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Debtor In Possession  
7  
8

9 **UNITED STATES BANKRUPTCY COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11  
12 In re:  
13 **BORREGO COMMUNITY HEALTH**  
**FOUNDATION,**  
14  
15 Debtor and Debtor In Possession.

Case No. Case No. 22-02384-11

Chapter 11 Case

**DEBTOR'S EMERGENCY FIRST  
DAY MOTION FOR ENTRY OF  
ORDER: (A) PROHIBITING  
UTILITIES FROM ALTERING,  
REFUSING, OR DISCONTINUING  
SERVICE AND (B) DETERMINING  
ADEQUATE ASSURANCE OF  
PAYMENT FOR FUTURE  
UTILITY SERVICES**

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF

[Declaration of Isaac Lee in Support of  
Debtor's First Day Motions filed  
concurrently herewith]

Judge: Honorable Laura S. Taylor

Date: TBD  
Time: TBD  
Place: TBD

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**EMERGENCY MOTION**

Pursuant to Appendix D-1(1) of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Southern District of California (the “LBR”), Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and § 366 of title 11 of the United States Code (the “Bankruptcy Code”),<sup>1</sup> Borrego Community Health Foundation (“Borrego” or the “Debtor”), the debtor and debtor in possession in the above-captioned chapter 11 bankruptcy case (the “Case”), hereby moves, on an emergency basis (the “Motion”), for the entry of an order (substantially in the form attached hereto as **Exhibit “A”**, the “Proposed Order”):

(a) Determining that the following together constitutes adequate assurance of payment for future utility services as contemplated by §§ 366(b) and (c)(3)(A): (i) a deposit made by the Debtor to each of the utilities (collectively, the “Utility Companies” and individually, a “Utility Company”) in an amount equal to half (1/2) of the average monthly invoice<sup>2</sup> set forth on **Exhibit “B”** for prepetition services provided to the Debtor by such Utility Company (the “Deposit”), (ii) the ability to obtain an expedited hearing twenty (20) days after the Debtor receives notice of a default and does not cure that default, and (iii) the other procedures outlined in this Motion and the Memorandum of Points and Authorities;

(b) Prohibiting each of the Utility Companies from altering, refusing, or discontinuing services to the Debtor without further order of this Court;

(c) Requiring any Utility Company whose services are terminated by the Debtor to immediately refund a Deposit (with no offset for prepetition claims) provided that all postpetition invoices have been paid; and

(d) Granting such other and further relief as is just and proper under the

<sup>1</sup> All references to “§” or “section” herein are to sections of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

<sup>2</sup> The average monthly invoice amount was determined by averaging the amounts of the twelve (12) most recently received monthly bills (August 2021 – July 2022) from each Utility Company.

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1 circumstances.

2 **BACKGROUND INFORMATION**

3 On September 12, 2022, the Debtor filed a voluntary petition for relief under  
4 chapter 11 of the Bankruptcy Code.

5 The Debtor is a nonprofit federally qualified health center (“FQHC”) that  
6 provides health care services to low-income and rural patients (collectively,  
7 “Patients”) in San Diego and Riverside Counties through a system of eleven clinics,  
8 two pharmacies, and six mobile units. In 2021, the Debtor provided approximately  
9 386,000 patient care visits to over 94,000 patients. Borrego services include  
10 comprehensive primary care, urgent care, behavioral health, dental services, specialty  
11 care, transgender health, women’s health, prenatal care, veteran’s health, chiropractic  
12 services, tele-health, and pharmacy.

13 As set forth in the annexed Memorandum of Points and Authorities, the Debtor  
14 filed this Case to protect its patient population and explore all available restructuring  
15 options, particularly since its patient population faces risks as a result of recent steps  
16 taken by DHCS.

17 **SUMMARY OF REQUESTED RELIEF**

18 By this Motion, the Debtor seeks entry of an order:

19 (a) Determining that the following together constitutes adequate assurance of  
20 payment for future utility services as contemplated by §§ 366(b) and (c)(3)(A): (i) a  
21 Deposit equal to half (1/2) of one (1) month of the Debtor’s average monthly  
22 prepetition invoice amount prior to the filing of the Case, (ii) the ability to obtain an  
23 expedited hearing twenty (20) days after the Debtor receives notice of a default and  
24 does not cure that default, and (iii) the other procedures outlined in this Motion and  
25 the Memorandum of Points and Authorities;

26 (b) Prohibiting each of the Utility Companies from altering, refusing, or  
27 discontinuing services to the Debtor without further order of this Court;  
28

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1 (c) Requiring any Utility Company whose services are terminated by the  
2 Debtor to immediately refund a Deposit (with no offset for prepetition claims)  
3 provided that all postpetition invoices have been paid; and

4 (d) Granting such other and further relief as is just and proper under the  
5 circumstances.

6 The Debtor requests that the relief sought herein be granted on an emergency basis  
7 because it will suffer irreparable harm without the relief requested in this Motion.

8 In support of the Motion, the Debtor has separately filed the *Declaration of*  
9 *Isaac Lee, Chief Restructuring Officer of Borrego Community Health Foundation, in*  
10 *Support of Debtor’s Emergency First Day Motions* (the “Lee Declaration”).

11 By way of background, the Debtor receives essential utility services from  
12 several Utility Companies, as listed in the attached **Exhibit “B”**.<sup>3</sup> In order to ensure  
13 the timely and proper care of the Debtor’s Patients and maintain ongoing business  
14 operations seamlessly in chapter 11, it is imperative the Debtor is able to rely on  
15 uninterrupted electricity, gas, telephone, and internet and similar services that are  
16 essential to the Debtor’s provision of medical services to the Debtor’s Patients. Any  
17 interruption, however brief, to utility services to the Debtor’s business will result in  
18 a serious disruption of the Debtor’s business operations and dramatically affect  
19 Patient care. Therefore, it is critical the Court prohibit the Utility Companies from  
20 altering, refusing, or discontinuing service to the Debtor without further order of this  
21 Court. The Deposit for each of the Utility Companies, coupled with the proposed  
22 mechanism for requesting further adequate assurance described in the attached  
23 Memorandum of Points and Authorities, will provide adequate assurance of payment  
24 to the Utility Companies and safeguard the Debtor’s continuing operations.

