or direct access to, or control over, bank accounts or accounts with financial institutions of any client. If this Agreement includes Article 14, Contractor must also adhere to requirements contained in Article 14.

Contractor shall have a documented process for reviewing the information and determine if criminal history demonstrates behavior that could create an increased risk of harm to clients. Contractor shall document review of criminal background findings and consideration of criminal history in the selection of such persons listed above in this section

16.21.1 Contractor shall utilize a subsequent arrest notification service during the term of this Agreement for any individual required to undergo the Criminal Background Check process described in 16.21.

16.21.2 Contractor shall keep the documentation of their review and consideration of the individual's criminal history on file in accordance with paragraph 13.4 "Maintenance of Records."

16.21.3 Definitions

- A. Activities of Daily Living: The basic tasks of everyday life, such as eating, bathing, dressing, toileting, and transferring.
- B. Minor: Individuals under the age of eighteen (18) years old.
- C. Sensitive Position: A job with responsibilities that can be criminally abused at great harm to the Agreement or the clients served. All positions that (1) physically supervise minors or vulnerable adults, (2) have unsupervised physical contact with minors or vulnerable adults, or (3) have fiduciary responsibility to a County client or direct access to, or control over client bank accounts, or serve in a financial capacity to the County client.
- D. Vulnerable Adult: (1) Individuals age eighteen (18) years or older, who require assistance with activities of daily living and who may be put at risk of abuse during service provision; (2) Individuals age eighteen (18) years or older who have a permanent or temporary limited physical and/or mental capacity that may put them at risk of abuse during service provision because it renders them: unable to make decisions for themselves, unable to physically defend themselves, or unaware of physical abuse or other harm that could be perpetrated against them.
- E. Volunteer: A person who performs a service willingly and without pay.

16.22 Survival. The following sections or articles of this Agreement shall survive the expiration or earlier termination of this Agreement: Sections 8.1, 8.13, 8.14, 8.15, 8.21, 10.1, 11.1, 11.2, and 11.4, and Articles 7 and 13.

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SIGNATURE PAGE

AGREEMENT TERM. This Agreement shall be subject to approval by the United States Bankruptcy Court, Southern District of California. Pending the Court’s approval, the anticipated start date of this Agreement is October 21, 2019. The County of San Diego will notify the contractor of the start date once confirmed.

COMPENSATION: Pursuant to Exhibit C or other applicable pricing provisions of this Agreement, County agrees to pay Contractor a sum not to exceed of two-hundred fifty-thousand dollars (\$250,000) for the duration of this Agreement in accordance with the method of payment stipulated in Article 4.

COR. The County has designated the following individual as the Contracting Officer’s Representative (“COR”)

Ryan Lau, Project Manager
5510 Overland Avenue,
San Diego, CA 92123
858-495-5510, Ryan.Lau@sdcounty.ca.gov

CONTRACTOR’S REPRESENTATIVE. The Contractor has designated the following individual as the Contractor’s Representative.

Cameron Coombs, President
511 Venture St.
Escondido, CA 92029
760-745-2228, cameron@wqsc.com

IN WITNESS WHEREOF, County and Contractor have executed this Agreement effective as of the date of the last signature below.

COUNTY OF SAN DIEGO

WATER QUALITY SPECIALISTS

By: _____
JOHN M. PELLEGRINO, Director
Department of Purchasing and Contracting

By: Cameron Coombs
CAMERON COOMBS, President

Date: _____

Date: 9/16/2019

CONTRACT NUMBER 560849
COUNTY OF SAN DIEGO - DEPARTMENT OF PUBLIC WORKS
AGREEMENT WITH WATER QUALITY SPECIALISTS
FOR WATER SYSTEM OPERATION SERVICES FOR LIVE OAK SPRINGS WATER SYSTEM
EXHIBIT A – STATEMENT OF WORK

SYSTEM DESCRIPTION

1. Live Oak Spring (LOS) Water System serves the unincorporated community of Live Oak Springs located in southeastern San Diego County. Live Oak Springs can be accessed by highway I-8 East approximately 62 miles from downtown San Diego taking Live Oak Springs exit (#61) to the Crestwood Road. LOS Water System is classified as a treated, small community public water system consisting of 96 metered service connections which consists of various customer types such as residential homes, recreational vehicle park, mobile homes, motel cabins, a restaurant, and a market. Refer to the Water System Map in included as Exhibit A.
2. LOS Water System Identification Number is CA3700922.
3. LOS Water System has one (1) active potable water well (Well #2) with a capacity of 60 gpm.
4. LOS Water System has three 20,000 gallon storage tanks.
5. LOS Water System includes distribution system composed of 2-inch to 6-inch diameter pipelines with various material types such as steel, asbestos cement, and polyvinyl chloride, the approximate total length of the distribution system is 2 miles.
6. The System also includes chemical feeder, booster pump, valves, fire stands, and water meters.

