
CARLSBAD SEAWATER DESALINATION PROJECT
WATER PURCHASE AGREEMENT

between

THE SAN DIEGO COUNTY WATER AUTHORITY

and

POSEIDON RESOURCES (CHANNELSIDE) LP

Dated as of

_____, 2012

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TABLE OF CONTENTS

Page

ARTICLE 1

DEFINITIONS AND INTERPRETATION

Section 1.1.	DEFINITIONS.....	2
Section 1.2.	INTERPRETATION.....	38
	(A) Plurality.....	38
	(B) Persons.....	38
	(C) Headings.....	38
	(D) References Hereto	39
	(E) References to Days and Time of Day	39
	(F) References to Including	39
	(G) References to Statutes.....	39
	(H) References to Governmental Bodies	39
	(I) References to Business Days	39
	(J) References to Documents and Standards	39
	(K) References to All Reasonable Efforts	39
	(L) References to Treatment	39
	(M) Entire Agreement	39
	(N) Counterparts.....	40
	(O) Governing Law	40
	(P) Severability	40
	(Q) Drafting Responsibility	40
	(R) Rounding of Acre Foot Calculations	40
	(S) Interpolation	40
	(T) Accounting and Financial Terms.....	40
	(U) Applicability, Stringency and Consistency of Contract Standards	40
	(V) Delivery of Documents in Digital Format.....	40
	(W) Obligations to Provide Assistance.....	41
	(X) Third-Party Rights.....	41
	(Y) Liquidated Damages	41
	(Z) Discretion	41

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

Section 2.1.	REPRESENTATIONS AND WARRANTIES OF THE WATER AUTHORITY.....	42
	(A) Existence and Powers.....	42
	(B) Due Authorization	42
	(C) No Conflict	42
	(D) No Approvals Required	42
	(E) No Litigation	42
Section 2.2.	REPRESENTATIONS AND WARRANTIES OF THE PROJECT COMPANY.	43
	(A) Existence, Powers and Ownership	43
	(B) Due Authorization and Binding Obligation	43
	(C) No Conflict	43
	(D) No Approvals Required	43
	(E) No Litigation Affecting the Project Company	43

(F)	No Litigation Affecting the Project Contractors	43
(G)	Equity Contribution Agreement	44
(H)	Bond Purchase Agreement.....	44
(I)	Sufficiency of Financing Arrangements	44
(J)	Initial Financing of the Product Water Pipeline Improvements	44
(K)	Cabrillo Ground Lease Terms	44
(L)	Intellectual Property	44
(M)	Information Supplied by the Project Company.....	44
(N)	No Gratuities.....	44
(O)	Compliance with Applicable Law Generally	44
(P)	CEQA Notice of Determination.....	45
(Q)	Project Company Interest in the Plant Site	45
(R)	Practicability of Performance	45

ARTICLE 3

TERM

Section 3.1.	EFFECTIVE DATE AND TERM.	46
(A)	Term.....	46
(B)	Accrued Rights.....	46
Section 3.2.	SURVIVAL.	46

ARTICLE 4

CONTRACT OBLIGATIONS GENERALLY

Section 4.1.	GENERAL RESPONSIBILITIES OF THE PARTIES.	47
(A)	Plant Ownership	47
(B)	Project Company	47
(C)	Water Authority	47
(D)	Party Bearing Cost of Performance.....	47
(E)	Grants and Subsidies Benefit the Water Authority	47
(F)	Public Communications.....	47
Section 4.2.	LETTER OF CREDIT.	47
(A)	Letter of Credit Requirements	47
(B)	Drawings for Non-Renewal or Bankruptcy.....	48
(C)	Drawings for Termination	48
(D)	Drawings Upon a Project Company Event of Default.....	48
(E)	Effect of Final Determination of Damages	48
(F)	Release or Suspension.....	49
(G)	Return	49
Section 4.3.	CONSTRUCTION OF THE PLANT.	49
(A)	Commencement and Prosecution of Construction Work Generally	49
(B)	Payment of Costs	49
(C)	Construction on the Plant Site.....	49
(D)	Project Company Control of the Construction Work; No Water Authority Responsibility	49
(E)	Construction Work Reviews	50
(F)	Project Schedule.....	50
(G)	Construction of Tie-Ins and Connection to the Water Authority Distribution System	50
(H)	Water Authority Engineer	50
(I)	Fees	51
(J)	Operating Protocol.....	51

	(K) Water Authority Administrative Space During the Construction Period	51
	(L) Hazardous Substances Management During the Construction Period	51
Section 4.4.	CONSTRUCTION GOVERNMENTAL APPROVALS.	51
	(A) Generally	51
	(B) Copies.....	51
	(C) Review and Comment	52
	(D) Water Authority Interests	52
	(E) Limited Permitting Assistance by the Water Authority	52
	(F) Project Company Assumption of Permitting Risk for Construction Work Generally	53
	(G) Extension of the Scheduled Commercial Operation Date for Certain CDPH Permitting Delays	53
Section 4.5.	(H) Permits and Approvals Required Upon Completion.....	53
	COMPLIANCE WITH APPLICABLE LAW.....	53
	(A) Compliance Obligation	53
	(B) Compliance With Environmental Mitigation Measures	53
	(C) Sampling, Testing and Laboratory Work.....	54
	(D) Registration, Licensing and Certification Requirements	54
	(E) Investigations of Non-Compliance	54
	(F) Fines, Penalties and Remediation	55
	(G) No Nuisance Covenant	55
Section 4.6.	RESTRICTIONS ON DIRECTED DESIGN REQUIREMENTS CHANGES AND CAPITAL MODIFICATIONS.	55
Section 4.7.	CABRILLO RISK.	56
	(A) Project Company Responsibility	56
	(B) Exceptions	56
Section 4.8.	CABRILLO RAW SEAWATER INTAKE SYSTEM IMPROVEMENTS.....	56
	(A) Closure and Decommissioning of the Cabrillo Generating Facility.....	56
	(B) Obligation to Construct Cabrillo Raw Seawater Intake System Improvements Constitutes a Change in Law; Limitations.....	56
	(C) Baseline Unit Price Cap Applicability	58
	(D) Governmental Approvals for the Cabrillo Raw Seawater Intake System Improvements	58
Section 4.9.	COVENANT NOT TO CONSTRUCT A SEPARATE, STAND-ALONE SEAWATER DESALINATION FACILITY.	58
Section 4.10.	GOOD MANAGEMENT PRACTICE AND GOOD DESIGN AND CONSTRUCTION PRACTICE.	58
Section 4.11.	FINANCIAL BOOKS AND RECORDS.....	58
	(A) Recordkeeping Requirements.....	58
	(B) Inspection, Audit and Adjustment.....	59
Section 4.12.	DELIVERY OF DOCUMENTS.	59
	(A) Project Company	59
	(B) Water Authority	59
Section 4.13.	FAIR EMPLOYMENT AND CONTRACTING POLICY.	60
	(A) Compliance with Water Authority Non-Discrimination Policy	60
	(B) Veteran Employment Outreach Program	60
	(C) Compliance with Statutes.....	60
	(D) Compliance with Policy.....	60
	(E) Indemnification	61

ARTICLE 5

WATER AUTHORITY OBLIGATIONS GENERALLY

Section 5.1.	WATER AUTHORITY OBLIGATIONS GENERALLY	62
Section 5.2.	WATER AUTHORITY IMPROVEMENTS	62
	(A) Design, Construction and Financing	62
	(B) Scheduled Water Authority Improvements Completion Date	62
	(C) Completion Delay	62
	(D) Project Company Obligations Relating to the Full System Test.....	63
	(E) Operation and Maintenance	63
Section 5.3.	PRODUCT WATER PIPELINE IMPROVEMENTS.	63
Section 5.4.	WATER AUTHORITY INTERFACE CABINET.....	63
Section 5.5.	PRODUCT WATER PURCHASE RELIEF EVENTS.....	63
	(A) Notice and Written Report	63
	(B) Updates	64
	(C) Continuance of Relief	64

ARTICLE 6

PROJECT FINANCING AND REFINANCING

Section 6.1.	PLANT FINANCING.	65
	(A) Project Company Financing	65
	(B) Issuance of Initial Plant Bonds	65
	(C) Adequacy of Initial Plant Bond Proceeds to Pay Project Costs.....	65
	(D) Limitations on Project-Secured Debt	65
	(E) Permitted Debt Other than Plant Bonds	66
	(F) Permitted Debt Non-Recourse to Water Authority	66
	(G) Use of Reserve Funds Under the Collateral Trust Agreement	66
	(H) Project Company Liability	66
Section 6.2.	PRODUCT WATER PIPELINE IMPROVEMENTS FINANCING.	66
	(A) Issuance of the Initial Pipeline Bonds.....	66
	(B) Security for the Pipeline Bonds	66
	(C) Delivery of Financing-Related Reports to the Project Company	66
Section 6.3.	FINANCING COMPENSATION ADJUSTMENT EVENT CAPITAL COSTS.	67
	(A) Financing Compensation Adjustment Event Capital Costs.....	67
	(B) Limitation on Permitted Debt Issued for Compensation Adjustment Event Capital Costs Resulting from an Earthquake	67
	(C) Water Authority Rights With Respect to Compensation Adjustment Event Financings	67
	(D) Negotiated Extension of Expiration Date	68
	(E) Water Authority Right to Finance Compensation Adjustment Event Capital Costs	68
	(F) Financing Unavailability for Compensation Adjustment Event Capital Costs	68
Section 6.4.	FINANCING THE CAPITAL COSTS OF DIRECTED CAPITAL MODIFICATIONS.....	69
	(A) Financing Directed Capital Modification Capital Costs	69
	(B) Water Authority Rights With Respect to Directed Capital Modification Financings	69
	(C) Negotiated Extension of Expiration Date	69
	(D) Water Authority Right to Finance Directed Capital Modification Capital Costs	69
	(E) Financing Unavailability for Directed Capital Modifications	70

Section 6.5.	FINANCING THE CAPITAL COSTS OF PROJECT COMPANY- REQUESTED CAPITAL MODIFICATIONS.	70
Section 6.6.	COMPLIANCE WITH PLANT FINANCING AGREEMENTS; DELIVERY OF REPORTS TO WATER AUTHORITY.....	70
	(A) Compliance	70
	(B) Delivery of Financing-Related Reports to the Water Authority	70
Section 6.7.	CHANGES TO PLANT FINANCING AGREEMENTS.	70
Section 6.8.	REFINANCING GAIN.....	71
	(A) Consent Required for Refinancing	71
	(B) Water Authority's Share of Refinancing Gain.....	71
	(C) Project Company Proposal to Refinance	71
	(D) Reduction in the Capital Charge	71
	(E) Calculation of Refinancing Gain.....	71
	(F) Water Authority's Expenses	71
Section 6.9.	WATER AUTHORITY REQUESTED REFINANCING.....	72
	(A) Refinancing Notice	72
	(B) Meeting.....	72
	(C) Project Company Action	72
	(D) Water Authority Instruction	73
	(E) Implementation of Refinancing	73
	(F) Project Company Expenses.....	73
	(G) Limitation On Refinancing Notices	73
Section 6.10.	PROCEDURES RELATING TO POTENTIAL TAX GROSS-UPS.	73

ARTICLE 7

COMPLETION AND ACCEPTANCE OF THE PLANT

Section 7.1.	MECHANICAL COMPLETION.	75
	(A) Mechanical Completion Procedures	75
	(B) Commissioning Plan.....	75
	(C) Mechanical Completion Procedures Report	75
	(D) Conditions to Mechanical Completion	75
	(E) Notice of Mechanical Completion	77
	(F) Achievement of Mechanical Completion	77
Section 7.2.	INTERIM OPERATIONS APPROVAL AND DOMESTIC WATER SUPPLY PERMIT.....	78
	(A) Authorization of Operation and Water Introduction	78
	(B) Responsibilities of the Parties with Respect to the Water Authority Domestic Water Supply Permit Amendment	78
	(C) Project Company Obligations Generally	79
	(D) Project Company Assumption of Risk.....	79
Section 7.3.	PERFORMANCE TESTING.	79
	(A) Performance Test Protocol	79
	(B) Performance Test and Surge Protection System Test	80
	(C) Notice of Commencement of the Performance Test.....	80
	(D) Conditions to Commencement of the Performance Test	80
	(E) Conduct of the Performance Test	81
	(F) Test Report	81
Section 7.4.	PRODUCT WATER DELIVERIES PRIOR TO THE COMMERCIAL OPERATION DATE.	81
	(A) Performance Tests	81
	(B) Interim Operations	82
	(C) Other Obligations of the Parties During Interim Operations	82
	(D) Water Disposal and Disinfection Required by Curtailments	82

Section 7.5.	PROVISIONAL ACCEPTANCE.....	83
	(A) Conditions	83
	(B) Notice and Report of Provisional Acceptance	84
	(C) Achievement of Provisional Acceptance	84
	(D) Completion and Acceptance of the Product Water Pipeline Improvements	84
	(E) Commercial Operation Date.....	85
	(F) Adjustment for Underpayment.....	85
Section 7.6.	SCHEDULED COMMERCIAL OPERATION DATE.	85
	(A) Commercial Operation Date.....	85
	(B) Scheduled Commercial Operation Date Defined	85
	(C) Extension for Uncontrollable Circumstances.....	85
Section 7.7.	FAILURE TO ACHIEVE PROVISIONAL ACCEPTANCE BY THE SCHEDULED COMMERCIAL OPERATION DATE.	85
Section 7.8.	NO WATER AUTHORITY PAYMENT OBLIGATION PRIOR TO COMMERCIAL OPERATION DATE; EXCEPTIONS.....	85
Section 7.9.	PROJECT COMPLETION.....	86
	(A) Requirements.....	86
	(B) Notice and Report of Project Completion	86
	(C) Achievement of Project Completion	87
	(D) Obligation to Achieve Project Completion; Punch List Items.....	87

ARTICLE 8

OPERATION AND MANAGEMENT OF THE PLANT

Section 8.1.	PROJECT COMPANY OBLIGATIONS GENERALLY.....	88
	(A) Operation and Management Responsibility for the Project	88
	(B) Application of Industry Experience	88
	(C) Water Authority Administrative Space.....	88
Section 8.2.	SERVICE COORDINATION.....	88
	(A) Project Company's Chief Operator.....	88
	(B) Communications and Meetings.....	89
	(C) Complaints and Communications	89
	(D) Relations with Member Agencies.....	89
Section 8.3.	STAFFING AND PERSONNEL.....	89
	(A) Staffing Generally.....	89
	(B) Key Operations Staff.....	90
	(C) Training	90
Section 8.4.	UTILITIES.	90
	(A) Supply	90
	(B) SDG&E Special Conditions Contract.....	90
	(C) Alternative Electricity Suppliers.....	90
	(D) Payment of Utility Costs	91
Section 8.5.	ELECTRONIC OPERATION AND MAINTENANCE MANUAL.	91
	(A) Project Company Responsibility	91
	(B) Supplements for Capital Modifications.....	91
Section 8.6.	SAFETY.....	91
Section 8.7.	SECURITY.....	92
Section 8.8.	OPERATING GOVERNMENTAL APPROVALS.	92
	(A) Applications and Submittals.....	92
	(B) Data and Information	92
	(C) Non-Compliance and Enforcement.....	93
	(D) Reports to Governmental Bodies	93
	(E) Copies of Operating Governmental Approvals.....	93

