

Term Sheet
Water Reliability Agreement
Huntington Beach Seawater Desalination Project

Orange County Water District
and
Poseidon Resources (Surfside) LLC

May, 2015

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TERMINOLOGY

Subject	Meaning
1. Parties	<p>Seller Poseidon Resources (Surfside) LLC (“Seller”). Seller is a special purpose project company established and controlled by Poseidon Water LLC.</p> <p>Buyer Orange County Water District (“Buyer”).</p> <p>Together, the “Parties.”</p>
2. Plant	<p>A reverse osmosis seawater desalination plant, including the seawater intake, concentrate disposal facilities, product water pump station (“Product Water Pump Station”), and appurtenant facilities to be located on a site adjacent to the AES Huntington Beach Generating Station (“Plant”), capable of delivering a baseload of 56,000 acre-feet/year of desalinated water (“Product Water”) to the boundary of the Plant site (“Delivery Point”) consistent with the Subsequent Environmental Impact Report (SEIR).</p>
3. Delivery Point	<p>The Delivery Point is defined as the boundary between the Plant and the Delivery System, currently expected to be the edge of the Plant site at Newland Street. The Product Water Pump Station that is part of the Plant will be adequate to transport and deliver Product Water at the quantity and pressure required by the Contract.</p>
4. Delivery System	<p>The Delivery System shall be defined as any offsite facilities (i.e., pipeline and booster pumps) to deliver the Product Water after the Delivery Point.</p>
5. Water Reliability Agreement	<p>A contract (“Contract”) between the Seller and the Buyer under which the Seller shall permit, construct, own, operate and maintain the Plant and deliver water to the Delivery Point, and the Buyer shall construct, own, operate and maintain the Delivery System and purchase all Product Water produced under terms set forth in the Agreement (up to 56,000 acre-feet/year), except for any water sold to the City of Huntington Beach under the Huntington Beach Agreement (defined below).</p>
6. Contract Date	<p>The date on which the Contract is executed and delivered by the Parties.</p>

Subject	Meaning
7. EPC Contractor; EPC Contract	A proposed contract between Seller and the Plant's engineering, procurement and construction contractor and with its principal process subcontractor (the "EPC Contractor") for the design, construction and startup of the Plant (the "EPC Contract"). The EPC Contract will be consistent with the Contract.
8. Operations Agreement	A proposed contract between Seller and the Operating Contractor for the operation, maintenance, repair and equipment replacement of the Plant on behalf of Seller. The Operations Agreement will be consistent with the Contract and will have terms and conditions that will provide a reasonable assurance that the Seller will be able to meet its operating performance obligations under the Contract.
9. MWD	Metropolitan Water District of Southern California.
10. MWD Agreement	The MWD Local Reliability Program Agreement between the Buyer and/or Orange County MWD Member Agencies and MWD.
11. SEIR	The Subsequent Environmental Impact Report for the Huntington Beach Seawater Desalination Project (the "Project") certified by the city of Huntington Beach in September, 2010.
12. Huntington Beach Agreement	The agreement contemplated to be entered into between Poseidon and the City of Huntington Beach ("HB") that grants HB the right to purchase 3,360 acre-feet/year at a discounted price.
13. Regulatory Water Quality Standards	All potable water health and safety requirements and maximum contaminant levels established by state and federal agencies and applicable to the Product Water.

NEGOTIATION AND APPROVAL PROCESS

Subject	Understanding
1. Purpose	<p>The purpose of this Term Sheet is to set forth the preliminary and non-binding terms of subsequent negotiations toward a possible Contract between the Parties. The proposed terms and conditions set forth herein represent the current intention of the Parties, do not bind either Party in any manner, do not commit any Party to a particular course of action (e.g., entering into a Water Reliability Agreement), do not limit the Buyer’s discretion under CEQA, and in particular do not commit the Buyer to design or construct the Delivery System or to purchase Product Water.</p> <p>This Term Sheet is a summary only and is not comprehensive or definitive. The Parties do not intend to be legally bound until, among other things, any required CEQA review, including any required public hearings, are completed, and definitive agreements related to the Project are executed by the Parties, any additional conditions or changes to the Project based upon CEQA review or other review undertaken by Buyer have been resolved in a manner acceptable to both Buyer and Seller, and all required permits and approvals needed to enter into the transactions contemplated herein have been obtained by Buyer and Seller in accordance with all applicable laws and regulations. Either Party is free to terminate negotiations at any time following written notice to the other Party without any liability or obligation to the other Party.</p> <p>As required by law, prior to entering into the transactions contemplated herein, Buyer retains the sole and independent discretion to, among other things, balance the benefits of the proposed Project against any potential environmental impacts prior to taking final action if such impacts cannot be avoided, consider alternatives to the proposed Project (including the “no project” alternative”), and determine not to proceed with the proposed Project.</p> <p>The Parties understand that substantive terms and detailed provisions not noted or fully developed in this Term Sheet are expected to be included in any final Contract. Buyer shall have no obligation to enter into any definitive transaction documents (including but not limited to the Contract).</p>

