

Board of Directors San Simeon Community Services District



SPECIAL BOARD MEETING PACKET

**Tuesday December 21, 2021
Meeting Start Time 1:00 pm**

Virtual Board Meeting via Zoom Webinar
Webinar Code: **873 0781 0050**

Prepared by:



**NOTICE AND CALL OF A SPECIAL MEETING:
San Simeon Community Services**



I, Gwen Kellas, Chairperson of the San Simeon Community Services District Board of Directors, hereby call a Special Meeting of the Board of Directors, pursuant to California Government Code Section 54956. The Special Meeting will be held Tuesday: December 21, 2021 at 1:00 pm.

Internet Meeting Location – Via ZOOM

Pursuant to San Simeon CSD Resolution 21-438 and in compliance with AB 361 this meeting shall occur as a virtual teleconference using the Zoom app.

Join Zoom for Regular Board Session: Part One

<https://us02web.zoom.us/j/87307810050>

Or One tap mobile:

US: +16699009128, 87307810050#

Or Telephone:

Dial (for higher quality, dial a number based on your current location):

US: +1 669 900 9128

The following commands can be entered via DTMF tones using your **phone's** dial pad while in a **Zoom meeting**:
***6 - Toggle mute/unmute. *9 - Raise hand.**

Webinar ID: 873 0781 0050

NOTE: On the day of the meeting, the virtual meeting room will be open beginning at 2:30 PM. If you are unable to access the meeting please contact Cortney Murguia at (805) 400-7399 prior to the 3:00 PM meeting start time and staff can assist you in accessing the meeting. Should you have any questions related to the information on this agenda or if you wish to submit public comment in the written format you can email Cortney Murguia at admin@sansimeoncsd.org. Members of the public can also contact the District office at (805) 927-4778 or (805) 400-7399 with any questions or concerns related to this agenda or accessing the meeting.

1. REGULAR SESSION: - <https://us02web.zoom.us/j/87307810050>

A. Roll Call

2. BUSINESS ACTION ITEMS:

Public Comment – Public comment will be allowed for each individual business item.

Members of the public wishing to speak on business items may do so when recognized by the Presiding Officer. If a member of the public wishes to speak at this time, Public Comment is limited to three (3) minutes per person for each business item.

- A. APPROVAL OF THE AUDIT FOR FISCAL YEAR 2020/2021.**
- B. APPROVAL OF TOWN & COUNTRY FENCING, INC. FOR INSTALLATION OF A FENCE ON DISTRICT PROPERTY NOT TO EXCEED THE AMOUNT OF \$6,975.00.**
- C. REVIEW AND APPROVAL OF THE HEARST LIMITED TERM ENCROACHMENT AND EASEMENT AGREEMENT.**
- D. DISCUSS AND CONSIDER CLERICAL CORRECTIONS TO CONTRACT WITH GRACE ENVIRONMENTAL SERVICES, LLC.**

3. ADJOURNMENT –

If requested, this agenda shall be made available in appropriate alternative formats to persons with a disability, as required by the Americans with Disabilities Act. To make a request for a disability-related modification or accommodation, or to be able to participate in this Special meeting, please email Cortney Murguia at cmurguia@graceenviro.com and the District will work with you on your accommodation.

2.A. Business Action Item



BUSINESS ACTION ITEM STAFF REPORT

ITEM 2.A. APPROVAL OF THE AUDIT FOR FISCAL YEAR 2020/2021.

Summary:

At the December 14, 2021 Board meeting Adam Guise presented a draft version of the District audit for FY 2020/2021. The Board unanimously voted to approve the draft version of the audit.

Recommendation:

Staff is asking that the Board approve the fiscal year 2020/2021 audit.

Enc: Audit for Fiscal Year 2020/2021

November 16, 2021

Board of Directors
San Simeon Community Services District
111 Pico Avenue
San Simeon, CA 93452

We have audited the basic financial statements of San Simeon Community Services District as of and for the fiscal year ended June 30, 2021. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated April 19, 2021. Professional standards also require that we communicate to you the following information related to our audit.

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by San Simeon Community Services District are described in Note 2 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the fiscal year ended June 30, 2021. We noted no transactions entered into by the governmental unit during the fiscal year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the District's financial statements were:

Management's estimate of the useful lives of capital assets is based on experience with other capital assets and on their standard table of useful lives. We evaluated the key factors and assumptions used to develop the useful lives of capital assets in determining that it is reasonable in relation to the financial statements taken as a whole.

Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting the financial statements were:

The disclosures of Capital Assets in Note 4 and Long-Term Liabilities in Note 7.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. Some of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to the financial statements taken as a whole.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated November 16, 2021.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the governmental unit's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each fiscal year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Adjustments: We assisted the District staff with moving equipment expenditures to capital assets accounts since the equipment gives the District a long-term benefit. We also assisted District staff with adjusting ending accruals for payables to ensure that expenses were recorded in the proper fiscal period to match when they were actually earned or incurred.

Other Matters

With respect to the supplementary information accompanying the financial statements, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

This information is intended solely for the use of the Board of Directors and management of San Simeon Community Services District and is not intended to be and should not be used by anyone other than these specified parties.

Sincerely,

Moss, Keny & Halgren LLP

Santa Maria, California



**INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER
FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS
BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED
IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS***

Board of Directors
San Simeon Community Services District
San Simeon, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the basic financial statements of San Simeon Community Services District, which comprise the statement of net position as of June 30, 2021, and the related statements of revenues, expenses, and changes in net position, and cash flows for the fiscal year then ended, and the related notes to the financial statements, and have issued our report thereon dated November 16, 2021.

Internal Control Over Financial Reporting

In connection with our engagement to audit the financial statements of the District, we considered the District's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, we do not express an opinion on the effectiveness of the District's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. We did not identify certain deficiencies in internal control, described in the accompanying schedule of findings that we consider to be significant deficiencies.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether San Simeon Community Services District's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Moss, Levy & Hartzheim LLP
Santa Maria, California
November 16, 2021

SAN SIMEON COMMUNITY SERVICES DISTRICT

FINANCIAL STATEMENTS

June 30, 2021

SAN SIMEON COMMUNITY SERVICES DISTRICT
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June 30, 2021

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INTRODUCTORY SECTION

Board of Directors

<u>Name</u>	<u>Office</u>	<u>Term Expires</u>
Gwen Kellas	Chairperson	2024
Mary Giacoletti	Vice-Chairperson	2022
Daniel de la Rosa	Director	2024
William Carson	Director	2024
Bill Maurer	Director	2022

FINANCIAL SECTION

INDEPENDENT AUDITOR'S REPORT

To the Board of Directors
San Simeon Community Services District
San Simeon, CA

Report on the Financial Statements

We have audited the accompanying basic financial statements of San Simeon Community Services District (District) as of and for the fiscal year ended June 30, 2021, and the related notes to the basic financial statements, as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the San Simeon Community Services District, as of June 30, 2021, and the changes in financial position and cash flows for the fiscal year then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Management has omitted management's discussion and analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinion on the basic financial statements is not affected by this missing information.

Other Information

Our audit was conducted for the purpose of forming an opinion on the financial statements that collectively comprise the District's basic financial statements. The introductory section and the schedules of revenues, expenses, and changes in net position by function on pages 15 and 16 are presented for purposes of additional analysis and are not a required part of the basic financial statements.

The schedules of revenues, expenses, and changes in net position by function is the responsibility of management and were derived from and related directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the schedules of revenues, expenses, and changes in net position by function are fairly stated in all material respects in relation to the basic financial statements as a whole.

The introductory section has not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we do not express an opinion or provide any assurance on it.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated November 16, 2021, on our consideration of the San Simeon Community Services District's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the District's internal control over financial reporting and compliance.

Report on Summarized Comparative Information

We have previously audited the District's basic financial statements as of and for the fiscal year ended June 30, 2020, and our report dated January 28, 2021, expressed an unmodified opinion on those audited financial statements. In our opinion, the summarized comparative information presented herein as of and for the fiscal year ended June 30, 2020, is consistent, in all material respects, with the audited financial statements from which it has been derived.

Moss, Rony & Halgreim LLP

Santa Maria, California
November 16, 2021

SAN SIMEON COMMUNITY SERVICES DISTRICT
STATEMENT OF NET POSITION - PROPRIETARY FUND

June 30, 2021

with Comparative Totals for June 30, 2020

	2021	2020
ASSETS		
Current Assets:		
Petty cash	\$ 150	\$ 150
Cash and investments	1,155,515	1,248,894
Accounts receivable	122,234	128,375
Prepaid expenses		12,959
Total current assets	<u>1,277,899</u>	<u>1,390,378</u>
Capital Assets:		
Non-depreciable:		
Construction in progress	287,694	223,206
Depreciable:		
Sewer plant	1,797,238	1,784,769
Water plant	1,631,891	1,627,991
Building	279,580	279,580
Equipment	12,690	12,690
Land improvements	26,791	26,791
Less: Accumulated depreciation	<u>(1,539,919)</u>	<u>(1,446,427)</u>
Net capital assets	<u>2,495,965</u>	<u>2,508,600</u>
Total assets	<u>3,773,864</u>	<u>3,898,978</u>
LIABILITIES		
Current Liabilities:		
Accounts payable	36,278	18,306
Customer deposits	88,799	80,140
Long-Term Liabilities:		
Current portion of loan payable	<u>8,805</u>	<u>8,567</u>
Total current liabilities	<u>133,882</u>	<u>107,013</u>
Long-Term Liabilities		
Loan payable	<u>425,548</u>	<u>434,353</u>
Total long-term liabilities	<u>425,548</u>	<u>434,353</u>
Total Liabilities	<u>559,430</u>	<u>541,366</u>
NET POSITION		
Net investment in capital assets	2,061,612	2,065,680
Unrestricted:		
Board assigned for water capital improvements	155,505	55,655
Board assigned for wastewater capital improvements	155,785	55,341
Board assigned for general capital improvements	43,295	15,637
Board committed for operating reserves	250,000	250,000
Undesignated	<u>548,237</u>	<u>915,299</u>
Total net position	<u>\$ 3,214,434</u>	<u>\$ 3,357,612</u>

See accompanying notes to basic financial statements.

SAN SIMEON COMMUNITY SERVICES DISTRICT
STATEMENT OF REVENUES, EXPENSES, AND CHANGES IN NET POSITION - PROPRIETARY FUND
For the Fiscal Year Ended June 30, 2021
With Comparative Totals for the Fiscal Year Ended June 30, 2020

	2021	2020
Operating Revenues:		
Services-waste	\$ 471,529	\$ 444,391
Services-water	432,805	396,043
State of CA-Hearst Castle	25,430	70,777
Services-other	94,691	88,422
Late fees and adjustments	(27,990)	2,514
	<u>996,465</u>	<u>1,002,147</u>
Operating Expenses:		
Accounting	5,775	9,775
Bank fees	1,033	166
Bookkeeping	15,720	14,560
Directors' fees	4,500	5,100
Payroll expenses	344	397
Dues and subscriptions	2,985	4,732
Road maintenance	29,800	
Riprap engineering	4,273	21,958
Insurance-health	4,227	4,285
PERS Retirement	15,816	13,199
Insurance-liability	12,959	10,163
LAFCO budget allocation	2,637	3,386
Legal fees	117,212	64,363
Licenses and permits	19,784	16,936
Miscellaneous	6,590	1,524
Depreciation	93,492	97,102
Office expenses	958	
Operations management	600,510	653,031
Professional fees	108,636	40,922
Emergency stand by	10,000	10,000
Repairs	69,846	34,280
Utilities	82,332	7,695
Website	14,300	13,700
Weed abatement	2,175	3,885
	<u>1,225,904</u>	<u>1,031,159</u>
Total operating expenses		
	<u>(229,439)</u>	<u>(29,012)</u>
Net operating income (loss)		
Non-Operating Revenues (Expenses):		
Property taxes	90,912	87,860
Interest expense	(12,123)	(12,354)
Interest income	7,472	21,979
	<u>86,261</u>	<u>97,485</u>
Total non-operating revenues (expenses)		
Capital Contributions:		
Grant income		178,482
		<u>178,482</u>
Total capital contributions		
	(143,178)	246,955
Changes in net position		
Net position - beginning of fiscal year	3,357,612	3,285,342
Prior-period adjustment		(174,685)
	<u>3,357,612</u>	<u>3,110,657</u>
Net position - beginning of fiscal year, restated		
Net position - end of fiscal year	<u>\$ 3,214,434</u>	<u>\$ 3,357,612</u>

See accompanying notes to basic financial statements.

SAN SIMEON COMMUNITY SERVICES DISTRICT
STATEMENT OF CASH FLOWS - PROPRIETARY FUND
For the Fiscal Year Ended June 30, 2021
With Comparative Totals for the Fiscal Year Ended June 30, 2020

	<u>2021</u>	<u>2020</u>
Cash Flows From Operating Activities:		
Receipts from customers and users	\$ 1,011,265	\$ 985,107
Payments to suppliers	(1,092,410)	(924,066)
Payments to employees	(9,071)	(9,782)
Net cash provided (used) by operating activities	<u>(90,216)</u>	<u>51,259</u>
Cash Flows from Capital and Related Financing Activities:		
Purchase of capital assets	(80,857)	(71,103)
Grants		178,482
Interest payments	(12,123)	(12,354)
Principal loan payments	(8,567)	(8,336)
Net cash provided (used) by capital and related financing activities	<u>(101,547)</u>	<u>86,689</u>
Cash Flows from Noncapital Financing Activities:		
Property taxes	90,912	87,860
Net cash provided by noncapital and related financing activities	<u>90,912</u>	<u>87,860</u>
Cash Flows from Investing Activities:		
Investment income	7,472	21,979
Net cash provided by investing activities	<u>7,472</u>	<u>21,979</u>
Net increase (decrease) in cash and cash equivalents	(93,379)	247,787
Cash and cash equivalents, beginning of fiscal year	1,249,044	1,001,257
Cash and cash equivalents, end of fiscal year	<u>\$ 1,155,665</u>	<u>\$ 1,249,044</u>
Reconciliation to Statement of Net Position		
Petty cash	\$ 150	\$ 150
Cash and investments	1,155,515	1,248,894
	<u>\$ 1,155,665</u>	<u>\$ 1,249,044</u>
Reconciliation of Operating Income (Loss) to Net Cash Provided (Used) by Operating Activities:		
Operating income (loss)	\$ (229,439)	\$ (29,012)
Adjustments to reconcile operating income (loss) to net cash provided (used)		
by operating activities:		
Depreciation	93,492	97,102
Change in Operating Assets and Liabilities:		
(Increase) decrease in accounts receivable	6,141	(18,230)
(Increase) decrease in prepaid expenses	12,959	(2,796)
Increase (decrease) in accounts payable	17,972	3,005
Increase (decrease) in customer deposits	8,659	1,190
Net cash provided (used) by operating activities	<u>\$ (90,216)</u>	<u>\$ 51,259</u>

See accompanying notes to basic financial statements.

SAN SIMEON COMMUNITY SERVICES DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
June 30, 2021

NOTE 1 - NATURE OF DISTRICT

San Simeon Community Services District (the "District") is a political subdivision of the State of California. The District administers the following community services as provided by its charter: water, sanitation, streets, lighting, weed abatement, and general and administrative services.

The District is a Community Services District as defined under State Code Section: 61000. A Community Services District is a public agency (State Code Section: 12463.1) which is a State instrumentality (State Code Section: 23706). State instrumentalities are exempt from federal and state income taxes.

There are no component units included in this report which meet the criteria of the Governmental Accounting Standards Board (GASB) Statement No. 14, *The Financial Reporting Entity*, as amended by GASB Statements No. 39, No. 61, and No. 80.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- A. Accounting Policies - The accounting policies of the District conform with accounting principles generally accepted in the United States of America as prescribed by the Governmental Accounting Standards Board (GASB) and the American Institute of Certified Public Accountants (AICPA).
- B. Basis of Accounting - The District is organized as an Enterprise Fund and follows the accrual method of accounting, whereby revenues are recorded as earned, and expenses are recorded when incurred.
- C. Budget - Although a budget is adopted annually, it is used primarily as a guideline for the Board in regulating expenditures. There is no legal requirement to stay within the adopted budget in the payment or classification of expenditures.
- D. Cash and Cash Equivalents - Cash and cash equivalents consist of cash on hand and in banks and short-term, highly liquid investments with a maturity of three months or less, which include money market funds, cash management pools in County Treasury and the state Local Agency Investment Fund (LAIF). Cash held in the county and state pooled funds is carried at cost, which approximates fair value. Interest earned is deposited quarterly into the participant's fund. Any investment losses are proportionately shared by all funds in the pool. The County is authorized to deposit cash and invest excess funds by California Government Code Section 53648 et seq. The funds maintained by the County are either secured by federal depository insurance or are collateralized.
- E. Property, Plant and Equipment - Capital assets purchased by the District are recorded at cost. Contributed or donated capital assets are recorded at fair value when acquired.
- F. Depreciation - Capital assets purchased by the District are depreciated over their estimated useful lives (ranging from 5-50 years) under the straight-line method of depreciation.
- G. Receivables - The District did not experience any significant bad debt losses; accordingly, no provision has been made for doubtful accounts, and accounts receivable is shown at full value.
- H. Encumbrances - Encumbrances represent commitments related to unperformed contracts for goods or services. Encumbrance accounting, under which purchase orders, contracts, and other commitments for the expenditure of resources are recorded to reserve that portion of the applicable appropriation, is not utilized by the District.
- I. Customer Deposits - Customer deposits are recorded as a liability of the District. The District requires an advance deposit of \$50 for new customers.
- J. Net Position - GASB Statement No. 63 requires that the difference between assets added to the deferred outflows of resources and liabilities added to the deferred inflows of resources be reported as net position. Net position is classified as either net investment in capital assets, restricted, or unrestricted.