25 \_\_\_\_\_  
26 <sup>3</sup> Although the Debtor believes that the list of Utility Companies set forth in **Exhibit**  
27 **“B”** hereto is complete, the Debtor reserves the right to supplement such list if it  
28 determines that any Utility Company has been omitted. The Debtor further reserves  
all rights to challenge the status of any entity listed in **Exhibit “B”** as a “utility”  
falling within the scope of § 366.

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1 The Debtor is current on payment to the Utility Companies. The Debtor also  
2 has sufficient cash to pay the Deposits and the Debtor’s postpetition utility bills as  
3 they come due.

4 Based on the foregoing, and for the reasons set forth below, the Debtor  
5 respectfully requests that (i) the Motion be heard on an emergency basis,<sup>4</sup> pursuant  
6 to Rule 9013-9, of the Local Bankruptcy Rules and Administrative Procedures (the  
7 “LBR”) of the United States Bankruptcy Court for the Southern District of California  
8 (the “Court”), and (ii) the Court grant the relief requested in the Motion.

9 **ADDITIONAL INFORMATION**

10 The Motion is based on the Notice of Emergency Motions that will be filed  
11 and served after a hearing date for the Debtor’s “First Day Motions” has been  
12 obtained, the attached Memorandum of Points and Authorities, the Lee Declaration,  
13 and the arguments of counsel and other admissible evidence properly brought before  
14 the Court at or before the hearing regarding the Motion. In addition, the Debtor  
15 requests that the Court take judicial notice of all documents filed with the Court in  
16 this Case.

17 The Debtor will serve this Motion, the attached Memorandum of Points and  
18 Authorities, the Lee Declaration, and the Notice of First Day Motions in accordance  
19 with LBR 9013(9)(d) and Appendix D-1 of the LBR and on: (i) the Office of the  
20 United States Trustee; (ii) any alleged secured creditors; (iii) the twenty largest  
21 general unsecured creditors appearing on the list filed in accordance with Bankruptcy  
22 Rule 1007(d); (iv) the United States of America, and the State of California; (v) the  
23 Utility Companies; and (vi) parties that file with the Court and serve upon the Debtor  
24 requests for notice of all matters in accordance with Bankruptcy Rule 2002(i). To  
25 the extent necessary, the Debtor requests that the Court waive compliance with  
26 Bankruptcy Rules 2002 and 6004(a), and approve service (in addition to the means

27 \_\_\_\_\_  
28 <sup>4</sup> Pursuant to LBR 9013-9(b), a separate motion for an expedited hearing is not required.

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1 of services set forth in such LBR) by overnight delivery and telephonic notice.

2 Pursuant to Appendix D-1(8) of the LBR, any party who opposes this  
3 Emergency First Day Motion must immediately notify the Bankruptcy Judge’s law  
4 clerk of its position by telephone at (619) 557-6750. No opposition may be filed to  
5 an Emergency First Day Motion unless authorized by the Court.

6 In the event that the Court grants the relief requested by the Motion, the Debtor  
7 shall provide notice of the entry of the order granting such relief upon each of the  
8 foregoing parties and any other parties in interest as the Court directs. The Debtor  
9 submits that such notice is sufficient and that no other or further notice be given.

10 **CONCLUSION**

11 **WHEREFORE**, for all the foregoing reasons and such additional reasons as  
12 may be advanced at or prior to the hearing regarding this Motion, the Debtor  
13 respectfully requests that the Court enter an order:

14 (a) Determining that the following together constitutes adequate assurance of  
15 payment for future utility services as contemplated by §§ 366(b) and (c)(3)(A): (i) a  
16 Deposit made by the Debtor to each Utility Company in an amount equal to half (1/2)  
17 of the average monthly invoice<sup>5</sup> set forth on **Exhibit “B”** for prepetition services  
18 provided to the Debtor by such Utility Company, (ii) the ability to obtain an expedited  
19 hearing twenty (20) days after the Debtor receives notice of a default and does not  
20 cure that default, and (iii) the other procedures outlined in this Motion and the  
21 Memorandum of Points and Authorities;

22 (b) Prohibiting each of the Utility Companies from altering, refusing, or  
23 discontinuing services to the Debtor without further order of this Court;

24 (c) Requiring any Utility Company whose services are terminated by the  
25 Debtor to immediately refund a Deposit (with no offset for prepetition claims)

26 \_\_\_\_\_  
27 <sup>5</sup> The average monthly invoice amount was determined by averaging the amounts of  
28 the twelve (12) most recently received monthly bills (August 2021 – July 2022) from  
each Utility Company.

1 provided that all postpetition invoices have been paid; and  
2 (d) Granting such other and further relief as is just and proper under the  
3 circumstances.

4 Dated: September 12, 2022

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SAMUEL R. MAIZEL  
TANIA M. MOYRON

7 By /s/ Tania M. Moyron  
8 Tania M. Moyron

9 Proposed Attorneys for the Chapter 11  
10 Debtor and Debtor In Possession

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Pursuant to Appendix D-1(1) of the Local Bankruptcy Rules of the United  
 5 States Bankruptcy Court for the Southern District of California (the “LBR”), Rule  
 6 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and §  
 7 366 of title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the  
 8 “Bankruptcy Code”),<sup>1</sup> Borrego Community Health Foundation (“Borrego” or the  
 9 “Debtor”), the debtor and debtor in possession in the above-captioned Chapter 11  
 10 bankruptcy case (the “Case”), hereby moves, on an emergency basis (the “Motion”),  
 11 for the entry of an order (substantially in the form attached hereto as **Exhibit “A”**,  
 12 the “Proposed Order”):

13 (a) Determining that the following together constitutes adequate assurance of  
 14 payment for future utility services as contemplated by §§ 366(b) and (c)(3)(A): (i) a  
 15 deposit made by the Debtor to each of the utilities (collectively, the “Utility  
 16 Companies” and individually, a “Utility Company”) in an amount equal to half (1/2)  
 17 of the average monthly invoice<sup>2</sup> set forth on **Exhibit “B”**<sup>3</sup> for prepetition services  
 18 provided to the Debtor by such Utility Company (the “Deposit”), (ii) the ability to  
 19 obtain an expedited hearing twenty (20) days after the Debtor receives notice of a  
 20 default and does not cure that default, and (iii) the other procedures outlined in the  
 21 Motion and this Memorandum of Points and Authorities;

22 \_\_\_\_\_  
 23 <sup>1</sup> All references to “§” and “section” herein are to sections of the Bankruptcy Code.

