

# DIVISION OF WATER AND AUDITS

## Advice Letter Cover Sheet

**Utility Name:** Live Oak Springs Water Co.  
WTD-390

**Date Filed:** May 6, 2020

**CPUC Utility #:**

**Protest Deadline (20<sup>th</sup> Day):** May 26, 2020

**Advice Letter #:** 36-W

**Review Deadline (30<sup>th</sup> Day):**

**Tier:** 3

**Req. Effective Date:**

**Authorization for Filing:** General Order 96-B,  
**Compliance Filing:** Water Industry Rule 7.3.3(9)

**Rate Impact:** N/A

**Description:** Requesting approval for the purchase and acquisition of Live Oak Springs Water Company.

**Utility Contact:** Suedy Alfaro  
**Phone:** (619) 531-5044  
**Email:** suedy.alfaro@sdcounty.ca.gov

**Alternate:**  
**Phone:**  
**Email:**

### DWA USE ONLY

<u>Date</u>	<u>Staff</u>	<u>Comments</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ACCEPTED

WITHDRAWN

REJECTED

Signature: \_\_\_\_\_ Comments: \_\_\_\_\_ Date: \_\_\_\_\_



# County of San Diego

OFFICE OF COUNTY COUNSEL

1600 PACIFIC HIGHWAY, ROOM 355, SAN DIEGO, CA 92101

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SENIOR DEPUTY  
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Email: Suedy.Alfaro@sdcounty.ca.gov

## Advice Letter No. 36-W

May 6, 2020

VIA E-MAIL ([water.division@cpuc.ca.gov](mailto:water.division@cpuc.ca.gov))

To the Public Utilities Commission of the State of California:

The County of San Diego (“County”), a political subdivision of the State of California, hereby transmits for filing Advice Letter No. 36-W (“Advice Letter”), requesting approval for the purchase and acquisition of Live Oak Springs Water Company (“Live Oak”), a Class D water utility, upon the Effective Date, as defined below.

### PURPOSE

The County requests authority under General Order 96-B, Water Industry Rule 7.3.3(9), and Section 851 of the Public Utilities Code for the purchase and acquisition of Live Oak, transfer of the Live Oak service area to the County, and revocation of *The Certificate of Public Convenience and Necessity*. In support, the County submits the Agreement for Purchase and Sale entered into by the County and Richard Kipperman, Chapter 11 trustee of Live Oak Holding, LLC (“Trustee”), on September 19, 2019, attached hereto as **Exhibit A**, and approved on March 16, 2020 by the United States Bankruptcy Court for the Southern District of California (“Court”), pursuant to the Court’s Order, attached hereto as **Exhibit B**.

### BACKGROUND

#### *Introduction*

Live Oak is located in Boulevard, California, an area of San Diego County situated about 65 miles from downtown San Diego. Live Oak is the sole water service provider for approximately 96 connections, serving around 300 individuals. The State Water Resources Control Board’s (“State Water Board”) Division of Financial Assistance has determined the local population meets the definition of a disadvantaged community.<sup>1</sup>

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<sup>1</sup> Declaration of David Rice in Support of County’s Memorandum of Points and Authorities in Opposition to Trustee’s Emergency Motion for Order Dismissing Bankruptcy Case, Dkt. No. 435 (“Rice Declaration”), ¶ 3.

The County Department of Environmental Health (“DEH”) is the Local Primacy Agency delegated by the State Water Board with authority to regulate Live Oak, pursuant to the California Safe Drinking Water Act. The County is familiar with Live Oak’s regulatory history and the condition of its infrastructure. The County is prepared to devote significant resources to rehabilitate Live Oak and ensure reliable water service is provided to Live Oak’s customers.

#### *Regulatory History and Bankruptcy Filing*

On August 2, 2012, the California Public Utilities Commission (“Commission”) initiated an investigation into Live Oak and its various affiliated entities. On July 29, 2013, the Commission released Decision 13-07-036, which included the following findings:<sup>2</sup>

- “Live Oak has a history of non-compliance with DEH environmental health permitting and water quality requirements.
- Live Oak has and continues to provide public utility water service without a required environmental health permit.
- Live Oak submitted a falsified lab report to DEH in 2007.
- The collateralization of [a loan by Live Oak Holding for \$1.5 million]... included real property known to have been previously owned by Live Oak and real property used for public utility purposes that were comingled with other business interests without Commission authorization.”

The Commission determined a receiver was needed “to protect the health and safety of Live Oak customers due to Live Oak’s unresponsiveness to Commission rules and order, inability to timely comply with DEH requirements, and falsification of lab reports.”<sup>3</sup> The Commission thereafter sought the appointment of a receiver in the Superior Court of San Diego County.<sup>4</sup>

On December 3, 2013, Live Oak Holding, LLC filed a petition under chapter 11 of the Bankruptcy Code and on January 30, 2014, the Trustee was appointed.<sup>5</sup> The Commission dismissed its request for a receiver once the Trustee was appointed and it was clear the Court would displace the individuals responsible for Live Oak during the period the actions investigated by the Commission occurred.<sup>6</sup>

#### *Proposed Sale of Live Oak*

By September 2016, the Trustee had sold all of the assets of Live Oak Holding, LLC, with the exception of Live Oak.<sup>7</sup> The Trustee conducted an extensive three-year marketing campaign to

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<sup>2</sup> Decision 13-07-036, Findings of Fact, ¶¶ 31-33, 46.

<sup>3</sup> *Id.*, Conclusions of Law, ¶ 1.

<sup>4</sup> *Declaration of Christopher Nolan in support of Opposition to Emergency Motion of Trustee*, Dkt. No. 436 (“Nolan Declaration”), ¶ 9.

<sup>5</sup> *Memorandum of Points and Authorities in Support of Motion for Order (1) Approving Sale of Water Company and Related Assets Free and Clear of Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. § 363(f); (2) Waiving the Stay Under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure; and (3) Granting Related Relief*, Dkt. No. 540 (“Sale Memo”), 1:22-23.

<sup>6</sup> *Nolan Declaration*, ¶ 9.

<sup>7</sup> *Sale Memo*, 2:2-3.

sell Live Oak, during which he engaged in direct marketing, advertised in numerous outlets, including the San Diego Union Tribune, the American Water Works Association (with 100,000 water utility professionals) and other industry association newsletters, and the National Association of Bankruptcy Trustees, and retained a broker. Despite this effort, the Trustee received only one viable offer to purchase Live Oak.<sup>8</sup> The Court approved the sale, subject to Commission approval. However, shortly after the Court's order approving the sale, the buyer terminated escrow, citing high repair costs incurred during a one-month period.<sup>9</sup>

With no other plausible buyers, minimal financial reserves, and the possibility of significant future repair costs, the Trustee feared the estate was on the brink of operational insolvency, posing a threat to the health and safety of Live Oak's customers.<sup>10</sup> The Trustee sought emergency dismissal of the bankruptcy case so the Commission could "avail itself of remedies available under state law" or so an operator with sufficient financial resources could "assume control through some other means" to operate Live Oak.<sup>11</sup>

The County opposed emergency dismissal due to concerns about Live Oak's compliance with regulatory requirements and ability to reliably provide water to its customers without Trustee oversight.<sup>12</sup> The County sought a ten-week continuance of the hearing so the County, Commission, and State Water Board's Division of Drinking Water could locate a receiver willing to operate and rehabilitate Live Oak to meet State standards.<sup>13</sup> Lacking sufficient time to seek Commission and State Water Board approval, legal counsel for the Commission and State Water Board submitted declarations in support of this approach.<sup>14</sup> The Court issued an order approving the dismissal, unless the State or County agreed within one week to fund all operational expenses of Live Oak, to the extent such expenses exceeded revenues.<sup>15</sup> On June 4, 2019, the County committed to this funding, avoiding dismissal of the case.<sup>16</sup>

Shortly after making this financial commitment, the County and Trustee began negotiating the County's purchase of Live Oak. On September 19, 2019, the County and Trustee entered into a purchase agreement for Live Oak.<sup>17</sup> The Court approved the sale to the County on March 16, 2020.<sup>18</sup> Also, on September 19, 2019, the County and Trustee entered into an operating

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<sup>8</sup> *Id.*, 3:1-4:3.

<sup>9</sup> *Id.*, 4:13-5:7.

<sup>10</sup> *Memorandum of Points and Authorities in Support of Emergency Motion for Order (1) Dismissing Bankruptcy Case; (2) Authorizing Chapter 11 Trustee to Distribute Funds; and (3) Granting Related Relief*, Dkt. No. 428-1, 5:15-6:4.

<sup>11</sup> *Id.*

<sup>12</sup> *Memorandum of Points and Authorities in Support of County's Opposition to Trustee's Emergency Motion for Order Dismissing Bankruptcy Case*, Dkt. No. 432, 7:7-8:13.

<sup>13</sup> *Id.*, 1:21-2:6.

<sup>14</sup> *Id.*, 2:7-14; *see also Rice Declaration, Nolan Declaration.*

<sup>15</sup> *Order on Emergency Motion for Order (1) Dismissing Bankruptcy Case; (2) Authorizing Chapter 11 Trustee to Distribute Funds; and (3) Granting Related Relief*, Dkt. No. 440.

<sup>16</sup> Declaration of Helen Robbins-Meyer, Dkt. No. 444-1.

<sup>17</sup> Exhibit A.

<sup>18</sup> Exhibit B.

agreement for Live Oak, which the Court approved on October 17, 2019.<sup>19</sup> In November 2019, the County assumed control over day-to-day operations at Live Oak and extended its financial commitment through the close of the sale.<sup>20</sup>

#### *Current Condition of Live Oak*

On May 24, 2019, DEH issued a comprehensive report of Live Oak's infrastructure and operations.<sup>21</sup> The report showed a number of ongoing deficiencies and violations of State law and regulations. These included the lack of a secondary well, violation of operating standards, operator certification and recordkeeping requirements, water testing requirements, treatment system maintenance requirements, and an improper cross connection between Live Oak's water system and a well not approved for potable water use.<sup>22</sup> DEH issued a Notice of Violation on November 20, 2019 after Live Oak failed to address the deficiencies outlined in the May 24, 2019 report or a subsequent August 26, 2019 Official Notice.<sup>23</sup>

The County began operating Live Oak on November 4, 2019, following the Court's approval of the operating agreement. The County immediately made various improvements and either addressed the items outlined in DEH's Notice of Violation or began planning for items involving longer time frames, such as the secondary well. The County also rapidly mobilized personnel to conduct repairs and provided bottled water after numerous infrastructure failures and service outages.

If the Commission approves the purchase and acquisition, the County proposes to make significant improvements to Live Oak once it takes over as owner. To date, the County's Board of Supervisors has allocated \$2.7 million to purchase and rehabilitate Live Oak. Attached hereto as **Exhibit C** is a list of planned improvements by the County, subject to approval of additional funding by the Board of Supervisors or state or federal grants.

#### **FUTURE RATES**

The County's process for determining and setting the rates it will charge Live Oak customers is currently underway. The process involves a preliminary rate study, formation of a County Service Area ("CSA"), and approval of a County ordinance to set the fees. The County's intention is to recover only operational and maintenance costs through rates. It does not intend to recover through rates the significant capital it will need to rehabilitate Live Oak.

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<sup>19</sup> *Order on 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)*, Dkt. 491.

<sup>20</sup> *Declaration of William Morgan in Support of Motion for Order (1) Approving Sale of Water Company and Related Assets Free and Clear of Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. § 363(f); (2) Waiving the Stay Under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure; and (3) Granting Related Relief*, Dkt. 542.

<sup>21</sup> *Declaration of Lars Seifert in Support of County's Memorandum of Points and Authorities in Opposition to Trustee's Emergency Motion for Order Dismissing Bankruptcy Case*, Dkt. No. 434, ¶ 4.

<sup>22</sup> *Id.*, ¶¶ 5-7.

<sup>23</sup> Notice of Violation, Nov. 20, 2019.

The County recently completed a preliminary rate study. The limited information available regarding usage by customers suggests the majority of Live Oak's operating costs are fixed. As a result, the County expects to charge a flat rate to all residential Live Oak customers that is largely in line with or slightly above the current average rate paid by customers. Once it gathers three years of usage data, the County will reassess rates and may adjust them accordingly.

The process for formation of a CSA is also underway. The CSA will be the mechanism through which the County will provide water service to Live Oak customers upon completion of the sale. In March 2020, the County's Board of Supervisors approved a Resolution of Application to the San Diego Local Agency Formation Commission ("LAFCO"), initiating the formation process. If LAFCO approves the proposal, the County will hold two public hearings before adopting an ordinance setting the rates. The County will provide notice to each affected parcel owner prior to adopting the rates.<sup>24</sup> If the Board adopts the ordinance, the rates will become effective upon completion of the sale. The County and Trustee expect to complete the sale shortly after approval of the County's ordinance. The County will continue to charge Live Oak customers the Commission's authorized rates, adopted by Res. W-5086, until it completes its rate-setting process and the sale closes.