SAN SIMEON COMMUNITY SERVICES DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
 June 30, 2021

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

- J. Net Position (Continued) - Net investment in capital assets consists of capital assets, net of accumulated depreciation, and reduced by the outstanding principal of related debt. Restricted net position is the net position that has external constraints placed on them by creditors, grantors, contributors, laws, or regulations of other governments, or through constitutional provisions or enabling legislation. Unrestricted net position consists of net position that does not meet the definition of net investment in capital assets or restricted net position.
- K. Estimates - The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America, as prescribed by the GASB and the AICPA, requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.
- L. Comparative Data/Total Only - Comparative total data for the prior fiscal year has been presented in certain accompanying financial statements in order to provide an understanding of the changes in the District's financial position, operations, and cash flows. Also, certain prior fiscal amounts have been reclassified to conform to the current fiscal year financial statements presentation.

M. Future Accounting Pronouncements

GASB Statements listed below will be implemented in future financial statements:

Statement No. 87	"Leases"	The provisions of this statement are effective for fiscal years beginning after June 15, 2021.
Statement No. 89	"Accounting for Interest Cost Incurred before the End of a Construction Period"	The provisions of this statement are effective for fiscal years beginning after December 15, 2020.
Statement No. 91	"Conduit Debt Obligations"	The provisions of this statement are effective for fiscal years beginning after December 15, 2021.
Statement No. 92	"Omnibus 2020"	The provisions of this statement are effective for fiscal years beginning after June 15, 2021.
Statement No. 93	"Replacement of Interbank Offered Rates"	The provision of this statement except for paragraphs 11b, 13, and 14 are effective for fiscal years beginning after June 15, 2020. Paragraph 11b is effective for fiscal years beginning after December 31, 2021. Paragraphs 13 and 14 are effective for fiscal years beginning after June 15, 2021.
Statement No. 94	"Public-Private and Public-Public Partnerships and Availability Payment Arrangements"	The provisions of this statement are effective for fiscal years beginning after June 15, 2022.
Statement No. 96	"Subscription-Based Information Technology Arrangements"	The provisions of this statement are effective for fiscal years beginning after June 15, 2022.
Statement No. 97	"Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans - an amendment of GASB Statements No. 14 and No. 84, and a supersession of GASB Statement No. 32"	The provision of this statement except for paragraphs 6-9 are effective for fiscal years beginning after December 15, 2019. Paragraph 6-9 is effective for fiscal years beginning after June 15, 2021.

SAN SIMEON COMMUNITY SERVICES DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
June 30, 2021

NOTE 3 - CASH AND INVESTMENTS

Investments are carried at fair value. On June 30, 2021, the District had the following cash and temporary investments on hand:

Deposits:	
Cash on hand	\$ 150
Cash in banks	140,677
	<u>140,827</u>
Investments:	
Money market	1,014,277
State of California Local Agency Investment Fund (LAIF)	561
	<u>1,014,838</u>
Total Cash and Investments	<u>\$1,155,665</u>

Cash and investments are presented on the accompanying basic financial statements, as follows:

Petty cash	\$ 150
Cash and investments	1,155,515
Total cash and investments	<u>\$1,155,665</u>

The District categorizes its fair value measurements within the fair value hierarchy established by U.S. Generally Accepted Accounting Principles. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs. The Local Agency Investment Fund (LAIF) is measured under Level 2. The money market account is not measured under Levels 1, 2, or 3.

Restricted cash

Restricted cash consists of funds that are set aside for well refurbishment as well as appurtenant equipment and structures.

Investments Authorized by the District's Investment Policy

The following table identifies the investment types that are authorized for the District by the California Government Code. The table also identifies certain provisions of the California Government Code that address interest rate risk, credit risk, and concentration of credit risk.

<u>Authorized Investment Type</u>	<u>Maximum Maturity</u>	<u>Maximum Percentage of Portfolio</u>	<u>Maximum Investment in One Issuer</u>
Local Agency Bonds	5 years	None	None
U.S. Treasury Obligations	5 years	None	None
Federal Agency Securities	N/A	None	None
Banker's Acceptances	180 days	40%	None
Commercial Paper	270 days	25%	10%
Negotiable Certificates of Deposit	5 years	30%	None
Repurchase and Reverse Repurchase Agreements	92 days	20% of base value	None
Medium-Term Notes	5 years	20%	None
Mutual Funds	N/A	20%	None
Money Market Mutual Funds	N/A	None	None
Mortgage Pass-Through Securities	5 years	20%	None
County Pooled Investment Fund	N/A	None	None
Local Agency Investment Fund (LAIF)	N/A	None	\$75,000,000
State Registered Warrants, Notes or Bonds	N/A	None	None
Notes and Bonds for other Local California Agencies	5 years	None	None

SAN SIMEON COMMUNITY SERVICES DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
 June 30, 2021

NOTE 3 - CASH AND INVESTMENTS (Continued)

Disclosures Relating to Interest Rate Risk

Interest rate risk is the risk that changes in market interest rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates. One of the ways that the District manages its exposure to interest rate risk is by purchasing a combination of shorter term and longer term investments and by timing cash flows from maturities so that a portion of the portfolio is maturing or coming close to maturity evenly over time as necessary to provide the cash flow and liquidity needed for operations.

Information about the sensitivity of the fair values of the District's investments to market interest rate fluctuations is provided by the following table that shows the distribution of the District's investments by maturity:

<u>Investment Type</u>	<u>Carrying Amount</u>	<u>Remaining Maturity (in Months)</u>			
		<u>12 Months or Less</u>	<u>13-24 Months</u>	<u>25-60 Months</u>	<u>More than 60 Months</u>
Money market funds	\$ 1,014,277	\$ 1,014,277	\$ -	\$ -	\$ -
LAIF	561	561			
Total	\$ 1,014,838	\$ 1,014,838	\$ -	\$ -	\$ -

Disclosures Relating to Credit Risk

Generally, credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. This is measured by the assignment of rating by a nationally recognized statistical rating organization. Presented below, is the minimum rating required by (where applicable) the California Government Code and the actual rating as of fiscal year end for each investment type.

<u>Investment Type</u>	<u>Carrying Amount</u>	<u>Minimum Legal Rating</u>	<u>Exempt From Disclosure</u>	<u>Rating as of Fiscal Year End</u>		
				<u>AAA</u>	<u>Aa</u>	<u>Not Rated</u>
Money market funds	\$1,014,277	N/A	\$ -	\$ -	\$ -	\$1,014,277
LAIF	561	N/A				561
Total	\$1,014,838		\$ -	\$ -	\$ -	\$1,014,838

Concentration of Credit Risk

The investment policy of the District contains no limitations on the amount that can be invested in any one issuer beyond that stipulated by the California Government Code. There are no investments in any one issuer that represent 5% or more of total District's investments.

Custodial Credit Risk

Custodial credit risk for *deposits* is the risk that, in the event of the failure of a depository financial institution, a government will not be able to recover its deposits or will not be able to recover collateral securities that are in the possession of an outside party. The California Government Code and the District's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for deposits, other than the following provision for deposits: The California Government Code requires that a financial institution secure deposits made by state or local governmental units by pledging securities in an undivided collateral pool held by a depository regulated under state law (unless so waived by the governmental unit). The fair value of the pledged securities in the collateral pool must equal at least 110% of the total amount deposited by the public agencies. California law also allows financial institutions to secure the District's deposits by pledging first trust deed mortgage notes having a value of 150% of the secured public deposits.

SAN SIMEON COMMUNITY SERVICES DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
 June 30, 2021

NOTE 3 - CASH AND INVESTMENTS (Continued)

Custodial Credit Risk (continued)

None of the District's deposits with financial institutions in excess of federal depository insurance limits were held in uncollateralized accounts.

The custodial credit risk for *investments* is the risk that, in the event of the failure of the counterparty (e.g., broker-dealer) to a transaction, a government will not be able to recover the value of its investment or collateral securities that are in the possession of another party. The California Government Code and the District's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for investments. With respect to investments, custodial credit risk generally applies only to direct investments in marketable securities. Custodial credit risk does not apply to a local government's indirect investment in securities through the use of mutual funds or government investment pools (such as LAIF).

Investment in State Investment Pool

The District is a voluntary participant in the Local Agency Investment Fund (LAIF) that is regulated by the California Government Code under the oversight of the Treasurer of the State of California. The fair value of the District's investment in this pool is reported in the accompanying basic financial statements at the amounts based upon the District's pro-rata share of the fair value provided by LAIF for the entire LAIF portfolio (in relation to the amortized cost of that portfolio). The balance available for withdrawal is based on the accounting records maintained by LAIF, which are recorded on an amortized cost basis.

NOTE 4 - SCHEDULE OF CAPITAL ASSETS

A schedule of changes in capital assets and depreciation for the fiscal years ended June 30, 2021, and June 30, 2020, are shown below and on the following page:

	Balance July 1, 2020	Additions	Deletions	Balance June 30, 2021
Non-depreciable capital assets:				
Construction in progress	\$ 223,206	\$ 64,488	\$ -	\$ 287,694
Total non-depreciable capital assets	<u>\$ 223,206</u>	<u>\$ 64,488</u>	<u>\$ -</u>	<u>\$ 287,694</u>
Depreciable capital assets:				
Sewer plant	\$ 1,784,769	\$ 12,469	\$ -	\$ 1,797,238
Water plant	1,627,991	3,900		1,631,891
Building	279,580			279,580
Land improvements	26,791			26,791
Equipment	12,690			12,690
	<u>3,731,821</u>	<u>16,369</u>	<u>-</u>	<u>3,748,190</u>
Accumulated depreciation	1,446,427	93,492		1,539,919
Total depreciable capital assets	<u>\$ 2,285,394</u>	<u>\$ (77,123)</u>	<u>\$ -</u>	<u>\$ 2,208,271</u>
Net capital assets	<u>\$ 2,508,600</u>	<u>\$ (12,635)</u>	<u>\$ -</u>	<u>\$ 2,495,965</u>

SAN SIMEON COMMUNITY SERVICES DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
 June 30, 2021

NOTE 4 - SCHEDULE OF CAPITAL ASSETS (Continued)

	Balance July 1, 2019	Additions	Deletions	Prior-period Adjustment	Balance June 30, 2020
Non-depreciable capital assets:					
Construction in progress	\$ -	\$ 62,538	\$ -	\$ 160,668	\$ 223,206
Total non-depreciable capital assets	<u>\$ -</u>	<u>\$ 62,538</u>	<u>\$ -</u>	<u>\$ 160,668</u>	<u>\$ 223,206</u>
Depreciable capital assets:					
Sewer plant	\$ 2,086,929	\$ 8,565	\$ (280,413)	\$ (30,312)	\$ 1,784,769
Water plant	2,322,338		(387,047)	(307,300)	1,627,991
Building	395,874		(116,294)		279,580
Land improvements	26,791				26,791
Equipment	329,437		(316,747)		12,690
	<u>5,161,369</u>	<u>8,565</u>	<u>(1,100,501)</u>	<u>(337,612)</u>	<u>3,731,821</u>
Accumulated depreciation	2,444,252	97,102	(1,100,501)	5,574	1,446,427
Total depreciable capital assets	<u>\$ 2,717,117</u>	<u>\$ (88,537)</u>	<u>\$ -</u>	<u>\$ (343,186)</u>	<u>\$ 2,285,394</u>
Net capital assets	<u>\$ 2,717,117</u>	<u>\$ (25,999)</u>	<u>\$ -</u>	<u>\$ (182,518)</u>	<u>\$ 2,508,600</u>

Depreciation expense for the fiscal years ended June 30, 2021 and 2020 was \$93,492 and \$97,102, respectively.

NOTE 5 – CUSTOMER DEPOSITS

The liability for customer deposits consists of the following as of June 30, 2021 and 2020:

	2021	2020
Hook-up deposits	\$ 80,099	\$ 70,890
Customer meter deposits	8,700	9,250
	<u>\$ 88,799</u>	<u>\$ 80,140</u>

The hook-up deposits are from customers on a waiting list to connect into the system. Each deposit represents total hook-up fees owed by the customer based on the fee schedule in place at the time of the payment. Additional fees may be required from the customer, based on the current fee schedule, when the utility connection is completed.

Customer meter deposits consist of a \$50 refundable deposit required for each metered customer before any service can be provided by the District.

NOTE 6 – LOAN PAYABLE

On July 11, 2011, the District applied for a \$500,000 loan from the United States Department of Agriculture. The loan was approved, and the District began to draw on the loan during the 13/14 fiscal year. The District is required to make semi-annual payments of \$10,345. The agreement is secured by a first lien and a pledge of revenues from the water system. In the event of a default by the District, the remaining amount of the note shall become due. Future minimum payments are as follows on the next page:

SAN SIMEON COMMUNITY SERVICES DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
 June 30, 2021

NOTE 6 – LOAN PAYABLE (Continued)

Fiscal year Ended June 30,	Principal	Interest	Total
2022	\$ 8,805	\$ 11,885	\$ 20,690
2023	9,049	11,641	20,690
2024	9,300	11,390	20,690
2025	9,557	11,133	20,690
2026	9,822	10,868	20,690
2027-2031	53,343	50,107	103,450
2032-2036	61,149	42,301	103,450
2037-2041	70,096	33,354	103,450
2042-2046	80,353	23,097	103,450
2047-2051	92,111	11,339	103,450
2052-2053	30,768	866	31,634
Total	<u>\$ 434,353</u>	<u>\$ 217,981</u>	<u>\$ 652,334</u>

NOTE 7 – LONG TERM DEBT – SCHEDULE OF CHANGES

A schedule of changes in long-term debt for the fiscal years ended June 30, 2021 and June 30, 2020, are shown below:

	Balance July 1, 2020	Additions	Deletions	Balance June 30, 2021	Due within one year
Loan payable (Direct Borrowing)	\$ 442,920	\$ -	\$ 8,567	\$ 434,353	\$ 8,805
Totals	<u>\$ 442,920</u>	<u>\$ -</u>	<u>\$ 8,567</u>	<u>\$ 434,353</u>	<u>\$ 8,805</u>

	Balance July 1, 2019	Additions	Deletions	Prior-period Adjustment	Balance June 30, 2020	Due within one year
Loan payable (Direct Borrowing)	\$ 459,089	\$ -	\$ 8,336	\$ (7,833)	\$ 442,920	\$ 8,567
Totals	<u>\$ 459,089</u>	<u>\$ -</u>	<u>\$ 8,336</u>	<u>\$ (7,833)</u>	<u>\$ 442,920</u>	<u>\$ 8,567</u>

NOTE 8 – JOINT POWERS AUTHORITY

The District is a member of the Special District Risk Management Authority (S.D.R.M.A.), an intergovernmental risk sharing joint powers authority, created pursuant to California Government Code Sections 6500 et. Seq. In becoming a member of the S.D.R.M.A., the District elected to participate in the risk financing programs listed below for the program period July 1, 2017 through June 30, 2018.

General and Auto Liability, Public Officials’ and Employees’ Errors, and Employment Practices Liability and Employee Benefits Liability: Special District Risk Management Authority, coverage number LCA SDRMA 201112. This covers \$2,500,000 per occurrence, subject to policy deductibles.

Employee Dishonesty Coverage: Special District Risk Management Authority, coverage number EDC SDRMA 201112. This policy includes a \$400,000 Public Employee Dishonesty Blanket Coverage.

Property Loss: Special District Risk Management Authority, coverage number PPC SDRMA 201112. This policy covers the replacement cost for property on file, \$1,000,000,000 per occurrence, subject to policy deductibles.

SAN SIMEON COMMUNITY SERVICES DISTRICT
NOTES TO BASIC FINANCIAL STATEMENTS
June 30, 2021

NOTE 8 – JOINT POWERS AUTHORITY (Continued)

Boiler and Machinery: Special District Risk Management Authority, coverage number BMC SDRMA 201112. This covers \$100,000,000 per occurrence, subject to policy deductibles.

The District also participated in the elective comprehensive/collision coverage on selected vehicles, subject to policy deductibles.

Personal Liability Coverage for Board Members: This policy covers \$500,000 per occurrence, coverage number LCA SDRMA 201112, annual segregate per each selected/appointed official, subject to policy deductibles.

Members are subject to dividends and/or assessments, in accordance with Second Amended Joint Powers Agreement and amendments thereto, on file with the District. No such dividends have been declared, nor have any assessments been levied.

NOTE 9 – RELATED PARTY TRANSACTION

The District has an agreement with Grace Environmental Services to oversee the daily operations of the District with the President of Grace Environmental Services, Charles Grace, serving as the General Manager. San Simeon Community Services District paid \$692,964 for their services including \$560,510 for operations which includes staffing, \$82,332 for electricity, \$40,000 for preventative maintenance, and \$10,122 for additional consulting, maintenance, and repairs during the 2020/21 fiscal year.

NOTE 10 – CONTINGENCIES

According to the District's staff and attorney, no contingent liabilities are outstanding and no lawsuits are pending of any significant financial consequence.