Subject	Understanding
2. Schedule	<p data-bbox="521 233 1057 268">A. Schedule Milestones for Project</p> <p data-bbox="477 285 756 321">Seller anticipates:</p> <ul data-bbox="521 363 1495 699" style="list-style-type: none"> <li data-bbox="521 363 1455 432">• that the Contract will be executed by the Parties no later than December 31, 2016; <li data-bbox="521 438 1468 548">• that it shall obtain the full construction financing of the Plant (“Financial Close”)no later than June 30, 2017 (the “Construction Finance Deadline”); <li data-bbox="521 554 1495 699">• that the Commercial Operation Date will be by a date that is 42 months following the Financial Close, as such date may be extended due to Uncontrollable Circumstances (the “Scheduled Commercial Operation Date”). <p data-bbox="477 741 846 777">B. Schedule Extensions</p> <p data-bbox="477 783 1503 926">The Contract shall provide for extensions of such dates due to the occurrence of Uncontrollable Circumstances and, in the absence of Uncontrollable Circumstances, as mutually agreed to by the Parties.</p> <p data-bbox="477 968 919 1003">C. Failure to Meet Deadlines</p> <p data-bbox="477 1010 1503 1409">In the event that, after extensions that may be provided for in the Contract, Seller has not been able to meet the Construction Finance Deadline, or the Scheduled Commercial Operation Date, Buyer will have the remedies set forth below in the Section of this Term Sheet entitled TERMS AND CONDITIONS OF THE PROPOSED WATER RELIABILITY AGREEMENT Sections 4 & 7. Similarly, if Buyer fails to complete construction of the Delivery System by the Scheduled Commercial Operation Date, the Seller will have the remedies set forth below in the Section of this Term Sheet entitled TERMS AND CONDITIONS OF THE PROPOSED WATER RELIABILITY AGREEMENT Section 7.</p>
3. Contract Negotiations	<p data-bbox="477 1451 1503 1560">The Parties acknowledge that either Party may suspend, terminate or renew negotiations at any time and for any reason without consequence.</p>
4. Buyer Due Diligence	<p data-bbox="477 1604 1503 1934">During the negotiating period and through the execution of the Contract, the Buyer intends to conduct such due diligence relating to the Project, the Seller and its proposed contractors and financing arrangements as it reasonably determines is necessary for entering into the Contract. Seller will fully cooperate with the examination, and provide all documents and information reasonably requested by the Buyer in connection therewith, subject to the terms of the existing confidentiality agreement between the Parties. Buyer will have the right to (a)</p>

Subject	Understanding
	<p>review and comment on the EPC Contract, including but not limited to the provisions related to the design basis (including future optionality on expansion), process equipment and material specifications, prior to the EPC Contract being executed, (b) review and comment on the Operations Agreement, including but not limited to the provisions related to delivery of Product Water and repair and replacement of process equipment, prior to the Operations Agreement being executed, and (c) approve the EPC Contractor and Operating Contractor, in each case, which approval will not be unreasonably withheld.</p>
<p>5. Responsibility for the Plant</p>	<p>Seller understands and acknowledges Buyer does not assume any responsibility for the Plant whatsoever for the term of the Contract. Seller has planned and developed and will implement the Plant completely at its own risk. Seller will be solely responsible for the efficacy of the Plant and its permitting, financing, design, construction, commissioning and capability of successfully passing acceptance tests producing Product Water to the standards of the Contract. Seller will warrant in the Contract that the Plant will reasonably perform. No due diligence performed by the Buyer shall constitute any transfer of liability to the Buyer for the Plant or its performance.</p>
<p>6. Water Supply Arrangement</p>	<p>The Parties recognize that Buyer may be discussing the supply of Product Water from the Project with Orange County and other Southern California water agencies.</p>

**TERMS AND CONDITIONS OF
THE PROPOSED WATER RELIABILITY AGREEMENT**

Subject	Proposed Term/Condition
1. Conditions Precedent	<p>The Contract will include the following conditions precedent that will need to occur prior to Buyer having a firm obligation to purchase Product Water:</p> <ul style="list-style-type: none"> A. Seller shall obtain all discretionary permits necessary to authorize Plant construction (including a Coastal Development Permit), and provide copies to Buyer. B. Seller shall provide fully-executed copies of the EPC Contract and Operations Agreement to Buyer. C. Seller shall achieve Financial Close (with all construction financing in place for the Plant). D. Buyer (or Orange County MWD Agencies) shall execute the MWD Agreement. E. Buyer shall complete all required CEQA processing and approvals, and the time period for challenging such CEQA documents shall have passed (or any such challenges shall be fully and finally resolved), and shall obtain all of its discretionary permits to perform its Delivery System improvement obligations and have a sufficient schedule to perform the Delivery System improvements. F. The desalination project in the City of Carlsbad will have demonstrated 90 days or more of successful operation. G. Buyer certifies or adopts a CEQA document and makes all findings and adopts all mitigation measures in accordance with CEQA and all other applicable laws. In this regard, Buyer shall find that (i) the proposed project is reviewed in accordance with the requirements of CEQA, (ii) any additional conditions or changes to the project based upon CEQA review or other review undertaken by Buyer have been resolved in a manner acceptable to both Buyer and Seller, and (iii) all required permits and approvals have been obtained by Buyer and Seller in accordance with all applicable laws and regulations. H. Buyer can feasibly sell and deliver at rates