#### **REQUESTED EFFECTIVE DATE**

This filing is submitted as a Tier 3 filing and the County requests that this filing become effective at the earliest possible date.

#### **NOTICE AND SERVICE**

In accordance with General Order 96-B, General Rules 4.3 and Water Industry Rule 4.1, a copy of this Advice Letter was mailed or electronically transmitted to the enclosed service list, which includes parties of record in a related proceeding or persons with a specific interest in the Advice Letter. A notice of this request, attached hereto as **Exhibit D**, was mailed to Live Oak's customers on May 6, 2020.

#### **PROTESTS AND RESPONSES**

Anyone may respond to or protest this Advice Letter. A response supports the filing and may contain information useful to the Commission in evaluating the Advice Letter. A protest objects to the Advice Letter in whole or in part. If filing a protest, you must state the grounds and supporting facts for the protest, how the Advice Letter affects you, and reasons you believe all or part of the Advice Letter is not justified. The grounds to protest are as follows:

1. The utility did not properly serve or give notice of the advice letter;
2. The relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies;

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<sup>24</sup> California Constitution, Article XIII D, Section 6.

3. The analysis, calculations, or data in the advice letter contain material error or omissions;
4. The relief requested in the advice letter is pending before the Commission in a formal proceeding; or
5. The relief requested in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process; or
6. The relief requested in the advice letter is unjust, unreasonable, or discriminatory (such a protest may not be made if it would require relitigating a Prior order of the Commission).

A protest shall provide citations or proofs where available to allow staff to properly consider the protest. If your protest requests an evidentiary hearing (a legal proceeding held before an administrative law judge at the Commission to obtain evidence), you must state the facts you would present at the hearing to support your request for a complete or a partial denial of the Advice Letter. The filing of a protest does not ensure an evidentiary hearing will be held. The decision to hold an evidentiary hearing will be based on the contents of the protest.

Any response or protest must be made in writing and received by the Commission's Water Division within 20 days of the date this Advice Letter is filed. Cities and counties needing approval from the elected body to protest should inform the Water Division within the protest period and indicate the estimated date the elected body will vote on the proposed protest.

The County may reply to any response and must respond to each protest. Each reply by the County must be received by the Water Division within five business days after the end of the protest period, and served on the same day to the person who filed the protest or response.

A response or protest must be served on the following entities:

California Public Utilities Commission Tariff Unit, Water Division 505 Van Ness Avenue San Francisco, CA 94102 water.division@cpuc.ca.gov	The County of San Diego Office of County Counsel Attention: Suedy Alfaro 1600 Pacific Hwy., Rm. 355 San Diego, CA 92101 suedy.alfaro@sdcounty.ca.gov	Mintz Levin Cohn Ferris Glovsky and Popeo, P.C. Attention: Abigail V. O'Brien 3850 Carmel Mtn. Rd., Ste. 300 San Diego, CA 92130 avobrient@mintz.com
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**E-mail is the preferred method for all communications, including submittal of a response or protest.** A copy of this Advice Letter may be inspected by contacting the County. Further information may be obtained by contacting the County or Commission at the above addresses.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By 

Suedy Alfaro, Senior Deputy

CERTIFICATE OF SERVICE

I certify that I served on all interested persons and organizations in these filings or their attorneys, as shown on the attached list, a true copy of Advice Letter No. 36-W (without exhibits).

The exhibits listed below are available by contacting the County of San Diego, Office of County Counsel, Attention: Suedy Alfaro at 1600 Pacific Highway, Room 355, San Diego, CA 92101 or suedy.alfaro@sdcounty.ca.gov.

Exhibit A Agreement for Purchase and Sale of Assets

Exhibit B United States Bankruptcy Court Modified Order Approving Sale

Exhibit C Improvements Planned by the County of San Diego

Exhibit D Customer Notice

Dated: May 6, 2020 at San Diego, California.

  
\_\_\_\_\_  
Liana Gomez

**Advice Letter No. 36-W  
Service List**

**U.S. MAIL SERVICE**

American Express  
PO Box 0001  
Los Angeles, CA 90096-8000

American Express Bank FSB  
c/o Becket and Lee LLP  
POB 3001  
Malvern PA 19355-0701

Baker Corporation  
1726 Don Lee Place  
Escondido, CA 92029-1136

California American Water Company  
4701 Beloit Drive  
Sacramento, CA 95838

Clairemont Equipment  
7651 Ronson Road  
San Diego, CA 92111-1511

Citibank  
PO Box 790034  
St. Louis, MO 63179-0034

City National Bank  
937 Lomas Santa Fe Drive  
Solana Beach, CA 92075-1544

Dun & Bradstreet  
Attn: Lynne Roberts, 2nd Floor  
3501 Corporate Parkway  
PO Box 520  
Center Valley, PA 18034-0520

Dudek Engineering & Environmental  
605 Third Street  
Encinitas, CA 92024-3513

Frank B & Associates  
134 Davis Street  
Santa Paula, CA 93060-2730

Fry's Electronics  
PO Box 760  
Draper, UT 84020-0760

GE Capital Retail Bank  
c/o Recovery Mgmt. Systems Corp  
25 SE 2nd Ave Suite 1120  
Miami FL 33131-1605

Home Depot  
PO Box 183175  
Columbus, OH 43218-3175

Live Oak Springs Market  
37820 Old Highway 80  
Boulevard, CA 91905-9542

Lowe's/GECRB  
PO Box 530914  
Atlanta, GA 30353-0914

Lowe's Business/GECRB  
PO Box 530970  
Atlanta, GA 30353-0970

Nationstar Mortgage LLC  
PO Box 619096  
Dallas, TX 75261-9096

Nazar Najor  
Daniel Najor  
Lauren Najor  
PO Box 1241  
Boulevard, CA 91905-0341

Rocky Vandergriff  
PO Box 815  
Seeley, CA 92273-0815

Staples Credit Plan  
PO Box 689020  
Des Moines, IA 50368-9020

USA Blue Book  
PO Box 9004  
Gurnee, IL 60031-9004

US Bank Credit  
2955 Alpine Blvd.  
Alpine, CA 91901-2392

United States Trustee  
Office of the U.S. Trustee  
880 Front Street, Suite 3230  
San Diego, CA 92101

Wells Fargo  
PO Box 54349  
Los Angeles, CA 90054-0349

CA Employment Dev. Dept.  
Lien Group, MIC 92G  
PO Box 826880  
Sacramento, CA 94280-0001

CA Tax and Fee Admin. Dept.  
Account Info. Group, MIC 29  
P.O. Box 942879  
Sacramento, CA 94279-0001

CA Franchise Tax Board  
Bankruptcy Section MS A340  
P.O. BOX 2952  
Sacramento, CA 95812-2952

CA Div. of Labor Stds. Enforcement  
1550 West Main St.  
El Centro, CA 92243-2105

CA Div. of Labor Stds. Enforcement  
7575 Metropolitan Drive, Suite 210  
San Diego, CA 92108-4424

U S Sec. and Exchange Commission  
Los Angeles Regional Office  
444 South Flower Street 9th Floor  
Los Angeles, CA 90071-2934

Internal Revenue Service  
PO Box 7317  
Philadelphia, PA 19101-7317

IRS-Insolvency Division  
P.O. Box 7346  
Philadelphia, PA 19101-7346

Internal Revenue Service  
PO Box 37900  
Hartford, CT 06176-7900

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**EXHIBIT A**

**Agreement for Purchase and Sale of Assets**

## AGREEMENT FOR PURCHASE AND SALE OF ASSETS

This Agreement for Purchase and Sale of Assets (“**Agreement**”) is made and entered into this 19th day of September 2019 (“**Effective Date**”) by and between Richard M Kipperman, the chapter 11 trustee of Live Oak Holding, LLC, a Nevada limited liability corporation (“**Seller**”), and the County of San Diego, a political subdivision of the State of California (“**Buyer**”).

### RECITALS

A. Richard M Kipperman is the chapter 11 Trustee of Live Oak Holding, LLC (“**Debtor**”), the debtor in Case No. 13-11672-LT11 (“**Bankruptcy Case**”), pending in the United States Bankruptcy Court for the Southern District of California (“**Bankruptcy Court**”).

B. Debtor owns Live Oak Springs Water Company, a Class D water utility providing public utility water service to approximately one hundred customers in San Diego County (“**Water Company**”) and occupying approximately 27 acres of real property located at 37820 Old Highway 80, Boulevard, California with APNs 609-050-03-00, 609-050-06-00, 609-086-03-00, 609-071-01-00, and 609-090-07-00 (“**Real Property**”).

C. Seller desires to sell and Buyer desires to purchase the Water Company, the Real Property, or if not all of such parcels, then such parcels of the Real Property specifically identified by Buyer, by existing APN in writing to the Trustee at least five Business Days before the Closing (“**Purchased Real Property**”), and the improvements thereon, and certain other assets pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual representations, covenants and promises set forth herein, the Parties hereby agree as follows:

### ARTICLE I DEFINITIONS

“**Additional Deposit**” shall mean the \$25,000.00 deposit to be delivered by Buyer to Escrow Agent upon expiration of the Diligence Period.

“**Agreement**” shall mean this Agreement for Purchase and Sale of Assets.

“**Approval Order**” shall mean the order entered by the Bankruptcy Court approving the sale of the Assets to Buyer free and clear of all liens, claims, and encumbrances, including all liens related to real property taxes in substantially the form attached hereto as **Exhibit A**.

“**Assets**” shall mean the Water Company, the Purchased Real Property and the improvements thereon (including groundwater wells and three 20,000 gallon water storage tanks), and all assets owned by the Water Company and/or owned by the Debtor and used by the Water Company, including, but not limited to, any and all machinery, equipment, hardware, materials, fixtures, trade fixtures, storage units, vehicles, tools, and books and records, including the information necessary to provide service to the Customers.

“**Bankruptcy Case**” shall have the meaning set forth in Recital A.

“**Bankruptcy Court**” shall have the meaning set forth in Recital A.

“**Bill of Sale**” shall mean a bill of sale, in substantially the form attached or to be attached hereto as **Exhibit B**, transferring title to any Assets that constitute personal property.

“**Break-Up Fee**” shall mean an amount equal to \$15,000.00, to be paid by Seller to Buyer as set forth in this Agreement.

“**Business Day**” shall mean any day other than a Saturday, Sunday or other day in which banks in Los Angeles, California are authorized or required by law to be closed.

“**Buyer**” shall have the meaning set forth in the Preamble.

“**Closing**” shall mean the closing of the purchase and sale of the Assets pursuant to this Agreement.

“**Closing Date**” shall mean the date on which the Closing occurs, which shall be on the fifth Business Day after the later of (a) the fourteenth day following the entry of the Approval Order, (b) the day on which the Regulatory Approval is obtained, or (c) such other date as the Parties may agree in writing.

“**Customers**” shall mean the customers of the Water Company.

“**Debtor**” shall have the meaning set forth in Recital A.

“**Deed**” shall mean a quitclaim deed, duly executed and acknowledged by Seller, granting and conveying to Buyer fee simple title to the Purchased Real Property, in the form attached or to be attached hereto as **Exhibit C**.

“**Deposit**” shall mean the Initial Deposit plus the Additional Deposit.

“**Diligence Period**” shall have the meaning set forth in Section 2.3(a).

“**Effective Date**” shall have the meaning set forth in the Preamble.

“**Escrow Agent**” shall mean Carolyn Church of Ticor Title, located at 2275 Rio Bonito Way, Suite 160, San Diego, California 92108.

“**Expense Reimbursement**” shall mean any actual Expenses (as defined in **Section 5** of the Operating Agreement) both incurred by Seller after the Diligence Period and paid by Buyer after the Diligence Period, to be paid by Seller to Buyer on the terms and conditions set forth in this Agreement.

“**Final Order**” means an order of the Bankruptcy Court that (a) is with respect to a motion or application to which no opposition, objection, reservation of rights or other challenge was filed, unless such opposition, objection, reservation of rights or other challenge was withdrawn; or (b) is with respect to a motion or application to which one or more oppositions, objections, reservations of rights or other challenges were filed and were not withdrawn, and (i)

has not been reversed, rescinded, stayed, modified or amended; (ii) is in full force and effect; and (iii) (A) the time to appeal or to seek review, rehearing or reconsideration, or a writ of certiorari has expired and no appeal, request for rehearing or reconsideration, or a writ of certiorari is pending; or (B) any such appeal, request or writ has been dismissed or resolved by the highest court to which the order or judgment was timely appealed or from which review, rehearing, reconsideration or a writ of certiorari was sought.