24 <sup>2</sup> The average monthly invoice amount was determined by averaging the amounts of  
 25 the twelve (12) most recently received monthly bills (August 2021 – July 2022) from  
 26 each Utility Company.

27 <sup>3</sup> Although the Debtor believes that the list of Utility Companies set forth in **Exhibit**  
 28 **“B”** hereto is complete, the Debtor reserves the right to supplement such list if it  
 determines that any Utility Company has been omitted. The Debtor further reserves  
 all rights to challenge the status of any entity listed in **Exhibit “B”** as a “utility”  
 falling within the scope of § 366.

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1 (b) Prohibiting each of the Utility Companies from altering, refusing, or  
2 discontinuing services to the Debtor without further order of this Court;

3 (c) Requiring any Utility Company whose services are terminated by the  
4 Debtor to immediately refund a Deposit (with no offset for prepetition claims)  
5 provided that all postpetition invoices have been paid; and

6 (d) Granting such other and further relief as is just and proper under the  
7 circumstances.

8 The Debtor receives essential utility services from Utility Companies listed in  
9 **Exhibit “B”**.

10 **II.**

11 **JURISDICTION**

12 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and  
13 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the  
14 Case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

15 **III.**

16 **STATEMENT OF FACTS**

17 **A. GENERAL BACKGROUND**

18 1. On September 12, 2022 (“Petition Date”), the Debtor filed a voluntary  
19 petition for relief under chapter 11 of title 11 of the Bankruptcy Code.

20 2. Borrego is a non-profit 501(c)(3) public charity, a federally qualified  
21 health center (“FQHC”), and a federal tort claims act deemed facility that, as of  
22 September 12, 2022, had twenty-four (24) bricks and mortar sites, including  
23 administrative sites, two (2) pharmacies, and six (6) mobile units. Borrego’s service  
24 area covers a 250-mile corridor on the eastern side of San Diego and Riverside  
25 Counties, California.

26 3. FQHCs are federally designated entities that receive higher state  
27 payments to provide health care services to low-income and rural families. Borrego’s  
28 health services are targeted to families with incomes below 200% of the poverty

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1 level. As a FQHC, Borrego strives to deliver high quality, comprehensive,  
2 compassionate primary health care to people in the surrounding area, regardless of  
3 ability to pay.

4 4. Borrego was organized in the early 1990s to operate a holistic health  
5 clinic in Borrego Springs, a small unincorporated community in the northeast corner  
6 of San Diego County, California. In 2002, when Borrego gained recognition as a  
7 FQHC, it operated one clinic in Borrego Springs with seventeen (17) employees  
8 providing 7,400 patient visits. Borrego has since grown to approximately 700  
9 employees serving over 94,000 patients in eighteen (18) clinics, and six (6) mobile  
10 units throughout San Diego and Riverside counties excluding Riverside Community  
11 Health Foundation (“RCHF”) affiliated clinics.

12 5. Borrego strives to be the community leader in improving the health of  
13 the populations in our service area. Its primary focus is the underserved, with an  
14 empowering workforce providing measurable quality and compassionate care.

15 6. Borrego’s services include comprehensive primary care, pediatric care,  
16 urgent care, behavioral health, dental services, specialty care, transgender health,  
17 women’s health, prenatal care, veteran’s care, chiropractic services, telehealth and  
18 pharmacy.

19 7. Borrego is an active partner in the training of medical residents, medical  
20 students, nurse practitioner students, physician assistant students, nursing students,  
21 and other healthcare professionals.

22 8. Since the commencement of the Case, the Debtor has been operating as  
23 debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

24 9. To date, no official committee or examiner has been appointed by the  
25 Office of the United States Trustee in this Case.

26 10. Additional background regarding the Debtor, including an overview of  
27 the Debtor’s business, information on the Debtor’s capital structure, and additional  
28 events leading up to this Case, is set forth in the *Declaration of Isaac Lee, Chief*

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1 *Restructuring Officer of Borrego Community Health Foundation, in Support of*  
2 *Debtor’s Emergency First Day Motions (the “Lee Declaration”).*

3 **B. RELEVANT BACKGROUND TO MOTION**

4 11. To ensure the timely and proper care of its Patients and maintain and  
5 operate its business, the Debtor requires essential utility services from the Utility  
6 Companies. The Debtor’s account number with each Utility Company is attached  
7 hereto as listed in **Exhibit “B”**.<sup>4</sup> The Debtor receives essential water, gas, electric,  
8 telephone, and internet and similar services from these Utility Companies. While  
9 any interruption in utility services would certainly be very detrimental to any debtor’s  
10 business, in this Case, any utility interruption, no matter how brief, could be  
11 extremely harmful to the Patients at the Debtor’s facilities. The Debtor’s ability to  
12 operate its clinics, pharmacies, and mobile units depends on maintaining the  
13 confidence of the physicians who perform medical procedures at its clinics,  
14 pharmacies, and mobile units, and the Patients who are treated there. Both  
15 constituencies must be absolutely assured that there will be no interruption of utility  
16 services.

17 12. The Debtor is current on payment to the Utility Companies. Further, the  
18 Debtor has sufficient cash to pay the Deposits and the Debtor’s postpetition utility  
19 bills as they come due.