SUPPLEMENTARY INFORMATION

SAN SIMEON COMMUNITY SERVICES DISTRICT
SCHEDULE OF REVENUES AND EXPENSES BY FUNCTION
For the Fiscal Year Ended June 30, 2021

	Sanitation Fund	Water Fund	General	Total
Operating Revenues:				
Utility sales	\$ 454,502	\$ 418,508	\$ 3,334	\$ 876,344
Service charges			94,691	94,691
State of CA-Dept. of Parks and Recreation	25,430			25,430
Total operating revenues	479,932	418,508	98,025	996,465
Operating Expenses:				
Accounting	1,925	1,925	1,925	5,775
Bank fees		1	1,032	1,033
Bookkeeping	5,240	5,240	5,240	15,720
Directors' fees	1,600	1,600	1,300	4,500
Payroll expenses	122	122	100	344
Dues and subscriptions	1,795	910	280	2,985
Road maintenance			29,800	29,800
Riprap engineering	4,273			4,273
Insurance-health			4,227	4,227
PERS Retirement			15,816	15,816
Insurance-liability	7,775	3,888	1,296	12,959
LAFCO budget allocation	659	659	1,319	2,637
Legal fees	37,447	53,615	26,150	117,212
Licenses and permits	15,600	3,884	300	19,784
Miscellaneous	36	2,561	3,993	6,590
Depreciation	7,342	42,744	43,406	93,492
Office expenses	409	458	91	958
Operations management	338,292	232,449	29,769	600,510
Professional fees	16,637	78,349	13,650	108,636
Emergency stand by		10,000		10,000
Repairs	33,116	29,741	6,989	69,846
Utilities	45,282	32,934	4,116	82,332
Website	4,767	4,767	4,766	14,300
Weed abatement			2,175	2,175
Total operating expenses	522,317	505,847	197,740	1,225,904
Net operating income (loss)	(42,385)	(87,339)	(99,715)	(229,439)
Non-Operating Revenues (Expenses):				
Property taxes			90,912	90,912
Interest expense		(12,123)		(12,123)
Interest income		4,732	2,740	7,472
Total non-operating revenues (expenses)		(7,391)	93,652	86,261
Change in net position	\$ (42,385)	\$ (94,730)	\$ (6,063)	\$ (143,178)

SAN SIMEON COMMUNITY SERVICES DISTRICT
SCHEDULE OF REVENUES AND EXPENSES BY FUNCTION
For the Fiscal Year Ended June 30, 2020

	Sanitation Fund	Water Fund	General	Total
Operating Revenues:				
Utility sales	\$ 444,391	\$ 396,043	\$ 2,514	\$ 842,948
Service charges			88,422	88,422
State of CA-Dept. of Parks and Recreation	70,777			70,777
	<u>515,168</u>	<u>396,043</u>	<u>90,936</u>	<u>1,002,147</u>
Operating Expenses:				
Accounting	3,258	3,258	3,259	9,775
Bank fees			166	166
Bookkeeping	4,853	4,854	4,853	14,560
Directors' fees	1,734	1,733	1,633	5,100
Payroll expenses	132	133	132	397
Dues and subscriptions	891	891	2,950	4,732
Riprap engineering	21,958			21,958
Insurance-health			4,285	4,285
PERS Retirement			13,199	13,199
Insurance-liability	6,098	3,049	1,016	10,163
LAFCO budget allocation	847	846	1,693	3,386
Legal fees	21,204	21,204	21,955	64,363
Licenses and permits	14,589	2,347		16,936
Miscellaneous	281	439	804	1,524
Depreciation	38,198	43,408	15,496	97,102
Operations management	417,262	200,446	35,323	653,031
Professional fees	25,215	11,582	4,125	40,922
Emergency stand by		10,000		10,000
Repairs	18,641	15,639		34,280
Utilities	2,565	2,565	2,565	7,695
Website	4,567	4,567	4,566	13,700
Weed abatement			3,885	3,885
	<u>582,293</u>	<u>326,961</u>	<u>121,905</u>	<u>1,031,159</u>
Net operating income (loss)	<u>(67,125)</u>	<u>69,082</u>	<u>(30,969)</u>	<u>(29,012)</u>
Non-Operating Revenues (Expenses):				
Property taxes			87,860	87,860
Interest expense		(12,354)		(12,354)
Interest income		15	21,964	21,979
		<u>(12,339)</u>	<u>109,824</u>	<u>97,485</u>
Capital Contributions				
Grant income			178,482	178,482
			<u>178,482</u>	<u>178,482</u>
Total capital contributions			<u>178,482</u>	<u>178,482</u>
Change in net position	<u>\$ (67,125)</u>	<u>\$ 56,743</u>	<u>\$ 257,337</u>	<u>\$ 246,955</u>

2.B. Business Action Item



BUSINESS ACTION ITEM STAFF REPORT

ITEM 2.B. APPROVAL OF TOWN & COUNTRY FENCING, INC. FOR INSTALLATION OF A FENCE ON DISTRICT PROPERTY NOT TO EXCEED THE AMOUNT OF \$6,975.00.

Summary:

Mr. Hurlbert owns the piece of land adjacent to the District office. Mr. Hurlbert previously presented the District with an offer to purchase this property (APN 013.091.027). The purchase of this parcel was previously discussed at both the March 2020 and March 2021 Board meetings. Currently, gravel that was installed to prevent a muddy potholed driveway is spreading onto Mr. Hurlbert's property due to vehicle traffic making U-turns in the middle of the gravel driveway.

When the Board was notified about the above-described situation by a concerned citizen, Charlie Grace contacted Mr. Hurlbert and he agreed to a barrier fence of some type. After several discussions, a post and rope barrier fence was decided on. In addition, on December 3, 2021 the District has now received a letter from property owner requesting a fence to be installed in effort to prevent the spread of gravel.

Discussion:

Section 19.03 of the purchasing policy reads:

19.03. Procurement Procedures.

Sections A, B, and C are governed by the following conditions:

The contract shall be awarded to the lowest responsible, responsive bidder, in accordance with the Public Contract Code. Written entries documenting that the required bidding process has been followed shall be entered in the project file, and a copy of the Board Report and contract shall be saved in the District files. Following Board approval, the General Manager and one Board member shall then execute the contract.

C. Solicitation of Three Verbal Quotes for Expenditures Exceeding \$5,000 but Not Exceeding \$10,000

When any expenditure is expected to exceed \$5,000 but not exceed \$10,000, the General Manager, or said designee, shall solicit a minimum of three (3) verbal quotes to provide the goods or services. Written entries documenting that three verbal quotes were solicited shall be made in the project file.

Staff contacted three vendors to obtain quotes for the installation of a fence. Town & Country Fencing, Inc., Coast Fence, and Creative Fence. Coast Fence was unavailable and Creative Fence was non-responsive.

Recommendation:

If the Board chooses to have a fence installed at the property line the lowest responsive bidder is Town & Country Fencing, Inc. in the amount of \$6,975.00.

Enc: December 3, 2021 correspondence from property owner
Quote from Town & Country Fence

TOWN & COUNTRY FENCING, INC.

225 Tank Farm Rd., D-4
San Luis Obispo, CA 93401
Ph # (805) 544-0171 Fax # (805) 544-0189
Email: TownAndCountryFence@hotmail.com
License #1004631

PROPOSAL

CUSTOMER'S NAME San Simeon CSD Rope fence	PHONE (805) 431-6253	DATE 12/1/21
STREET 111 Pico Ave.	FAX: E-MAIL: cgrace@graceenviro.com JOB NAME: San Simeon CSD Rope fence	
CITY, STATE, ZIP Sam Simeon, CA 934	JOB LOCATION: ATTN: Charlie	

We propose hereby to furnish material and labor-complete in accordance with specifications below, for the sum of **SEE OPTIONS ON PAGE TWO.**

Payment to be made as follows: Down payment with signed proposal, and balance due at time of job completion, unless progress payments are required below.

*****NET DUE AND PAYABLE UPON JOB COMPLETION AND BILLING.*****

*****Down payment requested in the amount of 10% or \$1,000.00 whichever is less.*****

****OWNERS PLEASE NOTE: This contract is not valid unless the "notice to owner" acknowledgement is signed and dated. You have the right to require the contractor to have a performance and payment bond. Failure by the contractor without lawful excuse to substantially commence work within twenty (20) days from the approximate date specified in this Proposal and Contract when work will begin is a violation of the Contractor's License Law. Law requires contractors to be license and regulated by the contractor's state license board. Any questions concerning a contractor may be referred to the registrar of the board whose address is: Contractors State License Board, 1020 N. Street, Sacramento, CA 95814.

All material is guaranteed to be as specified. All work to be completed is a workmanlike manner according to standard practices. Any alteration or deviation from specifications below involving extra costs will be executed only upon written or verbal orders from Customer and will become an extra charge over and above the estimate. Customer warrants that they alone are responsible for determining the boundaries to the property. Contractor assumes no responsibility for the contraction or expansion of wood fencing. Customer warrants that they alone are responsible for determining the existence and location of underground pipes, utilities, septic tanks, and the like, and to so advise contractor of the existence and location thereof. Contractor fully covers his workers with Workman's Compensation Insurance. Any, and all insurance certifications are available upon request.

AUTHORIZED SIGNATURE

ADAM RUST, OWNER Adam Rust

Note: We may withdraw This proposal if not accepted within 30 days.

TOWN & COUNTRY FENCING, INC.

225 Tank Farm Rd., D-4
San Luis Obispo, CA 93401
Ph # (805) 544-0171 Fax # (805) 544-0189
Email: TownAndCountryFence@hotmail.com
License #1004631

PROPOSAL

CUSTOMER'S NAME	PHONE	DATE
San Simeon CSD Rope fence	(805) 431-6253	12/1/21

All prices stated are based on approximate footage. Actual billed cost will be based on actual field measurements, unless otherwise stated. We hereby submit specifications and estimates for:

#1 Wood Fencing:

Install 200' of 42" high Rope railing fence line.

**Posts will be 6"x 6" treated lumber, set 2' in concrete and spaced no more than 8' apart
2" hole drilled into the top of the posts to let a thick rope slide through**

Rope will be 1.5" – 2" thick and may need to be replaced every few years

COST: \$6,975.00

Note: Project is bid prevailing wage

ACCEPTANCE OF PROPOSAL – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified; payment will be made as outlined above. If payment is not made as set forth above, a service charge shall accrue on the unpaid balance at the rate of 1 ½% per month.

Date of Acceptance: _____

Signature _____

RECEIVED

December 3, 2021

DEC - 9 2021

San Simeon CSD General Manager Charles Grace
111 Pico Avenue
San Simeon, CA 93452

BY: CAM

RE: Cease and Desist Demand encroachment on APN 013-091-027 and Removal of improperly/ illegally located district buildings.

Dear Sir,

This letter is to put the San Simeon Community Services District on Notice. The district has constructed its office and Reverse Osmosis Unit in the Pico Avenue road right-of-way and has installed gravel on my private property, APN 013-091-027. As a result my property is now being used for vehicle parking and turnaround traffic. In doing so, the San Simeon CSD has reduced the value of my real property.

I demand:

- 1) Cease and desist the district's encroachment on my property and prevent vehicle use of my property caused by the placement of district facilities in the Pico Avenue public road right-of-way.
- 2) Remove or relocate the district office and Reverse Osmosis facility buildings from the Pico Avenue road right-of-way and the unintended consequence of creating a cul-de-sac for vehicle turnaround use on my property.

A recent survey conducted on behalf of the district by MBS Survey (attached) confirms the encroachments and these improper and illegal property uses by the district.

The highest and best use of my property lies in its zoning for multi-family. It is my desire to build condominiums. Proper ingress and egress will be required on Pico Avenue for any development. The districts two buildings protrude well into the road. If these buildings remain in place, my future development's parking lot may be seen as the only way for nonresident vehicles to turn around at the end of Pico Avenue. This is not acceptable.

Additionally, I object to the district use of its multifamily zoned parcel for public facilities. My development will face the road and the district office and reverse osmosis facility, with its busy activity of trucks and noise, is also detrimental to my property.

It is unclear if the District's obstructions protruding into the road has caused narrowing, which may cause permitting problems, especially in light of the need for emergency vehicles to be able to turnaround at the end of Pico Avenue.

You are in receipt of an email dated May 3, 2021 requesting written acknowledgement of my property rights to APN 013-091-027 and release of any district claims to that land. The district has failed to honor and execute that request. Additionally two telephone calls occurred wherein it was believed a verbal commitment was made to prevent district and vehicle use of my property. The agreement included installing posts and heavy chain along the roadside of my northerly property line. The request to release and the low-cost post and chain barrier were considered reasonable steps to address the physical encroachment of the district on my property. To date, the release letter has not been signed nor has the post and chain barrier been constructed.

The post and chain barrier should be erected immediately by the district and remain in place until the road encroachments have been cured and a turnaround cul-de-sac installed at the end of Pico Avenue.

Additional matters that need to be addressed are related to the encroachment of the district office and the reverse osmosis unit on land that is designated multi-family residential and well into a public road right-of-way. The aesthetics and impacts of these commercial buildings reduce property values in the neighborhood and would not be allowed if Coastal Development Permit/ Minor Use Permits had been required. These structures would not be permitted in residential multi-family zoning land use category and certainly not in a road right-of-way.

More than six months has lapsed since our communications. Nothing has been done and there has been little communication of any value.

I have waited for over 35 years to make use of this property. The district was offered a fair price and financing arrangements to acquire my property. This property could have been rezoned and used for the district office and the desalination building.

It was particularly unnerving to hear the Chair of your Board state, "we will just take my property when we need it," implying the district would use its power of eminent domain to obtain my property.

In closing, consider this a cease and desist demand to vacate APN 013-091-027, install a post and chain barrier and remove the improperly/illegally located district buildings from Pico Avenue.

Sincerely,



Cc: District Legal Counsel, Jeffrey A. Minnery
Board of Directors



Michael B Stanton, PLS 5702
3559 S. Higuera Street
San Luis Obispo, Ca 93401

Ofc: 805.594.1960
Cell: 805.440.4215
Fax: 805.594.1966

September 22, 2021

Charlie Grace
San Simeon Community Services District
111 Pico Ave
San Simeon, CA 93452

RE: Boundary Survey for 111 Pico Ave., San Simeon
MBS No. 21-321

Dear Charlie:

I've completed the retracement survey for the San Simeon CSD's property at 111 Pico Ave in San Simeon. Unfortunately for the District, I concur with Clayton Bradshaw's conclusion that the RO water treatment building was partially constructed on land owned by Hearst Holdings, Inc. I have prepared a draft Record of Survey map that will be submitted and reviewed by the County Surveyor. We normally receive the County's comments and review within a few weeks of submittal. Once we receive comments back, we can schedule a time to set the monuments.

The deed that originally created this parcel was recorded in 1958 in Book 930 of Official Records at Page 32. At that time, the grantee was known as Rancho San Simeon Acres Service Corporation. This deed begins at the intersection of the northeasterly right-of-way line of the state highway and the northwest line of Pico Avenue as it existed in 1958. This was back when the state highway was only 80 feet wide and before the highway was widened to its current configuration. The original monument at the point of beginning was destroyed and currently lies within the travel lanes of the highway.

To re-establish the CSD property, I was able to establish the easterly corner from measurements that were made by Skip Touchon, LS in 2006, prior to construction of the RO water treatment building. Based on his measurements to other property monuments in the area, I was able to re-establish the easterly corner in its original position, which lands inside the current RO water treatment building. Sheet 1 of the Record of Survey shows the ties to his monuments found in 2006. Once this critical point was re-established, I was then was able to run the deed courses backwards to establish the other corners of the property. The two back corners fall below the toe of bluff, in the flood plain. In 1954, a survey was performed along the toe of the bluff with 2"x2" wood stakes set, but none of these could be found due to thick vegetation in wet soil and possible prior flooding in that area.

The east corner of the main treatment building was found to be 12.81 feet onto Hearst Holding's property. There is an electrical panel on the east corner of the building which would protrude onto the Hearst property another 4 or 5 feet. Additionally, both the treatment building and the district office were built partially within area reserved for the Pico Avenue (County) right-of-way.

The design site plan by Phoenix Engineering clearly shows the building to be constructed over the property line by over 12 feet. I have included a sketch showing pink lines for the property lines superimposed over the original site plan. It appears that the building was moved about three feet

southeasterly from the position shown on the design plan, however this adjustment did not change the degree of encroachment. In the field, I can understand how the placement of the property lines could be deceiving, since the assumption would be that the fence is the property line; however, the property jogs about 25 feet southwesterly at the southeasterly right-of-way line of Pico Avenue. This jog in the property line is not fenced, and is not visibly apparent in the field. Phoenix engineering should have had their surveyor perform a boundary survey at the same time the topographic survey was performed (prior to design) to ensure that the building was placed correctly and that it met county setback requirements.

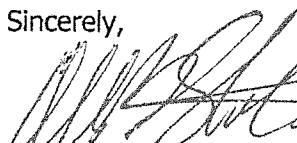
With regard to County Road No. 3, Roy Ogden of Ogden & Fricks, in his letter dated February 25, 2021, stated that abandonment of the road would allow the adjacent owner to claim half of the road. He referenced a case - *Safwenberg v. Marquez (1975) 50 CA 3d 301*. That case involved two lots within a subdivision (the Town of Carpinteria) filed in Book 2 of Maps at Page 7 of Santa Barbara County records, where the lots were straddling a public road that was ultimately abandoned by the City. In this case, the fee title to both of the lots straddling the road would extend up to the centerline of the street. When the agency abandons the easement, each adjacent owner can claim fee title up to the centerline. Civil Code Sections 831 and 1112 are generally applicable to situations where roads are abandoned within subdivisions.