**“Governmental Authority”** shall mean any foreign, United States federal, state or local government, political subdivision or governmental, regulatory or administrative authority, body, agency, board, bureau, commission, department, instrumentality or court, quasi-governmental authority, self-regulatory organization or stock exchange, including, but not limited to, the California Public Utilities Commission; provided, however, Buyer shall not constitute a Governmental Authority for purposes of this Agreement.

**“Initial Deposit”** shall mean the \$15,000.00 deposit delivered by Buyer to Escrow Agent in accordance with Section 3.2.

**“New Exception”** shall have the meaning set forth in Section 4.7(h) below.

**“Operating Agreement”** shall mean an interim operating agreement between Seller and Buyer for operation of the Assets and any Real Property not included in the Assets, in substantially the form attached hereto as **Exhibit D**.

**“Outside Closing Date”** shall mean June 30, 2020; provided, however, that in the event the conditions to Closing set forth in Sections 4.6(b), 4.7(b) and 4.7(g) have not been satisfied by June 30, 2020, the Outside Closing Date shall be September 30, 2020; or such other date as the Parties may agree in writing.

**“Party”** shall mean Buyer or Seller; **“Parties”** shall mean Buyer and Seller, collectively.

**“Preliminary Report”** shall mean that certain Preliminary Report, dated as of September 6, 2019, issued by Title Company under Order No. 00634439-002-CC1 with respect to the Real Property.

**“Prepaid Taxes”** shall have the meaning set forth in Section 3.4 below.

**“Proposed Sale”** shall have the meaning set forth in Section 7.2 below.

**“Purchase Price”** shall have the meaning set forth in Section 3.1(a) below.

**“Purchased Real Property”** shall have the meaning set forth in Recital C.

**“Real Property”** shall have the meaning set forth in Recital B.

**“Regulatory Approval”** shall mean the approval of the transfer of ownership of the Water Company, and any actions related to such transfer, to Buyer by all necessary Governmental Authorities, including the California Public Utilities Commission, whether by advice letter, application, or otherwise.

“**Sale Hearing**” shall mean the hearing in the Bankruptcy Court to consider approval of the Proposed Sale.

“**Seller**” shall mean Richard M Kipperman, as chapter 11 trustee of the Debtor.

“**Third Party Consent**” shall have the meaning set forth in Section 6.8(c) below.

“**Title Company**” shall mean Ticor Title, located at 2275 Rio Bonito Way, Suite 160, San Diego, California 92108.

“**Title Policy**” shall mean the standard coverage owner’s CLTA policy of title insurance issued to Buyer by Title Company with respect to the Real Property in a form acceptable to Buyer.

“**Water Company**” shall have the meaning set forth in Recital B.

## **ARTICLE II**

### **PURCHASE AND SALE OF ASSETS**

2.1 Sale of Assets. Subject to the terms and conditions of this Agreement and in consideration of the Purchase Price, at the Closing, Seller will sell, transfer, assign and convey to Buyer, and Buyer will purchase from Seller, the Assets.

(a) Free and Clear of Liens. In accordance with 11 U.S.C. section 363, the sale of the Assets by Seller, and the acquisition of the Assets by Buyer, shall be free and clear of all liens, encumbrances or interests of any nature whatsoever, except Exceptions D and 1 through 14 as reflected in the Preliminary Report, including all liens related to real property taxes, and is otherwise on the terms and conditions set forth herein. At or before Closing, Seller or the Escrow Agent (from the Purchase Price) shall pay any delinquent or non-delinquent property taxes, assessments or bonds assessed against the Assets, together with penalties and interest thereon, except as otherwise provided in Section 3.4 and Section 4.10 herein.

2.2 Diligence Period.

(a) For ninety days following the Effective Date, unless otherwise agreed by the Seller and Buyer (“**Diligence Period**”), Buyer may enter upon the Water Company, the Real Property and improvements thereon to perform, at Buyer’s expense, such studies and investigations as Buyer may deem appropriate relating to Buyer’s proposed acquisition of the Assets. Buyer will use care and consideration in connection with all of its inspections and investigations of the Assets. Buyer will schedule any entry onto the Real Property with Seller in advance, except as otherwise provided by the Operating Agreement, and will provide a schedule and brief explanation of all activities to be conducted on the Real Property during such entry. All activities will be performed in compliance with all applicable laws, and in a manner which does not cause any damage in any material respect to the Assets. Except as otherwise provided by the Operating Agreement, Buyer agrees not to interfere with the operation and maintenance of the Assets or allow interference by any of its employees, agents or contractors. Buyer acknowledges that Seller is in no way obligated to correct any conditions or alleged defects discovered by Buyer in the course of such investigations, studies or tests, or thereafter. During the Diligence Period,

Buyer may also conduct any investigations as Buyer deems necessary with respect to the Regulatory Approval and any other regulatory requirements, and shall request (with a copy to Seller) the California Public Utilities Commission provide Buyer with a list of documents and information required to be furnished by Buyer in order to obtain the Regulatory Approval. Trustee shall use reasonable best efforts to provide to Buyer, within five (5) days' receipt of any written request by Buyer, any information Buyer may deem necessary to Buyer's proposed acquisition of the Assets.

(b) If Buyer elects not to proceed with the purchase of the Assets, Buyer shall notify Seller in writing prior to the expiration of the Diligence Period that Buyer has elected to terminate this Agreement, and thereupon the Initial Deposit, if previously paid by Buyer to Seller, and any interest accrued thereon shall be repaid to Buyer (less any escrow fees payable by Buyer pursuant to this Agreement), and this Agreement shall automatically terminate. Seller and Buyer shall then be released from all liability or obligation hereunder, except for the obligations which survive termination of this Agreement. If Buyer does not so notify Seller of its election to terminate this Agreement during the Diligence Period, Buyer shall be deemed to have satisfied itself as to the condition of the Assets.

(c) Buyer will indemnify, protect, defend (with counsel reasonably satisfactory to Seller) and hold Seller harmless from and against any and all loss, expense, claim, damage and injury to person or property resulting from the presence or acts of Buyer, Buyer's employees, agents, contractors and/or subcontractors and/or the contractors or subcontractors of such agents on or about the Real Property and the Water Company in connection with the performance of any such inspections, tests, investigations or other activities pursuant to this Section 2.3. This indemnification will survive the Closing or the termination of this Agreement. In conducting any such activities, Buyer will take all steps necessary to insure that no mechanic's or materialman's liens are recorded against the Real Property or improvements thereon with respect to such activities and will promptly remove or bond over any such liens in the event they are so recorded.

### **ARTICLE III** **PURCHASE PRICE AND PAYMENT**

3.1 **Purchase Price.** The purchase price ("**Purchase Price**") for the Assets shall be cash in the amount of \$150,000.00.

3.2 **Deposit.** Buyer shall deliver to Escrow Agent the Initial Deposit within fifteen (15) days of the execution of this Agreement. Upon expiration of the Diligence Period, Buyer shall deliver to Escrow Agent the Additional Deposit. At Closing, the Deposit shall be credited towards the Purchase Price. The Initial Deposit and/or the Additional Deposit shall be nonrefundable except as set forth in Sections 2.2(b) and 9.2.

3.3 **Closing Date Payment.** On the Closing Date, Buyer will deliver, or cause to be delivered, as consideration for the Assets, by wire transfer of immediately available funds to the Escrow Agent, the Purchase Price less the amount of the Deposit actually delivered by Buyer to the Escrow Agent, less any Prepaid Taxes.

3.4 Prepaid Taxes. If the conditions to Closing in Sections 4.6(a), 4.6(b), 4.7(a), and 4.7(b) have been satisfied, but the condition to Closing in Section 4.7(g) has not been satisfied by April 5, 2020, then on or before April 9, 2020, the County shall pay to the Officer of the Treasurer-Tax Collector those property taxes due during the current assessment year (prorated, as applicable, pursuant to Section 4.10) and those property taxes identified as Exceptions A through C in the Preliminary Report, together with any penalties and interest thereon (the “**Prepaid Taxes**”), which Prepaid Taxes shall constitute a credit against the Purchase Price to be paid on the Closing Date; provided however, that if this Agreement is terminated prior to the Closing, Buyer shall be entitled to reimbursement of the Prepaid Taxes from the proceeds of any future sale of the Water Company.

#### **ARTICLE IV** **CLOSING**

4.1 Closing. The closing of the purchase and sale of the Assets (“**Closing**”) will take place at 10:00 a.m. on the Closing Date, at the offices of Mintz Levin Cohn Ferris Glovsky and Popeo, P.C., 3580 Carmel Mountain Road, Suite 300, San Diego, CA 92130, or at such other time and place as the Parties may agree in writing prior to the Closing Date.

4.2 Possession. At Closing, possession of the Purchased Real Property and improvements thereon shall be delivered to Buyer free and clear of all tenants and occupants except as otherwise provided in the Operating Agreement.

4.3 Post-Closing Filings. Within five (5) Business Days after the Closing, Seller shall file a Report of Sale (CSD 2024) with respect to the Assets, which, if authorized by the Approval Order, shall identify any Real Property that is not Purchased Real Property and is, therefore, deemed abandoned pursuant to 11 U.S.C. § 554 and in accordance with the Approval Order.

4.4 Seller’s Deliveries at Closing. At the Closing, Seller shall deliver the following to the Escrow Agent:

- (a) The Approval Order, which shall be a conformed copy if required by the Escrow Agent;
- (b) The Deed;
- (c) The Bill of Sale;
- (d) Such documents as may reasonably be required by the Title Company to issue the Title Policy;
- (e) All keys and combinations in Seller’s possession to all locks on the Purchased Real Property;
- (f) Possession of the Assets;

(g) A notice to Customers that the Water Company has been transferred by Seller to Buyer and instructing Customers to pay any and all charges for Water Company service provided after the Closing directly to Buyer or as otherwise directed by Buyer;

(h) Escrow instructions consistent with this Agreement and providing for the payment, directly by Escrow Agent from the Purchase Price, of any outstanding delinquent or non-delinquent property taxes, assessments or bonds assessed against the Assets, together with penalties and interest thereon, due in or with respect to any assessment period prior to the assessment period in which the Closing occurs; and

(i) Such other duly executed documents, instruments and certificates as may be necessary or appropriate to be delivered by Seller pursuant to this Agreement.

4.5 Buyer's Deliveries at Closing. At the Closing, Buyer shall deliver the following to the Escrow Agent:

(a) The Purchase Price less the amount of the Deposit actually delivered to Seller and/or Escrow Agent prior to the Closing Date and any Prepaid Taxes;

(b) A certificate, executed by an appointive officer of Buyer, dated no later than the Closing Date, executed by Buyer certifying that the conditions set forth in Section 4.6(c) and (e) have been satisfied;

(c) A Preliminary Change of Ownership Report and any required transfer tax statements;

(d) The Regulatory Approval, in such form as Escrow Agent may request;

(e) Escrow instructions consistent with this Agreement; and

(f) Such other duly executed documents, instruments and certificates as may be necessary or appropriate to be delivered by Seller pursuant to this Agreement.

4.6 Seller's Conditions to Closing. Seller's obligations to transfer the Assets to Buyer shall be subject to the following conditions precedent:

(a) The Bankruptcy Court shall have entered the Approval Order and the Approval Order shall not be stayed or reversed.

(b) The Regulatory Approval shall have been obtained and there shall be no suit, action, litigation, arbitration or governmental proceeding or audit, including appeals and applications for review, in progress, pending, or threatened with respect to the Regulatory Approval, or any judgment, decree, injunction, deficiency, rule or order of any court, Governmental Authority, commission, agency, instrumentality or arbitrator with respect to the Regulatory Approval.

(c) Each of the representations of Buyer shall be true and correct in all respects as of the date hereof and as of the Closing Date.

(d) Buyer shall have delivered to the Escrow Agent the items required in Section 4.5.

(e) Buyer shall have performed and observed all material covenants and agreements of this Agreement to be performed and observed by Buyer as of the Closing Date.

(f) No action shall have been commenced by or before any Governmental Authority against Buyer, seeking to restrain or materially and adversely alter the transactions contemplated by this Agreement which, in the reasonable, good faith determination of Seller, is likely to render it impossible or unlawful to consummate such transactions.

(g) No court or other Governmental Authority shall have issued an order or stay pending appeal which shall then be in effect restraining or prohibiting the completion of the transactions contemplated hereby or reversing the Approval Order or the Regulatory Approval.