Subject	Proposed Term/Condition
	<p>favorable to Buyer, and/or Buyer can feasibly and cost effectively beneficially use all of Product Water to be purchased from Seller,</p> <p>I. The Delivery System can feasibly be designed, constructed and operated by Buyer at costs acceptable to Buyer,</p> <p>J. Buyers design and construction of the Delivery System and Buyers purchase of the Product Water will not have an adverse impact on Buyer’s financial rating or Buyer’s ability to issue debt for other purposes of Buyer,</p>
<p>2. Term</p>	<p><u>A. Term</u> The initial term (“Term”) of the Contract shall begin upon the execution of the Contract and shall terminate 50 years from the Commercial Operation Date.</p> <p><u>B. Responsibility for Plant Upon Expiration of Term.</u> Buyer shall have no responsibility for any costs or obligations with respect to decommissioning the Plant at the end of the Term.</p>
<p>3. Roles of the Parties</p>	<p><u>A. Seller</u> Seller shall design, permit, construct, start-up and acceptance test the Plant all in conformity to applicable law, prudent industry practices and the requirements of the Contract and the EPC Contract. Seller shall finance the Plant and cooperate with Buyer in the financing of the Delivery System. Upon the commencement of the commercial operation of the Plant (“Commercial Operation Date”), Seller shall operate and maintain the Plant in accordance with prudent industry practices and applicable laws and regulations sufficient to meet the reliability, Product Water quality, product water quantity, and permitting requirements of the Contract, the Operations Agreement and the Plant’s operation and maintenance manual (the “Operation and Maintenance Manual”) and all Regulatory Water Quality Standards.</p> <p>Upon the achievement of the Commercial Operation Date, Seller shall sell Product Water as provided for under the Contract and deliver the Product Water to the Delivery Point.</p>

Subject	Proposed Term/Condition
	<p><u>B. Buyer</u> Buyer shall design, permit as necessary (the anticipated Coastal Development Permit and any other permits obtained by Seller for the Delivery System prior to execution of the Water Reliability Agreement (the “Seller Delivery System Permits”) will be transferred to the Buyer solely to the extent necessary to design, construct, own, operate and maintain the Delivery System), construct, start-up and acceptance test the Delivery System. Upon the Commercial Operation Date, Buyer shall operate and maintain the Delivery System.</p> <p>Buyer shall cooperate with Seller during the period of the Project, as necessary and appropriate, with respect to activities such as permitting, financing and public information, but shall have no responsibility or liability regarding such activities of Seller.</p> <p>Upon the achievement of the Commercial Operation Date, Buyer shall purchase Product Water as provided for under the Contract and accept delivery of the Product Water at the Delivery Point.</p>
4. Financing Period	<p><u>A. Construction Finance Deadline</u> In the event a Contract is successfully negotiated and executed, Seller shall achieve Financial Close (with all construction financing in place for the Plant) by the Construction Finance Deadline.</p> <p><u>B. Failure to Achieve Financial Close by the Construction Finance Deadline</u> If, after extensions that may be provided for in the Contract, Seller fails to achieve Financial Close for the Plant by the Construction Finance Deadline, and if such failure to meet the Construction Finance Deadline is not caused by actions of the Buyer, the Buyer may terminate the Contract, and upon such termination Seller will reimburse Buyer’s third party costs incurred after execution of the Contract related to the permitting, design, construction, implementation and financing of the Delivery System (including the costs of its advisors and legal support), and Seller will have the right to use all work product related to such costs in connection with the</p>

Subject	Proposed Term/Condition
	<p>Project.</p> <p><u>C. Achievement of Financial Close</u> If Seller succeeds in achieving Financial Close by the Construction Finance Deadline, Seller will proceed to construct the Plant and Buyer will proceed to construct the Delivery System, unless otherwise agreed by the Parties as part of the Contract. Buyer will not be obligated to construct the Delivery System if Seller fails to achieve Financial Close.</p>
5. Financing Plan	<p>Seller will be solely responsible for the financing of the Plant, and Buyer will be solely responsible for the financing of the Delivery System. Each Party will keep the other Party regularly informed of its progress in executing its respective plan of financing.</p>
6. Design and Construction of the Plant	<p><u>A. Construction Period Design Reviews for the Plant</u> During the Construction Period, the Buyer will have the right, but not the obligation, to periodically review the design of the Plant for compliance with the design specifications as set forth in the Contract and the EPC Contract. The Buyer will not have approval authority over the design of the Plant, except as such may relate to compliance with the requirements of the Contract. Seller will agree to consider and respond to material comments or concerns made by the Buyer. Seller to the extent reasonably possible and without a material impact to its costs, permits or operations capability will design the treatment plant in a manner to accommodate possible future expansions, additions and changes to the treatment system.</p> <p><u>B. Construction Period Reporting and Review for the Project</u> Seller and Buyer will attend monthly progress meetings and will provide the other Party access to information such Party has regarding the Project, including without limitation any material information Seller provides to the parties providing Plant debt financing or needed to obtain any federal, state, local or water agency subsidies. Seller will consider and respond to material comments or concerns made by the Buyer. The Buyer will have the right to observe and inspect construction of the Plant at</p>