	(F) Potential Regulatory Change.....	94
Section 8.9.	WATER AUTHORITY ACCESS TO PLANT.....	94
	(A) General Access.....	94
	(B) Tours.....	94
Section 8.10.	ASSET RECORDS.....	95
	(A) Information Systems.....	95
	(B) Availability of Plant Records to Water Authority.....	95
	(C) Record Documents.....	95
	(D) Annual Update of Record Drawings and Documents.....	95
Section 8.11.	PERIODIC REPORTS.....	95
	(A) Monthly Operations.....	95
	(B) Annual Operations and Maintenance Reports.....	97
	(C) Default Reports.....	97
Section 8.12.	MAINTENANCE OF RECORDS.....	97
	(A) Duty to Maintain Records.....	97
	(B) Maintenance of Records.....	97
	(C) Disposal of Records.....	98
	(D) Drawing Requirements.....	98
	(E) Records to Be Kept.....	98
Section 8.13.	EMERGENCIES.....	99
	(A) Emergency Plan.....	99
	(B) Emergency Action.....	99
Section 8.14.	ANNUAL MANAGEMENT FEE.....	99
	(A) Fee Calculation.....	99
	(B) Factors.....	99
Section 8.15.	HAZARDOUS SUBSTANCE MANAGEMENT DURING THE OPERATING PERIOD.....	100

ARTICLE 9

PERFORMANCE

Section 9.1.	GENERAL PERFORMANCE RESPONSIBILITIES.....	101
	(A) Project Company Acknowledgment.....	101
	(B) Asset Management.....	101
	(C) Water Ownership.....	101
	(D) Risk of Loss of Product Water.....	101
	(E) Hydraulic Transients.....	101
	(F) Limitations on Project Company Rights.....	101
Section 9.2.	PRODUCT WATER QUALITY GUARANTEE.....	101
	(A) Applicable Law Limits.....	101
	(B) Additional Product Water Quality Standards.....	102
	(C) Chlorine Residual and Chloramine/Ammonia Ratio.....	102
	(D) Sampling Locations for Determining Compliance With the Product Water Quality Guarantee.....	102
	(E) Remedies for Breach of Product Water Quality Guarantee - Off- Specification Product Water.....	102
	(F) Remedies for Breach of Product Water Quality Guarantee - Unacceptable Water.....	102
	(G) Boil Water Notices.....	102
	(H) Reporting Off-Specification Product Water and Unacceptable Product Water.....	103
	(I) Indemnity for Loss-and-Expense from Non-Complying Product Water.....	103
	(J) Change in Law Event Affecting Product Water.....	103

Section 9.3.	MAXIMUM ANNUAL SUPPLY COMMITMENT AND ADJUSTED ANNUAL SUPPLY COMMITMENT.	104
	(A) Maximum Annual Supply Commitment Defined.....	104
	(B) Decrease in Maximum Annual Supply Commitment Based on Performance Test	104
	(C) Scheduled Shutdown Hours	104
	(D) Adjusted Annual Supply Commitment	104
Section 9.4.	MINIMUM ANNUAL DEMAND COMMITMENT.	104
	(A) Minimum Annual Demand Commitment Defined	104
	(B) Decrease in Minimum Annual Demand Commitment	104
	(C) Decrease to the Fixed Unit Price and the Operating Period Shortfall Payment Unit Price.....	105
Section 9.5.	MAXIMUM MONTHLY SUPPLY COMMITMENT AND ADJUSTED MONTHLY SUPPLY COMMITMENT.	105
	(A) Establishment.....	105
	(B) Adjusted Monthly Supply Commitment Defined	105
Section 9.6.	MINIMUM MONTHLY DEMAND COMMITMENT.....	105
	(A) Establishment.....	105
	(B) Water Authority Take or Pay Obligation	105
Section 9.7.	PROJECTED ANNUAL DELIVERY SCHEDULES.	106
	(A) Projected Annual Delivery Schedules	106
	(B) Modifications by Mutual Agreement.....	106
Section 9.8.	PLANNED AND ACTUAL DAILY DELIVERIES OF PRODUCT WATER.....	107
	(A) Planned Daily Deliveries	107
	(B) Expected Firm Daily Demand Schedule	107
	(C) Modified Firm Daily Demand Schedule and Allowable Ordinary Flow Rates	107
	(D) Establishing the Firm Daily Demand Order.....	107
	(E) Project Company's Product Water Delivery Covenants	107
	(F) Limitations on the Project Company's Product Water Supply Obligations	108
	(G) Supplemental High Pressure Pump.....	109
	(H) Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term	109
	(I) Metering Point for Determining Product Water Deliveries.....	109
Section 9.9.	FLOW RATE LIMITATIONS.....	109
	(A) Operating Modes	109
	(B) First Operating Period	110
	(C) Second Operating Period	110
	(D) Operating Mode Change Performance Test	110
	(E) Remaining Operating Period	110
	(F) Extraordinary Flow Rate Changes.....	111
	(G) Extraordinary Flow Rate Change Payments.....	111
	(H) Limitations.....	112
Section 9.10.	WATER AUTHORITY-DIRECTED CURTAILMENTS AND SHUTDOWNS.	112
Section 9.11.	OPERATING PERIOD SHORTFALL PAYMENTS.....	112
	(A) General	112
	(B) Operating Period Shortfall Payments.....	113
	(C) Monthly Operating Period Shortfall Payments	113
	(D) Monthly Operating Period Shortfall Restoration Payments	114
	(E) Termination Operating Period Shortfall Payments	115
	(F) Annual Operating Period Shortfall Payment True-Up Payment.....	115
	(G) Operating Period Shortfall Payment Statement of Account.....	116
	(H) Water Authority Review and Determination.....	117
	(I) Non-Payment During the Assignment Period.....	117

	(J) Non-Payment Following the Assignment Period	117
Section 9.12.	DROUGHT SHORTFALL PAYMENTS.	117
Section 9.13.	RAW SEAWATER QUALITY AND UNCONTROLLABLE CIRCUMSTANCES.	118
	(A) Relief Generally	118
	(B) Raw Seawater Quality-Specified Parameters.....	118
	(C) Raw Seawater Quality-Unspecified Parameters.....	118
	(D) “Red Tide” Algae Blooms	118
	(E) Raw Seawater Quality-Contamination.....	118
	(F) Claim Requirements	119
	(G) Effect on Water Authority Obligations	119
Section 9.14.	WATER AUTHORITY REMEDIES FOR NON-COMPLIANCE WITH PERFORMANCE GUARANTEES.	119
	(A) Remedies	119
	(B) Example of Water Authority Remedies	119
	(C) Performance Testing.....	120
Section 9.15.	SERVICE COORDINATION.....	120
Section 9.16.	METERING AND TESTING.	120
	(A) Testing.....	120
	(B) Metering	120
Section 9.17.	RELEASES, LEAKS AND SPILLS.	121
	(A) Unauthorized Releases	121
	(B) Notification and Reporting.....	121
	(C) Site Assessment Upon Termination or Expiration.....	121
	(D) Cleanup and Costs	121
Section 9.18.	PROJECT COMPANY DISPOSAL OF RESIDUALS.	121
	(A) Residuals Management.....	121
	(B) Acceptable Disposal Site.....	122
	(C) Transportation Operations.....	122
	(D) Acceptable Disposal Site Information	122
	(E) Indemnity	122
Section 9.19.	PROJECT COMPANY DISPOSAL OF CONCENTRATE DISCHARGE.	122
Section 9.20.	ADMINISTRATIVE OBLIGATIONS.	122

ARTICLE 10

MAINTENANCE, REPAIR AND REPLACEMENT

Section 10.1.	MAINTENANCE, REPAIR AND REPLACEMENT GENERALLY.	124
	(A) Ordinary Maintenance, Repair and Replacements	124
	(B) Major Maintenance, Repairs and Replacements	124
	(C) Repair and Maintenance of Plant Site	124
Section 10.2.	MAINTENANCE, REPAIR AND REPLACEMENT PLAN AND MAINTENANCE, REPAIR AND REPLACEMENT SCHEDULE.....	124
	(A) Maintenance, Repair and Replacement Plan.....	124
	(B) Maintenance, Repair and Replacement Schedule	125
Section 10.3.	PLANT EVALUATIONS.	125
	(A) Asset Registry	125
	(B) Final Evaluation of the Plant	125
	(C) Disputes	126
Section 10.4.	PERIODIC MAINTENANCE INSPECTIONS.	126
	(A) Annual Maintenance Inspection.....	126
	(B) Full-Scale Biennial Inspections.....	126
	(C) Non-Interference	126
Section 10.5.	COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM.	126

Section 10.6.	END OF TERM PERFORMANCE EVALUATION REQUIREMENTS.	127
(A)	Applicability of End of Term Performance Evaluation Requirements.	127
(B)	Compliance With End of Term Performance Evaluation Requirements.....	127
(C)	Non-Compliance With End of Term Performance Evaluation Requirements.....	127
(D)	Applicable Exit Performance Period.....	127
(E)	Condition of Project Structures and Project Equipment	127
Section 10.7.	PROJECT ASSETS TRANSFER CONDITION.	128
(A)	Water Authority Exercise of End-of-Term Purchase Option.....	128
(B)	Required Project Condition	128
(C)	Transfer Condition Survey and Work Plan.....	128
(D)	Determination of Transfer Condition Retainage	128
(E)	Establishment and Use of Transfer Condition Retainage Account	129
(F)	Performance of the Transfer Condition Work and Further Inspection	129
(G)	Final Water Authority Condition Assessment	129
(H)	Final Project Company Condition Assessment.....	130
(I)	Final Compliance	130

ARTICLE 11

CAPITAL MODIFICATIONS

Section 11.1.	CAPITAL MODIFICATIONS GENERALLY.	131
Section 11.2.	CAPITAL MODIFICATIONS MADE AT PROJECT COMPANY REQUEST.....	131
(A)	General.....	131
(B)	Water Authority Approval	131
Section 11.3.	CAPITAL MODIFICATIONS REQUIRED DUE TO COMPENSATION ADJUSTMENT EVENT.	131
(A)	General.....	131
(B)	Water Authority Approval	132
Section 11.4.	CAPITAL MODIFICATIONS AT WATER AUTHORITY DIRECTION.	132
(A)	General.....	132
(B)	Inability of Project Company to Obtain Financing.....	132
(C)	No Plant Bondholder Obligation.....	132
Section 11.5.	PROCEDURES FOR IMPLEMENTING DIRECTED CAPITAL MODIFICATIONS AND COMPENSATION ADJUSTMENT EVENT	
	CAPITAL MODIFICATIONS.....	132
(A)	Primary Implementation Procedure.....	132
(B)	Project Company Conceptual Plan and Water Authority Review	132
(C)	Project Company Implementation Proposal	133
(D)	Preparation Costs.....	133
(E)	Negotiation and Finalization of Project Company Implementation Proposal.....	133
(F)	Implementation Procedures	134
Section 11.6.	OPERATING, MAINTENANCE, REPAIR AND REPLACEMENT COSTS RELATED TO CAPITAL MODIFICATIONS.	134
(A)	Directed Capital Modifications and Compensation Adjustment Events	134
(B)	Project Company-Requested Capital Modifications	134

ARTICLE 12

CONTRACTING AND LABOR PRACTICES

Section 12.1.	USE OF PROJECT CONTRACTORS AND SUBCONTRACTORS.....	135
(A)	Project Contractors and Subcontractors.....	135
(B)	Bonds	135
(C)	Use of Project Contractors and Key Individuals	135
(D)	Restricted Persons.....	135
(E)	Water Authority Access to and Communications with Project Contractors	135
(F)	Incentive Compensation Payable to Operating Service Provider	136
Section 12.2.	PROJECT CONTRACTS AND SUBCONTRACTS.	136
(A)	Terms and Actions	136
(B)	Indemnity for Claims	136
(C)	Assignability	136
Section 12.3.	PROJECT CONTRACTS.	136
(A)	Water Authority Consents	136
(B)	Timeframe for Consents.....	137
(C)	Costs of Request for Consent	137
Section 12.4.	REPLACEMENT PROJECT CONTRACTS.	137
Section 12.5.	DELIVERY OF AMENDED OR REPLACEMENT PROJECT CONTRACTS.....	138
Section 12.6.	LABOR RELATIONS AND DISPUTES.	138
(A)	Labor Relations	138
(B)	Labor Disputes.....	138

ARTICLE 13

INSURANCE, DAMAGE AND DESTRUCTION

Section 13.1.	INSURANCE.....	139
(A)	Required Insurance	139
(B)	Project Contractors and Subcontractors.....	139
(C)	Compliance with Insurer Requirements	139
(D)	Proof of Insurance Coverage	139
(E)	Failure to Provide Insurance Coverage	139
(F)	Reductions for Insurance Proceeds and Insurance Receivables	139
Section 13.2.	PROTECTION OF PROJECT AND PRIVATE PROPERTY FROM LOSS, DAMAGE AND DESTRUCTION.....	140
(A)	Protection	140
(B)	Repair of Property	140
Section 13.3.	WATER PURCHASE AGREEMENT NOT AFFECTED BY DAMAGE OR DESTRUCTION.....	140

ARTICLE 14

UNCONTROLLABLE CIRCUMSTANCE PROCEDURES

Section 14.1.	UNCONTROLLABLE CIRCUMSTANCES GENERALLY.	141
(A)	Extent of Relief Available to the Project Company	141
(B)	Mitigation Given Effect	141
(C)	Applicable Law Compliance	141
Section 14.2.	PROCEDURES UPON THE OCCURRENCE OF AN UNCONTROLLABLE CIRCUMSTANCE.	141

(A)	Notice and Written Report	141
(B)	Updates	141
(C)	Submittal of Relief Request.....	142
(D)	Delay in Notification	142
(E)	Multiple and Overlapping Claims	142
(F)	Burden of Proof and Mitigation	142
(G)	Resumption of Performance	142
(H)	Project Company Information	142
(I)	Water Authority Response	142
(J)	Agreement or Dispute.....	142

ARTICLE 15

INSURABLE AND UNINSURABLE FORCE MAJEURE EVENTS

Section 15.1.	INSURABLE FORCE MAJEURE EVENTS.....	143
(A)	Project Company Reinstatement	143
(B)	Schedule and Performance Relief	143
(C)	No Compensation Relief.....	143
(D)	Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration	143
(E)	Water Authority Remedies and Termination Right	143
(F)	Earthquakes	144
Section 15.2.	UNINSURABLE FORCE MAJEURE EVENTS.....	144
(A)	Project Company Reinstatement	144
(B)	Schedule and Performance Relief	144
(C)	Compensation for Uninsurable Force Majeure Events Occurring Prior to the Commercial Operation Date.....	144
(D)	Compensation Relief for Uninsurable Force Majeure Events Occurring On and After the Commercial Operation Date	145
(E)	Disaster Relief Funds	145
(F)	Financing Unavailability Following an Uninsurable Force Majeure Event	145
Section 15.3.	PROJECT COMPANY'S OBLIGATIONS UPON MATERIAL DAMAGE OR DESTRUCTION.....	145
(A)	Draft Reinstatement Plan	145
(B)	Comment on Draft Reinstatement Plan	145
(C)	Reinstatement Plan	146
(D)	Reinstatement Plan Details.....	146
Section 15.4.	STANDARDS OF REPLACEMENT, REPAIR OR RECONSTRUCTION.	146
Section 15.5.	UNAVAILABILITY OF REQUIRED INSURANCE.	146