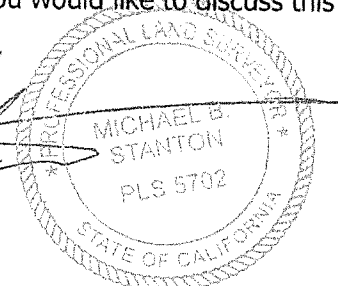
That case (*Safwenberg v. Marquez*) is not relevant to County Road No. 3 in San Simeon. County Road No. 3 was granted from Lora Van Gorden to the County of San Luis Obispo in 1914 and at that time, Lora Van Gorden owned all of the underlying fee title to what was known as Lot A of the Partition of that Part of the San Simeon Rancho (Book B of Maps at page 108). So, when the road was abandoned in 1933, the underlying fee owner at the time (Piedmont Land & Cattle) claimed all of the underlying fee title.

I was able to find an original bearing tree called for in the original deed for the road (Book 101 deeds, page 45). The description calls for a 21" Blue Gum (a.k.a. Eucalyptus) in 1914, and today, it is now 72" in diameter. Based on the call from the bearing tree, and the bearings shown on the Porter Survey from 1949 (5 RS 21), I was able to determine the alignment of the original County Road No. 3. This alignment matched almost perfectly with the top and toe of slopes that are currently existing for the old road alignment. The original top and toe of slopes are shown with dashed lines on the Record of Survey. Since the closest portion of the road is over 60 feet from the closest corner of the CSD property, abandonment of this road does not affect the CSD property.

Feel free to call me if you would like to discuss this further.

Sincerely,


Michael B. Stanton, PLS



Enclosures:

- Draft Record of Survey, sheets, 1 and 2
- Deed to District 930 OR 32 (1958)
- Site Plan for RO building from Phoenix Engineering with property lines in pink
- Safwenberg v. Marquez (1975) 50 CA 3d 301* and Town of Carpinteria map
- Book B, Page 108 Van Gorden Tract showing county road No. 3

2.C. Business Action Item



BUSINESS ACTION ITEM STAFF REPORT

ITEM 2.C. REVIEW AND APPROVAL OF THE HEARST LIMITED TERM ENCROACHMENT AND EASEMENT AGREEMENT.

Discussion:

This matter was discussed at both the April 8, 2021 Regular Board meeting and a subsequent April 22, 2021 Special Board meeting. The direction to legal counsel and Grace Environmental Services was to work with the Hearst Corporation on the agreement and to make a payment of the outstanding amount.

During the September 9, 2021 Regular Board meeting, the Board approved MBS Land Surveys to perform a survey of the RO building. The results of this survey were presented to the Board at the October 12, 2021 Regular Board meeting. During the November 9, Regular Board meeting the Board approved the Limited Term Encroachment Easement contingent upon Hearst's approval of the legal description.

Hearst had Wallace Group reviewed the legal description from MBS Land Survey. Hearst has provided redline edits to the Limited Term Encroachment Easement and Agreement to reflect the legal description and minor edits have been made to the legal description.

Recommendation:

Given that the ownership determination has been finalized, and legal lot description has been reviewed by Hearst, GES staff recommends approval of the Limited Term Encroachment Easement and Agreement.

Enc: Redlined version of the Limited Term Encroachment Easement and Agreement
Exhibit "A" Draft encroachment area legal description Wallace Group
review of MBS Draft Legal Description and Exhibit Map

RECORD AT REQUEST OF AND RETURN TO:

Hearst Holdings, Inc.
5 Third Street, Suite 200
San Francisco, CA 94103-3202
Attn: Controller

No Fee Document – Per Govt. Code Sec. 6103 & 27383
No County Transfer Tax Per R & T Code 11922

APNs: Portions of APNs 013-041-014 &
013-011-024

Space Above This Line for Recorder’s Use

GRANT OF LIMITED TERM ENCROACHMENT EASEMENT AND AGREEMENT

This GRANT OF LIMITED TERM ENCROACHMENT EASEMENT AND AGREEMENT (the “**Agreement**”), dated _____ for reference purposes only, is made and entered into by and between **HEARST HOLDINGS, INC.**, a Delaware corporation (“**Hearst**” or “**Grantor**”), and **SAN SIMEON COMMUNITY SERVICES DISTRICT**, a California special district (“**District**” or “**Grantee**”).

RECITALS

A. Hearst owns certain real property located in San Luis Obispo County, California (the “**Conservation Property**”) encumbered by a conservation easement (the “**Conservation Easement**”) held by California Rangeland Trust, a California nonprofit public benefit corporation (“**Rangeland Trust**”), pursuant to that certain Deed of Conservation Easement and Agreement Concerning Easement Rights recorded on February 18, 2005 in the Official Records of San Luis Obispo County, California, as Instrument No. 2005013388, as assigned pursuant to that certain Assignment and Assumption of Conservation Easement and Related Grant Agreement (East Side Conservation Area) recorded on February 18, 2005 in the Official Records of San Luis Obispo County, California, as Instrument No. 2005013391 (as assigned, the “**Conservation Easement Agreement**”).

B. On or about March 16, 2015, Hearst provided a copy of the Conservation Easement Agreement to the District.

C. In or about October 2015, the District commenced construction of certain Potable Water Well Head Treatment Project (the “**Project**”) improvements including a reverse osmosis facility (collectively, the “**Water Treatment Facility**”), and completed construction of the Water Treatment Facility on or about April 2016. Since completion of the Water Treatment Facility, the District has been using the Water Treatment Facility for active water treatment operations and services as part of the Project (the “**Public Utilities Purposes**”).

D. In July 2020, Hearst and the District discovered that a portion of the Water Treatment Facility encroaches (the “**Encroachment**”) on an approximate 560 square foot portion of the Conservation Property (the “**Encroaching Facility Footprint**”).

Deleted: that

Deleted: more particularly description in Exhibit A attached hereto and incorporated herein by this reference (the “Encroachment Area”)

E. As an interim measure, Hearst and the District entered into that certain Revocable Encroachment License Agreement effective as of October 26, 2020 (the “**License Agreement**”), by which Hearst granted to District a license to temporarily leave the existing Encroachment on the Encroaching Facility Footprint pending completion and recordation of this Agreement.

Deleted: Encroachment Area

F. District desires to obtain from Hearst, and Hearst has agreed to grant to District, an easement to allow the existing Encroachment to remain on the Encroaching Facility Footprint within an approximate 2,693 square foot portion of the Conservation Property more particularly described in Exhibit A and depicted in Exhibit B, attached hereto and incorporated herein by this reference (the “Encroachment Area”) for so long as the District continues to use the Encroachment for the Public Utilities Purposes, on the terms and conditions set forth in this Agreement.

Deleted: Encroachment Area

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Agreement, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Easement Terms.**

(a) **Grant of Easement.** Subject to the terms and conditions of this Agreement, Hearst hereby grants to the District an easement (the “**Easement**”) on, over and across the Encroachment Area for the sole and exclusive purpose of allowing the Encroachment to remain in its current location within the Encroaching Facility Footprint for so long as the District (i) continues to use the Encroachment for the Public Utilities Purposes in a manner substantially similar to the District’s manner of use thereof as of the date of this Agreement; and (ii) uses the remainder of the Encroachment Area (the “**Access Area**”) solely for access to and from the Encroachment as part of the Public Utilities Purposes, and the Access Area remains vacant and is not used for any other purpose including any storage or other improvements.

Deleted: Encroachment Area

(b) **Term.** The term of the Easement and this Agreement (the “**Term**”) shall commence on the date that this Agreement is recorded in the Official Records of San Luis Obispo County, California (the “**Effective Date**”), and continue until the earlier of: (i) written notice by District to Hearst that the District has ceased to use the Easement for the Public Utilities Purposes as provided in Section 1(a) above; (ii) the District ceases to use the Easement for Public Utilities Purposes as provided in Section 1(a) above for a period of twelve (12) consecutive months; or (iii) any termination pursuant to Section 5 below.

(c) **Acknowledgements and Release by District.** In addition to Section 7 below, District acknowledges and agrees that, in consideration of the grant of the Easement by Hearst to District as provided herein, District releases, relinquishes and waives any and all claims or rights that it may have with respect to the Encroachment Area, including without limitation

any claims or rights of inverse condemnation, adverse possession, or prescriptive easement pertaining to the Encroachment. For purposes of any requirement that Hearst must file a claim under the Government Claims Act (California Government Code Section 810-996.6) with respect to the Encroachment, District further acknowledges and agrees as follows: (1) no claim by Hearst accrued until August 18, 2020 when the Encroachment was confirmed by that certain survey report dated August 18, 2020, prepared by Wallace Group, a copy of which has previously been provided by Hearst to the District; and (2) Hearst shall not be required to file a claim until the later of (A) expiration of the required filing period under the Government Claims Act, or (B) thirty (30) days after written notice from District to Hearst.

(d) Encroachment Fee.

(i) As additional consideration for the grant of the Easement by Hearst to District as provided herein, commencing on the Effective Date, District covenants and agrees to pay to Hearst an annual encroachment fee (the “**Encroachment Fee**”) as provided in this Section 1(d). The Encroachment Fee shall be payable in advance on the Effective Date and thereafter on each anniversary of the Effective Date through the Term. The amount of the first Encroachment Fee payment shall be Five Thousand Dollars (\$5,000.00). Commencing on the first anniversary of the Effective Date, the amount of each annual Encroachment Fee shall automatically increase two percent (2%) over the Encroachment Fee for the immediately preceding year. For the avoidance of doubt and as an example of such automatic Encroachment Fee increase during the Term, the annual Encroachment Fee for the first three (3) years of the Term shall be as follows:

<i>Annual Encroachment Fee</i>		
<i>Payment No.</i>	<i>Due Date</i>	<i>Amount</i>
1	Effective Date	\$5,000.00
2	1 st Anniversary of Effective Date	\$5,100.00
3	2 nd Anniversary of Effective Date	\$5,202.50

(ii) Notwithstanding Section 1(d)(i) above, Hearst and the District acknowledge and agree that a prorated amount of the annual license fee previously paid to Hearst by the District under the License Agreement in the aggregate sum of _____ Dollars (\$ _____) (the “**Encroachment Fee Credit**”) shall be applied to the first Encroachment Fee payment under this Agreement. District shall have three (3) business days after the Effective Date to pay to Hearst the balance of the first Encroachment Fee payment after crediting thereto the Encroachment Fee Credit.

(e) Reimbursement of Damages Resulting from Encroachment. As a direct result of the Encroachment, Hearst incurred damages as more particularly set forth in the License Agreement. Hearst and District acknowledge and agree that, as of the Effective Date, the payment obligations of District under the License Agreement (including, without limitation, Section 1(e) of the License Agreement) have been satisfied in full. As additional consideration

for the grant of the Easement by Hearst to District as provided herein, District shall pay to Hearst all additional damages incurred by Hearst during the Term as a result of the Encroachment promptly upon written demand by Hearst therefor (which demand shall include reasonable supporting documentation therefor). The payment obligations of the District under this Section 1(e) shall survive any termination of the Easement and this Agreement.

(f) Termination of License Agreement. Subject to and conditioned upon recordation of this Agreement as provided in Section 1(b) above, Hearst and the District hereby agree that this Agreement shall replace the License Agreement, and the License Agreement shall terminate as of the Effective Date.

2. Additional Covenants and Acknowledgements by the District.

(a) Compliance with Conservation Easement. District acknowledges and agrees that: (i) the Encroachment Area is encumbered by the Conservation Easement; (ii) this Agreement, including but not limited to the District's rights pursuant to Section 1 above, is subordinate and subject to the Conservation Easement Agreement; and (iii) in performing its activities and obligations under this Agreement (including, without limitation, removal and reclamation pursuant to Section 6(a) below), District shall comply with all applicable provisions of the Conservation Easement Agreement. The parties acknowledge and agree that the District's acceptance of the grant of the Easement as provided herein does not constitute an assumption of any of the affirmative obligations of Hearst with respect to the Encroachment Area under the Conservation Easement Agreement; provided, however, District shall cooperate with Hearst, at District's sole cost and expense, in connection with Hearst's performance of its affirmative obligations with respect to the Encroachment Area under the Conservation Easement Agreement.

(b) Compliance with Laws. District shall perform its activities and obligations under this Agreement in a good and workmanlike manner, shall keep the Encroachment Area in neat, clean, orderly and safe condition at all times, and shall, at its sole cost and expense, comply with all applicable federal, state or local laws, regulations, decisions or orders of courts, administrative bodies or governmental agencies, ordinances, codes, permits or permit conditions, currently existing and as amended, enacted, issued, adopted or imposed in the future.

(c) Mechanic's Liens. District shall keep the Encroachment Area free and clear of all mechanic's liens or other liens resulting from the District's exercise of its rights pursuant to this Agreement and will promptly pay and discharge any such liens; provided, however, District will have the right to contest the correctness or the validity of any such lien, if immediately on demand of Hearst, District procures and records a lien release bond that meets the requirements of California Civil Code Section 8424 and will provide for the payment of such sum that the claimant may recover on the claim (together with costs of suit, if it recovers in the action).

3. Indemnity. District agrees to wholly indemnify, protect, defend and hold harmless Hearst, its parent, affiliates, subsidiaries, officers, directors, employees, stockholders, managers, property managers, mortgagees, successors, assigns, and insurers, from and against all liability, claims and demands arising out of the existence of the Encroachment on the Encroachment Area and District's use of the Encroachment Area and the undertaking of the

Project. District agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at its sole expense, or, at the option of Hearst, agrees to pay Hearst or reimburse Hearst for the defense costs incurred by Hearst in connection with any such liability, claims or demands. District also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent.

4. **Insurance.** At all times during the Term, District shall, at its sole cost and expense, maintain a commercial general liability in the amount of not less than Two Million Dollars (\$2,000,000) per occurrence, naming Hearst and its parent, affiliates, subsidiaries, officers, directors, employees, stockholders, managers, property managers, mortgagees, successors, assigns as an additional insured for ongoing and completed operations and Rangeland Trust as an additional insured for claims arising out of the Encroachment and District's exercise of its rights granted under this Agreement on a primary and noncontributory basis. District shall also, at its sole cost and expense, maintain workers compensation insurance with statutory limits and employer's liability coverage of One Million (\$1,000,000) per accident, One Million (\$1,000,000) per employee for injury by disease, and One Million (\$1,000,000) policy aggregate; automobile liability coverage of not less than Two Million Dollars (\$2,000,000); property insurance for the District's real and personal property; and environmental liability insurance for any first party or third party clean-up. A waiver of subrogation shall be included on all policies in favor of Hearst and its parent, affiliates, subsidiaries, officers, directors, employees, stockholders, managers, property managers, mortgagees, successors, assigns. On or before the Effective Date, District shall deliver to Hearst a certificate verifying that such insurance has been obtained. Further, at any time during the Term, Hearst may request of District, and District shall deliver to Hearst within five (5) days, evidence satisfactory to Hearst that the insurance required hereunder is still in full force and effect. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Agreement. Not less frequently than every five (5) years, Hearst and the District shall cooperate in determining an appropriate increase, to adjust for inflation, in the limit of the insurance coverage maintained by the District under this Agreement. Thereafter, the District shall obtain and maintain in effect such increased coverage until the next such adjustment.

5. **Default by District; Hearst Remedies and Right to Terminate.**

(a) In the event District fails to perform any of its obligations as required under this Agreement, or breaches any covenant, condition or term of this Agreement (including, without limitation Section 1(a) above), Hearst shall, in addition to any other remedies available at law or in equity, have the right to immediately terminate the Easement and this Agreement.

(b) If District fails to make any payment to Hearst when due as provided in under this Agreement, then:

(i) the outstanding amount shall bear interest at the maximum rate allowed by law until paid in full ("**Default Interest**"); and

(ii) a late charge by way of damages shall be immediately due and payable to Hearst. District recognizes that any default by District in paying such amounts when

due will result in Hearst incurring additional expenses and in Hearst's loss of the use of the money due. District agrees that, if for any reason District fails to pay any amount owed under this Agreement when due, Hearst shall be entitled to damages for the detriment caused thereby, but that it is extremely difficult and impractical to ascertain the extent of such damages. District therefore agrees that an amount equal to Five Cents (\$0.05) for each dollar Hearst fails to pay when due (the "Late Charge") is a reasonable estimate of said damages to Hearst, which sum District agrees to pay on demand.

Hearst's right to payment of such Default Interest and Late Charge as provided in this Section 5(b) shall be in addition to, and not in substitution for, any other remedies available to Hearst by reason of any default, including, without limitation, Hearst's right set forth in this Agreement to be paid its costs and expenses as provided in Section 18 below.

(c) District shall not be in default of any of its obligations under this Agreement unless Hearst first provides to District written notice of default and District thereafter fails within five (5) days after receipt of such notice of default to either cure such default or diligently commence such actions reasonably necessary to cure such default within such five (5) day period, and thereafter cures such default not later than thirty (30) days after receipt of such notice of default.