SCOPE OF WORK

1. The work in general includes but is not limited to, operate and maintain the Water System without interrupting the potable water supply of the customers.
2. Per the Permit issued by the State, the Contractor shall provide one (1) designated operator with State of California D1 (Water Distribution) license. An operator also holding valid State of California T1 (Water Treatment) license with minimum of three (3) years experience in groundwater well chlorination system operation is highly recommended. Unless otherwise noted, the Contractor and designated operator shall be considered the same. The designated operator(s) shall not be changed without written request followed by the County's approval. **The Contractor shall not have any record of State Water Board license suspension and/or termination.**
3. The Contractor shall perform daily routine operation and maintenance (O&M), including inspection of the water system to assure continuous compliance with the Facility Permit and CA State Water Quality Standards. The Contractor's daily routine work shall be performed on-site at a minimum of two (2) hours per day, seven (7) days a week, between 7:30 am to 4:00 pm. The Contractor shall submit a weekly operation schedule to the County by Friday 12:00 pm. The schedule shall include a detailed daily task routine and the approximate number of hours expected to perform the work specified for the following week. For approximately the first month of the contract, it is expected that the Contractor will work up to forty (40) hours per week. Once the County establishes an alarm and monitoring system, it is expected that the daily routine work will reduce to the minimum hours, and will only be needed Monday through Friday. However, the Contractor will be expected to provide operational support during the County's anticipated water system capital improvements during the contract period.

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COUNTY OF SAN DIEGO - DEPARTMENT OF PUBLIC WORKS
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EXHIBIT A – STATEMENT OF WORK

4. The Contractor shall be capable of operating and maintaining groundwater well pump, booster pump, chemical feeder, water valves, fire hydrants, water quality monitoring devices, and other analytical instruments.
5. The Contractor will be responsible for the daily operation and maintenance of the water system, water well(s), distribution system, and storage tanks. The Contractor shall not be responsible for on-going utilities cost.
6. The Contractor shall confirm the location of water system features including isolation valves, fire hydrants, and water meters, and update the water system map within twenty (20) calendar days from Notice to Proceed and submit to County for approval.
7. If requested, the Contractor shall perform meter reads and report data to designated County staff.

County Facilities Supervisor: Lance Gayer, Lance.Gayer@sdcountyca.gov, 858-248-5237
County Water System Manager: Kyehee Kim, Kyehee.Kim@sdcounty.ca.gov, 858-694-3921

8. Prior to the end of each work day, the Contractor shall provide daily report via email to the County Facilities Supervisor for daily operation and maintenance summary.
9. The Contractor shall coordinate water system operations during County planned or emergency activities on site including, but not limited to, water system shutdown, activation of the water system, operation of valves and fire hydrants, operation of pumps, operation of chemical feed system, and water quality sampling and monitoring.
10. The Contractor shall prepare and submit a Water System Operation and Maintenance Plan within fifteen (15) calendar days from Notice to Proceed per Title 17 California Code of Regulation, §64600. Include a Standard Operation Plan (SOP) and Emergency Response Plan (ERP) for the water system as parts of the Water System Operation and Maintenance Plan.
11. The Contractor shall provide a 12.5% sodium hypochlorite solution for chlorination.
12. Emergency Services: In the event of an unforeseen significant incidence or failure impacting water quality standards, The Contractor shall be available to respond within two (2) hours to mitigate emergency conditions. Any operational work performed by the Contractor during emergency not included in normal work hours specified under Item #3, shall be compensated in accordance with pricing schedule emergency services rate.

WORK BY COUNTY

1. County will provide oversight of the Contractor's daily operations as needed.
2. County will be responsible for providing a separate contractor for repairing or replacing any broken water mains as necessary. The Contractor shall notify the County Facilities Supervisor of any water leak observed within one (1) hour of detection.