ARTICLE 16

CHANGE IN LAW EVENTS AND OTHER UNCONTROLLABLE CIRCUMSTANCES

Section 16.1.	CHANGE IN LAW EVENTS.....	147
(A)	Schedule and Performance Relief.....	147
(B)	Compensation Relief for Changes Occurring Prior to the Commercial Operation Date.....	147
(C)	Compensation Relief for Changes On or After the Commercial Operation Date.....	147
(D)	Financing Unavailability Following a Change in Law Event.....	148
Section 16.2.	DISCRIMINATORY OR SPECIFIED CHANGES IN TAX LAW.....	148
(A)	Changes Prior to the Commercial Operation Date.....	148

	(B) Changes On or After the Commercial Operation Date	148
Section 16.3.	OTHER UNCONTROLLABLE CIRCUMSTANCES.	148
	(A) Schedule and Performance Relief	148
	(B) Compensation for Other Uncontrollable Circumstances Occurring Prior to the Commercial Operation Date.....	148
	(C) Compensation Relief for Other Uncontrollable Circumstances Occurring On and After the Commercial Operation Date	149
	(D) Financing Unavailability Following an Other Uncontrollable Circumstance.....	149

ARTICLE 17

MONTHLY WATER PURCHASE PAYMENTS

Section 17.1.	PAYMENTS GENERALLY.	150
	(A) Monthly Water Purchase Payments Following the Commercial Operation Date.....	150
	(B) Limitation on Payments	150
Section 17.2.	MONTHLY DELIVERY RECORDS.	150
	(A) Monthly Product Water Deliveries	150
	(B) Monthly Demand Shortfall Units	150
	(C) Monthly Supply Shortfall Units.....	150
	(D) Base Product Water Deliveries	150
	(E) Additional Product Water Deliveries	150
	(F) Excess Product Water Deliveries	151
Section 17.3.	EXCUSED SUPPLY SHORTFALL UNIT TRACKING ACCOUNT AND EXCUSED DEMAND SHORTFALL UNIT TRACKING ACCOUNT.....	151
	(A) Account Establishment, Maintenance and Use.....	151
	(B) Changes to the Excused Demand Shortfall Unit Tracking Account Balance.....	151
	(C) Changes to the Excused Supply Shortfall Unit Tracking Account Balance.....	152
Section 17.4.	CAPITAL CHARGES.....	152
	(A) Debt Service Charge	152
	(B) Equity Return Charge.....	153
Section 17.5.	OPERATING CHARGES.	153
	(A) Fixed Operating Charge.....	153
	(B) Variable Operating Charge.....	153
Section 17.6.	ELECTRICITY CHARGES.....	153
	(A) Fixed Electricity Charge.....	153
	(B) Variable Electricity Charge	153
Section 17.7.	UNIT PRICES.	153
	(A) Fixed Unit Price.....	153
	(B) Variable Unit Price	153
	(C) Excess Product Water Deliveries Incentive Unit Price	153
Section 17.8.	MONTHLY WATER PURCHASE PAYMENTS.....	153
	(A) Monthly Payments.....	153
	(B) Annual Tracking Account Reduction Charge Applicable to July Monthly Payments.....	154
Section 17.9.	ANNUAL TRACKING ACCOUNT REDUCTION CHARGE.	154
	(A) Annual Tracking Account Reduction Charge	154
	(B) Annual Excused Demand Shortfall Unit Tracking Account Reduction Charge.....	154
	(C) Annual Excused Supply Shortfall Unit Tracking Account Reduction Charge.....	154

Section 17.10.	ANNUAL ADJUSTED SUPPLY COMMITMENT TRUE-UP PAYMENT BY THE PROJECT COMPANY.....	155
	(A) Annual Adjusted Supply Commitment True-Up Payment.....	155
	(B) No Offset	155
	(C) Subordination	155
Section 17.11.	DEDUCTIONS CREDIT.	155
Section 17.12.	DIRECT PAYMENTS.	155
Section 17.13.	FORM OF COMPENSATION ADJUSTMENTS FOR EVENTS OCCURRING AFTER THE CONTRACT DATE.	155
	(A) General	155
	(B) Adjustments to the Unit Price	156
	(C) Direct Payments	157
	(D) Lump Sum Payments for Directed Capital Modification Capital Costs and Compensation Adjustment Event Capital Costs	158
Section 17.14.	CAP ON INCREASES IN THE UNIT PRICE DUE TO UNCONTROLLABLE CIRCUMSTANCES.	158
	(A) Baseline Unit Price	158
	(B) Baseline Unit Price Cap	158
	(C) Recordkeeping.....	158
Section 17.15.	BILLING AND PAYMENT.	159
	(A) Invoicing and Monthly Water Purchase Payment Due Date	159
	(B) Late Annual Monthly Water Purchase Payments	159
Section 17.16.	ESTIMATES AND ADJUSTMENTS.....	159
	(A) First and Last Billing Periods	159
	(B) Budgeting	159
Section 17.17.	ANNUAL SETTLEMENT.	159
Section 17.18.	TAXES.	160
Section 17.19.	RISK OF ADVERSE TAX OR ACCOUNTING TREATMENT.	160
Section 17.20.	COST SUBSTANTIATION FOR ADDITIONAL WORK REQUIRED DUE TO DIRECTED CAPITAL MODIFICATIONS AND COMPENSATION ADJUSTMENT EVENTS.	161
	(A) General	161
	(B) Negotiated Price Based on Expected Costs	161
	(C) Price Payable Based on Incurred Costs	161
	(D) Competition Practices.....	161
	(E) Cost Substantiation Certificate	161
	(F) Evidence of Costs Incurred	162
	(G) Mark-Ups.....	162
Section 17.21.	WATER AUTHORITY'S RIGHT OF SET OFF.	162
Section 17.22.	BILLING STATEMENT DISPUTES.....	162
Section 17.23.	INTEREST ON OVERDUE AMOUNTS.	162

ARTICLE 18

DISPUTE RESOLUTION

Section 18.1.	FORUM FOR DISPUTE RESOLUTION.	164
	(A) Court Jurisdiction	164
	(B) Disputes as to Provisional Acceptance	164
Section 18.2.	NON-BINDING MEDIATION.	164
	(A) Rights to Request and Decline	164
	(B) Procedure	164
	(C) Non-Binding Effect	164
	(D) Relation to Judicial Legal Proceedings.....	164

ARTICLE 19

REMEDIES OF THE PARTIES AND WATER AUTHORITY STEP-IN RIGHTS

Section 19.1.	REMEDIES FOR BREACH.	165
Section 19.2.	WATER AUTHORITY'S TEMPORARY STEP-IN RIGHTS.....	165
Section 19.3.	NOTICE OF CAPITAL MODIFICATION.	165
Section 19.4.	NO EFFECT ON CONTRACT OBLIGATIONS.	166
Section 19.5.	ALLOCATION OF COSTS FOR WATER AUTHORITY'S EXERCISE OF STEP-IN RIGHTS.	166
Section 19.6.	WAIVER OF REMEDIES.	166
Section 19.7.	EXERCISE OF REMEDIES.....	166
	(A) Remedies Cumulative	166
	(B) Similar Rights and Remedies	166
	(C) Single or Partial Exercise of Remedies.....	166
Section 19.8.	NO DUPLICATIVE RECOVERY OR CLAIMS OUTSIDE CONTRACT.	166
Section 19.9.	NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.	167

ARTICLE 20

PROJECT COMPANY EVENTS OF DEFAULT

Section 20.1.	PROJECT COMPANY EVENTS OF DEFAULT.....	168
	(A) Project Company Events of Default Defined	168
	(B) Project Company Remediable Breach Defined	168
	(C) Project Company Persistent Breach Defined	169
	(D) Project Company Bankruptcy-Related Event Defined.....	169
Section 20.2.	NOTIFICATION BY THE PROJECT COMPANY.	170
Section 20.3.	PROJECT COMPANY REMEDIABLE BREACH CURE AND REMEDIAL PROGRAM.....	170
	(A) Notice and Remedy or Remedial Program	170
	(B) Water Authority Acceptance or Non-Acceptance	171
	(C) Remediable Program Limited to Project Company Remediable Breaches	171
Section 20.4.	WATER AUTHORITY TERMINATION RIGHT.	171
	(A) Termination Right	171
	(B) Collateral Agent's Remedies Agreement	171

ARTICLE 21

WATER AUTHORITY EVENTS OF DEFAULT

Section 21.1.	WATER AUTHORITY EVENTS OF DEFAULT.....	172
Section 21.2.	PROJECT COMPANY OPTIONS UPON A WATER AUTHORITY EVENT OF DEFAULT.	172
	(A) Notice	172
	(B) Remediable Water Authority Events of Default	172
	(C) Non-Remediable Water Authority Events of Default	173
	(D) Other Rights Upon Water Authority Non-Compliance	173

ARTICLE 22

TERMINATION

Section 22.1.	TERMINATION RIGHTS.	174
(A)	Water Authority Termination Rights	174
(B)	Project Company Termination Rights	174
(C)	Extent of Termination Rights	175
(D)	Termination Date	175
(E)	Continued Performance	175
(F)	Completion or Continuance by Water Authority	175

ARTICLE 23

WATER AUTHORITY PROJECT ASSETS PURCHASE OPTIONS

Section 23.1.	PROJECT ASSETS PURCHASE OPTION DURING THE TERM.	176
(A)	Option	176
(B)	Project Assets Purchase Price	176
Section 23.2.	PROJECT ASSETS PURCHASE OPTION IN THE EVENT OF FINANCING UNAVAILABILITY.....	176
Section 23.3.	PROJECT ASSETS PURCHASE OPTION UPON A PROJECT COMPANY EVENT OF DEFAULT.....	176
Section 23.4.	PROJECT ASSETS PURCHASE OPTION AT THE EXPIRATION DATE.	177
Section 23.5.	PURCHASE OPTION PROCEDURES.....	177
(A)	Notice of Exercise of Project Assets Purchase Option	177
(B)	Notice of Intent Required for Certain Purchase Options	177
(C)	Project Company Notice and Determination	177
(D)	Adequacy of Project Assets Purchase Price	178
(E)	Reliance on Plant Bondholders and Approved Permitted Debt Holders Certification.....	178
(F)	Termination	178
Section 23.6.	CONVEYANCE.....	178
(A)	Project Assets.....	178
(B)	Condition of Project Assets Upon Conveyance	178
(C)	Project Liabilities.....	178
(D)	Intellectual Property Rights	178
Section 23.7.	FULL SETTLEMENT; ANTECEDENT AND POST-TERMINATION LIABILITIES.	179
Section 23.8.	ADDITIONAL OBLIGATIONS UPON PROJECT ASSETS PURCHASE.	179
(A)	Transfer Responsibilities	179
(B)	No Additional Compensation	180
Section 23.9.	TRANSITIONAL ARRANGEMENTS.....	180
Section 23.10.	PROJECT COMPANY TO COOPERATE.	181
Section 23.11.	RECORDING.	181

ARTICLE 24

ASSIGNMENT AND CHANGE IN CONTROL

Section 24.1.	LIMITATION ON ASSIGNMENT BY PROJECT COMPANY.	182
Section 24.2.	LIMITATIONS ON CHANGE IN CONTROL.	182
(A)	Change in Control Defined.....	182
(B)	Limitations.....	183

Section 24.3.	FACTORS THE WATER AUTHORITY MAY CONSIDER.	184
Section 24.4.	LIMITATION ON ASSIGNMENT BY THE WATER AUTHORITY.....	184
Section 24.5.	COSTS OF REQUEST FOR CONSENT.	184

ARTICLE 25

INDEMNIFICATION

Section 25.1.	PROJECT COMPANY'S OBLIGATION TO INDEMNIFY.	185
Section 25.2.	INDEMNIFICATION PROCEDURES.	186
(A)	Notice	186
(B)	Project Company Right to Dispute Claim.....	186
(C)	Conflicts of Interest	186
(D)	Rights and Duties of the Parties.....	186
(E)	Water Authority Indemnatee Rights to Conduct Defense	187
(F)	Transfer of Conduct of Claim to Water Authority Indemnatee	187
(G)	Infringement of Intellectual Property Rights	187

ARTICLE 26

MISCELLANEOUS PROVISIONS

Section 26.1.	COVENANT AGAINST SALE OF THE PLANT.	188
Section 26.2.	RELATIONSHIP OF THE PARTIES.	188
Section 26.3.	NO OTHER BUSINESS.	188
Section 26.4.	GENERAL PROJECT COMPANY ASSUMPTION OF RISK.	188
Section 26.5.	GENERAL DUTY TO MITIGATE.	188
(A)	Mitigation by the Project Company	188
(B)	Mitigation by the Water Authority	188
Section 26.6.	OPPORTUNITIES.	189
Section 26.7.	CONTRACT ADMINISTRATION.....	189
(A)	Authority of Water Authority Representative	189
(B)	Operating Notices	189
(C)	Administrative Communications	189
(D)	Contract Administration Memoranda	190
(E)	Procedure	190
(F)	Effect	190
Section 26.8.	WATER PURCHASE AGREEMENT AMENDMENTS.	190
(A)	Amendments Generally	190
(B)	Water Purchase Agreement Amendments and Contract Administration Memoranda	190
Section 26.9.	WATER AUTHORITY APPROVALS AND CONSENTS.....	191
Section 26.10.	DISCLOSED DATA.	191
Section 26.11.	PROPERTY RIGHTS.....	191
(A)	Protection from Infringement	191
(B)	Intellectual Property Developed by the Project Company.....	192
Section 26.12.	ACTIONS OF THE WATER AUTHORITY IN ITS GOVERNMENTAL CAPACITY.	193
Section 26.13.	WATER AUTHORITY'S CONFIDENTIALITY OBLIGATIONS.	193
(A)	General	193
(B)	Disclosable Information	193
(C)	Non-Disclosable Information.....	194
(D)	Use of Confidential Project Company Information by Water Authority's Professional Advisers and Consultants	194

	(E) Procedures Upon Third Party Requests for Confidential Project Company Information.....	195
	(F) Equitable Relief.....	195
Section 26.14.	PROJECT COMPANY'S CONFIDENTIALITY OBLIGATIONS.....	195
	(A) Confidential Water Authority Information	195
	(B) Security Plan.....	195
	(C) Equitable Relief.....	195
Section 26.15.	PERSONAL INFORMATION.	195
Section 26.16.	COMPLIANCE WITH MATERIAL AGREEMENTS.	196
Section 26.17.	BINDING EFFECT.	196
Section 26.18.	CONSENTS.	196
Section 26.19.	NOTICES.....	196
	(A) Procedure	196
	(B) Water Authority Notice Address	197
	(C) Project Company Notice Address.....	197
Section 26.20.	NOTICE OF LITIGATION.	197
Section 26.21.	FURTHER ASSURANCES.....	198
Section 26.22.	CONTRACTOR LICENSE AND COMPLAINT INFORMATION.....	198
	(A) Owner's License	198
	(B) Notice Regarding California Contractors.....	198
Section 26.23.	NO PUBLIC UTILITY.	198
Section 26.24.	FORWARD CONTRACT.	198