Subject	Proposed Term/Condition
	<p>any reasonable time following reasonable notice. The Contract will detail the Buyer inspection rights and requirements, and Seller’s obligations during the construction of the Plant. The Buyer shall have the right to review information regarding the construction of the Plant to the extent reasonably necessary to confirm Seller’s compliance with the requirements of the Contract.</p> <p><u>C. Start-Up and Acceptance Testing of the Plant</u> The Contract will set forth acceptance test standards and procedures designed to assure the Buyer that the Plant will be capable, on a long term basis, of meeting the requirements of the Contract. The Buyer will have the right to review and comment on the acceptance test protocol to be developed in accordance with the requirements of the Contract, and to observe Plant start-up and acceptance testing.</p>
<p>7. Scheduled Commercial Operation Date</p>	<p>After Financial Close, if, after extensions that may be provided for in the Contract, Seller fails to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date, Seller will owe the Buyer liquidated damages in an amount that will be based on the estimated fixed costs of the Buyer on the Delivery System (including without limitation financing costs) and for a period to be negotiated in the Contract. If the period ends before the Commercial Operation Date occurs, Seller may purchase the Delivery System from Buyer (and be assigned all Buyer rights in the Project) on terms and conditions that will be set forth in the Contract. If Seller elects not to purchase the Delivery System or if Seller has notified Buyer of its intent to abandon the Project, the Buyer may terminate the Contract and shall have the first right, but not the obligation, to purchase the Plant from Seller (and be assigned all Seller rights in the Project) on terms and conditions that will be set forth in the Contract. If, after extensions that may be provided for in the Contract, Buyer fails to complete construction of the Delivery System by the Scheduled Commercial Operation Date, the Buyer will owe the Seller liquidated damages in an amount that will be based on the estimated fixed costs of the Seller (including without limitation financing and operating costs) and for a period to be negotiated in the Contract. After such period of time, the Seller may then terminate</p>

Subject	Proposed Term/Condition
	<p>the Contract and shall have the right to sell the Product Water to third parties. Seller will make reasonable efforts to mitigate its damages by offering to sell Product Water to third parties during any delay in construction or operation of the Delivery System.</p>
<p>8. Operation and Maintenance</p>	<p><u>A. Seller's Obligation to Operate the Plant</u> Upon the achievement of the Commercial Operation Date, Seller will operate, maintain, repair and replace the Plant in accordance with the terms of the Contract, the Operations Agreement, the Operation and Maintenance Manual, prudent industry practices and applicable laws and regulations sufficient to meet the contractual performance and regulatory requirements. Seller will operate the Plant to meet the distribution requirements of the Buyer, including the operation and maintenance of the Plant's product water storage tank and metering system necessary for Buyer to operate and maintain the Delivery System.</p> <p><u>B. Operation and Maintenance of the Delivery System</u> The Delivery System will be operated and maintained by Buyer. .</p> <p><u>C. Operator</u> Seller will, prior to the Contract Date, contract for the operation, maintenance, repair and equipment replacement of the Plant with the Operating Contractor. The Operating Contractor, which shall perform its duties under the Operations Agreement on behalf of Seller, will not be replaced without the Buyer's approval, which shall not be unreasonably withheld.</p> <p><u>D. Operation and Maintenance Manual</u> Two months prior to the Commercial Operation Date, Seller will provide the Buyer with a draft copy of the Operation and Maintenance Manual. Upon its approval, Seller shall provide Buyer with a copy of the approved Operation and Maintenance Manual.</p> <p><u>E. Life-Cycle Maintenance</u> The Contract will contain all necessary assurances that the Plant will be properly maintained, repaired and replaced over the term of the Contract. These will include</p>

Subject	Proposed Term/Condition
	<p>a requirement to have an industry standard Computerized Maintenance Management (CMMS) system and use it to perform ordinary and capital maintenance, and periodic maintenance inspections.</p> <p><u>F. Restoration of the Plant</u> In the event of damage to the Plant, Seller will be obligated to repair or replace damaged components to enable the restoration of full operations and the full performance of its obligations under the Contract, whether through the application of insurance proceeds, payments from the Operating Contractor or Seller’s own capital.</p> <p><u>G. Buyer Right to Monitor</u> The Buyer will have the right to monitor the operation and maintenance of the Plant in order to confirm compliance with the requirements of the Contract. The Buyer will have the right to conduct periodic inspections of the Plant, and will notify Seller of any operations and maintenance deficiencies found for rectification by Seller. The Buyer will have the right to engage consultants and advisors, at Buyer’s own cost, for inspections to review Seller performance and performance reports and to provide recommendations to the Seller.</p> <p><u>H. Future Technology Changes</u> If future commercially viable technology changes can be reasonably integrated into the Plant which will have a material reduction in the cost of providing ocean desalination water by the Seller to the Buyer, the Parties will negotiate an equitable adjustment to the price of the water, taking into account the costs to implement such new commercially viable technology (including the capital, operating, and maintenance costs and the time remaining in the Contract). These terms shall be negotiated within the final Contract</p>
9. Water Quantity	<p><u>A. Water Quantity Commitments</u> Seller will agree to produce and deliver, and the Buyer will agree to take, 56,000 acre-feet per year of Product Water (the “Committed Amount”). The Committed Amount will be reduced by (a) the amount of Product Water purchased by other entities agreed to by the Parties, including without limitation the City of Huntington Beach under the</p>