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AGREEMENT WITH WATER QUALITY SPECIALISTS
FOR WATER SYSTEM OPERATION SERVICES FOR LIVE OAK SPRINGS WATER SYSTEM
EXHIBIT A – STATEMENT OF WORK

3. County will be responsible for sampling and monitoring activities required by regulating agencies utilizing California State certified Environmental Laboratory Accreditation Program (ELAP) laboratory for water quality monitoring.
4. County shall be responsible for preparation and submission of an annual report to the regulatory agency and an annual Consumer Confidence Report (CCR) for the Water System as directed by the State.
5. County will be responsible for all costs and expenses necessary to repair and replace parts and equipment within the Water System.
6. County will be responsible for all costs and expenses necessary to install or construct improvements to the water system.
7. County will be responsible for the costs of the chemicals for chlorination (12.5% sodium hypochlorite solution). The Contractor shall purchase, maintain inventory, and use the chemical. Contractor shall invoice the County for the cost of chemical purchase and delivery to the site.

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COUNTY OF SAN DIEGO - DEPARTMENT OF PUBLIC WORKS
AGREEMENT WITH WATER QUALITY SPECIALISTS
FOR WATER SYSTEM OPERATION SERVICES FOR LIVE OAK SPRINGS WATER SYSTEM
EXHIBIT A – STATEMENT OF WORK
ATTACHMENT 1 – TASK ORDER PROCESS

1. Department will provide a copy of the task order form and Statement of Work to the Contractor as services or materials are needed, at least 24 hours prior to start of work in each work area, see Attachment 2 - Sample Task Order Form.
2. Contractor will provide requestor a quote or proposal based upon the task order request.
3. Requestor will submit the original task order form along with the Contractor's quote or proposal, any additional pertinent information, and any required supplemental forms to the Contracting Officer's Representative (COR).
4. COR will review documents to ensure the task requested is in compliance with contract scope, limits, DVBE requirements, and includes all required supplemental forms.
5. If task requested complies with contract terms & conditions and scope, COR will enter a release in Oracle for the work and provide notice to contractor to proceed with work.

HELPFUL REMINDERS WHEN ISSUING TASK ORDERS

- A task order form and statement of work are required for every request of contractor.
- Minor Labor Forms are required when service or installation is involved.
http://insite.sdcountry.ca.gov/csg/pc/Documents/p-card_release_of_liability_form_minor.pdf
- DVBE Forms may be used in accordance with Board Policy B-39a as stated on the sample task order form.
 - http://insite.sdcountry.ca.gov/csg/pc/Documents/p_cg_c0015_attachment_a.pdf
 - http://insite.sdcountry.ca.gov/csg/pc/Documents/p_cg_c0015_attachment_b.pdf
 - http://insite.sdcountry.ca.gov/csg/pc/Documents/p_cg_c0015_attachment_c.pdf
- Any individual task order that includes installation or labor and is determined to be Public Works cannot exceed \$25,000.
- Task orders cannot be combined with other contracts or task orders for materials, labor, service, etc. that is determined to be Public Works when the combined total project cost will exceed \$25,000.
- Task orders in excess of \$6,500 for new construction or any sequent alterations or repair thereto in excess of \$25,000 may not be a part of this contract and would have to be bid separately (see California Public Contracts Code Sections 20390-20397). Per PCC Section 20123.5, it is unlawful to split or separate into smaller work orders or projects any public work project for the purpose of evading the provisions of this article requiring public work to be done by contract after competitive bidding.
- Task orders are subject to audit by Purchasing & Contracting which may be conducted at any time during the duration of the contract.

CONTRACT NUMBER 560849
COUNTY OF SAN DIEGO - DEPARTMENT OF PUBLIC WORKS
AGREEMENT WITH WATER QUALITY SPECIALISTS
FOR WATER SYSTEM OPERATION SERVICES FOR LIVE OAK SPRINGS WATER SYSTEM
EXHIBIT A – STATEMENT OF WORK
ATTACHMENT 2 – SAMPLE TASK ORDER

COUNTY OF SAN DIEGO
 DEPARTMENT OF XXX

Address _____

CONTRACTOR: _____	CONTRACT NO: _____
REQUEST DATE: _____	CONTRACT DATE: _____
TASK ORDER NO: _____	PROJECT NO: _____

Description of the Complete Scope of Services: _____

Check One: ___ Standard Priority ___ High Priority

Board Policy B-39a requires DVBE participation of 3% for all Service procurements that are not exempt from the DVBE requirement, and are estimated (by the County) to exceed one million dollars annually. In the case of indefinite delivery/indefinite quantity Service contracts (also referred to as As-Needed Services Contracts), the 3% DVBE participation will be applied to the value of each individual task order. DVBE documentation shall be submitted with the response to each individual task order. DVBE participation is always encouraged, but not required for task orders less than one million.

Total Cost of Task Order Services: \$ _____ **Check One:** ___ Firm Price ___ Not to Exceed Estimate

Other services required to complete this project: _____

Contractor shall provide all equipment, furnish all materials, except as may otherwise be noted above, and perform all services described in this Task Order. Contractor shall accept \$ _____ as full payment for the provision of these services and shall complete these services by _____.