4.7 Buyer's Conditions to Closing. Buyer's obligations to purchase the Assets from Seller shall be subject to the following conditions precedent:

(a) The Bankruptcy Court shall have entered the Approval Order and the Approval Order shall not be stayed or reversed.

(b) The Regulatory Approval shall have been obtained and there shall be no suit, action, litigation, arbitration or governmental proceeding or audit, including appeals and applications for review, in progress, pending, or threatened with respect to the Regulatory Approval, or any judgment, decree, injunction, deficiency, rule or order of any court, Governmental Authority, commission, agency, instrumentality or arbitrator with respect to the Regulatory Approval.

(c) Seller shall have delivered to the Escrow Agent all of the items required in Section 4.4.

(d) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date.

(e) Seller shall have performed and observed all material covenants and agreements of this Agreement to be performed and observed by Seller as of the Closing Date.

(f) The Title Company shall have issued or shall be committed to issue the Title Policy.

(g) Buyer shall have completed all actions required to set rates and collect Revenues, as defined in the Operating Agreement, from Customers under applicable law, statute, ordinance, or other governmental rule or regulation, including but not limited to, any approval required by the County of San Diego Board of Supervisors and/or Customers.

(h) Subject to Section 2.1(a), title to the Purchased Real Property shall be consistent with the Preliminary Report; provided, however, that if any new matters, conditions, documents or ownership interests that are excepted from title insurance coverage arise on any

subsequently issued amendments to the Preliminary Report which are reasonably expected to have a material adverse effect on the County's interests in the Assets (each, a "**New Exception**"), then Buyer may elect, at any time prior to close of escrow, to (a) waive any objection it may have to such New Exception, approve the New Exception, and accept title to the Purchased Real Property subject to such New Exception; or (b) request that Seller remove such New Exception; or (c) terminate this Agreement on thirty (30) days' written notice to Seller. For the avoidance of doubt, the following shall not constitute New Exceptions: (1) any new matters, conditions, documents or ownership interests that arise on any subsequently issued amendments to the Preliminary Report which relate to any actions or omissions by Buyer in connection with the Operating Agreement or Buyer's due diligence under this Agreement; (2) any property taxes, including personal property taxes and any assessments collected with taxes, for fiscal years 2019-2020 or thereafter; and (3) any penalties, interest, notices of sale, or declarations of property tax defaults related to property taxes assessed against the Real Property as of the Effective Date.

(i) The Operating Agreement shall have been executed by the Parties and approved by the Bankruptcy Court no more than forty-five (45) days after the commencement of the Diligence Period, and shall be in full force and effect as of the Closing Date.

4.8 Closing Costs. Each Party shall bear its own attorneys' fees and other costs relating to this Agreement, except as set forth below or in the Operating Agreement:

(a) Seller's Transaction Costs. Seller shall pay for the following items in connection with the transactions contemplated by this Agreement: (a) one-half of the fees and expenses for Escrow Agent; (b) all filing fees, recording, transfer or conveyance taxes payable in connection with the conveyance of the Assets; and (c) the title insurance premium for the Title Policy.

(b) Buyer's Transaction Costs. Buyer shall pay for the following items in connection with the transactions contemplated by this Agreement: (a) one-half of the fees and expenses for Escrow Agent; (b) the cost of any due diligence Buyer chooses to conduct; (c) all costs related to the Regulatory Approval; (d) any fees, commissions or expenses of any broker retained by Buyer; and (e) all transfer taxes or similar taxes, if any, levied by any Governmental Authority attributable to the transfer of the Assets.

4.9 Pre-Closing Actions of Buyer and Seller. Each Party shall notify the other Party immediately in writing of any fact or condition that causes or constitutes a breach of either Party's representations, warranties or covenants under this Agreement.

4.10 Prorations and Allocations. Certain revenues, expenses, current-year property taxes and special assessments, and other items with respect to the Assets, and applicable to the periods of time before and after the Closing Date, determined in accordance with sound accounting principles consistently applied, shall be prorated and allocated between Seller and Buyer as provided herein. Except as provided to the contrary herein, Seller shall be entitled to all revenue and shall be responsible for all expenses for the period of time up to but not including the Closing Date (except as otherwise provided in the Operating Agreement), and Buyer shall be entitled to all revenue and shall be responsible for all expenses for the period of time from and after and including the Closing Date (except as otherwise provided in the Operating Agreement).

(a) Customer payments for services provided shall be prorated as of the Closing Date (except as otherwise provided in the Operating Agreement).

(b) Except as otherwise provided in the Operating Agreement, utility charges (including, but not limited to, charges for telephone, cellular telephone, internet, sewer and electricity) shall be prorated as of Closing Date except to the extent the Parties can arrange for the utility providers to read meters on the Closing Date, in which event Seller shall pay all outstanding utility charges through the time the meters are read and there shall be no proration of utilities.

(c) Except as otherwise provided in the Operating Agreement, ordinary course expenses of the Water Company, employee wages, payroll taxes, payroll expenses and repairs shall be prorated as of the Closing Date.

If accurate prorations and allocations cannot be made at Closing because, for example, current bills are not obtainable (as, for example, in the case of utility bills and/or real estate taxes), the Parties shall allocate or prorate such items at Closing using the best available information, subject to adjustment upon receipt of the final bill or other evidence of the applicable revenue or expense. The obligation to make the adjustment shall survive the Closing. Except as otherwise provided in the Operating Agreement, an adjustment to prorations and allocations shall be completed within one hundred and eighty days after the Closing Date in the manner described herein and the Parties shall promptly pay or reimburse any final amounts due.

## **ARTICLE V**

### **COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER**

To induce Buyer to enter into this Agreement and to purchase the Assets, Seller makes the following representations, warranties and covenants with respect to the Assets:

5.1 Authority. Subject to entry of the Approval Order and the issuance of the Regulatory Approval, Seller has all requisite right, power and authority to execute and deliver this Agreement and to perform his obligations under this Agreement.

5.2 Enforceability. This Agreement constitutes the legal, valid and binding obligation of Seller, subject to Bankruptcy Court approval and the issuance of the Regulatory Approval. If the Bankruptcy Court fails to approve this Agreement or the transactions contemplated thereby, the Approval Order does not become a Final Order, and/or the Regulatory Approval is not obtained, this Agreement shall have no force and effect and Seller shall have no obligations or liability to Buyer. Richard M Kipperman is entering into this Agreement solely in his capacity as the chapter 11 trustee of the Debtor and as Seller, and not in his personal capacity, and no obligations or liability shall accrue to Richard M Kipperman personally in connection with this Agreement or the transactions contemplated thereby.

5.3 Covenants of Seller. During the period between the execution of this Agreement and the Closing, Seller will use its best efforts to satisfy or cause to be satisfied all the conditions precedent to the Closing hereunder set forth in Section 4.7, except for Section 4.7(g) and to cause the transactions contemplated hereby to be consummated.

5.4 No Other Representations or Warranties. Except for the representations, warranties and covenants of Seller expressly contained herein, neither Seller nor its representatives makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of Seller, including, without limitation, (a) the probable success or profitability of ownership, use or operation of the Assets by Buyer before or after the Closing, (b) the probable success or results in connection with the Bankruptcy Court, the Approval Order and/or the Regulatory Approval, or (c) the value, use or condition of the Assets, which are being conveyed hereby on an “As Is”, “Where Is” condition (as further set forth below in Article X), without any warranty whatsoever (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose).

5.5 Survival of Representations and Warranties. To the extent permitted under applicable law, statute, ordinance, or other governmental rule or regulation, the covenants, representations and warranties of Seller set forth in this Article V will survive until nine months after the Closing Date, after which time they will be void and of no force or effect, unless, prior to the date that is nine months after the Closing Date, Buyer shall have notified Seller of a breach of such representation or warranty. In such event, the covenant, representation or warranty that is the subject of the claim shall survive until the Parties have resolved the claim or the claim is disposed of by a final non-appealable judgment by legal proceeding or settlement.

## **ARTICLE VI**

### **COVENANTS, REPRESENTATIONS AND WARRANTIES OF BUYER**

To induce Seller to enter into this Agreement and to sell the Assets, Buyer represents and warrants to Seller, which representations and warranties shall survive the Closing, as follows:

6.1 Organization and Qualification. Buyer is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Subject to the Regulatory Approval, Buyer has all requisite power and authority to own, lease and operate its properties and to carry on its business (including the operation of the Water Company) as it is now being conducted.

6.2 Authority. Buyer represents that it has all requisite right, power and authority to execute and deliver this Agreement and each of the documents to be delivered pursuant to this Agreement, and to perform its obligations under this Agreement and each of the documents to be delivered pursuant to this Agreement. Buyer’s execution and delivery of this Agreement and each of the documents to be delivered pursuant to this Agreement, the performance of Buyer’s obligations hereunder and thereunder, the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary actions on the part of Buyer.

6.3 Enforceability. This Agreement constitutes the legal, valid and binding obligation of Buyer, subject to Bankruptcy Court approval and the issuance of the Regulatory Approval. If the Bankruptcy Court fails to approve this Agreement or the transactions contemplated thereby, the Approval Order does not become a Final Order, and/or if the Regulatory Approval is not obtained, this Agreement shall have no force and effect and Buyer shall have no obligations or liability to Seller, except as otherwise provided herein or in the Operating Agreement.

6.4 No Violation. Neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby by Buyer will constitute a violation of (a) any rule, regulation, order, judgment or decree of any court or of any Governmental Authority, (b) any of Buyer's organizational documents, (c) any contract or agreement, (d) any writ, order, judgment, decree, law, rule, regulation or ordinance, or (e) any other commitment or restriction by which Buyer is bound.

6.5 Pending Litigation. There is no litigation, arbitration or administrative proceeding pending or threatened (including condemnation or taking by eminent domain) which could affect Buyer's ability to carry out its obligations hereunder.

6.6 No Broker. No person or entity has acted, directly or indirectly, as a broker, finder or advisor for Buyer. Seller is not and will not become obligated to pay any fee or commission or like payment to any broker, finder or advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement or contract made by or on behalf of Buyer.

6.7 Eligibility for Regulatory Approval. To Buyer's knowledge, there is no reason which would prevent Buyer from being able to qualify for and obtain the Regulatory Approval.

6.8 Covenants of Buyer. Buyer agrees as follows:

(a) During the period between the execution of this Agreement and the Closing, Buyer will use its best efforts to satisfy or cause to be satisfied all the conditions precedent to the Closing hereunder set forth in Section 4.6, except for Sections 4.6(f) and 4.6(g), and Section 4.7(g), and to cause the transactions contemplated hereby to be consummated.

(b) Seller is conveying to Buyer all right, title and interest in and to certain Assets which may require the consent of third-parties to effect the assignment (each a "**Third Party Consent**"), including business information related to the Customers, which may be subject to certain privacy and other protections. Including with respect to Buyer's access to and use of such information during the Diligence Period and during the Operating Agreement's Term (as defined therein), Buyer (i) shall be solely responsible for (A) ensuring the transfer of such information complies with applicable law; and (B) investigating the need for any such Third Party Consent with respect to the Assets; (ii) shall bear the burden and expense of obtaining such Third Party Consents; and (iii) shall maintain the confidentiality of any Customer information subject to privacy or other protections to the extent required by applicable law. Seller can provide no assurance that any such Third Party Consent can be obtained. Buyer will indemnify, protect, defend (with counsel reasonably satisfactory to Seller) and hold Seller harmless from and against any and all loss, expense, claim, damage and injury to person or property resulting from the transfer or use of the Customer information, or Buyer's access thereto. This indemnification will survive the Closing or the termination of this Agreement.

6.9 Survival of Representations and Warranties. The covenants, representations and warranties of Buyer set forth in this Article VI will survive until nine months after the Closing Date, after which time they will be void and of no force or effect, unless, prior to the date that is nine months after the Closing Date, Seller shall have notified Buyer of a breach of such

representation or warranty. In such event, the covenant, representation or warranty that is the subject of the claim shall survive until the Parties have resolved the claim or the claim is disposed of by a final non-appealable judgment by legal proceeding or settlement.

**ARTICLE VII**  
**BANKRUPTCY COURT APPROVAL SUBJECT TO OVERBID**

7.1 Bankruptcy Court Approval. This Agreement and the sale of the Assets as described herein shall be presented for approval to the Bankruptcy Court, subject to overbid. The sale by Seller to Buyer shall be a sale of the Assets free and clear of all liens, claims, encumbrances and interests, except Exceptions D and 1 through 14 as reflected in the Preliminary Report, including liens related to real property taxes, to the fullest extent provided by the United States Bankruptcy Code, including 11 U.S.C. section 363. Except for Buyer's obligations under this Agreement during the Diligence Period, including but not limited to its obligations under Sections 2.2, 3.2, 4.9, 6.8(b), and 6.9, all obligations under this Agreement and the Closing shall be conditioned upon the entry of the Approval Order.