6. **District Obligations Upon Termination.**

(a) **Removal and Reclamation.**

(i) Within twelve (12) months (the "Removal Period") after any termination of the Easement and this Agreement as provided in this Agreement (the "Termination"), Grantee shall, at its sole cost and expense, remove all improvements and facilities from the Encroachment Area (the "Removal"). The Removal shall include, without limitation, removal of all above-ground structures and the upper portion of foundations, and removal of all below-ground structures to a depth of thirty-six (36) inches below grade or greater if Grantor has a valid reason that would require removal of structures greater than 36 inches; provided that any of the foregoing that contain any materials then known to be harmful to the environment or health shall be completely removed, regardless of the depth. Foundations shall be ground to thirty-six (36) inches below grade, unless Grantor has a valid reason that would require removal greater than 36 inches, and the foundation sites re-graded, as applicable. Cables and conduits more than thirty-six (36) inches below grade may be abandoned in place provided they do not contain any materials then known to be harmful to the environment or health, unless Grantor has a valid reason that would require removal greater than 36 inches. All unsalvageable materials shall be disposed of by Grantee at authorized sites in accordance with all applicable present or future federal, state or local laws, statutes, codes, ordinances, rules regulations, decrees, orders and other such requirements. Site reclamation shall be based on site-specific requirements and techniques commonly employed at the time the area shall be reclaimed, including grading and removal of gravel. The failure of Grantee to remove, raze or demolish any improvement within the Removal Period as provided herein shall be deemed an abandonment of the improvements to Grantor, and Grantor shall have the right to keep such improvements and to charge Grantee, and Grantee agrees to reimburse Grantor, for all costs and expenses incurred by Grantor to remove, raze or demolish the improvements or any part thereof to the standard set forth above. In such event, Grantor shall be entitled to the entire salvage value of the

improvements, without accounting to Grantee for such value. All Removal and reclamation shall be conducted and completed in compliance with all applicable present or future federal, state or local laws, statutes, codes, ordinances, rules regulations, decrees, orders and other such requirements and all applicable provisions of agreements of record as of the Effective Date, including, without limitation, the Conservation Easement.

(ii) In the event of the Termination as provided above, then notwithstanding any other term or provision of this Agreement, and notwithstanding such termination of this Agreement, until Grantee's completion of the Removal as provided in the preceding subsection 6(a)(i) then: (A) Grantee shall remain bound by and obligated under the terms, covenants and provisions of this Agreement, and (B) Grantee's rights under this Agreement shall extinguish, except that Grantee shall have the continued license and right to access the Encroachment Area solely for the purpose of completing the Removal.

(b) Recordation of Quitclaim. Upon the Termination as provided above, Grantee shall execute, acknowledge and deliver to Grantor, within ten (10) business days after written demand from Grantor to Grantee, any quitclaim deed, termination agreement, cancellation and surrender agreement, affidavit, petition, or other document required by any reputable title company selected by Grantor, licensed to operate in the California, to remove any cloud or encumbrance on the Conservation Property created by this Agreement. Grantee irrevocably appoints Grantor as attorney-in-fact of Grantee, with full powers, at Grantee's cost and expense, to perform the obligations of Grantee under this paragraph upon the expiration of the ten (10) business day period described in this paragraph. Grantee's obligations under this paragraph shall survive the Termination.

7. **District's Use and Liability; Release of Hearst.** District hereby releases Hearst from any liability arising from the District exercising its rights under this Agreement and the District's undertaking of the Project. Furthermore, District agrees to assume responsibility for any damages to the Encroachment Area caused by reason of the District's use of the Easement and Encroachment Area under this Agreement. With respect to the release provided in this Section by the District, the District acknowledges that it has been advised by legal counsel and that the District waives the provisions of California Civil Code Section 1542, which provides:

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.

District, on behalf of itself and for its successors and permitted assigns, expressly, knowingly, and voluntarily waives and relinquishes all rights and benefits afforded by California Civil Code Section 1542 and any analogous state or federal law or regulation, and in so doing, understands and acknowledges the significance and consequence of such specific waiver.

8. **Notices.** Any notice, demand, approval, consent, or other communication required or desired to be given under this Agreement in writing shall be given in the manner set forth below, addressed to the party to be served at the addresses set forth below or at such other

address for which that party may have given notice under the provisions of this Section. Any notice, demand, approval, consent, or other communication given by: (a) mail shall be deemed to have been given on the second (2nd) business day immediately following the date it was deposited in the United States mail, first class and postage prepaid; (b) overnight common carrier courier service shall be deemed to be given on the business day immediately following the date it was deposited with such common carrier; (c) delivery in person or by messenger shall be deemed to have been given upon delivery in person or by messenger; or (d) electronic transmission shall be deemed to have been given on the date of transmission of the entire communication, provided that (i) such transmission occurs during 8:00 a.m. and 5:00 p.m., Pacific Time, on normal business days, and (ii) the receiving party receives delivery of a hard copy of the original transmitted document(s) not later than the first (1st) business day following such transmission.

To Hearst:

Hearst Holdings, Inc.
5 Third Street, Suite 200
San Francisco, CA 94103-3202
Attn: Controller
Email: _____@hearst.com

To District:

San Simeon Community Services District
111 Pico Avenue
San Simeon, CA 93452
Attn: Chairperson
Email: admin@sansimeoncsd.org

9. **Time of the Essence; Dates.** Time is of the essence in the performance of each of the parties' respective obligations contained in this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or other day on which public agencies and major banks in San Luis Obispo County, California, are not open for business (each a "**Non-Business Day**"), such date shall be deemed to be the succeeding business day. For purposes of this Agreement, a "business day" shall mean a day other than a Non-Business Day.

10. **Further Assurances.** Each of the parties agrees to perform any and all further acts and to execute and deliver any documents that may reasonably be necessary to carry out the provisions of this Agreement.

11. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

12. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Hearst and the District pertaining to the subject matter contained in it and, subject to Section 1(f) above, supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement may be amended, modified or supplemented only by written agreement of Hearst and the District and prior written consent of Rangeland Trust. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

13. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Hearst and the District, and no

provision contained in this Agreement nor any acts of the parties shall be deemed to create any relationship between Hearst and the District.

14. **No Assignment.** District's rights and obligations under this Agreement are personal to District, and District shall not assign this Agreement without the express written consent of Hearst, which consent may be withheld for any reason or for no reason.

15. **Binding on Successors.** This Agreement shall be binding upon the parties, permitted assigns and other successors in interest.

16. **Drafting.** The parties to this Agreement agree that this Agreement is the product of joint authorship and negotiation and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wordage or language of any kind shall not be construed against the drafting party in accordance with California Civil Code Section 1654, and that each such party to this Agreement waives the effect of such statute.

17. **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal suit, action, or proceeding arising out of this Agreement shall be instituted in Superior Court in San Luis Obispo County, California, and each party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding. Each party irrevocably and unconditionally waives any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

18. **Legal Costs.** If any party to this Agreement shall take any action to enforce this Agreement or bring any action or commence any proceeding for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' and experts' fees and costs incurred in taking such action, bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' and experts' fees and costs due hereunder, and such provision shall be determined by a court of competent jurisdiction and not by a jury. For the purposes of this Section, attorneys' and experts' fees and costs shall include, without limitation, fees incurred in the following: (a) postjudgment motions; (b) contempt proceedings; (c) garnishment, levy, and debtor and third party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals.

19. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties authorize each other to detach and combine, or cause to be detached and combined, original signature pages and consolidate them into a single identical original for recordation of this Agreement in the Official Records of San Luis Obispo County, California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

HEARST:

HEARST HOLDINGS, INC., a Delaware corporation

By: _____
Name:
Title:

DISTRICT:

SAN SIMEON COMMUNITY SERVICES DISTRICT, a California special district

By: _____
Name:
Title:

CONSENT OF CONSERVATION EASEMENT HOLDER

Rangeland Trust, as holder of the Conservation Easement under the Conservation Easement Agreement, hereby consents to and approves of the grant of the Easement as set forth in the foregoing Agreement, in accordance with the Conservation Easement Agreement. Capitalized terms used in this Consent shall have the meanings ascribed to them in the foregoing Agreement.

RANGELAND TRUST:

CALIFORNIA RANGELAND TRUST, a
California nonprofit public benefit
corporation

By: _____ Dated: _____
Name:
Title:

CERTIFICATE OF ACCEPTANCE

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)SS.

Certificate of Acceptance

This is to certify that the SAN SIMEON COMMUNITY SERVICES DISTRICT, a California special district, hereby accepts the interest in real property conveyed by the foregoing Grant of Limited Term Encroachment Easement and Agreement and consents to the recordation thereof.

Dated: _____

Name:
Title:

3658.008-3561021.2

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

3658.008-3561021.2

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature _____ (Seal)

3658.008-3561021.2

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State of California)
)
County of _____)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

3658.008-3561021.2

Exhibit A to
Grant of Limited Term Encroachment
Easement and Agreement

DESCRIPTION OF ENCROACHMENT AREA

The real property referred to in this Agreement as the "Encroachment Area," is located in San Luis Obispo County, California, and more particularly described as follows:

(See attached)

[Review Note: Legal description as Exhibit A and plat map as Exhibit B to be finalized and included.]

Deleted: prepared

Deleted: as Exhibit A

3658.008-3561021.2

RECORD AT REQUEST OF AND RETURN TO:

Hearst Holdings, Inc.
5 Third Street, Suite 200
San Francisco, CA 94103-3202
Attn: Controller

No Fee Document – Per Govt. Code Sec. 6103 & 27383
No County Transfer Tax Per R & T Code 11922

APNs: Portions of APNs 013-041-014 &
013-011-024

Space Above This Line for Recorder’s Use

GRANT OF LIMITED TERM ENCROACHMENT EASEMENT AND AGREEMENT

This GRANT OF LIMITED TERM ENCROACHMENT EASEMENT AND AGREEMENT (the “**Agreement**”), dated _____ for reference purposes only, is made and entered into by and between **HEARST HOLDINGS, INC.**, a Delaware corporation (“**Hearst**” or “**Grantor**”), and **SAN SIMEON COMMUNITY SERVICES DISTRICT**, a California special district (“**District**” or “**Grantee**”).

RECITALS

A. Hearst owns certain real property located in San Luis Obispo County, California (the “**Conservation Property**”) encumbered by a conservation easement (the “**Conservation Easement**”) held by California Rangeland Trust, a California nonprofit public benefit corporation (“**Rangeland Trust**”), pursuant to that certain Deed of Conservation Easement and Agreement Concerning Easement Rights recorded on February 18, 2005 in the Official Records of San Luis Obispo County, California, as Instrument No. 2005013388, as assigned pursuant to that certain Assignment and Assumption of Conservation Easement and Related Grant Agreement (East Side Conservation Area) recorded on February 18, 2005 in the Official Records of San Luis Obispo County, California, as Instrument No. 2005013391 (as assigned, the “**Conservation Easement Agreement**”).

B. On or about March 16, 2015, Hearst provided a copy of the Conservation Easement Agreement to the District.

C. In or about October 2015, the District commenced construction of certain Potable Water Well Head Treatment Project (the “**Project**”) improvements including a reverse osmosis facility (collectively, the “**Water Treatment Facility**”), and completed construction of the Water Treatment Facility on or about April 2016. Since completion of the Water Treatment Facility, the District has been using the Water Treatment Facility for active water treatment operations and services as part of the Project (the “**Public Utilities Purposes**”).

D. In July 2020, Hearst and the District discovered that a portion of the Water Treatment Facility encroaches (the “**Encroachment**”) on an approximate 560 square foot portion of the Conservation Property (the “**Encroaching Facility Footprint**”).

E. As an interim measure, Hearst and the District entered into that certain Revocable Encroachment License Agreement effective as of October 26, 2020 (the “**License Agreement**”), by which Hearst granted to District a license to temporarily leave the existing Encroachment on the Encroaching Facility Footprint pending completion and recordation of this Agreement.

F. District desires to obtain from Hearst, and Hearst has agreed to grant to District, an easement to allow the existing Encroachment to remain on the Encroaching Facility Footprint within an approximate 2,693 square foot portion of the Conservation Property more particularly described in **Exhibit A** and depicted in **Exhibit B**, attached hereto and incorporated herein by this reference (the “**Encroachment Area**”) for so long as the District continues to use the Encroachment for the Public Utilities Purposes, on the terms and conditions set forth in this Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Agreement, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Easement Terms.**

(a) Grant of Easement. Subject to the terms and conditions of this Agreement, Hearst hereby grants to the District an easement (the “**Easement**”) on, over and across the Encroachment Area for the sole and exclusive purpose of allowing the Encroachment to remain in its current location within the Encroaching Facility Footprint for so long as the District (i) continues to use the Encroachment for the Public Utilities Purposes in a manner substantially similar to the District’s manner of use thereof as of the date of this Agreement; and (ii) uses the remainder of the Encroachment Area (the “**Access Area**”) solely for access to and from the Encroachment as part of the Public Utilities Purposes, and the Access Area remains vacant and is not used for any other purpose including any storage or other improvements.

(b) Term. The term of the Easement and this Agreement (the “**Term**”) shall commence on the date that this Agreement is recorded in the Official Records of San Luis Obispo County, California (the “**Effective Date**”), and continue until the earlier of: (i) written notice by District to Hearst that the District has ceased to use the Easement for the Public Utilities Purposes as provided in Section 1(a) above; (ii) the District ceases to use the Easement for Public Utilities Purposes as provided in Section 1(a) above for a period of twelve (12) consecutive months; or (iii) any termination pursuant to Section 5 below.

(c) Acknowledgements and Release by District. In addition to Section 7 below, District acknowledges and agrees that, in consideration of the grant of the Easement by Hearst to District as provided herein, District releases, relinquishes and waives any and all claims or rights that it may have with respect to the Encroachment Area, including without limitation

any claims or rights of inverse condemnation, adverse possession, or prescriptive easement pertaining to the Encroachment. For purposes of any requirement that Hearst must file a claim under the Government Claims Act (California Government Code Section 810-996.6) with respect to the Encroachment, District further acknowledges and agrees as follows: (1) no claim by Hearst accrued until August 18, 2020 when the Encroachment was confirmed by that certain survey report dated August 18, 2020, prepared by Wallace Group, a copy of which has previously been provided by Hearst to the District; and (2) Hearst shall not be required to file a claim until the later of (A) expiration of the required filing period under the Government Claims Act, or (B) thirty (30) days after written notice from District to Hearst.

(d) Encroachment Fee.

(i) As additional consideration for the grant of the Easement by Hearst to District as provided herein, commencing on the Effective Date, District covenants and agrees to pay to Hearst an annual encroachment fee (the “**Encroachment Fee**”) as provided in this Section 1(d). The Encroachment Fee shall be payable in advance on the Effective Date and thereafter on each anniversary of the Effective Date through the Term. The amount of the first Encroachment Fee payment shall be Five Thousand Dollars (\$5,000.00). Commencing on the first anniversary of the Effective Date, the amount of each annual Encroachment Fee shall automatically increase two percent (2%) over the Encroachment Fee for the immediately preceding year. For the avoidance of doubt and as an example of such automatic Encroachment Fee increase during the Term, the annual Encroachment Fee for the first three (3) years of the Term shall be as follows:

<i>Annual Encroachment Fee</i>		
<i>Payment No.</i>	<i>Due Date</i>	<i>Amount</i>
1	Effective Date	\$5,000.00
2	1 st Anniversary of Effective Date	\$5,100.00
3	2 nd Anniversary of Effective Date	\$5,202.50

(ii) Notwithstanding Section 1(d)(i) above, Hearst and the District acknowledge and agree that a prorated amount of the annual license fee previously paid to Hearst by the District under the License Agreement in the aggregate sum of _____ Dollars (\$ _____) (the “**Encroachment Fee Credit**”) shall be applied to the first Encroachment Fee payment under this Agreement. District shall have three (3) business days after the Effective Date to pay to Hearst the balance of the first Encroachment Fee payment after crediting thereto the Encroachment Fee Credit.

(e) Reimbursement of Damages Resulting from Encroachment. As a direct result of the Encroachment, Hearst incurred damages as more particularly set forth in the License Agreement. Hearst and District acknowledge and agree that, as of the Effective Date, the payment obligations of District under the License Agreement (including, without limitation, Section 1(e) of the License Agreement) have been satisfied in full. As additional consideration

for the grant of the Easement by Hearst to District as provided herein, District shall pay to Hearst all additional damages incurred by Hearst during the Term as a result of the Encroachment promptly upon written demand by Hearst therefor (which demand shall include reasonable supporting documentation therefor). The payment obligations of the District under this Section 1(e) shall survive any termination of the Easement and this Agreement.

(f) Termination of License Agreement. Subject to and conditioned upon recordation of this Agreement as provided in Section 1(b) above, Hearst and the District hereby agree that this Agreement shall replace the License Agreement, and the License Agreement shall terminate as of the Effective Date.

2. **Additional Covenants and Acknowledgements by the District.**

(a) Compliance with Conservation Easement. District acknowledges and agrees that: (i) the Encroachment Area is encumbered by the Conservation Easement; (ii) this Agreement, including but not limited to the District's rights pursuant to Section 1 above, is subordinate and subject to the Conservation Easement Agreement; and (iii) in performing its activities and obligations under this Agreement (including, without limitation, removal and reclamation pursuant to Section 6(a) below), District shall comply with all applicable provisions of the Conservation Easement Agreement. The parties acknowledge and agree that the District's acceptance of the grant of the Easement as provided herein does not constitute an assumption of any of the affirmative obligations of Hearst with respect to the Encroachment Area under the Conservation Easement Agreement; provided, however, District shall cooperate with Hearst, at District's sole cost and expense, in connection with Hearst's performance of its affirmative obligations with respect to the Encroachment Area under the Conservation Easement Agreement.

(b) Compliance with Laws. District shall perform its activities and obligations under this Agreement in a good and workmanlike manner, shall keep the Encroachment Area in neat, clean, orderly and safe condition at all times, and shall, at its sole cost and expense, comply with all applicable federal, state or local laws, regulations, decisions or orders of courts, administrative bodies or governmental agencies, ordinances, codes, permits or permit conditions, currently existing and as amended, enacted, issued, adopted or imposed in the future.