Subject	Proposed Term/Condition
	<p>Huntington Beach Agreement and AES under any direct purchase agreement, and (b) on a year by year basis, any reductions in the quantity of Product Water produced by Seller and for other reasons as permitted under the Contract. The amount of Product Water that Buyer is required to purchase shall never be more than the amount of Product Water that Seller produces and delivers to Buyer; provided that except as otherwise provided in the Contract, Product Water that is not produced or delivered solely due to Buyer's failure or refusal to take such Product Water will be treated as having been produced and delivered for all purposes under the Contract. For the quantity of Product Water produced and delivered under the Contract, the Buyer will pay a per-acre foot unit charge as set forth in Item 14.</p> <p><u>B. Payment for Available Water that is Not Taken</u> Payment for Product Water the Buyer does not take will be based on the Delivery Schedule. Seller will make reasonable efforts to mitigate its costs by offering to sell Product Water to third parties during any period in which Buyer is unable to take Product Water. For water that is available but which Buyer does not take, and for which Seller is unable to deliver to a third party, Buyer will pay a price to be negotiated in the final Contract that covers all of Sellers fixed cost including an appropriate capital charge.</p> <p><u>C. Delivery Schedule</u> The schedule for periodic deliveries of Product Water (daily, monthly, quarterly) will be mutually agreed to by the Parties prior to the Commercial Operation Date and thereafter on an annual basis.</p> <p><u>D. Operating Committee</u> Seller, the Operating Contractor, and the Buyer will establish an Operating Committee to address daily flow changes and operations and other items to be set forth in the Contract.</p> <p><u>E. Water Ownership</u> The Buyer will own all Product Water received and accepted at the Delivery Point.</p>

Subject	Proposed Term/Condition
	<p data-bbox="576 302 1503 369"><u>F. Product Water Pressure and Hydraulic Transients Guarantee</u></p> <p data-bbox="576 375 1503 520">Seller will guarantee Product Water pressure, and will operate the Product Water Pump Station within agreed upon protocols so to minimize hydraulic transients in the Delivery System.</p> <p data-bbox="576 562 1146 594"><u>G. Distribution System Emergencies</u></p> <p data-bbox="576 600 1503 821">In the event of emergencies in its distribution system to be specified in the Contract (a “Distribution System Emergency”), the Buyer may demand a curtailment of Plant operation and Product Water deliveries, excusing the Buyer from its purchase obligation for the duration of the emergency.</p> <p data-bbox="576 863 1503 930"><u>H. Product Water Not Delivered Due to Uncontrollable Circumstances/Distribution System Emergency</u></p> <p data-bbox="576 936 1503 1566">Product Water which Seller would have delivered to the Buyer but which Seller is unable to deliver due to an Uncontrollable Circumstance affecting Seller or a Distribution System Emergency shall be delivered by Seller and purchased by the Buyer from any excess Product Water on a negotiated basis, or during an extension of the term of the Contract not to exceed three years. The Buyer will use all reasonable efforts to purchase “make-up” Product Water following the occurrence of Uncontrollable Circumstances affecting Seller and Seller will use all reasonable efforts to provide “make up” Product Water following a Distribution System Emergency if such Product Water can be provided while operating the Plant in accordance with applicable law and within its design limits. Seller will be compensated for any additional costs of providing “make up” Product Water following a Delivery System Emergency.</p> <p data-bbox="576 1608 1256 1640"><u>I. Respective Cost Obligations of the Parties</u></p> <p data-bbox="576 1646 1503 1824">Seller will be responsible for all costs incurred in producing and delivering Product Water to the Delivery Point, and the Buyer will be responsible for all costs incurred in receiving and distributing Product Water after the Delivery Point.</p> <p data-bbox="576 1866 878 1898">J. Additional Water</p>

Subject	Proposed Term/Condition
	Buyer shall have right of first offer to purchase any additional Product Water beyond the amounts offered under the Huntington Beach Agreement that may become available for sale to third parties. .
10.Product Water Quality	<p><u>A. Product Water Quality Requirements Generally</u> Product Water delivered by Seller will meet all Contract specifications and requirements, and all Regulatory Water Quality Standards. A detailed set of water quality specifications will be incorporated in the Contract per Attachment A to this Term Sheet. Prior to Contract execution, specific disinfection requirements and any other local water quality conditions may also be added to the Attachment A conditions as are reasonably required for safe and prudent operations of the distribution system. If Buyer directs Seller to deliver Product Water different than as specified in the Contract or if there is a need to change the water quality specifications in the Contract other than as a result of a change in Regulatory Water Quality Standards, Seller will be entitled to an equitable adjustment to the Water Purchase Price.</p> <p><u>B. Third Party Claims Regarding Product Water Quality</u> Seller will be solely liable for any fines, penalties or damages that may be incurred by either Party due to Seller’s failure to meet Product Water quality requirements in the Contract. Seller will indemnify the Buyer against any fines, penalties or damages (including third party tort claims) that may be incurred by the Buyer due to the delivery of Product Water that does not meet such Product Water quality requirements.</p> <p><u>C. Limitation on the Buyer Obligation to Accept Product Water</u> The Buyer will not be obligated to accept or pay for Product Water that does not meet the Product Water quality requirements in the Contract.</p>
11.Performance Liquidated Damages	<p><u>A. Product Water Quantity Failures</u> The Contract will specify liquidated damages for Seller’s failure to deliver an agreed upon amount of Product Water required to be delivered by the Contract during any Contract Year (any period running from July 1 to the following June 30 during the term of the Contract). Seller</p>