7.2 Sale Motion. Following the conclusion of the Diligence Period, Seller shall file a motion that seeks the entry of an order approving, among other things, the sale of the Assets to Buyer pursuant to this Agreement free and clear of all monetary liens, claims, encumbrances and interests, including liens related to real property taxes, to the fullest extent provided by the United States Bankruptcy Code ("**Proposed Sale**") and granting related relief.

**ARTICLE VIII**  
**REGULATORY APPROVAL AND OPERATION OF WATER COMPANY PRIOR TO CLOSING**

8.1 Regulatory Approval. Within thirty (30) days following entry of the Approval Order, or such other period as agreed by the Parties, the proposed acquisition of the Assets as described herein shall be presented by Buyer for approval to all necessary Governmental Authorities, including the California Public Utilities Commission. The Closing shall be conditioned upon obtaining the Regulatory Approval.

8.2 Regulatory Approval Cooperation. Buyer and Seller shall use best efforts to obtain the Regulatory Approval and shall assist and cooperate with each other and their respective representatives in obtaining the Regulatory Approval.

8.3 Conduct of Business. During the Diligence Period and prior to Closing, Buyer shall operate the Assets in accordance with the terms of the Operating Agreement. In the event the Regulatory Approval is not obtained by the Outside Closing Date or the Court refuses to approve the Proposed Sale, the Parties shall have the right to terminate the Operating Agreement in accordance with the terms thereof.

**ARTICLE IX**  
**TERMINATION**

9.1 Events of Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by Seller if a material breach of any provision of this Agreement has been committed by Buyer and the breach has not been waived or cured within ten (10) Business Days after delivery of such notice;

(b) by Buyer if a material breach of any provision of this Agreement has been committed by Seller after the Diligence Period and the breach has not been waived or cured within ten (10) Business Days after delivery of such notice;

(c) by Buyer, if any condition in Section 4.7 has not been satisfied by the Closing, other than through the failure of Buyer to comply with its obligations under this Agreement;

(d) by Seller, if (i) any condition in Section 4.6 has not been satisfied by the Closing, other than through the failure of Seller to comply with his obligations under this Agreement; or (ii) Buyer has not sought Regulatory Approval on or before the deadline set forth in Section 8.1;

(e) by either Party, if an alternative transaction is approved by the Bankruptcy Court;

(f) by either Party, if the Regulatory Approval is not obtained; provided, however, that Buyer may not terminate pursuant to this Section 9.1(f) if the failure to obtain such Regulatory Approval is the result of Buyer's withdrawal of or failure to prosecute diligently any applications and/or timely provide other documents or information either in Buyer's possession or reasonably able to be acquired by Buyer in order to obtain the Regulatory Approval;

(g) by Seller, if the Closing has not occurred by the Outside Closing Date;

(h) by Buyer, during the Diligence Period, as set forth in Section 2.2;

(i) by Seller, if the Diligence Period has expired and Buyer has failed to deliver the Additional Deposit or if Buyer has failed to request the California Public Utilities Commission provide Buyer with a list of documents and information required to be furnished by Buyer in order to obtain the Regulatory Approval;

(j) by Seller, if Buyer materially breaches its obligations under the Operating Agreement; or

(k) by the mutual consent of both Parties.

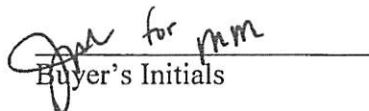
## 9.2 Effects of Termination.

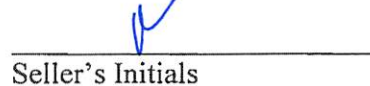
(a) In the event that this Agreement shall be terminated pursuant to Section 9.1 above, all further obligations of the Parties under this Agreement shall terminate without further liability or obligation of any Party to any other Party hereunder except for those provisions that expressly survive the termination of this Agreement; provided that no Party shall be released from liability hereunder, subject to the express provisions of this Agreement, if this Agreement is terminated and the transactions abandoned by reason of (a) failure of such Party to

have performed its obligations hereunder; or (b) any knowing misrepresentations made by such Party of any matter set forth herein. Upon any termination hereunder, Seller shall promptly release the portion of the Deposit actually delivered to the Escrow Agent, plus any accrued interest thereon, to Buyer; provided, however, that, if Buyer has not given notice of its intent to terminate pursuant to Section 9.1(b), in the event that this Agreement is terminated pursuant to Section 9.1(a); 9.1(d) (pertaining to Section 4.6(b) (solely if the failure to obtain such Regulatory Approval is the result of Buyer's withdrawal of or failure to prosecute diligently any applications and/or timely provide other documents or information either in Buyer's possession or reasonably able to be acquired by Buyer in order required to obtain the Regulatory Approval), and Section 4.6(c)-(e)); Section 9.1(f) (solely if the failure to obtain the Regulatory Approval is the result of Buyer's withdrawal of or failure to prosecute diligently any applications and/or timely provide other documents or information required to obtain the Regulatory Approval); or Section 9.1(j), Seller shall be entitled to retain the Deposit, plus any accrued interest thereon, as liquidated damages in complete satisfaction of any and all claims and causes of action arising in and out of any breach or default of this Agreement by Buyer; and further provided, however, that in the event that this Agreement is terminated pursuant to Section 9.1(i), Seller shall be entitled to retain the Initial Deposit, plus any accrued interest thereon, as liquidated damages in complete satisfaction of any and all claims and causes of action arising in and out of any breach or default of this Agreement by Buyer, excluding any claims of Seller under the Operating Agreement. For the avoidance of doubt, Seller's right to retain any Deposit under this Section 9(a) shall not include any Prepaid Taxes; reimbursement of any Prepaid Taxes to the County shall be pursuant to Section 3.4 of this Agreement.

(b) In the event that this Agreement is terminated pursuant to Section 9.1(e), the Seller promptly release the portion of the Deposit actually delivered to the Escrow Agent, plus any accrued interest thereon, to Buyer and shall pay Buyer the Expense Reimbursement and the Break-Up Fee from proceeds of the alternative transaction in complete satisfaction of any and all claims and causes of action arising in and out of any breach or default of this Agreement by Seller. In the event that this Agreement is terminated by Buyer pursuant to Sections 9.1(b) or 9.1(c) (only as it relates to Section 4.7(c)-(e)), the Seller shall pay Buyer the Break-Up Fee and Expense Reimbursement no later than five Business Days after the date of such termination in complete satisfaction of any and all claims and causes of action arising in and out of any breach or default of this Agreement by Seller.

(c) Seller and Buyer have each initialed below to further indicate their awareness and acceptance of each and every provision of Section 9.2(a) and (b).

  
Buyer's Initials

  
Seller's Initials

9.3 Notice of Termination. Notice of termination shall be given by the terminating Party to the other Party as provided in Section 11.8.

9.4 Survival. This Article IX shall survive any termination of this Agreement.

**ARTICLE X**  
**AS-IS TRANSACTION**

10.1 **“AS IS” SALE; DISCLAIMERS; RELEASE.** IT IS UNDERSTOOD AND AGREED THAT, UNLESS EXPRESSLY STATED HEREIN, SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE ASSETS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL, CONVEY AND ASSIGN TO BUYER AND BUYER SHALL ACCEPT THE ASSETS **“AS IS, WHERE IS, WITH ALL FAULTS.”** BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE ASSETS OR RELATING THERETO MADE OR FURNISHED BY SELLER OR ITS REPRESENTATIVES, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT AS EXPRESSLY STATED HEREIN. BUYER HEREBY ACKNOWLEDGES THAT NO SUCH WARRANTIES, GUARANTEES, STATEMENTS OR REPRESENTATIONS HAVE BEEN MADE. BUYER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE ASSETS ARE BEING SOLD **“AS IS, WHERE IS, WITH ALL FAULTS.”**

BUYER ACKNOWLEDGES TO SELLER THAT, PRIOR TO CLOSING, BUYER WILL HAVE HAD THE OPPORTUNITY TO CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE ASSETS AS BUYER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE ASSETS AND ITS ACQUISITION THEREOF. BUYER FURTHER WARRANTS AND REPRESENTS TO SELLER THAT BUYER WILL RELY SOLELY ON ITS OWN REVIEW AND OTHER INSPECTIONS AND INVESTIGATIONS IN THIS TRANSACTION AND NOT UPON THE INFORMATION PROVIDED BY OR ON BEHALF OF SELLER, OR ITS AGENTS, EMPLOYEES OR REPRESENTATIVES WITH RESPECT THERETO. BUYER HEREBY ASSUMES THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, LATENT OR PATENT DEFECTS, ADVERSE PHYSICAL, REGULATORY OR OTHER ADVERSE MATTERS, MAY NOT HAVE BEEN REVEALED BY BUYER’S REVIEW AND INSPECTIONS AND INVESTIGATIONS.

SELLER SPECIFICALLY DISCLAIMS, AND NEITHER SELLER NOR ANY OF SELLER’S REPRESENTATIVES, AGENTS NOR ANY OTHER PERSON IS MAKING, ANY REPRESENTATION, WARRANTY OR ASSURANCE WHATSOEVER TO BUYER, AND NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, ARE MADE BY SELLER OR RELIED UPON BY BUYER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF THE ASSETS, OR ANY PORTION THEREOF, INCLUDING BUT NOT LIMITED TO (i) ANY CLAIM BY

**BUYER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN, WITH RESPECT TO THE ASSETS, (ii) THE FINANCIAL CONDITION OR PROSPECTS OF THE ASSETS AND (iii) THE COMPLIANCE OR LACK THEREOF OF THE ASSETS WITH GOVERNMENTAL REGULATIONS, INCLUDING WITHOUT LIMITATION ENVIRONMENTAL LAWS AND ZONING REQUIREMENTS, NOW EXISTING OR HEREAFTER ENACTED OR PROMULGATED, IT BEING THE EXPRESS INTENTION OF SELLER AND BUYER THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE ASSETS WILL BE CONVEYED AND TRANSFERRED TO BUYER IN THEIR PRESENT CONDITION AND STATE OF REPAIR, "AS IS, WHERE IS, WITH ALL FAULTS". IN ADDITION, SELLER MAKES NO REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES REGARDING THE LIKELIHOOD THAT THE APPROVAL ORDER WILL BE ENTERED OR THE REGULATORY APPROVAL WILL BE OBTAINED. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE, EXPERIENCED AND SOPHISTICATED BUYER OF REAL ESTATE AND OTHER ASSETS, AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF BUYER'S CONSULTANTS IN PURCHASING THE ASSETS. BUYER HAS BEEN GIVEN A SUFFICIENT OPPORTUNITY TO CONDUCT AND HAS CONDUCTED SUCH INSPECTIONS, INVESTIGATIONS AND OTHER INDEPENDENT EXAMINATIONS OF THE ASSETS AND RELATED MATTERS AS BUYER DEEMS NECESSARY, INCLUDING BUT NOT LIMITED TO THE PHYSICAL, REGULATORY AND ENVIRONMENTAL CONDITIONS THEREOF, AND WILL RELY UPON SAME AND NOT UPON ANY STATEMENTS OF SELLER NOR OF ANY BROKER, REPRESENTATIVE, EMPLOYEE, AGENT OR ATTORNEY OF SELLER. BUYER ACKNOWLEDGES THAT ALL INFORMATION OBTAINED BY BUYER WAS OBTAINED FROM A VARIETY OF SOURCES, AND SELLER WILL NOT BE DEEMED TO HAVE REPRESENTED OR WARRANTED THE COMPLETENESS, TRUTH OR ACCURACY OF ANY OF THE DOCUMENTS OR OTHER SUCH INFORMATION HERETOFORE OR HEREAFTER FURNISHED TO BUYER. UPON THE CLOSING, BUYER WILL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL, REGULATORY AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS COLLATERAL TO OR AFFECTING THE ASSETS BY SELLER, ANY AGENT OF SELLER OR ANY THIRD PARTY. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE ASSETS FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN. BUYER, WITH BUYER'S COUNSEL, IF ANY, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT AND UNDERSTANDS THE SIGNIFICANCE OF EACH AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH HEREIN ARE AN INTEGRAL PART OF THIS AGREEMENT, AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE ASSETS TO BUYER FOR THE**

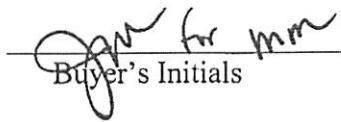
**PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT.**

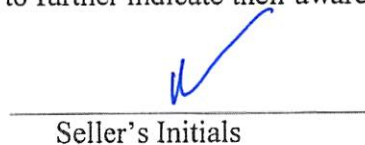
**BUYER COVENANTS AND AGREES ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS NOT TO SUE SELLER AND RELEASES SELLER OF AND FROM AND WAIVES ANY CLAIM OR CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION ANY STRICT LIABILITY CLAIM OR CAUSE OF ACTION, FOR ANY LOSS, COST, DAMAGE, EXPENSE OR OTHER OBLIGATION OR LIABILITY THAT BUYER OR ITS SUCCESSORS OR ASSIGNS MAY HAVE AGAINST SELLER, WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THAT MAY ARISE ON ACCOUNT OF OR IN ANY WAY CONNECTED WITH THE DESIGN, PHYSICAL, STRUCTURAL, REGULATORY OR ENVIRONMENTAL CONDITION OF THE ASSETS OR OPERATIONS OR PERFORMANCE OF THE ASSETS. THE TERMS AND CONDITIONS OF THIS ARTICLE X WILL EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT OR THE CLOSING, AS THE CASE MAY BE, AND WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS AND ARE HEREBY DEEMED INCORPORATED INTO THE DEED AND BILL OF SALE AS FULLY AS IF SET FORTH AT LENGTH THEREIN. THIS RELEASE INCLUDES CLAIMS OF WHICH BUYER IS PRESENTLY UNAWARE OR WHICH BUYER DOES NOT PRESENTLY SUSPECT TO EXIST WHICH, IF KNOWN BY BUYER, WOULD MATERIALLY AFFECT BUYER'S RELEASE OF SELLER.**

**BUYER SPECIFICALLY WAIVES THE PROVISION OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:**

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”**

Seller and Buyer have each initialed this Article X below to further indicate their awareness and acceptance of each and every provision of this Article X.