(c) Mechanic's Liens. District shall keep the Encroachment Area free and clear of all mechanic's liens or other liens resulting from the District's exercise of its rights pursuant to this Agreement and will promptly pay and discharge any such liens; provided, however, District will have the right to contest the correctness or the validity of any such lien, if immediately on demand of Hearst, District procures and records a lien release bond that meets the requirements of California Civil Code Section 8424 and will provide for the payment of such sum that the claimant may recover on the claim (together with costs of suit, if it recovers in the action).

3. **Indemnity.** District agrees to wholly indemnify, protect, defend and hold harmless Hearst, its parent, affiliates, subsidiaries, officers, directors, employees, stockholders, managers, property managers, mortgagees, successors, assigns, and insurers, from and against all liability, claims and demands arising out of the existence of the Encroachment on the Encroachment Area and District's use of the Encroachment Area and the undertaking of the

Project. District agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at its sole expense, or, at the option of Hearst, agrees to pay Hearst or reimburse Hearst for the defense costs incurred by Hearst in connection with any such liability, claims or demands. District also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent.

4. **Insurance.** At all times during the Term, District shall, at its sole cost and expense, maintain a commercial general liability in the amount of not less than Two Million Dollars (\$2,000,000) per occurrence, naming Hearst and its parent, affiliates, subsidiaries, officers, directors, employees, stockholders, managers, property managers, mortgagees, successors, assigns as an additional insured for ongoing and completed operations and Rangeland Trust as an additional insured for claims arising out of the Encroachment and District's exercise of its rights granted under this Agreement on a primary and noncontributory basis. District shall also, at its sole cost and expense, maintain workers compensation insurance with statutory limits and employer's liability coverage of One Million (\$1,000,000) per accident, One Million (\$1,000,000) per employee for injury by disease, and One Million (\$1,000,000) policy aggregate; automobile liability coverage of not less than Two Million Dollars (\$2,000,000); property insurance for the District's real and personal property; and environmental liability insurance for any first party or third party clean-up. A waiver of subrogation shall be included on all policies in favor of Hearst and its parent, affiliates, subsidiaries, officers, directors, employees, stockholders, managers, property managers, mortgagees, successors, assigns. On or before the Effective Date, District shall deliver to Hearst a certificate verifying that such insurance has been obtained. Further, at any time during the Term, Hearst may request of District, and District shall deliver to Hearst within five (5) days, evidence satisfactory to Hearst that the insurance required hereunder is still in full force and effect. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Agreement. Not less frequently than every five (5) years, Hearst and the District shall cooperate in determining an appropriate increase, to adjust for inflation, in the limit of the insurance coverage maintained by the District under this Agreement. Thereafter, the District shall obtain and maintain in effect such increased coverage until the next such adjustment.

5. **Default by District; Hearst Remedies and Right to Terminate.**

(a) In the event District fails to perform any of its obligations as required under this Agreement, or breaches any covenant, condition or term of this Agreement (including, without limitation Section 1(a) above), Hearst shall, in addition to any other remedies available at law or in equity, have the right to immediately terminate the Easement and this Agreement.

(b) If District fails to make any payment to Hearst when due as provided in under this Agreement, then:

(i) the outstanding amount shall bear interest at the maximum rate allowed by law until paid in full ("**Default Interest**"); and

(ii) a late charge by way of damages shall be immediately due and payable to Hearst. District recognizes that any default by District in paying such amounts when

due will result in Hearst incurring additional expenses and in Hearst's loss of the use of the money due. District agrees that, if for any reason District fails to pay any amount owed under this Agreement when due, Hearst shall be entitled to damages for the detriment caused thereby, but that it is extremely difficult and impractical to ascertain the extent of such damages. District therefore agrees that an amount equal to Five Cents (\$0.05) for each dollar Hearst fails to pay when due (the "**Late Charge**") is a reasonable estimate of said damages to Hearst, which sum District agrees to pay on demand.

Hearst's right to payment of such Default Interest and Late Charge as provided in this Section 5(b) shall be in addition to, and not in substitution for, any other remedies available to Hearst by reason of any default, including, without limitation, Hearst's right set forth in this Agreement to be paid its costs and expenses as provided in Section 18 below.

(c) District shall not be in default of any of its obligations under this Agreement unless Hearst first provides to District written notice of default and District thereafter fails within five (5) days after receipt of such notice of default to either cure such default or diligently commence such actions reasonably necessary to cure such default within such five (5) day period, and thereafter cures such default not later than thirty (30) days after receipt of such notice of default.

6. District Obligations Upon Termination.

(a) Removal and Reclamation.

(i) Within twelve (12) months (the "**Removal Period**") after any termination of the Easement and this Agreement as provided in this Agreement (the "**Termination**"), Grantee shall, at its sole cost and expense, remove all improvements and facilities from the Encroachment Area (the "**Removal**"). The Removal shall include, without limitation, removal of all above-ground structures and the upper portion of foundations, and removal of all below-ground structures to a depth of thirty-six (36) inches below grade or greater if Grantor has a valid reason that would require removal of structures greater than 36 inches; provided that any of the foregoing that contain any materials then known to be harmful to the environment or health shall be completely removed, regardless of the depth. Foundations shall be ground to thirty-six (36) inches below grade, unless Grantor has a valid reason that would require removal greater than 36 inches, and the foundation sites re-graded, as applicable. Cables and conduits more than thirty-six (36) inches below grade may be abandoned in place provided they do not contain any materials then known to be harmful to the environment or health, unless Grantor has a valid reason that would require removal greater than 36 inches. All unsalvageable materials shall be disposed of by Grantee at authorized sites in accordance with all applicable present or future federal, state or local laws, statutes, codes, ordinances, rules regulations, decrees, orders and other such requirements. Site reclamation shall be based on site-specific requirements and techniques commonly employed at the time the area shall be reclaimed, including grading and removal of gravel. The failure of Grantee to remove, raze or demolish any improvement within the Removal Period as provided herein shall be deemed an abandonment of the improvements to Grantor, and Grantor shall have the right to keep such improvements and to charge Grantee, and Grantee agrees to reimburse Grantor, for all costs and expenses incurred by Grantor to remove, raze or demolish the improvements or any part thereof to the standard set forth above. In such event, Grantor shall be entitled to the entire salvage value of the

improvements, without accounting to Grantee for such value. All Removal and reclamation shall be conducted and completed in compliance with all applicable present or future federal, state or local laws, statutes, codes, ordinances, rules regulations, decrees, orders and other such requirements and all applicable provisions of agreements of record as of the Effective Date, including, without limitation, the Conservation Easement.

(ii) In the event of the Termination as provided above, then notwithstanding any other term or provision of this Agreement, and notwithstanding such termination of this Agreement, until Grantee's completion of the Removal as provided in the preceding subsection 6(a)(i) then: (A) Grantee shall remain bound by and obligated under the terms, covenants and provisions of this Agreement, and (B) Grantee's rights under this Agreement shall extinguish, except that Grantee shall have the continued license and right to access the Encroachment Area solely for the purpose of completing the Removal.

(b) Recordation of Quitclaim. Upon the Termination as provided above, Grantee shall execute, acknowledge and deliver to Grantor, within ten (10) business days after written demand from Grantor to Grantee, any quitclaim deed, termination agreement, cancellation and surrender agreement, affidavit, petition, or other document required by any reputable title company selected by Grantor, licensed to operate in the California, to remove any cloud or encumbrance on the Conservation Property created by this Agreement. Grantee irrevocably appoints Grantor as attorney-in-fact of Grantee, with full powers, at Grantee's cost and expense, to perform the obligations of Grantee under this paragraph upon the expiration of the ten (10) business day period described in this paragraph. Grantee's obligations under this paragraph shall survive the Termination.

7. **District's Use and Liability; Release of Hearst.** District hereby releases Hearst from any liability arising from the District exercising its rights under this Agreement and the District's undertaking of the Project. Furthermore, District agrees to assume responsibility for any damages to the Encroachment Area caused by reason of the District's use of the Easement and Encroachment Area under this Agreement. With respect to the release provided in this Section by the District, the District acknowledges that it has been advised by legal counsel and that the District waives the provisions of California Civil Code Section 1542, which provides:

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.

District, on behalf of itself and for its successors and permitted assigns, expressly, knowingly, and voluntarily waives and relinquishes all rights and benefits afforded by California Civil Code Section 1542 and any analogous state or federal law or regulation, and in so doing, understands and acknowledges the significance and consequence of such specific waiver.

8. **Notices.** Any notice, demand, approval, consent, or other communication required or desired to be given under this Agreement in writing shall be given in the manner set forth below, addressed to the party to be served at the addresses set forth below or at such other

address for which that party may have given notice under the provisions of this Section. Any notice, demand, approval, consent, or other communication given by: (a) mail shall be deemed to have been given on the second (2nd) business day immediately following the date it was deposited in the United States mail, first class and postage prepaid; (b) overnight common carrier courier service shall be deemed to be given on the business day immediately following the date it was deposited with such common carrier; (c) delivery in person or by messenger shall be deemed to have been given upon delivery in person or by messenger; or (d) electronic transmission shall be deemed to have been given on the date of transmission of the entire communication, provided that (i) such transmission occurs during 8:00 a.m. and 5:00 p.m., Pacific Time, on normal business days, and (ii) the receiving party receives delivery of a hard copy of the original transmitted document(s) not later than the first (1st) business day following such transmission.

To Hearst:

Hearst Holdings, Inc.
5 Third Street, Suite 200
San Francisco, CA 94103-3202
Attn: Controller
Email: _____@hearst.com

To District:

San Simeon Community Services District
111 Pico Avenue
San Simeon, CA 93452
Attn: Chairperson
Email: admin@sansimeoncsd.org

9. **Time of the Essence; Dates.** Time is of the essence in the performance of each of the parties' respective obligations contained in this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or other day on which public agencies and major banks in San Luis Obispo County, California, are not open for business (each a "**Non-Business Day**"), such date shall be deemed to be the succeeding business day. For purposes of this Agreement, a "business day" shall mean a day other than a Non-Business Day.

10. **Further Assurances.** Each of the parties agrees to perform any and all further acts and to execute and deliver any documents that may reasonably be necessary to carry out the provisions of this Agreement.

11. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

12. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Hearst and the District pertaining to the subject matter contained in it and, subject to Section 1(f) above, supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement may be amended, modified or supplemented only by written agreement of Hearst and the District and prior written consent of Rangeland Trust. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

13. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Hearst and the District, and no

provision contained in this Agreement nor any acts of the parties shall be deemed to create any relationship between Hearst and the District.

14. **No Assignment.** District's rights and obligations under this Agreement are personal to District, and District shall not assign this Agreement without the express written consent of Hearst, which consent may be withheld for any reason or for no reason.

15. **Binding on Successors.** This Agreement shall be binding upon the parties, permitted assigns and other successors in interest.

16. **Drafting.** The parties to this Agreement agree that this Agreement is the product of joint authorship and negotiation and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wordage or language of any kind shall not be construed against the drafting party in accordance with California Civil Code Section 1654, and that each such party to this Agreement waives the effect of such statute.

17. **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal suit, action, or proceeding arising out of this Agreement shall be instituted in Superior Court in San Luis Obispo County, California, and each party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding. Each party irrevocably and unconditionally waives any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

18. **Legal Costs.** If any party to this Agreement shall take any action to enforce this Agreement or bring any action or commence any proceeding for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' and experts' fees and costs incurred in taking such action, bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' and experts' fees and costs due hereunder, and such provision shall be determined by a court of competent jurisdiction and not by a jury. For the purposes of this Section, attorneys' and experts' fees and costs shall include, without limitation, fees incurred in the following: (a) postjudgment motions; (b) contempt proceedings; (c) garnishment, levy, and debtor and third party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals.

19. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties authorize each other to detach and combine, or cause to be detached and combined, original signature pages and consolidate them into a single identical original for recordation of this Agreement in the Official Records of San Luis Obispo County, California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

HEARST:

HEARST HOLDINGS, INC., a Delaware corporation

By: _____
Name:
Title:

DISTRICT:

SAN SIMEON COMMUNITY SERVICES DISTRICT, a California special district

By: _____
Name:
Title:

CONSENT OF CONSERVATION EASEMENT HOLDER

Rangeland Trust, as holder of the Conservation Easement under the Conservation Easement Agreement, hereby consents to and approves of the grant of the Easement as set forth in the foregoing Agreement, in accordance with the Conservation Easement Agreement. Capitalized terms used in this Consent shall have the meanings ascribed to them in the foregoing Agreement.

RANGELAND TRUST:

CALIFORNIA RANGELAND TRUST, a
California nonprofit public benefit
corporation

By: _____ Dated: _____
Name:
Title:

CERTIFICATE OF ACCEPTANCE

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)SS.

Certificate of Acceptance

This is to certify that the SAN SIMEON COMMUNITY SERVICES DISTRICT, a California special district, hereby accepts the interest in real property conveyed by the foregoing Grant of Limited Term Encroachment Easement and Agreement and consents to the recordation thereof.

Dated: _____

Name:
Title:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature _____

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

DESCRIPTION OF ENCROACHMENT AREA

The real property referred to in this Agreement as the “Encroachment Area,” is located in San Luis Obispo County, California, and more particularly described as follows:

(See attached)

[Review Note: Legal description as Exhibit A and plat map as Exhibit B to be finalized and included.]

EXHIBIT A
Legal Description

A portion of Lot "A" of the Subdivisions of the Rancho San Simeon, as surveyed by V.H. Woods and delineated on the "Plat Showing Partition of that part of San Simeon Ro. owned by Ira Van Gorden S'r." filed in the office of the Recorder of San Luis Obispo County, California, on July 17th, 1899 in Book B at page 108 of Maps, also being portions of land owned by Hearst Holdings, Inc. as described in Certificates of Compliance recorded as Document Numbers 2002-028663 and Document No. 2002-055088 in the office of the County Recorder of San Luis Obispo County, California described as follows;

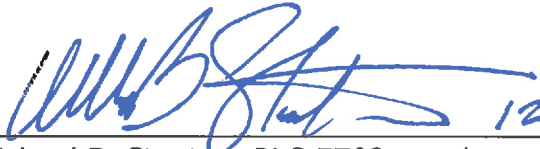
Beginning at the most northerly corner of the Arbuckle Tract as shown on the map filed May 22, 1952 in Book 6 of Records of Surveys at page 49 in said County Recorder's office, said point also being a 1" iron pipe with tag "RCE 6923" as shown on said map; thence

- 1) South 37° 46' 11" West along the northwest line of said Arbuckle Tract a distance of 26.82 feet to a 5/8" rebar with aluminum cap "LS5702" as shown on map filed in Book 117 of Records of Survey at Page 17; thence
- 2) North 31° 00' 43" West along the northeast line of Pico Ave. as shown on said Arbuckle Tract a distance of 32.25 feet to the east corner of property (Parcel One) granted to Rancho San Simeon Acres Service Corporation recorded on March 4, 1958 in Book 930 of Official Records at page 32 as witnessed by a 1" iron pipe with cap "LS 5702" as shown on map filed in Book 125 of Records of Surveys at page 62-63; thence continuing
- 3) North 31° 00' 43" West along the northeast line of Pico Ave. as shown on map of said Arbuckle Tract a distance of 32.13 feet to the most northerly corner of Pico Avenue as shown on map of said Arbuckle Tract and the most southerly corner of Hearst Holdings Inc. property described in Certificate of Compliance recorded as Document Number No. 2002-055088; thence
- 4) North 38° 17' 12" West along southwest line of said Hearst Holdings property a distance of 39.30 feet (said point lies North 38° 17' 12" West 1.00 feet from a 1" iron pipe with cap "LS 5702" per 125 RS 62-63); thence leaving said southwest line of Hearst Holdings Inc. property
- 5) North 47° 42' 01" East along an existing fence line a distance of 31.45 feet, thence
- 6) South 30° 30' 54" East along an existing fence line a distance of 99.82 feet to the Point of Beginning.

The basis of bearings for this survey was taken from the centerline of Avonne Avenue between found monuments at Pico Ave. and Pen Way as shown on Record of Survey filed in Book 125 at pages 62-63. Measured distances are on state plane grid, Zone 5. To obtain ground distances, multiply distances shown by the inverse of the combined scale factor of 1.00003312. All measured bearings shown are on grid. To obtain geodetic bearings, rotate bearings shown clockwise by 1° 47' 12".

The above-described parcel contains 2693 square feet and is graphically shown on Exhibit B attached hereto and made a part hereof.

* * *


Michael B. Stanton, PLS 5702 date 12-14-2021



N:\2021\21-321 111 Pico Ave - San Simeon CSD\Legal Descriptions\Legal Description - Hearst Encroachment Area.doc
12/14/2021 1:03 PM

EXHIBIT "B"

POINT OF BEGINNING
 N38°00'48"E 26.76'R7
 N37°46'11"E 26.82'M

6 RS 49

S38°00'48"W 1

FND 1" IP
 "RCE 6923"
 PER R2 & R7

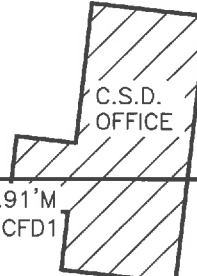
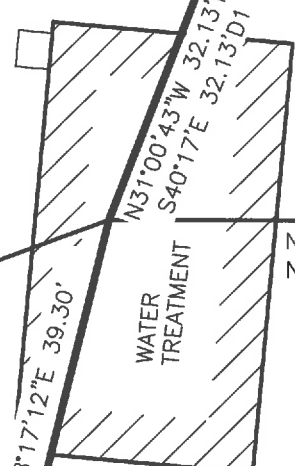
FND 5/8" REB IP
 ALUM. CAP
 "LS 5702" PER R7

PICO AVE.