TRANSACTION FORMS

TRANSACTION FORM A	LETTER OF CREDIT
TRANSACTION FORM B	COLLATERAL AGENT'S REMEDIES AGREEMENT
TRANSACTION FORM C	PROJECT CONTRACTOR COLLATERAL AGREEMENT

APPENDICES

APPENDIX 1	DESCRIPTION OF THE PLANT SITE
APPENDIX 2	GOVERNMENTAL APPROVALS
APPENDIX 3	PROJECT DESIGN AND CONSTRUCTION WORK
APPENDIX 4	MECHANICAL COMPLETION REQUIREMENTS
APPENDIX 5	MINIMUM PERFORMANCE CRITERIA AND PERFORMANCE TESTING
APPENDIX 6	OPERATING AND MAINTENANCE STANDARDS
APPENDIX 7	INSURANCE REQUIREMENTS
APPENDIX 8	SUPPLEMENTAL PERFORMANCE GUARANTEE REQUIREMENTS
APPENDIX 9	ELECTRICITY CHARGE
APPENDIX 10	SCHEDULES RELATING TO THE MONTHLY WATER PURCHASE PAYMENTS
APPENDIX 11	END OF TERM PROJECT CONDITION REQUIREMENTS
APPENDIX 12	PROJECT ASSETS AND LIABILITIES
APPENDIX 13	WATER AUTHORITY IMPROVEMENTS
APPENDIX 14	PROJECT COMPANY AND PROJECT CONTRACTOR INFORMATION
APPENDIX 15	PUBLIC COMMUNICATIONS
APPENDIX 16	LITIGATION
APPENDIX 17	LIST OF CERTAIN DOCUMENTS PROVIDED BY THE PROJECT COMPANY
APPENDIX 18	WATER AUTHORITY'S DISCRIMINATION/HARASSMENT PROHIBITION POLICY

CARLSBAD SEAWATER DESALINATION PROJECT
WATER PURCHASE AGREEMENT

This CARLSBAD SEAWATER DESALINATION PROJECT WATER PURCHASE AGREEMENT is entered into as of _____, 2012, between the San Diego County Water Authority (the "Water Authority") and Poseidon Resources (Channelside) LP, a limited partnership organized and existing under the laws of the State of California (the "Project Company").

In consideration of the mutual covenants herein, the parties hereto, intending to be legally bound, covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

As used in this Water Purchase Agreement, the following capitalized terms have the meanings set forth below. Certain words and expressions are defined within the Appendices hereto, and such definitions shall apply, unless the context otherwise requires, in all other parts of this Water Purchase Agreement whether or not this Article contains a cross-reference to such definitions.

“Acceptable Disposal Site” has the meaning set forth in subsection 9.18(B) (Acceptable Disposal Site).

“Acre Foot” means 43,560 cubic feet, which is equal to 325,851.42 U.S. gallons.

“Additional Pipeline Bonds” means any Pipeline Bonds other than the Initial Pipeline Bonds.

“Additional Plant Bonds” means any Plant Bonds other than the Initial Plant Bonds.

“Additional Product Water Deliveries” has the meaning set forth in subsection 17.2(E).

“Additional Product Water Quality Standards” has the meaning set forth in subsection 9.2(B) (Additional Product Water Quality Standards).

“Adjusted Annual Supply Commitment” has the meaning set forth in subsection 9.3(D) (Adjusted Annual Supply Commitment).

“Adjusted Monthly Supply Commitment” has the meaning set forth in subsection 9.5(B) (Adjusted Monthly Supply Commitment Defined).

“Administrative Code” means the Water Authority’s administrative code containing regulations adopted by the board of directors of the Water Authority and governing Water Authority property, contracts, business, operations and other matters, as in effect from time to time.

“Affiliate”, in respect of a person means any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person, where “control” means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such person. Affiliates of the Project Company include Poseidon Water LLC.

“Agua Hedionda Lagoon” means the approximately 230 acre lagoon in the City of Carlsbad, California extending 1.7 miles to Highway 101/Carlsbad Boulevard and the State coast, and discharging into the Pacific Ocean.

“Allowable Ordinary Flow Rates” has the meaning set forth in subsection 9.8(C) (Modified Firm Daily Demand Schedule and Allowable Ordinary Flow Rates).

“Annual Adjusted Supply Commitment True-Up Payment” has the meaning set forth in subsection 17.10(A) (Payment).

“Annual Equity Return Target Amounts” means the amounts for each Contract Year set forth in Table 1.2 (Equity Return Charge) of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments).

“Annual Excused Demand Shortfall Unit Tracking Account Reduction Charge” has the meaning set forth in subsection 17.9(B) (Annual Excused Demand Shortfall Unit Tracking Account Reduction Charge).

“Annual Excused Supply or Demand Shortfall Units” means, for any Contract Year, the sum of any Monthly Excused Supply Shortfall Units and Monthly Excused Demand Shortfall Units occurring in such Contract year.

“Annual Excused Supply Shortfall Unit Tracking Account Reduction Charge” has the meaning set forth in subsection 17.9(C) (Annual Excused Supply Shortfall Unit Tracking Account Reduction Charge).

“Annual Excused Supply Shortfall Units True-Up Charge” has the meaning set forth in subsection 9.11(F)(2) (Annual Excused Supply Shortfall Units True-Up Charge).

“Annual Operating Period Shortfall Payment True-Up Payment” has the meaning set forth in subsection 9.11(F)(5) (Annual Operating Period Shortfall Payment True-Up Payment).

“Annual Settlement Statement” has the meaning set forth in Section 17.17 (Annual Settlement).

“Annual Tracking Account Reduction Charge” has the meaning set forth in Section 17.9(A) (Annual Tracking Account Reduction Charge).

“Annual Unexcused Demand Shortfall Units” means, for any Contract Year, the sum of any Monthly Unexcused Demand Shortfall Units occurring in such Contract Year.

“Annual Unexcused Supply Shortfall Units” means, for any Contract Year, the sum of any Monthly Unexcused Supply Shortfall Units occurring in such Contract Year.

“Annual Unexcused Supply Shortfall Units True-Up Charge” has the meaning set forth in subsection 9.11(F)(1) (Annual Unexcused Supply Shortfall Units True-Up Charge).

“Annual Unscheduled Outage Units Allowance” means, for any Contract Year, 1,630 Units, multiplied by the Supply Commitment Reduction Percentage.

“Annual Water Purchase Payment True-Up Amount” has the meaning set forth in Section 17.9 (Annual Water Purchase Payment True-Up Amount).

“Appendix” means any of the Appendices and, as applicable, any schedules and attachments thereto, that are appended to this Water Purchase Agreement and identified as such in the Table of Contents.

“Applicable Law” means:

- (1) Any federal, State or local law, statute, code or regulation;
- (2) Any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; and
- (3) Any Governmental Approval,

in each case having the force of law and applicable from time to time to the Project.

“Approved Permitted Debt” has the meaning set forth in subsection 6.1(E) (Permitted Debt Other than Plant Bonds).

“Asset Registry” has the meaning set forth in Appendix 6 (Operating and Maintenance Standards).

“Assumed Liabilities” has the meaning set forth in Section 12.4 of Appendix 12 (Project Assets and Liabilities).

“Avoidable Costs”, when used in relation to an event or circumstance, means all costs and expenditures which:

- (1) Are saved or avoided as a result of, or in responding to, the event or circumstance or its effects; or
- (2) If the Project Company acted reasonably and in accordance with this Water Purchase Agreement (including subsection 26.5(A) (Mitigation by the Project Company), would have been saved or avoided as a result of, or in responding to, the event or circumstance or its effects.

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time, and any successor statute thereto. “Bankruptcy Law” also includes any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

“Base Product Water Deliveries” has the meaning set forth in subsection 17.2(D)(Base Product Water Deliveries).

“Baseline Unit Price” has the meaning set forth in subsection 17.14(A) (Baseline Unit Price).

“Baseline Unit Price Cap” has the meaning set forth in subsection 17.14(B) (Baseline Unit Price Cap).

“Billing Period” means each month of a Contract Year, except that:

(1) The first Billing Period of the first Contract Year shall begin on the Commercial Operation Date and shall continue to the last day of the month in which the Commercial Operation Date occurs, and

(2) The last Billing Period of the last Contract Year shall end on the last day of the Term.

Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

“Blended Water” means Product Water and the TOVWTP Treated Water, as blended together in the TOVWTP Clearwell.

“Board of Directors” means the board of directors of the Water Authority.

“Bond Purchase Agreement” means the Bond Purchase Agreement, dated _____, between the CPCFA, the Project Company and Barclays Capital, Inc. relating to the Initial Plant Bonds.

“Business Day” means a day other than a Saturday, Sunday or an official Water Authority holiday.

“Cabrillo” means Cabrillo Power I, LLC, a limited liability organized and existing under the laws of the State of Delaware, and a subsidiary of NRG Energy, Inc., a corporation organized and existing under the laws of the State of Delaware.

“Cabrillo Entities” means Cabrillo, its Affiliates, any of their respective successors or assigns, and any subsequent owner of the Cabrillo Generating Facility or Cabrillo Generating Facility Site, and their respective successors and assigns.

“Cabrillo Generating Facility” means the existing electric power generating facility owned and operated by Cabrillo and located at the Cabrillo Generating Facility Site.

“Cabrillo Generating Facility Site” means the real property described in Appendix 1 (Description of the Plant Site) located in the City of Carlsbad, California on which the Cabrillo Generating Facility is located.

“Cabrillo Ground Lease” means the Second Amended and Restated Ground Lease and Easement Agreement, dated as of April 7, 2010, between Cabrillo and the Project Company, as amended pursuant to the First Amendment, dated as of October 5, 2010; the Second Amendment, dated as of December 14, 2011; the Third Amendment, dated as of February 10, 2012; the Fourth Amendment, dated as of March 23, 2012; the Fifth Amendment, dated as of April 24, 2012; the Sixth Amendment, dated as of May 15, 2012; the Seventh Amendment, dated as of June 19, 2012; the Eighth Amendment, dated as of July 31, 2012; and the Ninth Amendment, dated as of August 9, 2012.

“Cabrillo Raw Seawater Intake Structure” means the existing structure currently used for the intake of seawater for the Cabrillo Generating Facility.

“Cabrillo Raw Seawater Intake System” means the Cabrillo Raw Seawater Intake Structure, and the system of pipes, pumps, equipment, improvements and other assets

at the Cabrillo Generating Facility required for the conveyance of Raw Seawater from the Cabrillo Raw Seawater Intake Structure to the Raw Seawater Delivery Point.

“Cabrillo Raw Seawater Intake System Improvements” has the meaning set forth in Section 4.8 (Cabrillo Raw Seawater Intake System Improvements).

“California Public Records Act” means the California Public Records Act (California Government Code Section 6250 and following).

“Capital Charge” means the sum of the Debt Service Charge and the Equity Return Charge.

“Capital Expenditure” means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP.

“Capital Modification” has the meaning set forth in Section 11.1 (Capital Modifications Generally).

“CDPH” means the California Department of Public Health, or any predecessor or successor agency.

“CEQA” means the California Environmental Quality Act, California Public Resources Code Section 21000 et seq., and applicable regulations and guidelines promulgated thereunder, each as amended from time to time.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“CFS” means cubic feet per second.

“Change in Control” has the meaning set forth in subsection 24.2(A) (Change in Control Defined).

“Change in Law Event” means the following:

(1) Inclusions. The coming into effect of:

(a) Any Applicable Law enacted after the Contract Date; or

(b) Any modification (including repeal) of any Applicable Law existing on the Contract Date that comes into effect after the Contract Date;

(in either case, that is generally applicable to water treatment facilities, treated water quality or wastewater discharges and compliance with which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays or increases the cost of performing the Contract Obligations); or

(c) Any (i) Applicable Law enacted after the Contract Date or any modification (including repeal) of any Applicable Law existing on the Contract Date that comes into effect after the Contract Date requiring the closure of the once-through cooling facilities at the Cabrillo Generating Facility, or (ii) demand or delay by any Governmental Body in issuing a required Governmental

Approval for the Cabrillo Raw Seawater Intake System Improvements, in either case as and to the extent provided in Section 4.8 (Cabrillo Raw Seawater Intake System Improvements); or

(d) A CDPH permitting delay, as and to the extent provided in subsection 4.4(G) (Extension of the Scheduled Commercial Operation Date for Certain CDPH Permitting Delays); or

(e) A delay in the issuance of, or the imposition of terms or conditions in, any Governmental Approval that results directly from any Change in Law Event described in items (a) or (b) above with respect to Applicable Law described in items (1) or (2) of the definition of Applicable Law.

(2) Relief Limitations. The relief to which the Project Company is entitled upon a Change-in-Law Event described in items (c) and (d) above is limited as provided respectively in Section 4.8 (Cabrillo Raw Seawater Intake System Improvements) and subsection 4.4(G) (Extension of the Scheduled Commercial Operation Date for Certain CDPH Permitting Delays). Except as provided in subsection 4.8(B) (Obligation to Construct Cabrillo Raw Seawater Intake System Improvements Constitutes a Change in Law; Limitations), the Project Company shall not be entitled to an adjustment of the Unit Price or any other compensation relief upon the occurrence of any of the events referred to in this subsection (2) (Relief Limitations).

(3) Exclusions. It is specifically understood that none of the following shall constitute a “Change in Law Event”:

(a) Any law, statute, code or regulation that has been enacted or adopted on or before the Contract Date to take effect after the Contract Date;

(b) The denial, delay in issuance of, or imposition of any term or condition in connection with, any Governmental Approval required for the Contract Obligations, except as provided in items (1)(c), (d) or (e) above;

(c) A change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was in effect as of the Contract Date;

(d) Changes in or denials of Governmental Approvals in consequence of the enforcement, lapse or invalidation of an existing Governmental Approval, unless due to an act, event or circumstance described in items 1(a) or (b) above;

(e) Any increase in any fines or penalties provided for under Applicable Law in effect as of the Contract Date;

(f) Any act, event or circumstance that would otherwise constitute a Change in Law Event but that does not change the requirements imposed on the Project Company by the Contract Standards in effect as of the Contract Date;

(g) Any change in Tax Law (except that the Project Company shall be entitled to relief on account of a Discriminatory Change in Tax Law or a Specified Change in Tax Law as and to the extent provided in Section 16.2 (Discriminatory or Specified Changes in Tax Law); or

(h) Any Applicable Law enacted after the Contract Date or any modification (including repeal) of any Applicable Law existing on the Contract Date that comes into effect after the Contract Date affecting the Cabrillo Generating Facility other than a Change in Law Event described in item (1)(c) of the Change in Law Event inclusions described above.

“Charge” means the Debt Service Charge, the Equity Return Charge, the Fixed Operating Charge, the Variable Operating Charge, the Fixed Electricity Charge and the Variable Electricity Charge, as applicable.

“Chief Operator” has the meaning set forth in subsection 8.2(A) (Project Company’s Chief Operator).

“City” means The City of Carlsbad, California.

“CMMS” has the meaning set forth in Section 10.5 (Computerized Maintenance Management System).