  
Buyer's Initials

  
Seller's Initials

**ARTICLE XI  
MISCELLANEOUS**

11.1 Representation of Comprehension of Document. The Parties represent and warrant that they have each read this Agreement and are fully aware of and understand all of its terms. The Parties represent that they have consulted with, and have received advice from, independent legal counsel in connection with their review and execution of this Agreement, or have had the opportunity to consult with legal counsel and have declined to do so.

11.2 Merger and Modification. This Agreement, including the Exhibits hereto, contains the entire understanding of the Parties hereto with respect to the subject matter hereof, and there are no other agreements modifying its terms. This Agreement supersedes all prior agreements and understandings between the Parties with respect to such subject matter.

11.3 Amendment. This Agreement may be amended, changed, altered or modified only by an amendment in writing signed by both Parties.

11.4 Governing Law. The Parties acknowledge and agree that the conditions, validity and enforceability of any terms or provisions of this Agreement shall be determined by the laws of the State of California and the United States Bankruptcy Code.

11.5 Venue. The Bankruptcy Court will have exclusive jurisdiction over any and all disputes between or among the Parties, whether in law or equity, arising out of or relating to this Agreement and/or any transactions contemplated hereby; provided that if the Bankruptcy Court is unwilling or unable to hear any such dispute, the courts of the State of California, County of San Diego and the federal courts located in the State of California, County of San Diego will have exclusive jurisdiction over any and all disputes between or among the parties, whether in law or equity, arising out of or relating to this Agreement and/or any transactions contemplated hereby. Each of the Parties hereto hereby irrevocably waives any and all rights to trial by jury in any legal proceeding arising out of or related to this Agreement or the transactions contemplated hereby.

11.6 Interpretation of Agreement. This Agreement constitutes a fully negotiated agreement among commercially sophisticated Parties and therefore shall not be construed or interpreted for or against any Party. The Parties agree that California Civil Code section 1654 shall not apply to the terms of this Agreement.

11.7 Attorneys' Fees and Costs. If any of the Parties hereto commences any action to enforce, interpret or challenge the terms of this Agreement, then each of the Parties hereto agrees that the prevailing party in any such action shall be entitled to recover his attorneys' fees and court costs, and other non-reimbursable litigation expenses, including expert witness fees and attorney and witness travel expenses, and including all attorneys' fees and costs incurred in enforcing any judgment or in collecting upon any amounts that may be awarded in any such action.

11.8 Notices. All notices, requests and other communications required or permitted hereunder shall be in writing (which shall include communications by email); shall be deemed to have been given when delivered by hand, overnight delivery service, with acknowledged receipt, email, or when deposited in the United States mail if sent by registered or certified mail, postage prepaid, return receipt requested, addressed to a Party at the addresses set forth below:

If to Seller: Richard M Kipperman  
P.O. Box 3010  
La Mesa, CA 91944  
Email: rmk@corpmtg.com

With a copy to: Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.  
3580 Carmel Mountain Road, Suite 300  
San Diego, CA 92130

Attention: Abigail V. O'Brient  
Email: avobrient@mintz.com

If to Buyer: County of San Diego  
Department of Public Works  
Attn: William Morgan, Deputy Director  
5500 Overland Ave., Suite 310  
San Diego, CA 92123  
Email: William.Morgan@sdcounty.ca.gov

With a copy to: County of San Diego  
Office of County Counsel  
Attn: Suedy Alfaro, Senior Deputy  
1600 Pacific Highway, Suite 355  
San Diego, CA 92101  
Email: Suedy.Alfaro@sdcounty.ca.gov

11.9 Further Documents. The Parties agree to promptly perform such further acts and to execute and deliver any and all further documents that may reasonably be necessary or desirable to effectuate the purpose of this Agreement and the transactions contemplated hereby.

11.10 Severability. Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid or contrary to any existing or future law of any jurisdiction or any rule or regulation of any governmental authority, such invalidity shall not impair the operation of or affect those provisions in any other jurisdiction or any other provisions hereof which are valid.

11.11 Third Parties. Nothing herein shall be construed to be for the benefit of or enforceable by any third party.

11.12 Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

11.13 Headings. Captions and headings used in the Agreement are for ease of reference only and do not constitute a part of this Agreement.

11.14 Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute one in the same instrument, and any Party hereto may execute this Agreement by signing one or more counterparts.

11.15 Time of the Essence. Time is strictly of the essence in this Agreement.

IN WITNESS WHEREOF, this Agreement is executed as of the date set forth above.

SELLER:

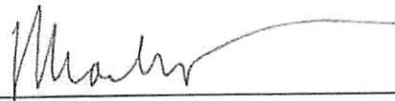
LIVE OAK HOLDING, LLC



By: Richard M Kipperman, chapter 11 trustee

BUYER:

COUNTY OF SAN DIEGO



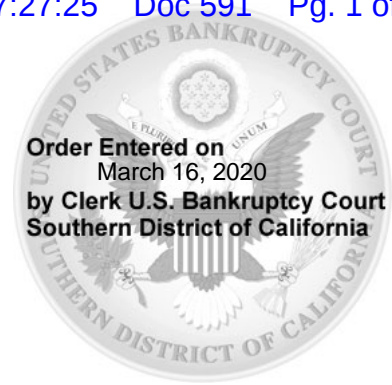
By: Marko Medved, Director  
Department of General Services

**EXHIBIT B**

**United States Bankruptcy Court Modified Order Approving Sale**

CSD 1001A [07/01/18]  
Name, Address, Telephone No. & I.D. No.

Abigail V. O'Brient (SBN 265704); Andrew B. Levin (SBN 290209)  
Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.  
3580 Carmel Mountain Road, Suite 300  
San Diego, CA 92130  
Tel: 858-314-1500  
Fax: 858-314-1501



**UNITED STATES BANKRUPTCY COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
325 West F Street, San Diego, California 92101-6991

In Re  
LIVE OAK HOLDING, LLC,

Debtor.

BANKRUPTCY NO. 13-11672-LT11

Date of Hearing: March 10, 2020

Time of Hearing: 10:00 a.m.

Name of Judge: Laura S. Taylor

**COURT MODIFIED**  
**ORDER ON**

**MOTION FOR ORDER (1) APPROVING SALE OF WATER COMPANY AND RELATED ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363(F); (2) WAIVING THE STAY UNDER RULE 6004(h) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE; AND (3) GRANTING RELATED RELIEF**

The court orders as set forth on the continuation pages attached and numbered two (2) through thirteen (13) with exhibits, if any, for a total of thirteen (13) pages. Motion/Application Docket Entry No. 538.

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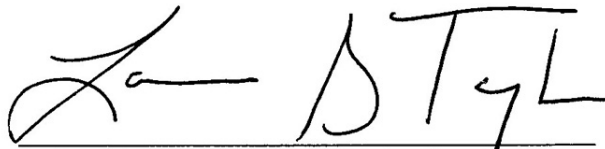
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// March 13, 2020

DATED:

  
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Judge, United States Bankruptcy Court

ORDER ON MOTION FOR ORDER (1) APPROVING SALE OF WATER COMPANY AND RELATED ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363(F); (2) WAIVING THE STAY UNDER RULE 6004(H) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE; AND (3) GRANTING RELATED RELIEF  
DEBTOR: LIVE OAK HOLDING, LLC CASE NO: 13-11672-LT11

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The Motion for Order (1) Approving Sale of Water Company and Related Assets Free and Clear of Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. § 363(f); (2) Waiving the Stay under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure; and (3) Granting Related Relief [Docket No. 538] (the "Motion"), filed by Richard M Kipperman, the chapter 11 trustee (the "Trustee") of Live Oak Holding, LLC (the "Debtor"), came on for hearing on March 10, 2020 (the "Hearing") before the Honorable Laura S. Taylor, United States Bankruptcy Judge. At the Hearing, appearances were as noted on the record. After consideration of the Motion, the Memorandum of Points and Authorities in support of the Motion ("Memorandum") [Docket No. 540], the declaration of Richard M Kipperman in support of the Motion ("Kipperman Declaration") [Docket No. 541], the declaration of Abigail V. O'Brien (the "O'Brien Declaration") in support of the Motion [Docket No. 544], the declaration of Thomas E. Montgomery in support of the Motion (the "Montgomery Declaration") [Docket No. 543], the declaration of William Morgan in support of the Motion [Docket No. 542], the notice of hearing on the Motion [Docket No. 546], and the other pleadings and papers on file in this case, and no opposition to the Motion having been filed, and after deliberation thereon, and for the reasons stated in the Court's Tentative Ruling on the Motion [Docket No. 582] (the "Tentative Ruling") and on the record at the Hearing, and good cause appearing,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein and in the Court's Tentative Ruling, a true and correct copy of which is attached hereto as Exhibit 1, constitute the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052, made applicable to this matter pursuant to Federal Rule of Bankruptcy Procedure 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. The matter concerns the administration of the estate as well as the sale of estate property and is therefore a core proceeding under 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and before this Court under 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motion are section 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6004.

E. As evidenced by the proofs of service filed with the Court, (i) proper, timely, adequate and sufficient notice of the Motion, the sale proposed therein, and the hearing on the Motion were provided in accordance with Bankruptcy Rules 2002 and 6004, and Local Bankruptcy Rule 2002-1; (ii) such notice was good and sufficient and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests in or on (a) Live Oak Springs Water Company, a water utility (the "Water Company"), (b) approximately 27 acres of real property located at 37820 Old Highway 80, Boulevard, California with APNs 609-050-03-00, 609-050-06-00, 609-086-03-00, 609-071-01-00, and 609-090-07-00 occupied by the Water Company and the improvements thereon (including groundwater wells and three 20,000 gallon water storage tanks) (the "Real Property"); and (c) all assets owned by the Water Company and/or owned by the Debtor and used by the Water Company, including, but not limited to, machinery, equipment, hardware, materials, fixtures,

trade fixtures, storage units, vehicles, tools, and books and records (together with the Water Company and the Real Property, the "Assets");<sup>1</sup> and (iii) no other or further notice is or shall be required.

F. Good cause exists to grant all relief sought in the Motion.

G. The Trustee's decisions to sell the Assets to the County without soliciting overbids and consummation of the sale of the Assets (the "Sale") pursuant to that certain Agreement for Purchase and Sale of Assets, dated as of September 19, 2019 (the "APA"), by and between the Trustee and the County of San Diego (the "County") represent sound exercises of the Trustee's business judgment pursuant to section 363(b) of the Bankruptcy Code.

H. As demonstrated by the evidence submitted by the Trustee in connection with the Motion, the Trustee adequately marketed the Assets over a three-year period, and the Trustee provided a full, fair and reasonable opportunity for any person or entity to purchase the Assets. Indeed, prior to filing the Motion, the Trustee gave all parties in interest in this case notice of the APA on September 19, 2019 [Dkts. 466-1, 469], and no party in interest approached the Trustee with a competing offer for the Assets after receiving notice of the APA, except as set forth on the record at the Hearing. Under the circumstances, additional marketing or another auction would not likely result in any additional or higher offers; instead, it would increase administrative expense, further diminish the proceeds of the sale, and unnecessarily delay the closing of this case.