Subject	Proposed Term/Condition
	<p>will be afforded a reasonable opportunity to make up delivery failures prior to the imposition of liquidated damages.</p> <p><u>B. Product Water Quality Failures</u> The Contract will specify liquidated damages for Product Water quality non-compliance.</p>
12.Raw Water Risks	The Contract will set forth the assumed raw water quality parameters upon which Seller’s performance guarantees are based. If (1) actual raw water quality parameters are outside those assumed, or (2) specific negotiated events occur affecting raw water quality (such as pollution events), Seller will be entitled to relief from its water quantity production guarantee if operational changes to account for events in (1) and (2) above cannot be made..
13.AES	Seller shall bear all risks relating to AES and AES’s generating plant and property as they relate to the Plant, including AES sale, merger or bankruptcy, and AES lease breach, default and termination; provided Seller shall be entitled to relief from its water quantity production guarantee upon (1) the occurrence of force majeure events or other events effecting the construction and operations of the Plant including access to source water and the site and (2) other reasonable exceptions negotiated by the Parties.
14.Water Purchase Price	<p><u>A. Buyer Obligation to Pay for Product Water</u> The Buyer will only pay for Product Water that meets the Product Water quality requirements in the Contract and is actually delivered or ready to be delivered to the Delivery Point.</p> <p><u>B. Water Purchase Price</u> The price payable by the Buyer for Product Water shall consist of (1) the negotiated Unit Price per acre-foot, multiplied by (2) the number of acre-feet of Product Water purchased by the Buyer. Any extraordinary items under the Contract (such as amounts payable by Seller for non-compliance with the MWD Agreement, liquidated damages or indemnity payments) shall be paid or credited as a separate element of the Water Purchase Price, or shall be reflected in a revised Unit Price, as the Parties mutually determine to be appropriate.</p>

Subject	Proposed Term/Condition
	<p data-bbox="576 262 787 294"><u>C. Unit Price</u></p> <p data-bbox="576 294 1502 367">The negotiation of the Unit Price (to be finalized prior to execution of the Contract) will be based on the sum of:</p> <ol data-bbox="625 409 1502 1522" style="list-style-type: none"> <li data-bbox="625 409 1502 556">1. The MWD Treated Water Rate (subject to a minimum cumulative annual escalation rate of approximately 3% to be negotiated prior to possible execution of a final contract); plus <li data-bbox="625 556 1502 777">2. Any other charges from the MWD or the Municipal Water District of Orange County (“MWDOC”) that are avoided by Buyer or its member agencies not purchasing the same amount of water from MWD or MWDOC, as the case may be (subsections 1 and 2 together, the “Base Rate”); plus <li data-bbox="625 777 1502 997">3. The amount of the MWD subsidy that should be received by Buyer and/or Orange County MWD Member Agencies under the MWD Agreement based on the costs and performance of the Project, so long as Poseidon performs its obligations under the MWD Agreement; plus <li data-bbox="625 997 1502 1291">4. A premium of up to 20% of the Base Rate for the first ten (10) years of the Term, up to 15% of the Base Rate for the second ten (10) years of the Term, up to 10% of the Base Rate for the third ten (10) years of the Term, up to 5% of the Base Rate for the fourth ten (10) years of the Term, and 0% for the final ten (10) years of the Term (each adjustment to the Base Rate a “Premium”). <li data-bbox="625 1291 1502 1522">5. Starting with the fifteenth (15) anniversary of commercial operations and every five (5) years thereafter, the Premium amount will be reviewed and adjusted down (can go below zero) if the Seller is receiving an economic return above an agreed upon amount. <p data-bbox="576 1564 1502 1711">Failure of Buyer to receive any amount of the expected MWD subsidy will not reduce the Unit Price, unless such failure is caused by the actions or inactions of the Seller as provided in the MWD Agreement and the Contract.</p> <p data-bbox="576 1753 1031 1785"><u>D. Plant Site Conditions Risk</u></p> <p data-bbox="576 1785 1502 1900">Seller shall bear all risk associated with any differing site conditions and regulated site conditions (such as hazardous substances and cultural resources) at the Plant</p>

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	<p>site.</p> <p><u>E. Delivery System Conditions Risk</u> Buyer shall bear all risk associated with any differing conditions and regulated conditions (such as hazardous substances and cultural resources) on the route of the Delivery System (regardless of any information in the Seller Delivery System Permits or other information provided by Seller to Buyer related to the Delivery System); provided that Seller will make customary representations and warranties related to the Seller Delivery System Permits.</p> <p><u>F. Grants and Subsidies Benefit Buyer</u> While the Buyer and Seller recognize that any potential benefits of private activity bond financing or the pricing support from the MWD Agreement are already included in the Unit Price terms in Section 14C, any other subsidy, grant or contribution received directly or indirectly by the Buyer or Seller from the MWD or any other local, regional, state or federal governmental agency (Grants and Subsidies) will be for the full benefit of the Buyer. The Parties will negotiate an equitable reduction in the Unit Price if the Grants and Subsidies, reduce the capital cost or operating cost of the Plant.</p> <p><u>G. Notification of Annual Price Adjustments</u> For budgetary purposes, Seller will notify the Buyer no later than a date to be specified in the Contract prior to the start of the next succeeding Contract Year of the Water Purchase Price that will be in effect for the coming Contract Year based on changes to the Base Rate and premium as specified in the Contract.</p>
<p>15.No Payment Obligation Before Commercial Operation Date; Exception</p>	<p><u>A. General</u> The Buyer will have no obligation to purchase Product Water or make any payment whatsoever to Seller prior to the Commercial Operation Date.</p> <p><u>B. Exception</u> Following approval by the State Department of Public Health of the introduction of Product Water into the Delivery System and prior to the Commercial Operation</p>