“Collateral Agent” means Union Bank of California, N.A. or any successor fiduciary institution serving as collateral agent from time to time under the Collateral Trust Agreement.

“Collateral Agent’s Remedies Agreement” means the Collateral Agent’s Remedies Agreement, dated _____, 2012, between the Water Authority, the Collateral Agent and the Project Company, executed substantially in the form set forth in Transaction Form B (Collateral Agent’s Remedies Agreement).

“Collateral Trust Agreement” means the Collateral Trust Agreement to be entered into between the Project Company, the Collateral Agent, the Plant Trustee and the Pipeline Trustee with respect to the Plant Bonds and the Pipeline Bonds.

“Commercial Operation Date” means the date on which Provisional Acceptance of the Project occurs or is deemed to have occurred under Article 7 (Provisional Acceptance).

“Commissioning Plan” has the meaning set forth in Section 7.1(B) (Commissioning Plan) of Appendix 4 (Mechanical Completion Requirements).

“Compensation Adjustment Event” means the occurrence of an Uninsurable Force Majeure Event, a Change in Law Event, or an Other Uncontrollable Circumstance.

“Compensation Adjustment Event Capital Costs” means the permitting, design, construction and related administration costs of modifying or reinstating the Plant that directly result from the occurrence of a Compensation Adjustment Event.

“Compensation Adjustment Event Financing” means a financing by the Project Company of Compensation Adjustment Event Capital Costs effected pursuant to subsection 6.3(A) (Compensation Adjustment Event Capital Costs).

“Concentrate Discharge” means any process wastewater produced at the Plant.

“Confidential Project Company Information” means any information that the Water Authority may not disclose or make public under Section 26.14 (Project Company’s Confidentiality Obligations).

“Confidential Water Authority Information” means any information that the Project Company may not disclose or make public under Section 26.13 (Water Authority’s Confidentiality Obligations).

“Construction Governmental Approvals” means all Governmental Approvals required from time to time during the Construction Period for the commencement and continuance of the Construction Work, excluding the Project Company New Domestic Water Supply Permit.

“Construction Period” means the period from and including the Contract Date through the Commercial Operation Date.

“Construction Period Shortfall Payments” has the meaning set forth in the Product Water Pipeline Improvement Design-Build Agreement.

“Construction Quality Management Plan” means the Project Company’s plan for quality assurance and quality control in implementing the Construction Work to be developed in accordance with the requirements set forth in subsection 3.12.4 (Construction Quality Management Plan) of Appendix 3 (Project Design and Construction Work).

“Construction Superintendent” has the meaning specified in Appendix 3 (Project Design and Construction Work).

“Construction Work” means everything required to be furnished and done for and relating to the design, construction and commissioning of the Project by the Project Company pursuant to this Water Purchase Agreement prior to the date of Project Completion.

“Contract Administration Memorandum” has the meaning set forth in subsection 26.7(D) (Contract Administration Memoranda).

“Contract Date” means the date this Water Purchase Agreement is executed and delivered by the parties hereto.

“Contract Obligations” means everything required to be furnished and done for and relating to the permitting, design, construction, financing, operation and maintenance of the Project and the production and delivery of Product Water by the Project Company pursuant to this Water Purchase Agreement.

“Contract Services” means the Construction Work and Operating Work.

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by:

- (1) Applicable Law;
- (2) The Design Requirements;
- (3) Good Design and Construction Practice;
- (4) The Major Repair and Replacement Plan;

- (5) The Performance Guarantees;
- (6) The Operating and Maintenance Standards;
- (7) Good Management Practice;
- (8) The Construction Quality Management Plan;
- (9) Applicable written equipment manufacturers' specifications;
- (10) Applicable Insurance Requirements; and
- (11) Any other standard, term, condition or requirement specifically provided in this Water Purchase Agreement to be observed by the Project Company.

Subsection 1.2(U) (Applicability, Stringency and Consistency of Contract Standards) shall govern issues of interpretation related to the applicability and stringency of the Contract Standards.

"Contract Year" means each of:

- (1) The period from the Contract Date to the next June 30th;
 - (2) Each subsequent period of 12 calendar months commencing on July 1st;
- and
- (3) The period from July 1st in the year in which this Water Purchase Agreement expires or is terminated (for whatever reason) to and including the Termination Date.

Any computation made or requirement established on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

"Contracted Shortfall Payments" means the Construction Period Shortfall Payments and the Operating Period Shortfall Payments.

"Cost Substantiation" has the meaning described in Section 17.20 (Cost Substantiation for Additional Work Required Due to Directed Capital Modifications and Compensation Adjustment Events).

"County" means The County of San Diego, California.

"CPCFA" means the California Pollution Control Financing Authority, a political subdivision and political instrumentality of the State.

"Debt Service Charge" has the meaning set forth in Section 17.4 (Capital Charges).

"Deductions" means those deductions from the otherwise applicable Monthly Water Purchase Payments that the Water Authority is permitted to take as offsets on account of: (1) the delivery of Off-Specification Water, pursuant to subsection 9.2(E) (Remedies for Breach of Product Water Quality Guarantee, and (2) Drought Shortfall Payments, pursuant to Section 9.12 (Drought Shortfall Payments).

“Deductions Credit” has the meaning set forth in Section 17.10 (Deductions Credit).

“Design Documents” means the Project Company’s plans, drawings, shop drawings, record drawings, specifications, sketches, graphic representations, calculations, electronic files and other design documents prepared in connection with the Construction Work.

“Design Requirements” means the design requirements for the Plant set forth in Appendix 3, Attachments 3A (Basic Design Requirements) of Appendix 3, and Attachment 3C (Supplemental Design Requirements) of Appendix 3.

“Design Requirements Change” has the meaning set forth in subsection 3.5.1 (Design Requirements Change Defined) of Appendix 3 (Project Design and Construction Work).

“Differing Site Conditions” means concealed or latent subsurface conditions at the Plant Site that materially differ from those described in the geotechnical baseline conditions set forth in Appendix 1 (Description of the Plant Site).

“Direct Payments” has the meaning set forth in subsection 17.13(C) (Direct Payments).

“Directed Capital Modification” means a Water Authority-directed Capital Modification made pursuant to Section 11.4 (Capital Modifications at Water Authority Direction).

“Directed Capital Modification Financing” means a financing by the Project Company of permitting, design and construction costs resulting from a Directed Capital Modification effected pursuant to subsection 6.4(A) (Directed Capital Modification Capital Costs).

“Disclosed Data” means any information, data and documents made available or issued to the Project Company or any Project Contractor or Subcontractor in connection with the Project by or on behalf of the Water Authority, including any information relating to the Sites or the requirements of any Governmental Body, whether before or after the execution of this Water Purchase Agreement.

“Discriminatory Change in Tax Law” means a Change in Law Event which results in the imposition of Taxes or a change in Taxes and which specifically applies to discriminate against:

- (1) the Project or the Project Company with respect to the Project and not other projects or persons;
- (2) other similar projects delivered through public-private partnership or performance-based infrastructure delivery methods, or another delivery method similar to them and not other projects;
- (3) Persons (including the Project Company) that have contracted with the Water Authority or other Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons; or

(4) Persons (including the Project Company) holding shares or other evidences of ownership in persons whose principal business is contracting with Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons.

“Drought Shortfall Payment” has the meaning set forth in Section 9.12 (Drought Shortfall Payments).

“Electricity Charge” has the meaning set forth in Section 17.6 (Electricity Charges).

“Electronic Operation and Maintenance Manual” means the electronic manual prepared by the Project Company as described in the Design Requirements.

“Employee Payments” means any liability that has been reasonably incurred by the Project Company arising as a result of termination of this Water Purchase Agreement under collective bargaining agreements, employment agreements or under any other agreements with employees of the Project Company, including severance (whether accrued or not), vacation pay and sick pay accrued.

“Encumbrance” means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project.

“End of Term Performance Evaluation Requirements” has the meaning set forth in Section 11.5 of Appendix 11 (End of Term Project Condition Requirements).

“Environmental Impact Report” means the Environmental Impact Report for the Project prepared pursuant to CEQA and certified by the City in June 2006, and the September 2009 and November 2012 addenda thereto.

“Environmental Mitigation Measures” means the environmental mitigation measures set forth in the Governmental Approvals required to be obtained by the Project Company.

“EPA” means the United States Environmental Protection Agency and any successor agency.

“EPC Agreements” means the Plant EPC Agreement and the Product Water Pipeline Improvements EPC Agreement.

“EPC Contractor” means the joint venture of Kiewit Infrastructure West Co., a corporation organized and existing under the laws of the State of Delaware, and J. F. Shea Construction, Inc., a corporation organized and existing under the laws of the State of California, or any assignee or replacement permitted under this Water Purchase Agreement.

“Equity Contribution Agreement” means the Equity Contribution Agreement, dated _____, 2012, between the Project Company and Orion Water Partners LLC, a _____ limited liability company.

“Equity Return Charge” has the meaning set forth in subsection 17.4(B) (Capital Charges - Equity Return Charge).

“Excess Product Water Deliveries” has the meaning set forth in subsection 17.2(F).

“Excess Product Water Deliveries Incentive Unit Price” has the meaning set forth in subsection 17.7(C).

“Excluded Assets” has the meaning set forth in Section 12.3 of Appendix 12 (Project Assets and Liabilities).

“Excluded Liabilities” has the meaning set forth in Section 12.5 of Appendix 12 (Project Assets and Liabilities).

“Excused Demand Shortfall Unit Tracking Account” has the meaning set forth in Section 17.3 (Excused Supply Shortfall Unit Tracking Account and Excused Demand Shortfall Unit Tracking Account).

“Excused Supply Shortfall Unit Tracking Account” has the meaning set forth in Section 17.3 (Excused Supply Shortfall Unit Tracking Account and Excused Demand Shortfall Unit Tracking Account).

“Exit Performance Test” has the meaning set forth in subsection 10.6(C) (Non-Compliance With End of Term Performance Evaluation Requirements).

“Expiration Date” means (1) the date that is 30 years following the Commercial Operation Date, or (2) such later date not to exceed 33 years following the Commercial Operation Date as may be established pursuant to subsection 9.8(H) (Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term) to account for Uncontrollable Circumstances precluding Product Water delivery or receipt following the Commercial Operation Date.

“Extraordinary Flow Rate Change” has the meaning set forth in subsection 9.9(F) (Extraordinary Flow Rate Changes).

“Extraordinary Flow Rate Change Payments” has the meaning set forth in subsection 9.9(H) (Extraordinary Flow Rate Change Payments).

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

“Financial Closing Date” means the date the Initial Plant Bonds are issued and sold by the CPCFA and purchased by the purchasers thereof pursuant to the Bond Purchase Agreement.

“Firm Daily Demand Order” has the meaning set forth in subsection 9.8(D) (Establishing the Firm Daily Demand Order).

“Fitch” means Fitch Ratings Ltd., or any of its successors and assigns. If such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the Water Authority.

“Fixed Annual Costs” means the product of (1) the Fixed Unit Price, and (2) the Minimum Annual Demand Commitment.

“Fixed Unit Price” has the meaning set forth in subsection 17.7(A) (Fixed Unit Price).

“Flow Rate” means the rate of flow of Product Water delivered to the Water Authority measured at the Plant Flow Meter, and expressed in CFS.

“Force Majeure Event” means an Insurable Force Majeure Event or Uninsurable Force Majeure Event.

“Full System Test” means the test to be conducted pursuant to the requirements set forth in subsection 4.2.2(o) of Appendix 4 (Mechanical Completion Requirements) demonstrating the interoperability of the Water Authority’s SCADA communication system for the Water Authority Distribution System with the Plant and the Product Water Pipeline Improvements and other related matters.

“GAAP” means generally accepted accounting principles in effect and consistently applied in the United States (including the accounting recommendations published in the Handbook of the American Institute of Certified Public Accountants).

“General Manager” means the General Manager of the Water Authority.

“Good Design and Construction Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good practice (1) in the design and construction of seawater desalination plants generally, and (2) in the construction of drinking water treatment plants and pipelines as observed in the State.

“Good Management Practice” means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices as observed (1) for seawater desalination plants, and (2) for drinking water treatment plants and pipelines as observed in the State.

“Governmental Approvals” means all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Obligations.

“Governmental Body” means any federal, State, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body (including the Water Authority, acting in its governmental capacity other than as a party to this Water Purchase Agreement), or any official thereof, having jurisdiction in any way over or in respect of any aspect of the performance of this Water Purchase Agreement or the Project.

“Hazardous Substance” means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture,

handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Applicable Law pertaining to the environment or otherwise, or is capable of causing harm to human health or the environment, including “hazardous substances” as defined under CERCLA and “hazardous waste” as defined under RCRA.

“Hazardous Substance Management Plan” means the written Hazardous Substances management program developed by the Project Company during the Construction Period in accordance with Appendix 3 (Project Design and Construction Work), and updated during the Operating Period.

“High Pressure Pumps” means the Standard High Pressure Pumps and the Supplemental High Pressure Pump.

“Income Tax” means any tax imposed on the income of a person by any federal, State or local Governmental Body.

“Independent Evaluator” means a qualified independent evaluator or evaluation firm with demonstrated skill and experience of water utility property similar to the Plant, not otherwise associated with the transactions contemplated hereby, selected with the mutual consent of the parties for the purpose of evaluating and determining the condition of the Plant pursuant to Section 10.3 (Plant Evaluations) and Appendix 11 (End of Term Project Condition Requirements). The Independent Evaluator may be an engineer or other technical professional competent to perform such services. Except as provided in Section 11.7.2 of Appendix 11 (End of Term Project Condition Requirements), the expenses of the Independent Evaluator shall be shared equally by the parties.

“Index Linked”, with respect to an amount at any time, means that the amount is increased as of July 1 of each Contract Year (commencing on July 1 of the Contract Year ending on June 30, 2014) by adding to it (1) an amount equal to such amount, multiplied by (2) the sum of the following percentages:

(1) The percentage representing the increase in the Inflation Index from (a) the Inflation Index for the last six months of the Contract Year ending on June 30, 2012, to (b) the Inflation Index for the last six months of the Contract Year immediately preceding the Contract Year for which a determination is to be made; and

(2) One-half of a percentage determined by dividing (a) the percentage determined under item (1) of this definition, by (b) the number of Contract Years occurring between the Contract Year ending on June 30, 2012 and the Contract Year ending on June 30 preceding the Contract Year with respect to which a determination is to be made.

“Inflation Index” means, with respect to items related to the Operating Work, the Consumer Price Index, All Urban Consumers (CPI-U) (1982-84 = 100) for the San Diego MSA published by the Bureau of Labor Statistics of the United States Department of Labor; provided, however, that if such Consumer Price Index shall cease to exist or is changed, then the term “Inflation Index” shall mean such other or similar index or formula as the parties reasonably select.

“Initial Pipeline Bonds” means the \$_____ Bonds, Series 2012 (San Diego County Water Authority Desalination Pipeline Project), issued by the CPCFA.

“Initial Plant Bonds” means the \$_____ Bonds, Series 2012 (Carlsbad Seawater Desalination Project) issued by the CPCFA under the Plant Indenture.

“Installment Payments” means the payments due by the Water Authority to the CPCFA under the Pipeline Installment Sale and Assignment Agreement.