I. The bid by County for the Assets for \$150,000 (the "County's Offer"), as reflected by the APA, attached as Exhibit A to the Kipperman Declaration, (i) constitutes the highest and best offer for the Assets; (ii) constitutes fair value, fair, full and adequate consideration, reasonably equivalent value and reasonable market value for the Assets; and (iii) is in the best interest of the Debtor's estate, the Debtor's creditors, and all other parties in interest.

J. The Trustee's determination that the County's Offer is the highest and best offer for the Assets is a valid and sound exercise of the Trustee's business judgment.

K. The Trustee has demonstrated a good, sufficient, and sound business purpose and justification for the Sale of the Assets to the County pursuant to the APA without seeking overbids.

L. The County is not an insider, as defined in section 101(31) of the Bankruptcy Code, of the Debtor or the Trustee, and is not affiliated with the Trustee, the Debtor, or any insiders of the Trustee or the Debtor.

M. The County is a good faith purchaser of the Assets under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. There is no evidence that the County colluded with the Trustee or other potential purchasers in connection with the Sale. The Trustee and the County negotiated the APA in good faith, without collusion, and from arms' length bargaining positions, and have not engaged in conduct that would cause or permit the sale or the APA to be avoided under section 363(n) of the Bankruptcy Code, as set forth in the O'Brien Declaration and the Montgomery Declaration.

N. A reasonable opportunity to object to the Motion, the Sale, and the terms of the APA was afforded to all parties in interest. No party objected to the sale of the Assets or opposed the Motion on any grounds, including, without limitation, the grounds of fraud or collusion.

O. The Assets are property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code. The transfer of the Assets to the County will be a legal, valid, and effective transfer of the estate's interest in the Assets. The transfer of the Assets pursuant to the terms of the APA will vest the County with good, valid

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<sup>1</sup> All capitalized terms used but not defined herein have the meanings ascribed to them in the Motion and the Memorandum.

and marketable title to the Assets, and will vest the County with all right, title, and interest in the Assets free and clear of any and all liens, claims, encumbrances, and other interests.

P. The provisions of Section 363(f) of the Bankruptcy Code have been satisfied. Any outstanding real property taxes attributed to the Purchased Real Property asserted by the San Diego County Treasurer-Tax Collector will be paid from the proceeds of the Sale, which satisfies Section 363(f)(5) with respect to this lienholder. Further, a bona fide dispute exists with regard to the State of California Employment Development Department (“EDD”)’s state tax lien on the Real Property because the Trustee has provided undisputed evidence that he believes he paid all taxes owed to the EDD. Sale proceeds will be reserved in an amount sufficient to satisfy the EDD state tax lien to the extent the dispute is not resolved prior to closing and/or such taxes are not paid at closing. Therefore, the Trustee may sell the Assets free and clear the EDD’s state tax lien pursuant to Section 363(f)(4) of the Bankruptcy Code. Any holder of any lien, claim or encumbrance upon any of the Assets that did not object, or withdrew its objection, to the Sale is hereby deemed to have consented to the Sale pursuant to Section 363(f)(2). The Trustee provided notice of the sale of the Assets to all known creditors of the Debtor and all other parties in interest who requested special notice, which notice set forth the last date to file and serve an objection to the Motion. No objections have been filed. Therefore, the Trustee may sell the Assets free and clear of all such liens, claims or encumbrances pursuant to section 363(f) of the Bankruptcy Code.

Q. The Trustee has full authority and power, without any further consents or approvals, to execute and deliver the APA (and any related agreements or documents to effectuate the terms thereof in the Trustee’s sole and absolute discretion), to perform his obligations therein, and, subject to any regulatory approval required under applicable state law, to consummate the Sale.

R. The County is purchasing only that Real Property described in the APA as “Purchased Real Property”, subject to designation of the specific parcels identified by APN, and the County is not assuming any liabilities of the Estate or Debtor except as set forth in the Operating Agreement, which was approved by the Court on October 28, 2019. [Dkt. 491]

S. Following the Sale and the transfer of the purchased Assets to the County, all remaining **pre-petition** property in the Debtor’s estate will be of inconsequential value and benefit to the estate, and it is appropriate for the Trustee to abandon such property pursuant to section 554 of the Bankruptcy Code. **The Trustee’s claims for post-petition coercive or compensatory sanctions, however, are not abandoned.**

T. A waiver of the stay pursuant to Federal Rule of Bankruptcy Procedure 6004(h) is appropriate because no opposition was filed to the Motion, and delaying closing is inappropriate because (1) this case has been pending for over five years; and (2) the Sale closing cannot occur prior to the CPUC’s approval of the Sale of the Assets and the County’s rate-setting process has concluded, which processes are anticipated to last, in aggregate, several months.

NOW THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED, AND DECREED THAT:

1. The findings of fact and conclusions of law set forth above, as well as the Court’s findings and determinations in the Tentative Ruling, are hereby incorporated by this reference.
2. The unopposed Motion is granted in its entirety.
3. The APA is hereby approved pursuant to section 363(b) of the Bankruptcy Code. The Trustee is authorized, empowered and directed to execute, deliver, perform, consummate and comply with the APA and all other instruments and documents necessary to implement the APA (collectively, the “Ancillary Documents”). The Trustee is further authorized, empowered and directed to effectuate the Sale and to take all further actions as may reasonably be required to convey the Assets to the County, subject to any regulatory approval required under applicable state law.

4. On the Closing Date, as defined in the APA, all right, title, and interest in and to, and possession of the Assets shall be immediately vested in the County, pursuant to sections 105(a), 363(b) and 363(f) of the Bankruptcy Code, free and clear of all liens, claims, encumbrances and interests.

5. The failure to specifically include or reference any particular provision of the APA or any Ancillary Document in this Order shall not diminish or impair the effectiveness of such provision(s), it being the intent of the Court that the APA and the Ancillary Documents be authorized and approved in their entirety. In the event of any conflict between any provision of the APA or any Ancillary Document and this Order, this Order shall control.

6. The APA and any Ancillary Documents may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate, as determined by the Trustee in his sole and absolute discretion.

7. The terms and provisions of the APA, the Ancillary Documents, and this Order shall be binding in all respects upon, and shall inure to the benefit of the Trustee, the estate and its creditors, the County and its successors and assigns and any affected third parties, including, but not limited to, all persons asserting alien, claim, encumbrance, or other interest in the Assets. As set forth in greater detail in the APA, the sale of the Assets is as-is, where-is, with all faults, and the County has had a reasonable opportunity to conduct all due diligence deemed necessary by the County in connection with the condition of the Assets and the purchase of the Assets.

8. Pursuant to section 363(f) of the Bankruptcy Code, the Trustee is authorized to sell, subject to any regulatory approval required under applicable state law, the Assets and transfer the estate's interest in the Assets to the County free and clear of any and all liens, claims, encumbrances and other interests because no holder of any such interest objected to the Sale and because the requirements of section 363(f) are satisfied with respect to the San Diego County Treasurer-Tax Collector and the EDD as set forth above in Section P. Subject to the terms of the Operating Agreement and the APA, to the extent any real property taxes or obligations to the EDD remain unpaid as of the date the Sale closes, the Trustee is authorized to pay such taxes and obligations at closing from the proceeds of the Sale.

9. All persons and entities holding or purporting to hold liens, claims, encumbrances, and other interests of any kind or nature whatsoever against the Debtor or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated) arising under or out of, in connection with, or in any way relating to the Debtor, the Assets, or the Sale are forever barred, estopped, and permanently enjoined from asserting against the County, its successors or assigns, its property, or the Assets, such persons' or entities' liens, claims, encumbrances, and other interests.

10. Any person or entity in possession, custody, or control of any of the Assets (or any other property that the Trustee may use, sell or lease under section 363 of the Bankruptcy Code and would have been "Assets" under the APA had they been in the Trustee's possession as of the date hereof) shall immediately deliver such property to the Trustee pursuant to section 542 of the Bankruptcy Code without further Order of the Court. The Trustee shall immediately deliver any such property it receives to County without further order of the Court. Nothing herein shall preclude the Trustee from designating the County as its agent for purposes of receiving directly any property that would otherwise be delivered to the Trustee pursuant to section 542 of the Bankruptcy Code and this provision.

11. The transaction contemplated by the APA is undertaken by the County and the Trustee without collusion and at arms' length, and in good faith, as that term is used in section 363(m) of the Bankruptcy Code. There is no evidence that the County colluded with any other potential purchaser in connection with the Sale or otherwise engaged in conduct that would cause or permit the Sale or the APA to be voided under Section 363(n) of the Bankruptcy Code. The County is a buyer in good faith of the Assets, the sale price is fair and reasonable, and the County is hereby provided all the protections afforded by section 363(m) of the Bankruptcy Code.

Code. Accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the Sale shall not affect the validity of the Sale, unless such authorization is duly stayed pending such appeal.

12. The consideration provided by the County under the APA (i) is fair and reasonable, (ii) is the highest and best offer for the Assets, (iii) will provide a greater recovery for all of the Debtor's stakeholders than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act or Uniform Voidable Transaction Act, as applicable, and the laws of all applicable jurisdictions, including, but not limited to, the laws of California.

13. The provisions of this Order are non-severable and mutually dependent on each other.

14. This Court shall retain jurisdiction to enforce and implement this Order and the APA, all amendments thereto, and each of the Ancillary Documents in all respects, including, without limitation, to resolve any disputes arising under or related to the APA and/or the Ancillary Documents or regarding liens, claims or interests asserted against or in the Assets.

15. This Order shall be effective immediately upon entry. The stay set forth in Bankruptcy Rule 6004(h) shall not apply with respect to this Order.

16. Nothing herein shall be deemed to prejudice or alter (y) the Trustee's or County's respective rights under the APA, including with respect to all closing conditions contained thereon, and any Ancillary Document, or (z) the CPUC's regulatory jurisdiction, including with respect to the review and approval of the Sale of Assets, or the CPUC's rights and immunities under the Eleventh Amendment to the United States Constitution and related principles of sovereign immunity.

17. This Order shall be binding in all respects upon the Trustee, the Debtor, its estate, its creditors, and the County.

18. Pursuant to the terms of the APA, to the extent County advises the Trustee, at least five (5) Business Days before the Closing Date, that certain parcels of the Real Property, identified by existing APN, are not being acquired under the APA, the Trustee shall identify such parcels in his Report of Sale and such parcels shall be deemed abandoned pursuant to section 554 of the Bankruptcy Code, effective as of the Closing Date. The Trustee further is authorized to abandon any and all other property remaining in the Debtor's estate following the Closing Date pursuant to section 554 of the Bankruptcy Code. For the avoidance of doubt, abandonment shall be effectuated pursuant to this Order, and the Trustee shall not be required to file a separate notice of abandonment.

# **EXHIBIT 1**

TENTATIVE RULING

ISSUED BY JUDGE LAURA S. TAYLOR

Debtor: LIVE OAK HOLDING, LLC

Number: 13-11672-LT11

Hearing: 10:00 AM Tuesday, March 10, 2020

Motion: MOTION FOR ORDER APPROVING SALE OF WATER COMPANY AND RELATED ASSETS FREE A D CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. 363(f); WAIVING THE STAY UNDER RULE 6004(h) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE; AND GRANTING RELATED RELIEF FILED ON BEHALF OF RICHARD M KIPPERMAN (fr 2/5/20)

This matter was continued by stipulation of the parties. The order approving the stipulation provided that opposition to the Motion was due on February 27, 2020, and any reply had to be filed by March 3, 2020. No one has filed a timely opposition. Accordingly, for the reasons set forth below the Court is inclined to grant the Motion.

**The Proposed Sale**

Pursuant to Bankruptcy Code § 363 and Federal Rule of Bankruptcy Procedure 6004, the Trustee of Live Oak Holding, LLC (the "Debtor") requests an order: (1) approving the private sale to the County of San Diego ("County") of (a) Live Oak Springs Water Company, a water utility ("Water Company"); (b) approximately 27 acres of real property located at 37820 Old Highway 80, Boulevard, California, which is occupied by the Water Company and the improvements thereon (including groundwater wells and three 20,000 gallon water storage tanks), or such portion thereof as the County may designate in accordance with the Agreement for Purchase and Sale of Assets (the "Real Property"); and (c) all other assets owned by the Water Company or owned by the Debtor and used by the Water Company, including, but not limited to, machinery, equipment, hardware, materials, fixtures, trade fixtures, storage units, vehicles, tools, and books and records (together with the Water Company and the Real Property, the "Assets"). The document governing the sale is the

Agreement for the Purchase and Sale of Assets dated as of September 19, 2019, by and between the Trustee and the County (the "APA"). The sale will be free and clear of all liens, claims, interests, and encumbrances pursuant to 11 U.S.C. § 363(f). The Trustee also requests that the order waive the stay under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure.