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	Date, the Buyer will purchase Product Water meeting Product Water quality requirements in the Contract. The price of the Product Water will be equal to the Base Rate, and the duration of this commitment will be negotiated.
16.Plant Purchase Option	The Buyer will have the option to purchase the Plant for \$1 at the end of the Term of the Agreement. Additionally Buyer will have the option, starting on the 30th anniversary of the Commercial Operations Date and annually thereafter, to purchase the Plant from the Seller for the fair market value of the Plant taking into account the condition of the Plant and the terms and conditions of the Contract.
17.Site Access	<p><u>A. Plant Tours</u> Seller will make the Plant available for Buyer tours after start of commercial operations, subject to reasonable notice by the Buyer.</p> <p><u>B. Site Access</u> Buyer staff, consultants and contractors will be provided reasonable access to the site and all facilities owned or leased by Seller during the construction period and after the start of commercial operations, subject to reasonable notice by the Buyer.</p>

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18. Insurance	<p><u>A. Seller Insurance Obligations</u> Seller will obtain and maintain, in reasonable amounts, insurance on the Plant as follows: commercial general liability insurance; builder’s risk (including earthquake coverage with an agreed sublimit) and property and casualty insurance that will provide for the full replacement value of the Plant; motor vehicle insurance; workers compensation; business interruption insurance in an amount sufficient to cover a minimum of one year of fixed operating and financing costs and, as appropriate, pollution liability insurance.</p> <p><u>B. Insurance Costs and Risks</u> Seller will bear all costs associated with any insurance deductibles, and replacement cost exceedances associated with builders’ risk and property insurance coverage on the Plant. Seller will also bear the risk of any insurance unavailability related to the insurance it is required to maintain on the Plant.</p>
19. Uncontrollable Circumstances/ Performance Relief	<p><u>A. Defined</u> Uncontrollable Circumstances are force majeure, changes in law and other events beyond a Party’s reasonable control (after exercising diligence to prevent the occurrence and to mitigate the effect of the occurrence) that materially and adversely affect such Party. Inclusions and exclusions will be negotiated.</p> <p><u>B. Seller Performance Relief</u> An Uncontrollable Circumstance will entitle Seller to schedule and water quantity guarantee relief, to the extent that it is adversely affected by Uncontrollable Circumstances.</p> <p><u>C. No Seller Price or Water Quality Relief</u> Unless otherwise stated in the Contract, an Uncontrollable Circumstance will not entitle Seller to any price relief or any water quality guarantee relief.</p> <p><u>D. Mitigation and Restoration</u> In the event of an Uncontrollable Circumstance, the affected Party will use commercially reasonable efforts to respond to the event and to mitigate its effects and, as</p>

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	<p>soon as is practicable, to restore conditions to the level at which it can fully perform its obligations under the Contract.</p> <p><u>E. Buyer Performance Relief</u> The Buyer will be entitled to relief from its obligation to take and purchase Product Water to the extent its ability to receive delivery of Product Water is adversely affected by a Distribution System Emergency. The Buyer will use all reasonable efforts to purchase “make-up” Product Water following any such occurrence in accordance with Section 9H.</p>
<p>20.Environmental Mitigation & Governmental Risk</p>	<p><u>A. Compliance With Environmental Mitigation Measures</u> Seller will bear the risk of complying with all environmental mitigation measures required by or in connection with the Plant and governmental approvals for the Plant. Buyer will bear the risk of complying with all environmental mitigation measures required by or in connection with the Delivery System and governmental approvals for the Delivery System.</p> <p><u>B. Government Approval Risk</u> Seller will be responsible for obtaining and maintaining all governmental approvals required for the Plant during construction and acceptance testing (including the California Department of Public Health’s drinking water permit) through the Commercial Operation Date and during operations through the end of the Contract term. Other than schedule relief, Seller will bear the risk of the denial, delay in issuance of, or imposition of any term or condition in connection with any such governmental approval and of compliance with all such governmental approvals. Buyer will be responsible for obtaining and maintaining all governmental approvals required for the Delivery System (other than as already acquired by Seller) during construction and through the Commercial Operation Date and during operations through the end of the Contract term. Buyer will bear the risk of the denial, delay in issuance of, or imposition of any term or condition in connection with any such governmental approval and of compliance with all such governmental approvals.</p>
<p>21. Events of Default and</p>	<p><u>A. Events of Default</u></p>