“Insurable Force Majeure Event” means any peril other than an Uninsurable Force Majeure Event the response to which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays, or increases the cost of performing the Contract Obligations, except to the extent such event arises from or is contributed to, directly or indirectly, by any Project Company Fault.

“Insurance Proceeds” means the amount of any insurance proceeds received by a person in respect of a claim made under any policy of insurance required to be maintained by the Project Company under this Water Purchase Agreement.

“Insurance Receivables” means Insurance Proceeds which a person is entitled to receive but which have not been received.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any insurer that has issued a policy of Required Insurance under this Water Purchase Agreement, as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

“Intellectual Property” means any or all of the following and all rights, arising out of or associated therewith:

- (1) National, international and foreign patents, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (2) Inventions (whether patentable or not), invention disclosures, improvements, innovations, trade secrets, proprietary information, know-how, technology, processes, software, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
- (3) Copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (4) Industrial designs and any registrations and applications therefor throughout the world;
- (5) Rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trademarks and service marks, trademark and service mark registrations and applications therefor throughout the world;
- (6) Databases and data collections and all rights therein throughout the world;
- (7) Moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (8) Any similar or equivalent rights to any of the foregoing anywhere in the world.

“Interim Operations Approval” has the meaning set forth in subsection 7.3(A) (Performance Test Protocol).

“Interim Operations Delivered Water Unit Price” means the sum of (1) the Equity Return Charge, (2) the Variable Operating Charge, and (3) the Variable Electricity Charge.

“Key Individuals” has the meaning set forth in Appendix 14 (Project Company and Project Contractor Information).

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Water Purchase Agreement, and all appeals therefrom.

“Letter of Credit” means the letter of credit that the Project Company is obligated to provide to the Water Authority pursuant to Section 4.2 (Letter of Credit) in the form set forth in Transaction Form A (Letter of Credit).

“Licensed Intellectual Property” has the meaning set forth in Section 26.11 (Property Rights).

“Lien” means any and every lien against the Project, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Loss-and-Expense” means, and is limited to, (in each case subject to Section 19.9 (No Special, Consequential or Punitive Damages)) any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense relating to third-party claims for which the Project Company is obligated to indemnify the Water Authority hereunder, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Water Purchase Agreement.

“Maintenance, Repair and Replacement Plan” means the repair and replacement plan prepared by the Project Company pursuant to Appendix 6 (Operating and Maintenance Standards).

“Maximum Annual Supply Commitment” has the meaning set forth in subsection 9.3(A) (Maximum Annual Supply Commitment Defined).

“Maximum Monthly Supply Commitment” has the meaning set forth in subsection 9.5(A) (Establishment).

“Mechanical Completion” has the meaning set forth in subsection 7.1(D) (Mechanical Completion).

“Mechanical Completion Protocol” has the meaning set forth in Section 4.6 (Mechanical Completion Protocol) of Appendix 4 (Mechanical Completion Requirements).

“Mechanical Completion Procedures” means the procedures set forth in Appendix 4 (Mechanical Completion Requirements) for determining when the Project Company has achieved Mechanical Completion.

“Mechanical Completion Procedures Report” has the meaning set forth in Section 4.6 (Mechanical Procedures Report) of Appendix 4 (Mechanical Completion Requirements).

“Mediator” means any person serving as a mediator of disputes hereunder pursuant to Section 18.2 (Non-Binding Mediation).

“Member Agencies” means the member agencies of the Water Authority.

“Metropolitan” means the Metropolitan Water District of Southern California.

“mg” or **“MG”** means millions of gallons.

“mgd” or **“MGD”** means millions of gallons per day.

“mg/L” means milligrams per liter.

“Minimum Annual Demand Commitment” has the meaning set forth in subsection 9.4(A) (Minimum Annual Demand Commitment Defined).

“Minimum Demand Progress Benchmark” has the meaning set forth in subsection 9.11(C)(1) (Minimum Demand Progress Benchmark).

“Minimum Monthly Demand Commitment” has the meaning set forth in subsection 9.6(A) (Establishment).

“Minimum Performance Criteria” has the meaning set forth on Appendix 5 (Minimum Performance Criteria and Performance Testing).

“Monthly Delivered Water Units” means, for any Billing Period and subject to subsection 9.2(F) (Remedies for Breach of Product Water Quality Guarantee-Unacceptable Water), the number of Units actually delivered by the Project Company and received by the Water Authority.

“Monthly Demand Shortfall Units” has the meaning set forth in Subsection 17.2(B) (Monthly Demand Shortfall Units)

“Monthly Excused Demand Shortfall Units” means, for any Billing Period, Monthly Shortfall Units (if any) that result from the failure of the Water Authority to receive Product Water in volumes up to the Minimum Monthly Demand Commitment for such Billing Period, to the extent such failure is caused by a Product Water Purchase Relief Event.

“Monthly Excused Supply or Demand Shortfall Units” means the sum of Monthly Excused Supply Shortfall Units and Monthly Excused Demand Shortfall Units.

“Monthly Excused Supply Shortfall Units” means, for any Billing Period, the Monthly Shortfall Units (if any) that result from the failure of the Project Company to supply Product Water in volumes up to the Monthly Product Water Order for such Billing Period, to the extent such failure is caused by Uncontrollable Circumstances.

“Monthly Operating Period Shortfall Payment Unit Tracking Account” has the meaning set forth in subsection 9.11(C)(5)) (Monthly Operating Period Shortfall Unit Tracking Account).

“Monthly Operating Period Shortfall Payments” has the meaning set forth in subsection 9.11(C) (Monthly Operating Period Shortfall Payments).

“Monthly Operating Period Shortfall Payment Units” has the meaning set forth in subsection 9.11(C)(2) (Monthly Operating Period Shortfall Payment Units).

“Monthly Operating Period Shortfall Restoration Payments” has the meaning set forth in subsection 9.11(D)(2)) (Monthly Operating Period Shortfall Restoration Payments).

“Monthly Operating Period Shortfall Restoration Payment Units” has the meaning set forth in subsection 9.11(D)(1) (Monthly Operating Period Shortfall Restoration Payment Units).

“Monthly Product Water Order” means, for any Billing Period, the sum of the Firm Daily Demand Orders for such Billing Period.

“Monthly Shortfall Units” means the sum of Monthly Demand Shortfall Units and Monthly Supply Shortfall Units.

“Monthly Supply Shortfall Units” has the meaning set forth in subsection 17.2(C) (Monthly Supply Shortfall Units).

“Monthly Unexcused Demand Shortfall Units” means, for any Billing Period, Monthly Shortfall Units (if any) that result from the Water Authority’s failure to receive Product Water that is available for delivery in volumes up to the Minimum Monthly Demand Commitment for such Billing Period, to the extent such failure is not caused by a Product Water Purchase Relief Event.

“Monthly Unexcused Supply Shortfall Units” means, for any Billing Period, Monthly Shortfall Units (if any), other than Monthly Unscheduled Outage Units, that result from the Project Company’s failure to deliver Product Water in volumes up to the Monthly Adjusted Supply Commitment for such Billing Period, to the extent such failure is not caused by Uncontrollable Circumstances.

“Monthly Unscheduled Outage Units” means, for any Billing Period, Monthly Supply Shortfall Units that (1) are not attributable to Uncontrollable Circumstances, (2) result from unplanned physical outages at the Plant that were contemporaneously documented and promptly reported to the Water Authority, (3) do not exceed, when taken together with all other Monthly Unscheduled Outage Units for the then-current Contract Year, the Annual Unscheduled Outage Units Allowance, and (4) that the Project Company elects to characterize as Monthly Unscheduled Outage Units.

“Monthly Water Purchase Payment” means the monthly amount to be paid by the Water Authority for the purchase of Product Water, calculated as provided in Section 17.1 (Payments Generally).

“Moody’s” means Moody’s Investors Service Inc. or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the Water Authority.

“Non-Binding Mediation” means the voluntary system of dispute resolution established by Section 18.2 (Non-Binding Mediation) for addressing disputes arising under this Water Purchase Agreement.

“Notice of Project Completion” has the meaning set forth in subsection 7.9(B) (Notice and Report of Project Completion),

“Notice of Provisional Acceptance” has the meaning set forth in subsection 7.5(B) (Notice and Report of Provisional Acceptance).

“NPDES Project Permit” means the National Pollutant Discharge Elimination System (NPDES) Permit for the Project issued by the San Diego Regional Water Quality Control Board under Order No. R9-2006-0065, as amended by Order No. R9-2009-0038, and all subsequent renewals.

“NTU” means nephelometric turbidity unit.

“Off-Specification Product Water” means Product Water conveyed to the Water Authority that does not strictly conform to the Product Water Quality Guarantee in every respect and to any extent whatsoever, irrespective of whether any such non-conformity as to any Product Water quality parameter may be considered material or immaterial. Off-Specification Water does not include Unacceptable Water.

“One Pump Mode” has the meaning set forth in subsection 9.9(A) (Operating Modes).

“Operating and Maintenance Standards” means the standards for the operation, maintenance and management of the Project as set forth in Appendix 6 (Operating and Maintenance Standards).

“Operating Charge” has the meaning set forth in Section 17.5 (Operating Charges).

“Operating Hours” means hours other than Scheduled Shutdown Hours.

“Operating Mode Change Performance Test” has the meaning set forth in Appendix 5 (Minimum Performance Criteria and Performance Testing).

“Operating Notice” means a written notice given by one party to the other hereunder relating to routine operational matters arising under this Water Purchase Agreement following the Commercial Operation Date specifically required hereunder to be given as an “Operating Notice”.

“Operating Period” means the period between the Commercial Operation Date and the Termination Date.

“Operating Period Shortfall Payment” has the meaning set forth in subsection 9.11(B) (Operating Period Shortfall Payments).

“Operating Period Shortfall Payment Unit Price” means the price per Unit set forth in Table 1.3 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments), adjusted if and to the extent required under subsection 9.4(C) (Decrease to the Fixed Unit Price and the Operating Period Shortfall Payment Unit Price).

“Operating Protocol” means the protocol governing operation of the Project, including all interface, coordination, and water delivery and supply policies, procedures, plans and protocols to be established, adopted and revised in accordance with Article 8 (Operation and Management of the Plant) and Appendix 6 (Operating and Maintenance Standards).

“Operating Service Agreement” means the Operation, Maintenance, Repair and Replacement Agreement, dated _____, between the Project Company and the Operating Service Provider, a certified copy of which has been delivered by the Project Company to the Water Authority.

“Operating Service Provider” means IDE Americas, Inc., a corporation organized and existing under the laws of the State of Delaware, or any assignee or replacement entity permitted under this Water Purchase Agreement.

“Operating Service Provider Breakage Costs” means the amount payable by the Project Company to the Operating Service Provider under subsection 10.3.2 of the Operating Service Agreement as a direct result of the exercise by the Water Authority of an option to purchase the Project Assets and the resulting termination of this Water Purchase Agreement (excluding any costs of improvements implemented by the Operating Service Provider pursuant to subsection 8.1.1 or clause (ii) of subsection 8.1.2 of the Operating Service Agreement, unless such improvements were implemented with the express approval of the Water Authority given in advance, including an agreement by the Water Authority to compensate the Project Company for such improvements in the event of any such termination).

“Operating Work” means everything required to be furnished and done relating to the operation, maintenance and management of the Project by the Project Company pursuant to this Water Purchase Agreement during the Operating Period.

“OSHA” means both the California Occupational Safety and Health Act, Chapter 3.2, Division 1, Title 8 of the California Code of Regulations, including all applicable regulations promulgated thereunder, and the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 650 et seq., including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

“Other Uncontrollable Circumstances” means any Uncontrollable Circumstance other than a Force Majeure Event or a Change in Law Event.

“Overdue Rate” means the maximum rate of interest permitted by the laws of the State, if applicable, or 7.75 percent annually, whichever is lower.

“Performance Guarantees” means the guarantees of performance made by the Project Company specifically set forth in Section 9.2 (Product Water Quality Guarantee); Section 9.5 (Maximum Monthly Supply Commitment and Adjusted Monthly Supply Commitment); subsection 9.8(E) (Project Company’s Product Water Delivery Covenants); Section 9.11 (Operating Period Shortfall Payments); Section 9.12 (Drought Shortfall Payments); Section 9.18 (Project Company Disposal of Residuals); Section 9.19 (Project Company Disposal of Concentrate Discharge); and Appendix 8 (Supplemental Performance Guarantee Requirements).

“Performance Test” means the performance test to be conducted pursuant to Appendix 5 (Minimum Performance Criteria and Performance Testing) for the achievement of Provisional Acceptance.

“Performance Test Protocol” has the meaning set forth in Section 7.3(A) (Performance Test Protocol).

“Permitted Debt” has the meaning set forth in subsection 6.1(D) (Limitations on Project-Secured Debt).

“Permitted Encumbrances” means, as of any particular time, any one or more of the following:

- (1) Encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Project Company and against which the Project Company has established appropriate reserves in accordance with GAAP;
- (2) Any Encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Project Company, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Project Company to construct the Project or operate the Project;
- (3) Any Encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workmen’s, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Project Company and against which the Project Company has established appropriate reserves;
- (4) Servitudes, licenses, easements, Encumbrances, restrictions, rights-of-way and rights in the nature of easements or similar charges which shall not in the aggregate materially and adversely impair the construction of the Project or operation of the Project by the Project Company;
- (5) Applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants;
- (6) Encumbrances which are created on or before the Contract Date;
- (7) Encumbrances which are created by a Change in Law Event;
- (8) Any Encumbrance created by an act or omission by any Governmental Body or with respect to which the Water Authority has given its consent;
- (9) Undetermined Encumbrances and charges incident to construction or maintenance, and Encumbrances and charges incident to construction or maintenance now or hereafter filed of record which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired), provided that the Project Company shall have set aside reserves with respect thereto which, in the opinion of its governing board, are adequate;
- (10) Notices of lis pendens or other notices of or Encumbrances with respect to pending actions which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired) and against which the Project Company has established appropriate reserves in accordance with GAAP;
- (11) Encumbrances for taxes, assessments, or other governmental charges which are not delinquent, or if delinquent are payable without penalty or are being contested in good faith; provided that the Project Company shall have set aside reserves

with respect to any taxes, assessments or other governmental charges which are being contested which are appropriate in accordance with GAAP;

(12) Minor defects and irregularities in the title to the Project which in the aggregate do not materially adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used or any exceptions to title existing listed in the Title Insurance Policy;

(13) The rights of the Collateral Agent;

(14) Encumbrances securing indebtedness for the payment, redemption or satisfaction of which money (or evidences of indebtedness) in the necessary amount shall have been deposited in trust with a trustee or other holder of such indebtedness;

(15) Purchase money security interests and security interests existing on any personal property prior to the time of its acquisition by the Project Company through purchase, merger, consolidation or otherwise, whether or not assumed by the Project Company, or placed upon property being acquired by the Project Company to secure a portion of the purchase price thereof, or lessor's interests in leases required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP;

(16) The lease or license of the use of a part of the Project for use in performing professional or other services necessary for the development, construction, operation and maintenance of the Project in accordance with customary business practices in the industry;

(17) Ordinary course Encumbrances, or those arising during the construction of the Project, in connection with worker's compensation and unemployment insurance or other social security or pension obligations;

(18) Encumbrances granted under the subordinated deed of trust and subordinated security agreement to be made by the Project Company in favor of the City pursuant to the development agreement between the Project Company and the City with respect to the Project, and any other rights granted to the City under such development agreement which constitute Encumbrances; and

(19) Rights granted to Cabrillo under the Cabrillo Ground Lease.