### **The Consideration**

The consideration for the Assets is a payment of \$150,000.00 (the "Purchase Price"). The Trustee reports that County has already deposited \$15,000 (the "Initial Deposit") with the escrow agent identified in the APA (the "Escrow Agent"). He finally reports that on or about December 16, 2019, the County delivered the Additional Deposit in the amount of \$25,000 to the Escrow Agent. The Deposits will be credited against the Purchase Price.

### **The Diligence Period**

Pursuant to Section 2.2 of the APA, the County had ninety days following the Effective Date of the APA (i.e., September 19, 2019) (the "Diligence Period") to conduct due diligence. The Trustee reports that at the conclusion of the Diligence Period, the County informed the Trustee that it intended to proceed with the acquisition of the Assets.

### **The Closing**

The closing of the Sale contemplated by the APA (the "Closing") is to occur on the fifth business day after the later of: (a) the fourteenth day following the entry of an order approving the Motion ("Sale Order"); (b) the day on which Regulatory Approval is obtained; or (c) such other date as the Parties may agree in writing. The County anticipates that it will obtain Regulatory Approval from the CPUC approximately one month after the County submits all required documentation to the CPUC. In addition, because the Water Company will not be regulated by the CPUC after the sale is completed, Article XIII(D) of the California Constitution requires the County to undertake a rate-setting process ("Rate-Setting Process") before assessing fees on Water Company customers, which process is expected to conclude in June 2020. Assuming all closing conditions have been satisfied, the Trustee anticipates that the Closing will occur at the conclusion of the Rate-Setting Process.

### **Analysis**

#### **Approval of the Sale**

A trustee may determine to sell property of the estate outside of the ordinary course of business by private sale. Fed. R. Bankr. P. 6004(f)(1) ("All sales not in the ordinary course of business may be by private sale or by public auction").

The Trustee's decision to sell the Assets to the County pursuant to the

terms of the APA without soliciting overbids appears to be a sound exercise of the Trustee's business judgment which the Court is inclined to approve under § 363(b) of the Bankruptcy Code. The Trustee has provided undisputed evidence that he extensively marketed the Assets over a three-year period, and that the notice of the opportunity to purchase the Assets was provided to over 100,000 water utility professionals and to the local water utilities most likely to acquire the Assets. The Trustee previously held a noticed auction for the Assets, which resulted in only one offer at the current sale price of \$150,000.

Under the circumstances, it appears that additional marketing or another auction would not likely result in any additional or higher offers; instead, it would increase administrative expense, further diminish the proceeds of the sale, and unnecessarily delay closing of this case. The Court is inclined to find that the Trustee has provided all potential purchasers a full, fair, and reasonable opportunity to purchase the Assets. The Court's long history with the case supports this view.

Further, all parties-in-interest have had ample notice and opportunity to purchase the Assets: On September 19, 2019, the Trustee provided all parties-in-interest with specific notice of the County's intent to purchase the Assets and the terms of the APA. Yet the Trustee reports that no party-in-interest has made a competing offer for the Assets after receiving notice of the APA.

Accordingly, the Court is inclined to find that it is the best interests of the Debtor's estate to sell the Assets to the County pursuant to the APA without seeking overbids. As noted above, the Purchase Price set forth in the APA is the same amount, \$150,000, as the DD Axiom Offer, which this Court already found to represent a "fair value, fair, full and adequate consideration, reasonably equivalent value and reasonable market value" for the Assets. See Dkt. No. 424. The Trustee has provided undisputed evidence that the Purchase Price was negotiated at arms' length between the Trustee and the County. The extensive marketing efforts undertaken by the Trustee, as well as the arms' length negotiations between the Trustee and the County, support a determination that the Purchase Price is fair and reasonable and that the Sale should be authorized. *In re Delaware & Hudson Railway Co.*, 124 B.R. 169, 179 (D. Del. 1991) (fair and reasonable price for the sale of assets is evidenced by extensive solicitation of bids, negotiations with prospective bidders, and testimony that proposed offer is best available). Accordingly, the Court is inclined to find that the Purchase Price is fair and reasonable.

### **Sale Free and Clear of Liens**

Section 363(f) of the Bankruptcy Code describes the circumstances under which a trustee may sell property of the estate free and clear of any interest of third parties in such property. Section 363(f) of the Bankruptcy Code provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the

estate, only if --

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

Because subsections (1) through (5) of Section 363(f) of the Bankruptcy Code are written in the disjunctive, authority to sell the subject property free and clear of any and all interests therein should be granted if any of the conditions are met with respect to each interest holder.

The Trustee reports that he is aware of only two alleged interests, claims, liens, or encumbrances related to the Assets: (i) the secured claim asserted by The San Diego County Treasurer-Tax Collector against the Real Property for unpaid property taxes; and (ii) the state tax lien on the Real Property filed by the EDD.

The San Diego County Treasurer-Tax Collector will be paid the portion of any outstanding real property taxes attributable to the Real Property from the proceeds of the sale, which satisfies § 363(f)(5) with respect to this lienholder.

As noted above, § 363(f)(4) provides that property may also be sold free and clear of an interest if "such interest is in bona fide dispute." The Trustee reports, and it is not disputed, that a bona fide dispute exists with regard to the validity of the EDD's asserted state tax lien. The Trustee has provided undisputed evidence that the Purchase Price was negotiated at arms' length between the Trustee and the County. The Trustee believes he paid all taxes owed to the EDD. The Trustee also reports that he is currently investigating the basis for the EDD's asserted state tax lien and, while reserving all rights and objections with regard to the EDD's asserted state tax lien, will reserve the amount of the asserted lien pending the results of his investigation.

In addition, Section 363(f)(2) authorizes a sale of property of the estate free and clear of all interests if such entity consents to the sale. Consent may be given by the creditor expressly or may be implied from failure to object to the sale. See, e.g., *In re Elliot*, 94 B.R. 343, 346 (E.D. Pa. 1988). The Trustee has provided notice of the sale of the Assets to all known creditors of the Debtor and all other parties in interest who requested special notice in this case. The notice set forth the last date to file and serve an objection to the Motion. No objections

have been filed.

For all of these reasons the Court is inclined to approve the sale free and clear.

### **Good Faith Purchaser**

Bankruptcy Code section 363(m) provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to any entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

A good faith purchaser under section 363(m) is one who purchases for "value" when there is no fraud or collusion in the sale process. *In re Filtercorp, Inc.*, 163 F.3d 570, 577 (9th Cir. 1998) ("[L]ack of good faith is [typically] shown by 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'" (internal citations omitted)).

The Trustee has provided undisputed evidence that the APA was negotiated and entered into without collusion and was the result of an arms' length transaction between the Trustee and the County. The Trustee reports that he is not aware of and does not anticipate any evidence that the County colluded with any other potential purchaser in connection with the Sale or otherwise engaged in conduct that would cause or permit the Sale or the APA to be voided under Section 363(n) of the Code. The Trustee also provides undisputed evidence that the County is not affiliated with the Trustee, the Debtor, or any insiders of the Trustee or Debtor, nor is the County an insider, as defined in Section 101(31) of the Bankruptcy Code, of the Trustee or the Debtor. Also, as indicated above, the Purchase Price is fair and reasonable and represents a purchase for "value." For all of these reasons the Court is inclined to find that the Sale constitutes a good faith purchase in accordance with 11 U.S.C. § 363(m).

### **Rule 6004(h)**

Federal Rule of Bankruptcy Procedure 6004(h) provides: "An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). The Advisory Committee Note to the 1999 amendment to Rule 6004 indicates the purpose of the stay is to provide sufficient time for an objecting party to request a stay pending appeal before the sale can be consummated.

Since there are no timely objections to the sale, the Court is inclined to waive the 14-day stay.

## EXHIBIT C

### **Improvements Planned by the County of San Diego\***

1. Construct a secondary well, including adding piping and connections to the water distribution system (“distribution system”)
2. Replace two existing horizontal storage tanks with larger capacity steel-bolted tanks in compliance with American Water Works Association (AWWA) standards
3. Replace existing distribution system components, including piping, valves and water meters
4. Install isolation valves throughout distribution system
5. Install Supervisory Control and Data Acquisition (SCADA) system to remotely monitor and control distribution system, including tank levels, pressure, chemical feed system, power levels, and communication system
6. Upgrade the electrical system and install emergency generator system to ensure uninterrupted water supply and accommodate future well and pump station needs
7. Replace and/or install various on- and off-site improvements, including lights, access road, and fire hydrants
8. Improve fire flow pumps and pump house to meet fire flow demands
9. Construct an office/storage facility
10. Replace the primary well, if deemed necessary following video inspection

\*All planned improvements are subject to approval of funding by the Board of Supervisors or state or federal grant funds.

**EXHIBIT D**  
**Customer Notice**



# County of San Diego

**BRIAN ALBRIGHT**  
DIRECTOR

DEPARTMENT OF PUBLIC WORKS  
5510 OVERLAND AVENUE, SUITE 410  
SAN DIEGO, CA 92123-1237  
(858) 694-2212  
[www.sdcounty.ca.gov/dpw/](http://www.sdcounty.ca.gov/dpw/)

## **CUSTOMER NOTICE**

### **REQUEST TO APPROVE THE PURCHASE AND ACQUISITION OF LIVE OAK SPRINGS WATER COMPANY BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

May 6, 2020

The following notice is provided in accordance with the California Public Utilities Commission's ("Commission") noticing requirements. By Advice Letter No. 36-W ("Advice Letter") filed May 6, 2020, the County of San Diego ("County") seeks Commission approval for the purchase and acquisition of Live Oak Springs Water Company ("Live Oak"), transfer of the Live Oak service area, and revocation of *The Certificate of Public Convenience and Necessity*, pursuant to the September 19, 2019 agreement entered into by Richard Kipperman, Chapter 11 trustee of Live Oak Holding, LLC ("Trustee"), and the County. The United States Bankruptcy Court for the Southern District of California approved the proposed sale on March 16, 2020.

The County's process for determining and setting the rates it will charge customers is currently underway. The process involves a preliminary rate study, formation of a County Service Area, and approval of a County ordinance to set rates. There will be opportunity for public comment during the rate-setting process. The County's intention is to recover only operational and maintenance costs through rates. It does not intend to use rates to recover the significant costs needed to rehabilitate Live Oak's water distribution system. The County will continue to charge Live Oak customers the Commission's authorized rates, adopted by Res. W-5086, until it completes its rate-setting process and the sale closes. The County and Trustee expect to close the sale shortly after approval of the County ordinance.

Anyone may respond to or protest the Advice Letter. A response supports the filing and may contain information useful to the Commission in evaluating the Advice Letter. A protest objects to the Advice Letter in whole or in part. If filing a protest, you must state the grounds and supporting facts for the protest, how the Advice Letter affects you, and the reasons you believe all or part of the Advice Letter is not justified. A protest shall provide citations or proofs where available. If the protest requests an evidentiary hearing (held before an administrative law judge at the Commission to obtain evidence), it must state the facts you would present at the hearing to support a complete or a partial denial of the Advice Letter. The filing of a protest does not ensure an evidentiary hearing will be held. The decision to hold an evidentiary hearing will be based on the contents of the protest.

**Any response or protest must be in writing and received by the Commission’s Water Division and County within 20 days of the date of this notice.** Public agencies requiring approval from the elected body to protest should inform the Water Division within the protest period and indicate the estimated date the elected body will vote on the protest.

The County may reply to any response and must reply to each protest. The County must serve any replies and provide a copy to the Commission’s Water Division within five business days after the end of the protest period. If you do not receive a reply to your protest within ten business days, please contact the County at the below address or by calling 619.531.4860.

A response or protest must be served on the following entities:

California Public Utilities Commission Tariff Unit, Water Division 505 Van Ness Avenue San Francisco, CA 94102 water.division@cpuc.ca.gov	The County of San Diego Office of County Counsel Attention: Suedy Alfaro 1600 Pacific Hwy., Rm. 355 San Diego, CA 92101 suedy.alfaro@sdcounty.ca.gov	Mintz Levin Cohn Ferris Glovsky and Popeo, P.C. Attention: Abigail V. O’Brien 3850 Carmel Mtn. Rd., Ste. 300 San Diego, CA 92130 avobrient@mintz.com
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**Please review the Advice Letter for additional information on filing a response or protest.** The full letter is available by contacting the County at the above address. If you would like additional information, please contact the Commission or the County at the above addresses.

**E-mail is the preferred method for all communications, including submittal of a response or protest, requests for the Advice Letter, or requests for further information.**