20 **IV.**

21 **PROPOSED PROCEDURES RELATED TO ADEQUATE ASSURANCE**

22 The Debtor proposes to give each of the Utility Companies adequate assurance  
23 of payment for their future services in the form of cash Deposits in amounts that are  
24 equal to half (1/2) of the average monthly invoice for one (1) month of prepetition

25 \_\_\_\_\_  
26 <sup>4</sup> Although the Debtor believes that the list of Utility Companies set forth in **Exhibit**  
27 **“B”** hereto is complete, the Debtor reserves the right to supplement such list if it is  
28 determined that any utility company has been omitted. The Debtor further reserves  
all rights to challenge the status of any entity listed therein as a “utility” falling within  
the scope of § 366.

1 services provided to the Debtor by each Utility Company. The average monthly  
2 invoice amount was determined by averaging the amounts of the twelve (12) most  
3 recently received monthly bills (August 2021-July 2022) from each Utility Company.  
4 As so calculated, the average monthly invoice amount is listed on **Exhibit “B”** (as  
5 shown next to each Utility Company’s name). The Debtor proposes to pay the  
6 Deposits promptly after the Court’s entry of an order granting this Motion.

7 In addition, the Debtor seeks to establish reasonable procedures (the  
8 “Procedures”) by which a Utility Company may request further adequate assurance  
9 of future payment, in the event that such Utility Company believes that its Deposit  
10 does not provide it with satisfactory adequate assurance. Such Procedures would  
11 provide that:

12 (i) If a Utility Company is not satisfied with the Deposit provided by the  
13 Debtor, such Utility Company must serve a written request (the “Request”) upon the  
14 Debtor setting forth the location(s) for which Utility Services are provided, the  
15 account number(s) for such location(s), the outstanding balance for each account, a  
16 summary of the Debtor’s payment history on each account, and an explanation of  
17 why the Utility Deposit is inadequate assurance of payment;

18 (ii) The Request must be actually received by the Debtor’s counsel, whose  
19 name and address are shown on the first page of this Motion, within forty-five (45)  
20 days after the entry date of the order (the “Order”) granting this Motion (the “Request  
21 Deadline”);

22 (iii) Without further order of this Court, the Debtor may enter into  
23 agreements granting additional adequate assurance to a Utility Company serving a  
24 timely Request, if the Debtor, in its discretion, determines that the Request is  
25 reasonable;

26 (iv) If the Debtor believes that a Request is unreasonable, it shall, within  
27 thirty (30) days after the Request Deadline, file a motion (a “Determination Motion”)  
28 pursuant to § 366(c)(3), seeking an order that the Deposit, plus any additional

1 consideration offered by the Debtor, if any, constitutes adequate assurance of  
2 payment. Pending notice and a hearing on this Motion, the Utility Company that is  
3 the subject of the unresolved Request may not alter, refuse, or discontinue services  
4 to the Debtor or recover or setoff against a prepetition deposit, if any; and

5 (v) The Deposit shall be deemed adequate assurance of payment for any  
6 Utility Company that fails to make a timely Request.

7 The Debtor reserves the right, without further order of the Court, to supplement  
8 the list of Utility Companies attached hereto as **Exhibit “B”** if any Utility Company  
9 has been omitted. If the Debtor adds a Utility Company to the list after the Court  
10 enters the proposed Order, the Debtor will serve a copy of this Motion and the signed  
11 Order on any Utility Company that is added to the list (the “Supplemental Service”).  
12 Concurrent with the Supplemental Service, the Debtor will file with the Court a  
13 supplement to **Exhibit “B”** showing the name of the Utility Company that is being  
14 added to the list. In addition, the Debtor will provide a Deposit for the added Utility  
15 Company within forty-five (45) days of entry of the Order or concurrently with the  
16 Supplemental Service, whichever is later. If the Debtor has not received utility  
17 services from the added Utility Company for the twelve (12) months prior to the  
18 Petition Date, then the utility deposit will be equal to half (1/2) of one (1) month of  
19 the Debtor’s expected monthly invoice amounts for utility consumption from the  
20 added Utility Company. If the added Company does not believe that the deposit  
21 received from the Debtor is adequate, the added Utility Company shall deliver a  
22 Request by the Request Deadline or within thirty (30) days after the service of the  
23 Supplemental Service, whichever is later. If such Request is made, the Procedures  
24 outlined above shall apply to their consideration and resolution.

25 Additionally, the Debtor proposes that if the Debtor defaults on an obligation  
26 to pay a Utility Company for postpetition services, and such default is not cured  
27 within twenty (20) days of the Debtor’s receipt of written notice of default, then the  
28 applicable Utility Company may file a motion requesting that the Debtor furnish

1 further adequate assurance of future payment, and such motion shall be heard on an  
2 expedited basis.

3 The Debtor further requests that the Order prohibit any Utility Company from  
4 altering, refusing, or discontinuing services to the Debtor without further order of this  
5 Court.

6 Finally, the Debtor requests that the Order provide that Utility Companies must  
7 immediately refund any Utility Deposit (without offset for prepetition claims) in the  
8 event that the Debtor terminates the services of any Utility Company and after all  
9 postpetition invoices owed by the Debtor to that Utility Company have been paid.  
10 The Debtor believes that the immediate refund of a Deposit by a Utility Company  
11 whose services have been terminated and whose postpetition bills have been paid is  
12 fair and appropriate under the circumstances because the Utility Company would no  
13 longer require adequate assurances of the Debtor's future performance.

14 Under the circumstances of this Case in which the Debtor is current on  
15 payment to the Utility Companies and has sufficient cash to pay the Deposits and the  
16 Debtor's postpetition utility bills as they come due, the Debtor believes that the  
17 proposed Deposits constitute adequate assurance of payment under § 366(c). The  
18 Debtor also proposes to further protect the Utility Companies by agreeing to  
19 expedited access to this Court by a Utility Company should the Debtor default  
20 postpetition and by establishing the Procedures provided for herein, pursuant to  
21 which any Utility Company can request additional adequate assurance by  
22 demonstrating facts and circumstances with respect to their postpetition services to  
23 the Debtor that merit greater protection.