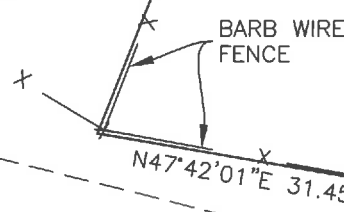
N38°00'48"E 51.41'M
 S36°01'W D1 (NO DIST)

HEARST HOLDINGS.
 COC DOC NO. 2002-028663

S53°59'E 30.00'D1
 N51°59'12"W 30.00'M



N38°00'48"E 62.91'M
 N36°01'E 62.91'CFD1



SAN SIMEON COMMUNITY SERVICES DISTRICT



N47°42'01"E 31.45'

TOP OF BANK

930 OR 32
 PARCEL ONE

SCALE 1"=20'

HEARST HOLDINGS.
 COC DOC NO. 2002-055088
 767 OR 490

COC DOC NO. 2004-033958
 JOHN K. RUSSELL TRUST

N51°59'12"W 209.38'M
 N53°59'W 209.38'D1 :09.38'D1

REFERENCES

- R2 6 RS 49, McLENNAN, 1952 (THE ARBUCKLE TRACT)
- R7 117 RS 17
- D1 930 OR 32 (CSD PROPERTY)

SEE 125 RS 62-63 FOR BOUNDARY ESTABLISHMENT.



MICHAEL B. STANTON, PLS 5702
 3559 SOUTH HIGUERA ST.
 SAN LUIS OBISPO, CA 93401
 805-594-1969

HEARST EASEMENT AREA
 IN FAVOR OF SAN SIMEON C.S.D.
 December 14, 2021

December 8, 2021

Kerry O'Toole
Hearst Corporation
5 3rd Street, The Hearst Building, Suite 200
San Francisco, California 94103

Subject: Surveyor's Review of Mike Stanton's Draft Legal Description and Exhibit Map in Relation to Hearst Holding, Inc. Property

Dear Ms. O'toole,

Attached please find our review and comments of the draft legal description and exhibit map prepared by Mike Stanton, PLS 5702 and provided by Hearst for Wallace Group review. The comments are minor but worth consideration. If Mr. Stanton has questions regarding our comments, we would be happy to discuss them with him.

Please feel free to reach out with questions or comments.

Sincerely,

WALLACE GROUP



Clayton Bradshaw, PLS, PE
P.L.S. 8298
Date signed: December 8, 2021

Attachment: Review of Legal Desc and Ex. Map



CIVIL AND
TRANSPORTATION
ENGINEERING

CONSTRUCTION
MANAGEMENT

LANDSCAPE
ARCHITECTURE

MECHANICAL
ENGINEERING

PLANNING

PUBLIC WORKS
ADMINISTRATION

SURVEYING /
GIS SOLUTIONS

WATER RESOURCES

WALLACE GROUP
A California Corporation

612 CLARION CT
SAN LUIS OBISPO
CALIFORNIA 93401

T 805 544-4011
F 805 544-4294

www.wallacegroup.us

S'r. if you are quoting
the plat (actually S'R.)

EXHIBIT A Legal Description

A portion of Lot "A" of the Subdivisions of the Rancho San Simeon, as surveyed by V.H. Woods and delineated on the "Plat Showing Partition of that part of San Simeon Ro. owned by Ira Van Gorden Sr." filed in the office of the Recorder of San Luis Obispo County, California, on July 17th, 1899 in Book B at page 108 of Maps, also being portions of land owned by Hearst Holdings, Inc. as described in Certificates of Compliance recorded as Document Numbers 2002-028663 and Document No. 2002-055088 in the office of the County Recorder of San Luis Obispo County, California described as follows;

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- 2) North 31° 00' 43" West along the northeast line of Pico Ave. as shown on said ^{One (per the doc.)} Arbuckle Tract a distance of 32.25 feet to the east corner of property (Parcel 1) granted to Rancho San Simeon Acres Service Corporation recorded on March 4, 1958 in Book 930 of Official Records at page 32 as witnessed by a 1" iron pipe with cap "LS 5702" as shown on map filed in Book 125 of Records of Surveys at page 62-63; thence continuing
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- 6) South 30° 30' 54" East along an existing fence line a distance of 99.82 feet to the Point of Beginning.

DRAFT
10-26-2021

The above-described parcel contains 2693 square feet and is graphically shown on Exhibit B attached hereto and made a part hereof.

* * *



N:\2021\21-321 111 Pico Ave - San Simeon CSD\Legal Descriptions\Legal Description - Hearst Encroachment\Map.doc
10/26/2021 10:51 AM

N:\2021\21-321 111 Pico Ave - San Simeon CSD\3D 2019\21-321 Pico Ave San Simeon CSD Hearst Easement Area.DWG, 8.5 x 11 Easement Map, Oct 26, 2021 10:52am, MStanton

EXHIBIT "B"

POINT OF BEGINNING
 FND 1" IP
 "RCE 6923"
 PER R2 & R7

N38°00'48"E 26.76'R7
 N37°46'11"E 26.82'M

6 RS 49

S38°00'48"W ①

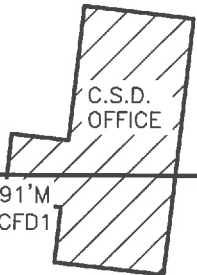
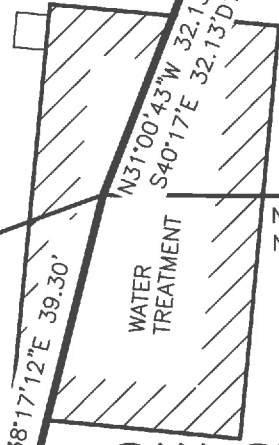
FND 5/8" REB IP
 ALUM. CAP
 "LS 5702" PER R7

PICO AVE.

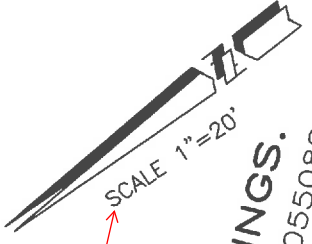
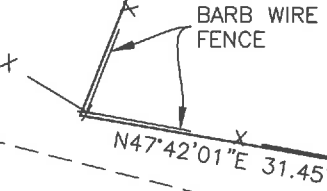
N38°00'48"E 51.41'M
 S36°01'W D1 (NO DIST)

HEARST HOLDINGS.
 COC DOC NO. 2002-028663

S53°59'E 30.00'D1
 N51°59'12"W 30.00'M



SAN SIMEON COMMUNITY SERVICES DISTRICT



930 OR 32
 PARCEL 1

One (per the doc.)

not scaling correct

HEARST HOLDINGS.
 COC DOC NO. 2002-055088
 767 OR 490

REFERENCES

- R2 6 RS 49, McLENNAN, 1952 (THE ARBUCKLE TRACT)
- R7 117 RS 17
- D1 930 OR 32 (CSD PROPERTY)

COC DOC NO. 2004-033958
 JOHN K. RUSSELL TRUST

N51°59'12"W 209.38'M
 N53°59'W 209.38'D1 .09.38'D1

10-26-2021
 DRAFT



MICHAEL B. STANTON, PLS 5702
 3559 SOUTH HIGUERA ST.
 SAN LUIS OBISPO, CA 93401
 805-594-1960

HEARST EASEMENT AREA
 IN FAVOR OF SAN SIMEON C.S.D.
 October 26, 2021 JOB #21-321

2.D. Business Action Item



BUSINESS ACTION ITEM STAFF REPORT

ITEM 2.D. DISCUSS AND CONSIDER CLERICAL CORRECTIONS TO CONTRACT WITH GRACE ENVIRONMENTAL SERVICES, LLC.

Discussion:

Clerical corrections to the Grace Environmental Services, LLC contract regarding section IX.N, Interest of GES and section VIII.A.4, Employer Liability, are provided in the attached redlined contract document.

Enc: GES Redlined Version Contract

**AMENDMENT AND RESTATEMENT
OF PROFESSIONAL SERVICES AGREEMENT**

This AMENDMENT and RESTATEMENT of Professional Services Agreement (“Amendment and Restatement”) is entered into as of the 12th day of October, 2021 (“Commencement Date”), by and between San Simeon Community Services District (“SSCSD”) and Grace Environmental Services, LLC, a California limited liability corporation (“GES”) (collectively, “Parties”).

I. RECITALS

- A. SSCSD is formed and operates pursuant to Government Code Section 61000, *et seq.* in the County of San Luis Obispo.
- B. GES is a California Limited Liability Corporation registered with the State of California; Charles Grace (“Mr. Grace”) is GES’s sole and managing member.
- C. SSCSD owns and has all applicable permits for:
 - (a) a wastewater collection and treatment system located in and around San Simeon, CA, generally consisting of less than 5 miles of sewer lines, headworks, biological wastewater treatment, disinfection, effluent disposal via ocean outfall, and related equipment; and
 - (b) a water supply, storage, and distribution system located in and around San Simeon, generally consisting of 2 wells, 1 emergency well, 1 storage tank, up to 250 connections, less than 5 miles of distribution lines, and related equipment; and
 - (c) local two-lane roads (less than 5 miles) maintained by the SSCSD; and
 - (d) a street lighting system with approximately 50 active streetlights; and
 - (e) the District office building.

The foregoing shall be collectively known and referred to hereinafter as “FACILITY.”

- D. In January 2016, SSCSD entered into a Professional Services Agreement with GES (“2016 Agreement”) for the operation of the FACILITY and general management of the district as more specifically identified in Section IV of the 2016 Agreement (“2016 Scope of Services”).
- E. Since the execution of the 2016 Agreement, certain ambiguities have arisen regarding the rights, roles, and obligations of the Parties related to the 2016 Agreement.
- F. The purpose of this Amendment and Restatement is to clarify areas of ambiguity in the

2016 Agreement, more specifically define the rights and obligations of the Parties, and amend and restate the 2016 Agreement to effectuate the Parties' intent for the benefit of good governance and transparency.

II. STATEMENT OF PURPOSE

This Amendment and Restatement provides for GES to furnish to SSCSD comprehensive services for the general management, maintenance, and operation of the SSCSD and the FACILITY, and to receive compensation from SSCSD for those services rendered in accordance with the following terms and conditions.

III. ADMINISTRATION OF THIS AMENDMENT AND RESTATEMENT

It is expressly understood that GES will perform its contractual obligations at the pleasure of the SSCSD Board of Directors, subject to termination at any time, with or without cause. Neither GES, nor its managing members, agents or employees, shall have any discretion as to the administration and/or interpretation of this Amendment and Restatement. Any perceived ambiguities shall be brought to the Board for discussion and resolution. Other than emergency expenses (subject to limitations in Section V.H.), GES shall not incur any expenses on behalf of the SSCSD or obligate the SSCSD to any costs or obligations without the expressed and advanced authorization of SSCSD Board of Directors.

IV. TERM OF AMENDMENT AND RESTATEMENT

This Amendment and Restatement shall remain in effect until January 20, 2023, subject to the right of either party to terminate as set forth in Section X.

V. SCOPE OF SERVICES

Unless otherwise specifically stated, all direct operational costs for the below listed operation and maintenance services are included in GES's costs and included as part of the base Amendment and Restatement price.

- A. **General Management.** GES shall furnish all necessary labor, materials, equipment, and supplies necessary for the management and operations of the FACILITY. This shall include the day-to-day physical tasks of operating the FACILITY, performing routine water and wastewater quality monitoring, physically performing the preventative maintenance of the FACILITY, and maintaining the daily operational records of the FACILITY.

GES shall also act as appointed general manager of SSCSD pursuant to California Government Code section 61050 and as defined by Government Code section 61002(f). As appointed general manager, GES shall be responsible for the following tasks as identified in Government Code section 61051:

- (a) The implementation of the policies established by the board of directors for the operation of the district.
- (b) The appointment, supervision, discipline, and dismissal of the district's employees, consistent with the employee relations system established by the board of directors.
- (c) The supervision of the district's facilities and services.
- (d) The supervision of the district's finances.

GES shall also serve as the General Manager and fulfill the duties of General Manager as identified in and pursuant to the provisions of Sections 4.03 and 5.01 of the SSCSD Policy Handbook. As GES's sole and managing member, Mr. Grace shall take the oath of office for public officers.

B. Office Management. GES further agrees to provide the following services associated with office management:

- 1) Maintaining District files, Board Ordinances, Resolutions and Minutes.
- 2) District customer billing and collection.
- 3) Preparation and mailing of customers' water bills.
- 4) Depositing of collected funds.
- 5) Maintaining records of deposits for auditing.
- 6) Respond to customer inquiries.
- 7) Coordinate with the District's accountant.
- 8) Process accounts receivable, accounts payable and aged receivables.
- 9) Attend Board of Director meetings.
- 10) Prepare and post Board packets and prepare minutes of meetings.
- 11) Respond to public records requests.
- 12) Participate in annual budget preparation with District's Budget Sub-Committee.
- 13) Prepare and distribute quarterly newsletter.
- 14) Staff and operate the District office. Schedule regular hours, answer telephones, respond to mail.
- 15) Oversee the maintenance of District's permits and licenses as required by regulatory agencies.
- 16) The employment, supervision, discipline, and dismissal of GES employees.

C. Definitions. For the purposes of this Amendment and Restatement the following definitions shall apply:

- 1. "Preventive Maintenance" shall mean periodic scheduled maintenance including valve exercising and line flushing.
- 2. "Corrective Maintenance or Repair" shall mean any non-preventive

maintenance or repair of the machinery, equipment, structures, or improvements constituting a part of the FACILITY and having a cost (excluding overhead, profit and all costs associated with the labor of GES or its employees, agents, or subcontractors), up to two thousand five hundred dollars (\$2,500.00).

3. "Capital Maintenance, Repairs, or Replacements" shall mean any renewal, repair or replacement of the machinery, equipment, structures, or improvements constituting a part of the FACILITY and having a cost (excluding overhead, profit and all costs associated with the labor of GES or its employees, agents or subcontractors) equal to or greater than two thousand five hundred dollars (\$2,500.00).
4. "Change in the Scope of Services" means those events or services which either change the basis of cost or add additional scope to the services provided in this Amendment and Restatement. Any change in scope, increasing the cost to GES, shall result in an increase in cost to SSCSD.

- D. FACILITY Operation and Maintenance. To the limit of \$40,000 annually, GES shall provide Preventive and Corrective Maintenance or Repairs for FACILITY, consistent with good preventive maintenance practice or manufacturer's specifications. GES employees' on-site labor cost shall not be included when calculating such annual FACILITY maintenance amounts. GES shall not add any markup, such as for profit or overhead, to the costs for outside contractors it uses for Preventive or Corrective Maintenance or Repair work herein. SSCSD shall be responsible for and pay all Capital Maintenance, Repair and Replacement costs as defined above.
- E. FACILITY Maintenance Rebates. If, in any fiscal year, the above limit is not exceeded, GES will, at SSCSD's option: (a) rebate to SSCSD, within sixty (60) days of the end of said year, the difference between such annual limit and the amount expended by GES, or (b) add the difference to the subsequent year's maintenance fund. SSCSD shall be responsible for and pay all Preventive and Corrective Maintenance or Repair costs exceeding said annual limit, but GES shall not make said excess expenditures without SSCSD's prior approval. SSCSD shall not unreasonably withhold such approval.
- F. Payment of Expenses. All vendors and subcontractors retained by GES to assist GES in providing FACILITY management, maintenance, and operation, will be timely paid by GES. Should GES fail to timely pay such invoices, SSCSD may, but is not required to, pay the invoices and withhold such payments from GES's monthly compensation.
- G. Repairs Accounting. GES shall, on a monthly basis, provide SSCSD with copies of all maintenance and repairs provided pursuant to this Amendment and Restatement.
- H. Emergency Maintenance. GES shall have the right to make reasonable emergency capital

expenditures up to two thousand five hundred dollars (\$2,500.00) with the approval from one of the Board of Directors if: (a) SSCSD is not available for prior approval of such action; and (b) if such expenditures are necessary to continue operation of FACILITY in order to provide for public safety and environmental protection; and (c) GES notifies SSCSD as soon as reasonably possible of its actions. SSCSD shall reimburse GES within forty-five (45) days of such expenditure by GES.

- I. Operational Testing. Sample collection and analyses required for governmental reporting on FACILITY as of the effective date of this Amendment and Restatement shall be performed by GES, which shall be included in the Amendment and Restatement price.
- J. Chemical and Materials Inventory. GES shall purchase and maintain an inventory of chemicals routinely used in the operation of FACILITY. Chemical inventories shall be stored at the site in compliance with OSHA and in quantities sufficient for the continuous operation of FACILITY.
- K. Sludge Disposal. SSCSD shall retain ownership of all FACILITY water and wastewater sludge and byproducts; GES shall dispose of same in a manner approved by State of California regulatory agencies. GES's price herein includes the cost of disposing of wastewater sludge. Any change in that method, quantity, or its cost caused solely by third parties shall be a change of scope and cause for a price adjustment.
- L. Electricity. The cost for electricity (including the electric power for operating the streetlights) needed to operate the FACILITY are included in GES's scope of work.
- M. Unit Cost Increase/Decrease for Electric Power. GES agrees to pay the electrical cost of the SSCSD up to an amount of \$66,000 per fiscal year. Any overage shall be paid by SSCSD. If at the end of the fiscal year the electrical cost to the SSCSD is less than \$66,000, GES will rebate the client the difference. A reasonable estimate of electrical overage cost shall be included in the SSCSD annual budget.
- N. SSCSD Interaction. Representatives of GES shall attend regular SSCSD Board meetings where the scope of its services is involved, as reasonably requested. GES shall respond to scope related correspondence and/or inquiries from SSCSD in a prompt and professional manner.
- O. Staffing. GES shall staff the FACILITY eight (8) hours per day, five (5) days per week. Staffing shall be reviewed and approved by SSCSD. GES shall respond to after-hours emergency calls for service within sixty (60) minutes. GES shall provide weekend and holiday coverage as necessary for permit compliance.
- P. Emergency Response. GES shall respond to emergency calls regarding FACILITY within sixty (60) minutes from the time of notification. GES shall respond to such calls twenty-four (24) hours per day, seven (7) days per week. Such emergency response calls are

included in GES's price for services listed herein.