<p>CONTRACTOR:</p> <p>1.</p> <p>By: _____ Date: _____</p> <p>Printed Name & Title: _____</p>	<p>PROJECT MANAGEMENT</p> <p>Chief, Project Management Division (or other appropriate title)</p> <p>By: _____ Date: _____</p> <p>Printed Name & Title: _____</p>
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<p>2. FISCAL</p> <p>By: _____ Date: _____</p> <p>Printed Name & Title: _____</p>	<p>COR, Contracting Officer's Representative</p> <p>By: _____ Date: _____</p> <p>Printed Name & Title: _____</p>
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DISTRIBUTION: COR (Original) Contractor Project Manager Fiscal Unit

Attached: DVBE Submittal Forms

- Any individual task order that includes installation or labor and is determined to be Public Works cannot exceed \$25,000.
- Task orders cannot be combined with other contracts or task orders for materials, labor, service, etc. that is determined to be Public Works when the combined total project cost will exceed \$25,000.
- Task orders in excess of \$6,500 for new construction or any sequent alterations or repair thereto in excess of \$25,000 may not be a part of this contract and would have to be bid separately (see California Public Contracts Code Sections 20390-20397). Per PCC Section 20123.5, it is unlawful to split or separate into smaller work orders or projects any public work project for the purpose of evading the provisions of this article requiring public work to be done by contract after competitive bidding.

CONTRACT NUMBER 560849
COUNTY OF SAN DIEGO - DEPARTMENT OF PUBLIC WORKS
AGREEMENT WITH WATER QUALITY SPECIALISTS
FOR WATER SYSTEM OPERATION SERVICES FOR LIVE OAK SPRINGS WATER SYSTEM
EXHIBIT B – INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS FOR CONTRACTORS

Without limiting Contractor's indemnification obligations to County, Contractor shall provide at its sole expense and maintain for the duration of this contract, or as may be further required herein, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of the work by the Contractor, his agents, representatives, employees or subcontractors.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office form CG0001.
- B. Automobile Liability covering all owned, non owned, hired auto Insurance Services Office form CA0001. Policy shall contain a Pollution Coverage Endorsement (MCS-90) or Pollution Liability-Broadened Coverage for Covered Autos-Business Auto, Motor Carrier and Truckers Coverage Forms, Form # CA9948 0306.
- C. Workers' Compensation, as required by State of California and Employer's Liability Insurance.
- D. Pollution Legal Liability

2. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$4,000,000.
- B. Automobile Liability: \$1,000,000 combined single limit for bodily injury and property damage.
- C. Employer's Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of County of San Diego.
- D. Pollution Legal Liability: \$2,000,000 per claim with an aggregate limit of not less than \$2,000,000.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. As a requirement of this contract, any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to the County of San Diego.

3. Self-Insured Retentions

Any self-insured retention must be declared to and approved by County Risk Management. At the option of the County, either: the insurer shall reduce or eliminate such self-insured retentions as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

CONTRACT NUMBER 560849
COUNTY OF SAN DIEGO - DEPARTMENT OF PUBLIC WORKS
AGREEMENT WITH WATER QUALITY SPECIALISTS
FOR WATER SYSTEM OPERATION SERVICES FOR LIVE OAK SPRINGS WATER SYSTEM
EXHIBIT B – INSURANCE REQUIREMENTS

4. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

A. Additional Insured Endorsement

The County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively are to be covered as additional insureds on the General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed by or on behalf of the Contractor. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO form CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used).

B. Primary Insurance Endorsement

For any claims related to this project, the Contractor's insurance coverage, including any excess liability policies, shall be primary insurance at least as broad as ISO CG 2001 04 13 as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, its officers, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

C. Notice of Cancellation

Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

D. Severability of Interest Clause

Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County Risk Management.

6. Evidence of Insurance

Prior to commencement of this Contract, but in no event later than the effective date of the Contract, Contractor shall furnish the County with a copy of the policy declaration and endorsement pages along with the certificates of insurance and amendatory endorsements effecting coverage required by this clause. Policy declaration and endorsement pages shall be included with renewal certificates and amendatory endorsements submissions and shall be furnished to County within thirty days of the expiration of the term of any required policy. Contractor shall permit County at all reasonable times to inspect any required policies of insurance.