24 **V.**

25 **DISCUSSION**

26 Under § 366(b), utility companies may alter, refuse, or discontinue service to  
27 a debtor if the debtor has not furnished adequate assurance of payment within twenty  
28 (20) days of the Petition Date. 11 U.S.C. § 366(b). The Court, however, has the

1 power to modify the form and amount of the assurance of payment after notice and a  
2 hearing. 11 U.S.C. § 366(c)(2), (3)(A). The policy underlying § 366 is to protect the  
3 debtor from utility service cutoffs upon the filing of a bankruptcy case and provide  
4 utility companies with adequate assurance that the debtor will in fact pay for  
5 postpetition services. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 350 (1978),  
6 *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306.

7 “Utility” is not defined in the Bankruptcy Code. However, courts have  
8 generally limited this to entities that have a “special relationship” with the debtor, in  
9 that they provide the debtor with an essential service, for which the debtor has a need  
10 for continued access. *See, e.g., Darby v. Time Warner Cable, Inc. (In re Darby)*, 470  
11 F.3d 573 (5th Cir. 2006).

12 Section 366 requires a cash deposit or other enumerated form of security that  
13 is “adequate,” but the Bankruptcy Code does not define what is “adequate,” except  
14 that administrative priority is not sufficient as a form of adequate assurance of  
15 payment. 11 U.S.C. §§ 366(c)(1)(B), 3(B)(iii).

16 While the *form* of adequate assurance of payment may be limited under  
17 § 366(c) to the types of security enumerated in § 366(c)(1)(A), the *amount* of the  
18 deposit or other form of security, however, remains fully within the reasonable  
19 discretion of the Court, subject only to three specific factors that may not be  
20 considered by the Court, as listed in § 366(c)(3)(B). *See also* 11 U.S.C. § 366(b)  
21 (“On request of a party in interest and after notice and a hearing, the court may order  
22 reasonable modification of the amount of the deposit or other security necessary to  
23 provide adequate assurance of payment.”) and (c)(3)(A) (“On request of a party in  
24 interest and after notice and a hearing, the court may order modification of the  
25 amount of an assurance of payment under paragraph (2).”), *accord In re Pacific Gas*  
26 *& Elec. Co.*, 271 B.R. 626, 644 (N.D. Cal. 2002) (“The use of the word ‘may’ in the  
27 second sentence [of § 366(b)] contemplates that the decision of whether to order  
28 security lies within the discretion of the Bankruptcy Court.”); *In re Steinbach*, 303

1 B.R. 634, 641 (Bankr. D. Az. 2004) (“Bankruptcy courts are afforded reasonable  
2 discretion in determining what constitutes adequate assurance.”).

3 Under such subsection, when determining “whether an assurance of payment  
4 is adequate,” the Court may not consider: (a) whether the debtor had a prepetition  
5 deposit; (b) whether the debtor paid its utility bills on time prepetition; or (c) the  
6 administrative expense priority afforded utilities postpetition. 11 U.S.C.  
7 § 366(c)(3)(B). Nothing in § 366(c), however, precludes the Court from considering  
8 other factors that could minimize the amount of the deposit, including (without  
9 limitation): (a) the right of the utility to terminate service upon nonpayment (*see In*  
10 *re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987) (“We note, in this  
11 regard . . . that the Court of Appeals has stated . . . that a utility is well-protected,  
12 after establishment of adequate assurance, by their remedy to disconnect service as  
13 their remedy for non-payment without recourse to the bankruptcy court, even though  
14 . . . the debtor is provided with an additional layer of protection arising from any  
15 available state utility commission Regulations limiting a utility’s termination  
16 rights.”) (internal quotations omitted)); (b) the chapter 11 estate’s liquidity (*see In re*  
17 *Agrifos Fertilizer, L.P.*, 2002 WL 32054779, at \*5 (Bankr. S.D. Tex. Nov. 25, 2002)  
18 (“If a debtor demonstrates . . . *evidence of post-petition liquidity*, a deposit may not  
19 be necessary.”) (emphasis added)); and (c) the estate’s net worth and ability to pay  
20 its postpetition obligations (*see Best Products*, 203 B.R. at 54 (“the court should  
21 consider the debtor’s payment history, *the debtor’s net worth, and the debtor’s*  
22 *present and future ability to pay post-petition obligations*”) (emphasis added)).

23 For example, the bankruptcy court in *In re Best Products Co.*, 203 B.R. 51, 54  
24 (Bankr. E.D. Va. 1996) took an approach that appears to parallel the requirements of  
25 § 366:

26 A question remains, however, as to [the security deposit’s]  
27 form and amount in this case. The objecting utilities each  
28 have demanded a deposit equal to the debtor’s bill for two  
months of service. Under section 366, the utilities have a

1 right to the deposit as demanded unless the debtor can show  
2 cause to reduce it. Once the debtor proffers a sufficient  
3 objection, the court must fix a reasonable security after  
4 notice and a hearing. In doing so, the court should consider  
5 the debtor's payment history, the debtor's net worth, and the  
6 debtor's present and future ability to pay post-petition  
7 obligations.

8 *Best Products*, 203 B.R. at 54. The court in *Best Products* approved a deposit of *one-*  
9 *half* the average monthly bill for the past twelve (12) months for each of the debtor's  
10 facilities because of factors such as the debtor's net worth and present and future  
11 ability to pay postpetition obligations.<sup>5</sup>

12 Thus, the amount of the deposit or other security should be minimal, and  
13 certainly no more than is absolutely necessary to provide adequate assurance.<sup>6</sup> By  
14 its terms, § 366, as amended, *does not require* that the deposit or other security be  
15 more than a nominal amount.

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16 <sup>5</sup> *Id.* The *Best Products* court permitted the debtor to apply prepetition deposits and  
17 prepayments to the post-petition deposits required by the court's ruling. *Id.*, at 54,  
18 n.2. The Bankruptcy Appellate Panel for the First Circuit approved an apparently  
19 one-month deposit that the utility argued would not cover the 13-day period between  
20 billing and payment of each month's rent — “even excluding the administrative  
21 expense priority from consideration.” *Massachusetts Electric Co. v. Keydata Corp.*  
22 (*In re Keydata Corp.*), 12 B.R. 156, 158 (1st Cir. B.A.P. 1981) (citation and footnote  
23 omitted).