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Termination	<p>The Contract will include negotiated events of default.</p> <p><u>B. Remedies</u> Upon the occurrence of an event of default, the non-defaulting Party may pursue any remedies available at law or in equity.</p> <p><u>C. Buyer Step-In Rights</u> The Buyer will have the right, but not the obligation, to step in and cure defaults that are not cured by Seller or Seller’s debt holders.</p>
22. Record Keeping, Reporting	<p><u>A. Seller Maintenance and Retention of Records</u> Seller will maintain records pertaining to its performance under the Contract, the Operations Agreement and the Operation and Maintenance Manual. The Buyer will have the right to inspect and audit such records during regular business hours (including audit rights for up to five years after each year of the Contract, or as provided for under applicable law, whichever is longer), to verify performance, quantity, quality, delivery of Product Water to the Delivery Point and price. Seller will establish and maintain accounting records of all costs in conformance with the MWD Agreement between the Buyer and MWD. MWD and the Buyer will have the right to inspect and audit Seller’s books and records relating to the MWD Agreement.</p> <p><u>B. Seller Reporting Requirements</u> Seller will provide monthly and annual reports to the Buyer regarding Plant performance, including: Product Water quantities produced; Product Water quality (subject to additional water quality reporting requirements); maintenance and capital repairs and replacements performed; any operating problems encountered and corrective measures taken; regulatory and Contract compliance.</p> <p><u>C. Measurement Devices Inspection</u> The Buyer will have the right to inspect Seller’s measurement devices periodically during regular business hours following reasonable notice to verify that calibration is accurate. The Buyer will also have the right to conduct independent verification of calibration at Buyer’s cost. Notwithstanding the foregoing, if Seller’s measurement</p>

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	devices are found to be in need of recalibration, Seller will pay for and undertake such recalibration, and will also reimburse the Buyer for all costs associated with the Buyer's inspection and testing.
23. Security for Performance by Project Contractors	<p><u>A. Construction Bond</u> Seller will obtain and maintain or will cause the EPC contractor to obtain and maintain performance and payment bonds in an amount sufficient to obtain non-recourse financing (or as otherwise agreed to by the Parties) for the construction of the Plant.</p> <p><u>B. Operations Bond</u> Seller will obtain and maintain or will cause the Operating Contractor to obtain and maintain an operations performance bond in an amount sufficient to obtain non-recourse financing (or as otherwise agreed to by the Parties) for the operation and maintenance of the Plant.</p>
24. Security for Performance by Seller	At a date no later than the Construction Financing Deadline, and for the Term), Seller shall provide to Buyer an annually renewable letter of credit in the amount of \$5 million, which amount shall escalate annually with the CPI up to a maximum of \$8.5 million or as the Parties negotiate in the Contract, as security for its obligations to Buyer under the Contract.
25. General Indemnity	The Parties will indemnify the other Party for claims arising from misrepresentation, negligence or breach of the Contract.
26. Litigation Risk Indemnity	Seller will indemnify the Buyer against third party litigation related to the Plant and the Seller Delivery System Permits, whether such litigation is brought against the Buyer or the Seller (such as litigation involving environmental reviews, permits, and legal entitlements), provided that Seller will not indemnify the Buyer against third party litigation resulting from: (a) the Buyer's breach of the Contract, (b) the Buyer's construction of the Delivery System or (c) the Buyer's additional environmental review and permitting of the Delivery System that is not covered or addressed by Seller's environmental review and permitting related to the Plant

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	and the Seller Delivery System Permits.
27. Representations and Warranties	The Contract will include customary representations and warranties regarding: legal standing in California; legal authority to enter into the Contract; absence of material adverse litigation or legal conditions; no conflict with other agreements or commitments; proper approvals of Contract. Seller will make representations and warranties as to CEQA compliance with respect to the Plant, the SEIR and any other Seller Delivery System Permits (to the extent CEQA applies).
28. Tax Risks	Seller will bear all tax risks related to the Plant (including its ownership, design, construction and operation) and sale of Product Water under the Contract. This includes all existing taxes payable with respect to construction, operation, maintenance, management, services on water purchases; income, sales, possessory interest, excise and value added taxes; tax law changes; new taxes; and adverse tax law determinations pertaining to tax accounting treatment, tax credit depreciation, amortization or otherwise. A tax is a governmental imposition of any kind, and includes fees and charges.
29. Liability Limitations	The Contract will contain no stated dollar limitation on damages for non-performance. Special, consequential and punitive damages will be mutually waived.
30. Dispute Resolution	The Parties will agree to attempt to resolve disputes, first, through negotiation and non-binding mediation and, if negotiations and mediation are unsuccessful, then to pursue other remedies available at law or in equity.
31. Assignment	Neither Party will assign the Contract without the prior written approval of the other Party. Notwithstanding the foregoing, Seller will have the right to collaterally assign the Contract to its lenders, and the Buyer will reasonably consent to such assignment.
32. Seller's Contractors and Subcontractors	The Contract will specify minimum financial, technical and experience qualifications, standards and requirements for the EPC Contractor and the Operating Contractor and for any party it may engage to replace or substitute for the

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	EPC Contractor or the Operating Contractor. Seller will provide adequate information to the Buyer regarding the qualifications of any proposed initial or substitute EPC Contractor and Operating Contractor. Notwithstanding the above, Seller may not replace or substitute the EPC Contractor or the Operating Contractor without Buyer approval, which will not be unreasonably withheld.