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COUNTY OF SAN DIEGO - DEPARTMENT OF PUBLIC WORKS
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EXHIBIT B – INSURANCE REQUIREMENTS

7. Failure to Obtain or Maintain Insurance; County's Remedies

Contractor's failure to provide insurance specified or failure to furnish certificates of insurance and amendatory endorsements or failure to make premium payments required by such insurance, shall constitute a material breach of the Contract, and County may, at its option, terminate the Contract for any such default by Contractor.

8. No Limitation of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to the Contract, including, but not limited to, the provisions concerning indemnification.

9. Review of Coverage

County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Self-Insurance

Contractor may, with the prior written consent of County Risk Management, fulfill some or all of the insurance requirements contained in this Contract under a plan of self-insurance. Contractor shall only be permitted to utilize such self-insurance if in the opinion of County Risk Management, Contractor's (i) net worth, and (ii) reserves for payment of claims of liability against Contractor, are sufficient to adequately compensate for the lack of other insurance coverage required by this Contract. Contractor's utilization of self-insurance shall not in any way limit liabilities assumed by Contractor under the Contract.

11. Claims Made Coverage

If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

- A. The policy retroactive date coincides with or precedes Contractor's commencement of work under the Contract (including subsequent policies purchased as renewals or replacements).
- B. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Contract.
- C. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least three years to report claims arising in connection with the Contract.
- D. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

12. Subcontractors' Insurance

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors. Such Additional Insured endorsement shall be attached to the certificate of insurance in order to be valid and on a form at least as broad as ISO form CG 2010 11 85 or both CG 2010, CG 2026,

CG 2033, or CG 2038; and CG 2037 forms if later revisions used. If any sub contractor's coverage does not comply with the foregoing provisions, Contractor shall defend and indemnify the County from any damage, loss, cost, or expense, including attorneys' fees, incurred by County as a result of subcontractor's failure to maintain required coverage.

13. Waiver of Subrogation

Contractor hereby grants to County a waiver of their rights of subrogation which any insurer of Contractor may acquire against County by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the Contractor, its employees, agents and subcontractors.

CONTRACT NUMBER 560849
COUNTY OF SAN DIEGO - DEPARTMENT OF PUBLIC WORKS
AGREEMENT WITH WATER QUALITY SPECIALISTS
FOR WATER SYSTEM OPERATION SERVICES FOR LIVE OAK SPRINGS WATER SYSTEM
EXHIBIT C – PRICING SCHEDULE

The contract will be paid on a fixed-price basis. The quote shall include all expenses incidental to the accomplishment of the work requested under this RFQ. Where appropriate, pricing shall include all service billing rates and all other reimbursable expenses incidental to the accomplishment of the work requested under this RFQ. The Offeror shall submit a proposed pricing schedule as follows:

INITIAL TERM PERIOD: AUGUST 1, 2019 THROUGH JANUARY 31, 2020:

1. 1. SITE VISIT FEE:

The Site Visit Fee shall include compensation for each day the Contractor is required to be on-site. This shall be a fixed fee that includes driving hours and fuel costs.

Site Visit Fee: \$_450.00

2. 2. HOURLY OPERATION AND MAINTENANCE SERVICE FEE:

The Hourly Service Fee shall include compensation for hourly operation and maintenance, and inspection activities and other activities and responsibilities associated with daily operation of the Live Oak Springs Water System as defined in the Statement of Work during normal working hours. This shall be a loaded rate including overhead.

Normal Service Hourly Rate: \$_150.00

EMERGENCY SERVICES:

In the event of an unforeseen significant incident or failure impacting the water quality standard, and at the request of the County, Contractor shall be available to respond within two (2) hours to mitigate emergency conditions. Emergency Services compensation is only applicable outside normal working hours. This shall be a loaded rate including overhead, driving hours, and fuel cost.

Emergency Service Hourly Rate: \$_150.00

3. 3. PREPARATION OF OPERATION AND MAINTENANCE PLAN:

The Contractor shall prepare Water System Operation and Maintenance Plan in accordance with the Statement of Work. The lump sum fee includes full compensation for providing labor, materials, supplies, tools, and incidentals required for development of the Operation and Maintenance Plan.

Preparation of O&M Plan: \$_5,000.00

4. 4. CHEMICAL PURCHASE:

The Contractor shall purchase and maintain inventory of chemical supplies necessary for water system operation and continuous compliance with the System Permit and Water Quality Standards. Contractor shall include chemicals purchased and inventoried on the Monthly Service Fee Invoice, and County will reimburse at the rates set forth in the pricing schedule.

5. Unit Price of chemical charged by Contractor shall not exceed:

Sodium Hypochlorite (12.5% Solution) per gallon delivered: \$_6.27