24 <sup>6</sup> Bankruptcy courts should be conservative in providing deposits or other security to  
25 utilities to conserve the estate's scarce financial resources. See *In re Magnesium*  
26 *Corp. of America*, 278 B.R. 698, 714 (Bankr. S.D.N.Y. 2002) (“In deciding what  
27 constitutes ‘adequate assurance’ in a given case, a bankruptcy court must ‘focus upon  
28 the need of the utility for assurance, and to require that the debtor supply *no more*  
than that, since the debtor almost perforce has a conflicting need to conserve scarce  
financial resources.”) (quoting *Virginia Elec. & Power Co. v. Caldor*, 117 F.3d 646,  
650 (2d Cir. 1997) (emphasis in original); *Penn Jersey*, 72 B.R. at 985 (“We believe  
that, in analysis of what ‘adequate assurance’ is required of any particular debtor to  
retain utility service, it is significant to focus upon the need of the utility for  
assurance, and to require that the debtor supply no more than that, since the debtor  
almost perforce has a conflicting need to conserve scarce financial resources.”).

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1 The Debtor believes that the amount it proposes to make as a cash deposit to  
2 each of the Utility Companies, which is equal to half (1/2) of one (1) month of the  
3 Debtor’s average prepetition monthly invoice amount with the respective Utility  
4 Company, is fair and more than adequate under the totality of the facts and  
5 circumstances. *See In re Adelpia Business Solutions*, 280 B.R. 63, 82-83, 86 n.127  
6 (Bankr. S.D.N.Y. 2002) (adequate assurance of payment is a fact-driven analysis  
7 based on the totality of the facts and circumstances of the case).

8 As explained in the Lee Declaration, continued and uninterrupted utility  
9 service is critical to the Debtor’s operations because, as mentioned previously, the  
10 Debtor’s physicians and Patients must be assured that medical services can be  
11 provided without interruption at the Debtor’s clinics, pharmacies, and mobile units.  
12 Without such guarantees, no one will take the risk of performing or receiving critical  
13 medical treatment at the Debtor’s clinics, pharmacies, and mobile units. The well-  
14 being of Patients, as well as the Debtor’s business, is literally at stake. Without the  
15 revenues generated from medical services performed at the Debtor’s clinics,  
16 pharmacies, and mobile units, Patients will simply take their business elsewhere,  
17 which will cripple the Debtor’s efforts in this Case.

18 In contrast, the Utility Companies will not be prejudiced by the continuation  
19 of their services. *The Debtor is current on payment to the Utility Companies. The*  
20 *Debtor has sufficient funds to pay all postpetition charges.* The Utility Companies  
21 are further protected by the Deposits and the provisions granting them an expedited  
22 hearing if the Debtor fails to cure a payment default within twenty (20) days after  
23 written notice of such default. Finally, the rights of the Utility Companies will not  
24 be prejudiced should the relief requested in this Motion be granted because the Utility  
25 Companies are permitted to come before this Court and seek relief according to the  
26 Procedures proposed.

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**VI.**  
**CONCLUSION**

**WHEREFORE**, for all the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing on this Motion, and to avoid immediate and irreparable harm, the Debtor respectfully requests that this Court enter the Proposed Order (substantially in the form attached hereto as **Exhibit “A”**):

(a) Determining that the following together constitutes adequate assurance of payment for future utility services as contemplated by §§ 366(b) and (c)(3)(A): (i) a Deposit equal to half (1/2) of one (1) month of the Debtor’s average monthly prepetition invoice amount prior to the filing of the Case, (ii) the ability to obtain an expedited hearing twenty (20) days after the Debtor receives notice of a default and does not cure that default, and (iii) the other Procedures outlined in the Motion and this Memorandum;

(b) Prohibiting each of the Utility Companies from altering, refusing, or discontinuing services to the Debtor without further order of this Court;

(c) Requiring any Utility Company whose services are terminated by the Debtor to immediately refund a Deposit (with no offset for prepetition claims) provided that all postpetition invoices have been paid; and

(d) Granting such other and further relief as is just and proper under the circumstances.

Dated: September 12, 2022

DENTONS US LLP  
SAMUEL R. MAIZEL  
TANIA M. MOYRON

By /s/ Tania M. Moyron  
Tania M. Moyron

Proposed Attorneys for the Chapter 11  
Debtor and Debtor In Possession

**Exhibit “A”**  
**(Proposed Order)**

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CSD 1008 [08/21/00]  
 Name, Address, Telephone No. & I.D. No.  
 DENTONS US LLP  
 SAMUEL R. MAIZEL (Bar No. 189301)  
 TANIA M. MOYRON (Bar No. 235736)  
 601 South Figueroa Street, Suite 2500  
 Los Angeles, California 90017-5704  
 Tel: (213) 623-9300 | Fax: (213) 623-9924

Proposed Attorneys for the Chapter 11 Debtor and Debtor in Possession

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

In Re  
 BORREGO COMMUNITY HEALTH FOUNDATION  
  
 Debtor.

BANKRUPTCY NO. 22-02384  
 Date of Hearing:  
 Time of Hearing:  
 Name of Judge: Honorable Laura S. Taylor

**ORDER ON**

**EMERGENCY FIRST DAY MOTION FOR ENTRY OF ORDER: (A) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE AND (B) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES**

The court orders as set forth on the continuation pages attached and numbered 2 through 3 with exhibits, if any, for a total of pages 12. Motion/Application Docket Entry No. \_\_\_\_\_.