"Personal Information" means information about a person, the disclosure of which would constitute an unwarranted invasion of privacy.

"Pipeline Bondholders" means the holders of the Pipeline Bonds.

"Pipeline Bonds" means the Initial Pipeline Bonds and any Additional Pipeline Bonds.

"Pipeline Indenture" means the Trust Indenture to be entered into between the CPCFA and the Pipeline Trustee relating to the Pipeline Bonds.

"Pipeline Installment Sale and Assignment Agreement" means the Pipeline Installment Sale and Assignment Agreement to be entered into between the Water Authority and the CPCFA, under which debt financing for the Product Water Pipeline Improvements is provided.

“Pipeline Interconnection” means the interconnection pipeline and related improvements to be designed and built by the Project Company for the conveyance of Product Water between Pipeline 3 and Pipeline 4 pursuant to the Product Water Pipeline Improvements Design-Build Agreement.

“Pipeline Trustee” means Union Bank of California, N.A. or any successor fiduciary institution serving as trustee from time to time under the Pipeline Indenture.

“Pipeline 3” means the water transmission line owned by the Water Authority and constituting part of the Water System known as Pipeline 3.

“Pipeline 3 Dedicated Segment” means the segment of Pipeline 3 of approximately 5 miles to be dedicated exclusively for the conveyance of Product Water from the Desal 1 Flow Control Facility to the TOVWTP, as improved by the Pipeline 3 Improvements.

“Pipeline 3 Improvements” means the improvements to the Pipeline 3 Dedicated Segment to be constructed by the Water Authority for the conveyance of Product Water from the Product Water Pipeline through the Pipeline 3 Dedicated Segment to the TOVWTP.

“Pipeline 4” means the treated water transmission line owned by the Water Authority and constituting part of the Water System known as Pipeline 4.

“Plant” means the 50 MGD Carlsbad seawater desalination plant and related structures to be constructed by the Project Company on the Plant Site pursuant to this Water Purchase Agreement for the production, delivery and sale of Product Water to the Water Authority, as well as all utility connections, landscaping and other Plant Site improvements connected to or related to the plant (whether located on or off the Plant Site), as further described in the Design Requirements. The Plant includes the Plant Clearwell, the Raw Seawater desalination and treatment facilities, pumping facilities, Residuals treatment facilities, operations building, the yard piping, any related structures and equipment, all roads, grounds, fences and landscaping appurtenant thereto, and all Capital Modifications.

“Plant Bond Indenture” means the Trust Indenture, dated as of _____, 2012, entered into between the CPCFA and the Plant Trustee.

“Plant Bondholders” means the holders of the Plant Bonds.

“Plant Bonds” means indebtedness issued pursuant to the Plant Indenture secured by a charge and lien on the revenues and assets of the Project that is superior to the lien or charge securing any other obligations issued thereunder or pursuant thereto. The Plant Bonds include the Initial Plant Bonds and the Additional Plant Bonds.

“Plant By-Products” means Residuals and Concentrate Discharge requiring disposal by the Project Company in accordance with subsection 8.1(A) (Project Company Obligations Generally - Operation and Management Responsibility for the Project) and Article 9 (Performance).

“Plant Clearwell” means the Product Water holding structure, to be designed, constructed, tested and maintained by the Project Company on the Plant Site for the storage of Product Water prior to conveyance to the Product Water Pipeline, as more particularly described in the Design Requirements.

“Plant EPC Agreement” means the Desalination Facility Engineering, Procurement and Construction Agreement, dated _____, between the Project Company and the EPC Contractor, a certified copy of which has been delivered by the Project Company to the Water Authority.

“Plant Financing Agreements” means (1) the Plant Loan Agreement; (2) the Plant Indenture; (3) the Collateral Trust Agreement; and (4) any security agreements to be entered into pursuant to or in connection with the foregoing, certified copies of which to be delivered by the Project Company to the Water Authority.

“Plant Flow Meter” means the flow meter built in conformance with the requirements of Attachment 3C (Supplemental Design Requirements) of Appendix 3 (Project Design and Construction Work), and located downstream from the Product Water transmission pump at the Plant for the measurement of the volume of Product Water conveyed from the Plant to the Product Water Pipeline.

“Plant Loan Agreement” means the Loan Agreement to be entered into between the CPCFA and the Project Company, under which debt financing for the Project is provided and which secures the Plant Bonds.

“Plant Site” means the real property described in Appendix 1 (Description of the Plant Site) located in the City of Carlsbad, California leased to the Project Company under the Cabrillo Ground Lease and on which the Plant is to be constructed by the Project Company.

“Plant Trustee” means Union Bank of California, N.A., or any successor fiduciary institution serving as trustee from time to time under the Plant Indenture.

“Process Services Agreement” means the Process Services Agreement, dated _____, between the EPC Contractor and the Process Services Contractor, a certified copy of which has been delivered by the Project Company to the Water Authority.

“Process Services Contractor” means IDE Americas, Inc., a corporation organized and existing under the laws of the State of Delaware, or any assignee or replacement permitted under this Water Purchase Agreement.

“Product Water” means Raw Seawater which has been desalinated and treated at the Plant in accordance with the Contract Standards. Product Water includes Off-Specification Product Water, but does not include Unacceptable Water.

“Product Water Delivery Point” means the point at which the Product Water Pipeline meets the Plant Site fenceline.

“Product Water Pipeline” means the pipeline and related assets for the delivery of Product Water to be designed and built by the Project Company pursuant to the Product Water Pipeline Improvements Design-Build Agreement.

“Product Water Pipeline Improvements” means the Product Water Pipeline and the Pipeline Interconnection.

“Product Water Pipeline Improvements Design-Build Agreement” means the Design-Build Agreement for the Product Water Pipeline Improvements, dated _____, 2012, between the Water Authority and the Project Company.

“Product Water Pipeline Improvements EPC Agreement” means _____ Engineering, Procurement and Construction Agreement, dated _____, between the Project Company and the EPC Contractor, a certified copy of which has been delivered by the Project Company to the Water Authority.

“Product Water Pipeline Route” means the real property, interests therein and rights with respect thereto over or within which the Product Water Pipeline Improvements are to be constructed under the Product Water Pipeline Improvements Design-Build Agreement.

“Product Water Purchase Relief Event” means the formal declaration by the General Manager or the board of directors of the Water Authority, based on an emergency condition occurring within the Water Authority Distribution System, closing all or any portion of the Water Authority Distribution System required to be open for receiving Product Water under sound municipal water utility operating practices.

“Product Water Quality Guarantee” has the meaning set forth in subsection 9.2(B) (Product Quality Water Guarantee - Additional Product Water Quality Standards).

“Product Water Quality Sampling Locations” means the locations at which the quality of Product Water is sampled and measured, as more particularly described in Appendix 8 (Supplemental Performance Guarantee Requirements).

“Project” means the Plant and the Plant Site, and includes the performance of the Contract Obligations with respect thereto. The Project will be located in the City of Carlsbad, California.

“Project Assets” has the meaning set forth in Section 12.2 of Appendix 12 (Project Assets and Liabilities).

“Project Assets Purchase Date” means the closing date for any purchase and sale of the Project Assets under Article 23 (Water Authority Project Assets Purchase Options).

“Project Assets Purchase Price” means the applicable price payable by the Water Authority to the Project Company for the purchase of the Project Assets pursuant to Article 23 (Water Authority Project Assets Purchase Options).

“Project Company” means Poseidon Resources (Channelside) LP, a limited partnership organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

“Project Company Bankruptcy-Related Event” has the meaning set forth in subsection 20.1(D) (Project Company Bankruptcy-Related Event Defined).

“Project Company Event of Default” has the meaning set forth in subsection 20.1(A) (Project Company Events of Default Defined).

“Project Company Fault” means:

- (1) A breach by the Project Company of any of its obligations under this Water Purchase Agreement or under the Product Water Pipeline Improvements Design-Build Agreement;

(2) A breach of any representation or warranty made by the Project Company under this Water Purchase Agreement or under the Product Water Pipeline Improvements Design-Build Agreement;

(3) Willful misconduct of the Project Company or any Project Company Person; or

(4) A negligent act or omission of the Project Company or a Project Company Person.

“Project Company New Domestic Water Supply Permit” means the domestic water supply permit required to be issued by CDPH to the Project Company following Mechanical Completion, and authorizing the Project Company to use Product Water as a source of potable water for public consumption through the Water Authority Distribution System.

“Project Company Persistent Breach” has the meaning set forth in subsection 20.1(C) (Project Company Events of Default - Project Company Persistent Breach Defined).

“Project Company Person” means:

(1) Any director, officer, employee or agent of the Project Company in each case acting as such; or

(2) Any Project Contractor, any Subcontractor and any representative, advisor (including any legal and financial advisor) of the Project Company, in any such Person’s capacity as a provider of services directly or indirectly to the Project Company in connection with the Project.

“Project Company Remediable Breach” has the meaning set forth in subsection 20.1(B) (Project Company Events of Default - Project Company Remediable Breach Defined).

“Project Company Representative” means the individual specified in writing by the Project Company as the representative of the Project Company from time to time for all purposes of this Water Purchase Agreement.

“Project Completion” means completion of the Construction Work in compliance with the Design Requirements and the requirements of Section 7.9 (Project Completion).

“Project Contractor” means the EPC Contractor, the Process Services Contractor or any Operating Service Provider, and “Project Contractors” means any two or more of them.

“Project Contractor Collateral Agreement” means the agreement to be entered into among the Water Authority, a Project Contractor and the Project Company in the form set forth in Transaction Form C (Project Contractor Collateral Agreement).

“Project Contracts” means the Plant EPC Agreement, the Process Services Agreement (solely to the extent of the provisions to which the Project Company is an explicit third party beneficiary) and the Operating Services Agreement.

“Project Costs” means, without duplication, costs and expenses incurred by the Project Company on or prior to the date on which Project Completion has occurred in connection with the development, design, engineering, permitting, construction, financing, installation, equipping, assembly, inspection, start-up, testing and initial operations of the Project and the Product Water Pipeline Improvements; the leasing and preparation of the Plant Site; and the preparation of the Product Water Pipeline Route, together with an adequate contingency, which costs and expenses shall include: (1) all amounts payable under the EPC Agreements and the other agreements relating to any of the foregoing activities, any state sales taxes on equipment or other goods or services, amounts payable for power and other utilities relating to construction, start-up and testing, and all project development expenses and fees incurred by the Project Company or any of its Affiliates; (2) interest incurred on or in respect of the Permitted Debt and any other amounts required to be paid by the Project Company under the agreements with respect to the Permitted Debt, including fiduciary fees; (3) bond insurer payments and payments contemplated by any bond insurance policy, and the fees and expenses and other reimbursement of the issuer, and any agent or trustee party to the agreements with respect to the Permitted Debt; (4) legal, accounting, consulting, financial advisory and other transaction fees and expenses incurred by the Project Company and its Affiliates prior to Project Completion; (5) operating and maintenance costs due and payable on or prior to Project Completion; (6) the costs of obtaining surety bonds, letters of credit or other security required to be delivered under an agreement or Governmental Approval on or prior to Project Completion (including any cash collateral required to be provided in connection therewith and security deposits made to applicable counterparties); and (7) costs incurred in compliance with Governmental Approvals.

“Project Equipment” means all manufactured equipment, property or assets, whether or not constituting personal property or fixtures, constituting part of the Project, including tanks (other than concrete tanks), basins (other than concrete basins), process and treatment, mechanical, piping (with an original useful life of less than 20 years), electrical, instrumentation and controls, remote monitoring and communications, HVAC, chemical and other storage and feed systems, cranes and hoists, and any ancillary, appurtenant and support equipment and systems utilized in or at the Project.

“Project Schedule” means the schedule set forth in Attachment 3B (Project Schedule) of Appendix 3 (Project Design and Construction Work) and updated in accordance with Section 3.8 (Project Schedule and Scheduling) of Appendix 3.

“Project Structures” means all structures, buildings, concrete tanks, concrete basins, appurtenances (including valves, gates and weirs), and piping (with an original useful life of equal to or greater than 20 years) constituting part of the Project, other than Project Equipment.

“Projected Annual Delivery Schedule” has the meaning set forth in subsection 9.7(A) (Projected Annual Delivery Schedules).

“Provisional Acceptance” means satisfaction of the Provisional Acceptance Conditions.

“Provisional Acceptance Conditions” has the meaning set forth in subsection 7.5(A) (Provisional Acceptance-Conditions).

“Punch List” means the list prepared at the time of Mechanical Completion (and periodically revised as necessary), which list shall set forth (1) all items of Construction Work which remain to be performed or corrected in order to ensure that the Project fully complies with all of the standards and requirements set forth herein (and shall include those items of Construction Work damaged or destroyed by the Project Company during completion

of the Performance Test) and which do not affect the performance or safe and continued operation of the Plant, and (2) an assessed valuation of each such item of Construction Work that is equal to 150% of the estimated cost thereof. The final Punch List shall be provided to the Water Authority by the Commercial Operation Date. The Punch List shall not include any items of Construction Work, alone or in the aggregate, the non-completion of which (a) prevents the Plant from being used for its purpose as described in this Water Purchase Agreement in accordance with Applicable Law, (b) prevents the Plant from operation and maintenance on a legal, safe, environmentally sound and reliable basis, or (c) could have a materially adverse effect on the operation, maintenance, performance, warranties, efficiency, safety or reliability of the Plant or the environment.

“Qualified Commercial Bank” means a reputable domestic or foreign commercial bank:

- (1) Whose long term and short term debt is rated “A2” or higher by Moody’s, “A” or higher by Standard & Poor’s, and “A” or higher by Fitch (the lower of the three applying if there is a split rating); and
- (2) Which maintains a banking office, branch or agency in San Diego or Los Angeles, California.

“Qualified Insurer” means a reputable insurer authorized to conduct business in the State and having a credit rating of:

- (1) A-VII or better with A.M. Best; or
- (2) The equivalent thereof by any other recognized insurance rating agency.

“Rating Service” means Moody’s, Standard & Poor’s or Fitch.

“Raw Seawater” means sea water drawn from the Agua Hedionda Lagoon through the Cabrillo Raw Seawater Intake Structure and conveyed to the Plant through the Cabrillo Raw Seawater Intake System.

“Raw Seawater Delivery Point” means the point of connection of the Plant to the Cabrillo Raw Seawater Intake System or, upon the construction of the Cabrillo Raw Seawater Intake System Improvements, an alternate point mutually acceptable to the parties.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C.A. 6901 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“Refinancing” means any refinancing of the Plant Bonds and any subsequent refinancings.

“Refinancing Gain” means the nominal cash flow savings on debt service payable with respect to the Plant Bonds each Contract Year over the remaining Term resulting from a Refinancing.

“Refinancing Notice” has the meaning set forth in subsection 6.9(A) (Water Authority Requested Financing - Refinancing Notice).