- Q. Reports. GES shall promptly prepare and submit regular monthly and/or yearly compliance reports as may be required by the Regional Water Quality Control Board, or any other local, state, or federal agency having jurisdiction over FACILITY. All regulatory reports shall be approved and signed by the operator of record. Copies of all regulatory reports and communications (if such are required) shall be sent to SSCSD each month and made available at the District Office for review.
- R. Water Customer Service. GES shall perform meter readings for FACILITY and supply the data to SSCSD. GES's base Amendment and Restatement price includes reading the meters for up to two hundred and fifty (250) connections on a scheduled monthly basis. Should connections exceed 250, GES shall receive an additional \$250 per meter.
- S. Turn-on and Turn-off Services. As necessary, GES shall perform turn-on and turn-off services directly related to the proper care and maintenance of the FACILITY. The Amendment and Restatement price includes all turn-on and/or turn-off service up to twenty-four (24) meters per year. GES shall receive \$250 per meter when the number of turn-on/turn-off services GES performed is more than twenty-four (24) per year.
- T. Billing and Collection. GES shall bill each SSCSD customer for water in accordance with SSCSD's then current Rate Structure and for sewer services in accordance with SSCSD's current rate. GES shall deposit all money received for both water and sewer into an account at a bank or other qualified depository designated by SSCSD. GES shall provide these services out of the San Simeon Community Services District Office, and all inquiries, communications and services shall be provided from/to that point. Normal and reasonable response to account inquiries by SSCSD customers to the Billing and Collection staff are included in the fee. The billing and collection duties of GES in this Amendment and Restatement include the following:
- 1) Initiating service orders for billing-related fieldwork.
 - 2) Proofing deposits and refunds prior to distribution.
 - 3) Preparing, printing, and mailing accurate bills on time.
 - 4) Maintaining and preparing aged receivables for SSCSD for resolution according to SSCSD's policy or Board directives.
 - 5) Researching and responding to customer inquiries.
 - 6) Working with SSCSD's accountant for maintenance of the SSCSD's books.
- U. Sewer Collection Calls. GES shall promptly respond to all collection system call-out to assess initial GES, SSCSD or property owner responsibility. If the problem is a clearable blockage within the SSCSD's sanitary sewer lines, and not within property owner's line(s), GES's on-scene coordinator shall exercise best professional judgment to contact a subcontractor or to rent necessary and appropriate equipment for use by GES personnel. The SSCSD shall be billed the direct costs for any third-party costs to clear blockages to its sanitary sewer lines, and repair.

- V. Sewer Collection Cleaning. The collection system shall be cleaned approximately 100% every other year. SSCSD shall provide the necessary water for sewer line cleaning at no cost to GES. During the annual line cleaning, GES shall inspect and report on manholes, noting where repairs are needed.

- W. Street Sweeping and Flushing. GES shall provide semi-annual street sweeping and regular system flushing through fire hydrants and exercising of all system valves.

- X. Weed Abatement. GES shall provide for FACILITY weed abatement, however the cost for weed abatement in unimproved right of ways shall be independently budgeted and approved by the SSCSD Board of Directors.

- Y. Miscellaneous Expenses of GES. Unless otherwise specified herein, GES shall pay for all lab supplies, tools and equipment owned by GES, uniforms, chemicals, oxygen, postage and deliver specific to customer billing, conferences for GES staff and personnel, safety supplied for use of GES staff and personnel, office expenses and supplies, training and education for GES staff and personnel, office telephone and internet service and cell phones for GES staff and personnel, FACILITY garbage and waste disposal, alarm service, automobile expenses, fuel, insurance, and the cost of GES computer equipment supplies and maintenance.

VI. RIGHT TO AUDIT

GES shall establish and maintain a reasonable accounting system that enables SSCSD to readily identify GES's expenses, costs of goods, and use of funds arising out of or related to those services to be provided by GES in accordance with Section V, subsections D, H, K, M, S, T and U of this Amendment and Restatement ("Auditible Provisions"). SSCSD and its authorized accountants and auditors shall have the right to audit, examine, and make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to the above referenced Auditible Provisions owned by GES, including, but not limited to those kept by GES, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; memoranda; and correspondence. GES shall, at all times during the term of this Amendment and Restatement and for a period of three years after the completion of this Amendment and Restatement, maintain such records, together with such supporting or underlying documents and materials. GES shall at any time requested by SSCSD, whether during or after completion of this Amendment and Restatement, and at GES's own expense make such records available for inspection and audit (including copies and extracts of records as required) by SSCSD. Such records shall be made available to SSCSD during normal business hours at the

SSCSD's business office without delay. GES shall ensure these rights shall be explicitly included in any subcontracts or agreements formed between the GES and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the GES's obligations to SSCSD under this Section VI. If the audit identifies misappropriation or misallocation of SSCSD funds or overpricing or overcharges (of any nature) by GES to SSCSD in excess of one-half of one percent (.5%) of the total contract allocations, GES shall reimburse SSCSD for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, SSCSD may recoup the costs of the audit work from GES. Any adjustments and/or payments that must be made as a result of any such audit or inspection of GES invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of SSCSD's findings to GES.

VII. THE SSCSD'S RESPONSIBILITIES

- A. Payment. SSCSD shall pay to GES compensation for the services specifically described herein the lump sum payment of \$56,231.95 per month. Payment is due on the second Wednesday of the month that service is to be rendered. Late payments shall be subject to a service charge of one and one-half percent (1.5%) per month or the maximum legal rate, whichever is less. Interest shall accrue from the last day of the month following the date of invoice until the payment is received by GES. SSCSD is responsible for all "Capital Maintenance, Repairs, or Replacements."
- B. General Provision for Adjustments. If any changes in the scope of operations under this Amendment and Restatement should occur, including, but not limited to, changes in government regulations, reporting requirements and water supply conditions or standards that change the cost of contract operations, at no fault of GES, GES shall request from SSCSD a compensation adjustment for the additional scope. Such compensation adjustment shall be negotiated in good faith by SSCSD and GES within sixty (60) days of receiving such request.
- C. Annual Adjustment. At the start of each new SSCSD fiscal year (July 1 through June 30), the monthly invoiced amount shall increase by the most recent June Consumer Price Index as published by the U.S. Bureau of Labor Statistics (CPI-U) for the Los Angeles-Riverside-Orange Co. (CA) Region. Section V., items D and M shall not be included when calculating the annual adjustment.
- D. Licenses. SSCSD shall remain the named licensee on any and all licenses that may be required, shall pay for all costs, and shall meet all regulatory requirements not specifically assumed herein by GES as its responsibility.
- E. Permits. SSCSD shall remain the named permittee on any and all permits that may be required, shall pay for all costs, and shall meet all regulatory requirements not specifically assumed herein by GES as its responsibility.

- F. Record Drawings and Data. SSCSD shall provide GES with the available set of record drawings of FACILITY upon commencement of the Amendment and Restatement. GES shall maintain these drawings in a manner which allows their efficient and effective use in solving system problems. Both parties agree that operating data from the FACILITY is and remains the property of SSCSD.
- G. Equipment. SSCSD shall provide its equipment onsite for use in the operation and maintenance of FACILITY at no cost to GES. GES shall maintain said equipment and use it with reasonable care, according to manufacturer's recommendation.
- H. Accounting. SSCSD shall provide for all bookkeeping, accounting, and audit services not otherwise provided by GES herein.
- I. Capital Cost. SSCSD is responsible for paying for all "Capital Maintenance, Repairs, or Replacements," as defined above, for the project.
- J. Foreseeable Costs. SSCSD shall budget for reasonable and foreseeable costs not specifically allocated to GES by this Amendment and Restatement on an annual basis.

VIII. INSURANCE

- A. Following execution of this Amendment and Restatement, GES shall have its insurance carrier(s) issue direct to SSCSD certificates of insurance for the following coverage:
 - 1. Worker's Compensation as prescribed by law;
 - 2. Comprehensive General Liability, including umbrella coverage of \$2,000,000;
 - 3. Vehicle Liability Coverage (for bodily injury and property damage, combined single limit) of not less than \$1,000,000;
 - 4. Employer's Liability (~~covers criminal or fraudulent acts of employees~~) of \$2,000,000.
 - ~~4.5. Crime and Fidelity coverage of \$ 500,000.~~
- B. GES affirms that above referenced insurance shall be maintained in force throughout the term of this Amendment and Restatement.
- C. The insurance provided by GES will be primary and noncontributory.
- D. SSCSD, its Board members, agents and attorneys, must be named as additional insureds under the General Liability, Vehicle Liability, and Employer's Liability policies.

- E. Each insurance policy required by this Amendment and Restatement must contain a provision that no termination, cancellation, or change of coverage can be made without thirty (30) days' notice to SSCSD.
- F. Insurance required by this Amendment and Restatement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better.

IX. GUARANTEES, INDEMNITY AND LIMITATIONS

- A. Standard of Skill. GES affirms that GES staff is skilled in the professional calling necessary to perform the work agreed to be done pursuant to this Amendment and Restatement. SSCSD relies upon the skill of GES staff to do and perform such work in a skillful manner. The acceptance of GES's work by the SSCSD shall not operate as a release of GES from such standard of care and workmanship.
- B. Certified Personnel. GES affirms that FACILITY shall be operated under the supervision of personnel who possess valid and current water operator certification as and if required by the State of California and shall provide uninterrupted, safe, timely professional and reliable management of the FACILITY in a cost effective and businesslike manner and in accordance with this Amendment and Restatement.
- C. GES General Management. Mr. Grace, as the sole and managing member of GES, warrants and represents that he is experienced and proficient in the management and operation of a Special District including water and wastewater treatment systems comparable to the FACILITY and be otherwise appropriately certified under Applicable Law. GES acknowledges that the appointment of Mr. Grace has a material bearing on the quality of service provided hereunder, and that effective cooperation between the SSCSD and Mr. Grace is essential to effectuating the intent and purposes of this Amendment and Restatement.
- D. Safety Requirement. GES affirms that all work under this Amendment and Restatement shall be performed in such a manner as to provide safety to the public and to meet or exceed the safety standards outlined by CAL OSHA with respect to all matters within GES's responsibility and control.
- E. Guarantees. GES shall use generally accepted business practices to procure materials and replacement equipment. GES shall not be responsible to SSCSD for any guaranty in connection with such materials or replacement equipment. GES shall assert reasonable efforts to obtain the normal guaranties applicable in the particular industry manufacturing such materials or replacement equipment and shall assign same to SSCSD.
- F. Damage to FACILITY. GES shall not be required to repair any portion of FACILITY

damaged due to flood, fire, explosion, riot, revolution, civil disturbance, war, or other acts of God or any other cause whatsoever beyond the control of GES or due to the acts or omissions of any other entity or person(s) other than GES, its employees, agents, representatives, or subcontractors. GES agrees to notify SSCSD of such damage, both orally and in writing, as soon as possible after the occurrence of the above crises or acts.

- G. Ownership. Each and every report, draft, work product, map, record and other document reproduced, prepared, or caused to be prepared by GES pursuant to the business of the SSCSD shall be the exclusive property of the SSCSD.
- H. Indemnity. GES hereby agrees to indemnify and hold harmless SSCSD, its Board members, agents, servants, and attorneys, from any liability for damages or claims for personal injury (including death) or for property damages which directly arise from its willful or negligent operations under this Amendment and Restatement, whether such operations be conducted by GES or any of its employees, agents or subcontractors. GES shall not be liable to SSCSD and SSCSD shall indemnify and hold harmless GES, its officers, supervisors, employees, agents and representatives from any claim, loss, liability, damage, injury, or expense, including attorney's fees which arise or are related to this Amendment and Restatement other than intentional, willful, or negligent operations or conduct of GES or any of its employees, agents or subcontractors.
- I. Force Majeure. GES shall not be deemed to be in default if performance of the obligations required by this Amendment and Restatement is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, its agencies or offices, or any other cause beyond the control of the parties ("Force Majeure"). Upon occurrence of any such event, GES shall operate FACILITY on a "best reasonable effort" basis and shall not be responsible for damages, fines, penalties, or claims resulting therefrom. If any additional expense is incurred by GES in such operation, those expenses shall be reimbursed to GES by SSCSD.
- J. Prior Experience. GES has trained personnel who shall be assigned to perform the Services required under this Amendment and Restatement, and such GES personnel have experience operating and maintaining facilities similar to the FACILITY in accordance with Prudent Industry Practices. GES has planned and budgeted for providing experienced personnel that shall be available to ensure compliance with this Amendment and Restatement.
- K. Fines and Penalties. GES shall pay any and all fines or penalties against SSCSD as a result of actions taken by the California Department of Health, Regional Water Quality Control Board or U.S. EPA arising from the negligent operation of the FACILITY. In other cases, beyond GES's control, such as, force majeure, SSCSD shall be responsible for paying any and all fines and penalties levied by the California Department of Health, Regional Water Quality Control Board or U.S. EPA or other organization.
- L. Independent Contractor. GES is retained and employed by SSCSD only to the extent set

forth in this Amendment and Restatement, and GES's and all of its employees', agents' and subcontractors' relationship to the SSCSD is that of independent contractor.

- M. Invalid Provisions. The parties agree that in the event any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity thereof shall in no way affect any other provision in this Amendment and Restatement unless it materially affects either SSCSD or GES in their respective rights and obligation hereunder.
- N. Interest of GES. GES covenants that it presently has no interest, (and shall not acquire any such interest without prompt notification to SSCSD), direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. GES further covenants that, in the performance of this Amendment and Restatement, no subcontractor or person having such an interest shall be employed. GES certifies that no one who has or shall have any financial interest under this Amendment and Restatement is an ~~officer or~~ employee of SSCSD, ~~respectively~~. It is expressly agreed that, in the performance of the services hereunder, GES shall at all times be deemed an independent contractor ~~and not an agent or employee of SSCSD, respectively~~.
- O. The Parties mutually agree to cooperate in good faith regarding any necessary amendments and/or modifications to this Amendment and Restatement.

X. TERMINATION OF AMENDMENT AND RESTATEMENT

- A. Notwithstanding any other provision of this Amendment and Restatement, SSCSD may terminate this Amendment and Restatement, at any time, with or without cause by giving at least thirty (30) days prior written notice to GES. In the event that Mr. Grace is unable or unwilling to perform his obligations as managing member of GES pursuant to this Amendment and Restatement, SSCSD may, at its sole discretion, terminate this Amendment and Restatement immediately.
- B. If either party fails to perform any term, covenant or condition in this Amendment and Restatement, and that failure continues for fifteen (15) calendar days after the non-defaulting party gives the defaulting party written notice of the failure to perform, this Amendment and Restatement may be terminated for cause.
- C. In the event of termination, SSCSD shall pay GES compensation pursuant to this Amendment and Restatement up to the date of termination (pro-rated for less than a full month, if necessary) and any unpaid expenses incurred by GES pursuant to this Amendment and Restatement.

XI. MISCELLANEOUS

- A. Integration; Amendment. This Amendment and Restatement represents the entire

understanding of SSCSD and GES as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Amendment and Restatement. The Amendment and Restatement may not be modified or altered except in writing signed by both parties.

- B. Assignability. This Amendment and Restatement shall not be assigned by either party without the prior written consent of the other.
- C. Flow Rate. Both parties agree that this Amendment and Restatement is based on the FACILITY; (a) treating an annual average of 100,000 gal/day, 200 lbs/day BOD₅ and 250 lbs/day TSS₅ at the wastewater treatment plant and (b) treating and supplying an annual average of 100,000 gal/day of potable water. Should the actual flows or loadings treated change from any of these levels by more than ten percent (10%) the price differential for such operation shall be agreed to by the parties.
- D. Notice. Such notice as required under this Amendment and Restatement shall be in writing and shall be sent by certified or registered mail, return receipt requested, overnight courier, or personal delivery to the intended party's address of record. Notice shall be deemed to have been given when the notice was mailed to the following addresses of record:

GES

Grace Environmental Services, LLC
2060 E. Avenida De Los Arboles
Thousand Oaks, CA 91362

SSCSD

San Simeon Community Services District
111 Pico Avenue
San Simeon, CA 93452

- E. Governing Law; Jurisdiction. This Amendment and Restatement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Amendment and Restatement will be in San Luis Obispo County, California.
- F. Severability. If any part of this Amendment and Restatement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Amendment and Restatement will remain in full force and effect.
- G. Waiver of Breach. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or

approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Amendment and Restatement.

In witness whereof, GES and SSCSD have caused this Amendment and Restatement to be executed by their duly authorized officers.

FOR SSCSD

San Simeon Community Services District

Name

Signature

DATE: _____

FOR GES

Grace Environmental Services, LLC.

Name

Signature

DATE: _____

Approved As To Form:



Jeff Minnery, District Legal Counsel