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DATED:

\_\_\_\_\_  
Judge, United States Bankruptcy Court

CSD 1001A

CSD 1001A [07/01/18] (Page 2)

**ORDER ON ORDER GRANTING DEBTOR'S EMERGENCY FIRST DAY MOTION FOR ENTRY OF ORDER: (A) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE AND (B) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES**

**DEBTOR: BORREGO COMMUNITY HEALTH FOUNDATION**

**CASE NO: 22-02384**

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Having considered the Emergency Motion,<sup>1</sup> the accompanying Memorandum of Points and Authorities in support of the Emergency Motion, and the Declaration of Isaac Lee in support of the Emergency Motion, the arguments of counsel at the hearing, and good cause appearing therefore,

**IT IS HEREBY ORDERED THAT:**

1. The Emergency Motion is granted in its entirety.
2. The Debtor is authorized to provide adequate "assurance of payment" to the Utility Companies via cash deposits in the amounts set forth in Exhibit "B" of the Emergency Motion.
3. The cash deposits paid by the Debtor to the Utility Companies in the amounts set forth in Exhibit "B" constitute adequate "assurance of payment" pursuant to § 366(c).
4. Each Utility Company that receives a cash deposit under this Order must return such cash deposit in its possession to the Debtor within ten (10) days if, and when, the Utility Company's services are terminated by the Debtor (with no offset for prepetition claims) provided that all postpetition invoices have been paid.
5. The Utility Companies shall continue to have the opportunity to obtain an expedited hearing regarding further adequate assurance if the Debtor fails to cure a postpetition payment default within twenty (20) days after written no-tice of such default.
6. The Utility Companies shall comply with the Procedures set forth in the Emergency Motion in the event that such Utility Company believes that its Deposit does not provide it with satisfactory adequate assurance.
7. The Debtor may, without further order of the Court, supplement the list of Utility Companies, attached to the Emergency Motion as Exhibit "B," in accordance with the Procedures set forth in the Emergency Motion.
8. Notice of the Emergency Motion as provided therein shall be deemed good and sufficient notice, and the requirements of Bankruptcy Rules 2002 and 6004(a) and LBR 9013(9)(d) and Appendix D-1(2) the Local Bankruptcy Rules are waived and/or satisfied by such notice.
9. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Emergency Motion.

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<sup>1</sup> Defined terms in this Order shall have the same meaning as in the Emergency Motion unless otherwise defined herein.

**CSD 1001A [07/01/18] (Page 3)**

10. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

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**Exhibit “B”**  
**(Utility Companies and Deposits)**

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Vendor Name-Utilities Company	Vendor Address	Account #	Type of Service	Average Monthly Spend	Adequate Assurance Estimate	Deposits
ADT Inc.	1501 Yamato Road Boca Raton, FL 33431	61633970; 15735596; 401911562; 61633590; 15740162	Security	407.73	203.86	-
Airgas	259 North Radnor-Chester Road, Suite 100 Radnor, PA	1683345; 200892223; 200958070; 201858294; 201858375	Gas	2,835.51	1,417.76	-
American Internet Services	9305 Lightwave, Suite 100 San Diego, CA 92123	51289	Telecom	20,211.78	10,105.89	-
Anza ECI	P.O. Box 391909 (58470 Highway 371) Anza, CA 92539	31112-001; 31112-002; 31112-003; 31112-004; 31112-005; 31112-006; 31112-007; 90031112001	Electricity	784.19	392.09	100.00
AT&T	208 South Akard Street Dallas, TX 75202	288665022; 619-463-1047; 619 447 9500 230 7; 760-767-1172 758 5; 760 767-3517 496 2; 760-767-5052 950 4; 760 767-5608 199 7; 760 767 5112 110 3; 760-767-7449 411 5; 760 767-7485 569 5; 95172787273 00; 619-444-1541; 760-233-5836; 760-767-0503; 760 767 1108 265 0; 760-767-5369 256 4;	Telecom	9,891.93	4,945.96	-

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		858-292-1474 289 2; 287269361914; 760 765 3198 787 2; 760-767-0354 648 0; 760-767-4690 035 5				
Athens Services	14048 East Valley Blvd City of Industry, CA 91746	RV0002918; RV0419784; RV0440324	Waste Removal	1,390.68	695.34	-
Borrego Water District	806 Palm Canyon Drive Borrego Springs, CA 92004	005002-000; 005002-001; 005002-002; 005002-003	Water	1,149.67	574.84	-
Burrtec Environmental SF	P.O. Box 5518 Buena Park CA 90622-6859	45-PU 412794	Waste Removal	75.00	37.50	-
Burrtec Waste & Recycling Services	P.O. Box 7187 Buena Park CA 90622-7187	50-CC 730041	Waste Removal	1,067.27	533.63	-
Burrtec Waste Industries, Inc.	9400 Cherry Ave, Building C Fontana, CA 92335	143	Waste Removal	75.06	37.53	-
CenturyLink	1801 California Street Denver, CO 80202	80410040; 85400140; 86103715; 86266830; 87442130	Telecom	400.00	200.00	-
City of Coachella	1515 Sixth Street Coachella, CA 92236	00040304	Water & Sewer	180.29	90.15	15.00
City of Desert Hot Springs	65950 Pierson Blvd. Desert Hot Springs, CA 92240	100-0000061-000	Water	4,776.22	2,388.11	-
City of Escondido	P.O. Box 460009 Escondido,	9735815608	Water & Sewer	486.01	243.01	-

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1		CA 92046-0009					
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3	Cox	6205-B	001 3110				
4	Communicatio	Peachtree	128556001;	Telecom	578.99	289.49	-
5	ns	Dunwoody	001 3110				
6		Road NE	130126501;				
		Atlanta, GA	001 3110				
		30328	116005401;				
			001 3110				
			110846801				
7	CR&R	11292	41-00003637;	Waste			
8	Incorporated	Western	BH-	Removal	412.51	206.25	-
		Avenue	00006318				
		Stanton, CA					
		90680					
9							
10	Desert Valley	4690 East		Waste			
11	Disposal, Inc.	Mesquite	2-0032282-2;	Removal	651.85	325.93	49.61
		Avenue	2-0035894-1				
		Palm Springs,					
		CA 92264					
12	DIRECTV,	2260 East		Telecom			
13	LLC	Imperial	062866683		171.98	85.99	-
		Highway					
		El Segundo,					
		CA 90245					
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15	Dish Network	9601 South	8255 90 955	Telecom			
16		Meridian	3456440		901.91	450.96	-
		Boulevard					
		Englewood,					
		CO 80112					
17							
18	Ferrellgas	7500 College		Gas			
19		Boulevard	230770257		114.38	57.19	-
		Suite 1000					
		Overland					
		Park, KS					
		66210					
20							
21	Frontier		760-255-				
22	Communicatio	401 Merritt 7	2002-	Telecom			
23	ns	Norwalk, CT	112117-5;		2,275.96	1,137.98	-
		06851	951-654-				
			6933; 760-				
			202-0791;				
			760-251-				
			0002; 760-				
			329-				
			3567/124430				
			5759; 760-				
			340-9177;				
			760-775-				
			0839; 012578				
			1240524375				
			03; 951-654-				

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		4578; 760-398-8582-121412-5; 760-202-3110-010107-5; 951-928-2805-100213-5; 012546125042708801; 012548129041475008; 909-381-0058-063016-5; 951-763-4639-020714-5; 951-654-7511				
Golden State Water Company	630 East Foothill Boulevard San Dimas, CA 91773-1212	57660282286 ; 63889418586	Water	975.20	487.60	-
Imperial Irrigation District	333 E. Barioni Blvd. Imperial, CA 92251	50847974; 50542187; 50658327	Water	3,837.60	1,918.80	1,100.00
MPower TelePacific	303 Colorado St., Suite 2075 Austin, TX 78701	103679	Telecom	62,742.17	31,371.08	-
Mission Springs Water District	66575 Second St. Desert Hot Springs, CA 92240-3711	26-0171001-14; 26-192001-12; 26-192002-1	Water	655.01	327.51	-
Nuevo Water Company	30427 11th St. Nuevo, CA 92567	2824T	Water	142.18	71.09	-
One Ring Networks	2030 Powers Ferry Road SE, Suite 200 Atlanta, GA 30339	100-15078-46168; 100-15078-29909; 100-15078-29910; 100-15078-29908; 100-15078-29912; 100-15078-29911	Telecom	6,926.93	3,463.47	-

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Primus Cable	29415 Hunco Way Lake Elsinore, CA 92530	Borrego Community Health Foundation	Telecom	518.84	259.42	-
Republic Services	18500 North Allied WayPhoenix, AZ 85054	3-0467- 0701099; 3- 0467- 0027041; 3- 0467- 0701707	Waste Removal	670.21	335.10	-
Riverside Public Utilities	3900 Main St Riverside, CA 92522-0144	0204339000; 0209907001; 0209908001; 0209909001; 481986- 210638; 191717000; 0191718002	Electricity	7,383.38	3,691.69	-
SDG&E	8326 Century Park Court San Diego, CA 92123- 1530	0196 626 196 2; 1165 203 815 2; 1958 943 784 2; 2210 503 943 2; 3433 240 364 6; 3658 522 389 4; 3910 095 772 3; 3972 413 418 8; 4252 242 214 4; 4288 201 109 9; 4575 289 220 8; 5035 099 092 6; 5280 265 200 5; 5299 060 213 5; 5559 766 714 6; 6078 780 100 0; 6160 096 888 5; 6710 505 496 4; 6710 522 031 8; 7239 188 050 2; 7285 099 093 3; 7815 842 737 9; 7819 151 326 8; 8362 568 141 8; 9535 099 096 2; 9535 101	Electricity	19,084.85	9,542.43	790.47

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SoCalGas	555 West Fifth Street Los Angeles, CA 90013	031 825 0505 1; 103 225 1096 6; 201 423 5078 2; 017 524 1260 9; 187 923 0441 4	Natural Gas	464.84	232.42	-
Southern California Edison	2244 Walnut Grove Avenue, P.O. Box 800 Rosemead, CA 91770	2-42-441- 8200; 2-42- 752-0739; 2- 33-566-2342; 2-33-566- 2607; 2-33- 566-2755; 2- 34-869-3557; 2-35-418- 6710; 2-37- 539-5720; 2- 38-180-1455; 2-38-984- 0059; 2-38- 984-0299; 2- 39-323-5767; 2-39-773- 0615; 2-40- 252-9218; 2- 40-717-9142; 2-15-597- 1096; 2-32- 909-9360; 2- 35-949-9639; 2-39-374- 3554; 2-36- 017-5772; 70065639692 3	Electricity	22,148.01	11,074.01	1,028.39
Southwest Corporation	8360 South Durango Drive, P.O. Box 98510	111- 0017412-032	Natural Gas	578.18	289.09	-

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	Las Vegas, NV 89193- 8510					
Spectrum	400 Atlantic Street Stamford, CT 06901	078920201; 096925101; 8245 10 061 4406979; 8448 40 068 0111056; 8448 41 073 1049486; 8448 41 089 0377160; 8448 41 089 0478250; 8245 10 061 4291025; 8245 10 061 4349559; 8448 41 072 0921893; 8448 41 089 0476041; SPECTRUM- 069495301; 8245 10 062 1181144; 8448 41 079 0460830; 8448 41 096 0443520; 8448 41 085 1226849; 8448 41 089 0537123	Telecom	3,279.77	1,639.89	-
SSD Alarm	1740 N Lemon Street Anaheim, CA 92801-1007	400932; 401455; 401645	Security	99.55	49.77	-
T-Mobile	12920 SE 38th Street Bellevue, WA 98006-1350	965549820	Telecom	549.87	274.93	-
TPX Communicatio ns	P.O. Box 60767 Los Angeles CA 90060- 0767	405947; 279814; 404485; 161452; 395654	Telecom	1,855.23	927.62	-
Verizon Wireless	1095 Avenue of the Americas	969902732- 00006; 342293069- 00001;	Telecom	2,771.66	1,385.83	-

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	New York, NY 10036	969902732- 00001; 969902732- 00004; 969902732- 00007				
Waste Management	800 Capitol Street, Suite 3000 Houston, TX	18-56997- 03009	Waste Removal	275.67	137.84	-
				<b>183,798.07</b>	<b>91,899.03</b>	<b>3,083.47</b>

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