“Regulated Site Condition” means, and is limited to,

- (1) Surface or subsurface structures, materials, properties or conditions having historical, cultural, archaeological, religious or similar significance;
- (2) Any habitat of an endangered or protected species as provided in Applicable Law;
- (3) The presence anywhere in, on or under the Plant Site on the Contract Date of wells or underground storage tanks for the storage of chemicals or petroleum products;
- (4) The presence of Hazardous Substances in, on or under the Plant Site (including presence in surface water, groundwater, soils or subsurface strata; and
- (5) Any fact, circumstance or condition constituting a violation of, or reasonably likely to result in any loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense under or in connection with any Applicable Law pertaining to the environment,

in each case to the extent not disclosed in or reasonably inferable from the Disclosed Data.

“Regulated Substance” means (1) any oil, petroleum or petroleum product and (2) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, or industrial waste that is defined as such by and is subject to regulation under any Applicable Law. Regulated Substances include Hazardous Substances and contaminated soils requiring special handling or disposal.

“Required Insurance” means the insurance specified in Appendix 7 (Required Insurance).

“Residuals” means any semi-solid or solid material resulting from the treatment of Raw Seawater which requires disposal as waste material.

“Response Plan” means the Hazardous Substance emergency/spill response plan developed by the Project Company in accordance with the requirements of Appendix 3 (Project Design and Construction Work) during the Construction Period, and updated during the Operating Period.

“Restricted Person” means any person who (or any member of a group of persons acting together, any one of which):

- (1) Is disbarred, suspended, or otherwise disqualified from federal, State, Water Authority, County or City contracting for any services similar in nature to the Contract Obligations;
- (2) Was or is subject to any material claim of the United States, State, Water Authority, County or City in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in the Water Authority’s view, in either case, be reasonably likely to materially affect the ability of the Project Company to perform its obligations under this Water Purchase Agreement;

(3) In the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal offense (other than minor traffic offences or misdemeanors) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;

(4) Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies; or

(5) Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism.

“Reverse Osmosis System Replacement Schedule” has the meaning set forth in subsection 6.3.1 of Appendix 6 (Operating and Maintenance Standards).

“Scheduled Commercial Operation Date” has the meaning set forth in Section 7.6 (Scheduled Commercial Operation Date).

“Scheduled Daily Delivery Volume” has the meaning set forth in subsection 9.8(A) (Planned Daily Deliveries).

“Scheduled Shutdown Hours” has the meaning set forth in subsection 9.3(C) (Scheduled Shutdown Hours).

“Scheduled Water Authority Improvements Completion Date” has the meaning set forth in subsection 5.2(B) (Scheduled Water Authority Improvements Completion Date).

“SDG&E” means the San Diego Gas & Electric Company, a public utility corporation organized and existing under the laws of the State of California.

“SDG&E Special Conditions Contract” means the Special Conditions Contract, dated as of October 1, 2009, by and between the Project Company and SDG&E.

“Security Plan” has the meaning set forth in Section 8.7 (Security).

“Service Area” means all territory in which customers are served by the Water Authority Distribution System during the Term hereof.

“Shareholder” means any holder or owner of Shares.

“Shares” means shares or other equity interests of any class in the capital of the Project Company.

“Specified Change in Tax Law” means a Change in Law Event which results in:

(1) A change in the sales Tax imposed by the State or by the City and paid by the Project Company, the Project Contractor or any Subcontractors with respect to sales of goods purchased for the performance of the Contract Obligations; or

(2) A new Tax imposed by the United States, the State or the City and paid by the Project Company, the Project Contractor or any Subcontractors with respect to the performance of the Contract Obligations, including any value added Taxes or any Taxes measured by gross receipts. New Taxes shall not include any Taxes based on or measured by net income; any unincorporated business, payroll, franchise or employment Tax; or any Taxes imposed by a foreign government or any of their agencies.

“Specified Raw Seawater Quality Parameters” means those Raw Seawater quality parameters which are listed in Table 8-4 of Appendix 8 (Supplemental Performance Guarantee Requirements)].

“Standard High Pressure Pumps” means the four high pressure Product Water Pumps installed in the Plant pursuant to Appendix 3 (Project Design and Construction Work) for standard Plant operations.

“Standard & Poor’s” means Standard & Poor’s Rating Service, a division of The McGraw-Hill Companies, Inc., or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the Water Authority.

“State” means the State of California.

“Subcontract” means any contract entered into by a Project Contractor (except Project Contracts), or a subcontractor of a Project Contractor of any tier, with one or more persons in connection with the carrying out of the Project Company’s obligations under this Water Purchase Agreement, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“Subcontractor” means any person that enters into a Subcontract.

“Supplemental High Pressure Pump” has the meaning set forth in subsection 9.8(G) (Supplemental High Pressure Pump).

“Supplemental High Pressure Pump Mode” has the meaning set forth in subsection 9.8(G) (Operating Modes).

“Supplemental High Pressure Pump Service Period” has the meaning set forth in subsection 9.8(G) (Supplemental High Pressure Pump).

“Supply Commitment Reduction Percentage” has the meaning set forth in subsection 9.3(B) (Decrease in Maximum Annual Supply Commitment Based on Performance Test).

“Surge Protection System Test” means the test that takes place on the last day of the Performance Test, of the surge protection system which comprises a portion of the Plant’s Product Water pump facilities, conducted in accordance with Section 5.8 (Surge Protection) of Appendix 5 (Minimum Performance Criteria and Performance Testing).

“Tax” means, from time to time, all taxes, surtaxes, fees, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Body, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection.

“Term” has the meaning set forth in Section 3.1 (Effective Date and Term).

“Termination Date” means the earlier of the Expiration Date or the date of termination of this Water Purchase Agreement provided in subsection 22.1(D) (Termination Rights - Termination Date).

“Three Pump Mode” has the meaning set forth in subsection 9.9(A) (Operating Modes).

“Title Insurance Policy” means the title insurance policy with respect to the Plant Site issued to the Project Company.

“TOVWTP Clearwell” means the two existing 7.5 MG treated water storage tanks located at the TOVWTP.

“TOVWTP Improvements” means the improvements to the Water Authority TOVWTP described in Appendix 13 (Water Authority Improvements) to be constructed by the Water Authority pursuant to Section 5.2 (Water Authority Improvements).

“TOVWTP Treated Water” means treated water produced at the Water Authority Twin Oaks Valley Water Treatment Plant and conveyed to the Water Authority TOVWTP Clearwell.

“Transaction Form” means any of the Transaction Forms appended to this Water Purchase Agreement and identified as such in the Table of Contents.

“Transfer Condition Requirements” has the meaning set forth in subsection 10.7(B) (Project Transfer Condition - Required Project Condition).

“Transfer Condition Retainage” has the meaning set forth in subsection 10.7(D) (Determination of Transfer Condition Retainage).

“Transfer Restriction Date” has the meaning set forth in Section 24.1 (Limitation on Assignment by Project Company).

“Twin Oaks Valley Water Treatment Plant” or **“TOVWTP”** means the Water Authority’s 100 MGD Twin Oaks Valley Water Treatment Plant located in northern San Diego County.

“Two Pump Mode” has the meaning set forth in subsection 9.9(A) (Operating Modes).

“Unacceptable Water” means water produced by the Plant and conveyed to the Water Authority that does not comply with the Product Water Quality Guarantee to such an extent that it (1) is non-potable under Applicable Law; (2) presents a risk to public health or safety; or (3) has the potential to damage or destroy Water Authority or private property or create a need to clean, repair, replace or restore any such property.

“Uncontrollable Circumstance” means any act, event or condition that (1) is beyond the reasonable control of the Project Company in relying on it as a justification for not performing an obligation or complying with any condition required under this Water Purchase Agreement, and (2) materially expands the scope, interferes with, delays or increases the cost of performing the Project Company’s obligations under this Water Purchase Agreement, to the extent that such act, event or condition is not the result of the willful or negligent act, error or

omission, failure to exercise reasonable diligence, or breach of this Water Purchase Agreement on the part of the Project Company in claiming the occurrence of an Uncontrollable Circumstance.

(1) Inclusions - Performance, Schedule and Compensation Relief. Subject to the first paragraph of this definition, Uncontrollable Circumstances shall include the following, upon the occurrence of which the Project Company shall be entitled to performance, schedule and compensation relief in accordance with terms and conditions hereof:

(a) a Change in Law Event (except as provided in item (l) of the “Exclusions” section of this definition), as and to the extent provided in Section 16.1 (Change in Law Events);

(b) an Uninsurable Force Majeure Event, as and to the extent provided in Section 15.2 (Uninsurable Force Majeure Event), occurring within the United States;

(c) the failure of any Project Contractor or Subcontractor to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Project Company directly (and entitled the Project Company to performance, schedule and compensation relief), and the Project Company is not able after exercising all reasonable efforts to timely obtain substitutes;

(d) a delay in completion of the Water Authority Improvements, as and to the extent described in subsection 5.2(C) (Completion Delay);

(e) an Extraordinary Flow Rate change demanded by the Water Authority pursuant to subsection 9.9(F) (Flow Rate Limitations - Extraordinary Flow Rate Changes), or a Water Authority curtailment pursuant to Section 9.10 (Water Authority-Directed Curtailments and Shutdowns); and

(f) the occurrence of a Raw Seawater quality contamination event, as and to the extent provided in subsection 9.13(E) (Raw Seawater Quality Contamination);

(2) Inclusions - Performance and Schedule Relief; No Compensation Relief. Subject to the first paragraph of this definition, Uncontrollable Circumstances shall also include following, upon the occurrence of which the Project Company shall be entitled to performance and schedule relief only, and not compensation relief, in accordance with the terms and conditions hereof:

(a) an Insurable Force Majeure Event, wherever occurring;

(b) an Uninsurable Force Majeure Event occurring outside the United States during the Construction Period;

(c) an injunction or similar order issued by a Governmental Body;

(d) the failure of any appropriate Governmental Body or utility having operational jurisdiction in the area in which the Plant is located to provide and

maintain Utilities to the Plant which are required for the performance of this Water Purchase Agreement;

(e) the failure of any Project Contractor or Subcontractor to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Project Company directly (and entitled the Project Company to performance and schedule relief but not compensation relief), and the Project Company is not able after exercising all reasonable efforts to timely obtain substitutes;

(f) the intake of Raw Seawater with characteristics outside the applicable parameter range set forth in Appendix 8 (Supplemental Performance Guarantee Requirements), as and to the extent provided in subsection 9.13(B) (Raw Seawater Quality-Specified Parameters);

(g) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Project;

(h) abnormally severe weather conditions wherever occurring that directly affect the performance of the Contract Obligations at the Plant Site;

(i) a violation of Applicable Law by a person other than the Project Company, the Project Contractors or any Subcontractors;

(j) any Water Authority Fault (without, however, limiting the Project Company's right to bring an action for breach);

(k) the existence of a Regulated Site Condition;

(l) the existence of a Differing Site Condition;

(m) contamination of the Plant Site from groundwater, soil or airborne Regulated Substances migrating from sources outside of the Plant Site;

(n) the occurrence of certain force majeure events at the Cabrillo Generating Facility Site as described in subsection 4.7(B) (Exceptions);

(o) strikes, work stoppages and other labor disputes (except those involving employees of the Project Company, the Project Contractors and Subcontractors); and

(p) the occurrence of any event or circumstance providing the Project Company with schedule or performance relief under the Product Water Pipeline Improvements Design-Build Agreement.

(3) Exclusions. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute Uncontrollable Circumstances:

(a) any Uninsurable Force Majeure Event occurring outside the United States during the Operation Period;

(b) any act, event or circumstance that would not have occurred but for the Project Company's failure to comply with its obligations hereunder;

(c) changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, currency values, exchange rates or other general economic conditions;

(d) any changes in the financial condition of the Project Company, its Affiliates or Subcontractors affecting the ability to perform their respective obligations;

(e) the consequences of error, neglect or omissions by the Project Company, any Project Contractor, any Subcontractor, any of their Affiliates or any other person in the performance of the Contract Services;

(f) union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the Plant or otherwise increasing the cost to the Project Company of performing the Contract Services;

(g) any weather conditions other than those described in item (h) of "Inclusions - Performance Schedule Relief; No Compensation Relief" above;

(h) acts, events or circumstances affecting a Cabrillo Entity or occurring at the Cabrillo Generating Facility Site, except (1) as described in subsection 4.7(B) (Cabrillo Risk - Exceptions) and (2) any act, event or circumstance listed in items (k), (l) or (m) of the "Inclusions" section of this definition, if such act, event or circumstance pertains to the Cabrillo Generating Facility Site and does not affect the Plant Site, and with the associated relief limitations set forth in item (2) of this definition;

(i) mechanical failure of equipment to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition;

(j) any failure of title to the Project or any placement or enforcement of any Encumbrance on the Project not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby, other than Permitted Encumbrances;

(k) failure of the Project Company to secure any patent or other intellectual property right which is or may be necessary for the performance of the Contract Services; or

(l) except as provided for in Section 16.2 (Discriminatory or Specified Changes In Tax Law), a Change in Law Event pertaining to Taxes.

"Uninsurable Force Majeure Event" means the occurrence of any of the following events or circumstances:

(1) earthquakes or earth movement;

(2) war, civil war or armed conflict and related causes;

(3) terrorism arising from nuclear, biological or chemical materials;

(4) certified acts of terrorism (as defined by the Terrorism Reinsurance Act (TRIA)) occurring during any period in which TRIA or a substantially identical federal law is not in effect; or

(5) nuclear explosion or nuclear, radioactive, chemical or biological contamination, the response to which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays, or increases the cost of performing the Contract Obligations, except to the extent that such event or circumstance arises from or is contributed to, directly or indirectly, by any Project Company Fault.

“Unit” means an Acre Foot of Product Water.

“Unit Price” means the Fixed Unit Price, the Variable Unit Price, and the Excess Product Water Deliveries Incentive Unit Price, as applicable.

“Unit Price Adjustments” has the meaning set forth in subsection 17.13(B) (Adjustments to the Unit Price).

“Utilities” means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“Variable Electricity Charge” has the meaning set forth in subsection 17.6(B) (Variable Electricity Charge).

“Variable Operating Charge” has the meaning set forth in subsection 17.5(B) (Variable Operating Charge).

“Variable Unit Price” has the meaning set forth in subsection 17.7(B) (Variable Unit Price).

“Water Authority” means the San Diego County Water Authority, a county water authority organized and existing under and by virtue of the laws of the State.

“Water Authority Distribution System” means the water distribution system (including all pipes, pipelines, pumping stations, mains, valves, distribution facilities and equipment, treatment works, sources of water supply, and related buildings, structures, improvements and assets) and all appurtenances thereto owned by the Water Authority and serving the Service Area including the Product Water Pipeline Improvements, the Twin Oaks Valley Water Treatment Plant, and the Water Authority Improvements. The “Water Authority Distribution System” shall not include the Project.

“Water Authority Domestic Water Supply Permit Amendment” means the amendment to the Water Authority’s New Domestic Water Supply Permit required under Applicable Law to be entered into in connection with the Project.

“Water Authority Engineer” means the engineer appointed by the Water Authority pursuant to subsection 4.3(H) (Construction of the Project - Water Authority Engineer).

“Water Authority Event of Default” has the meaning set forth in Section 21.1 (Water Authority Events of Default).

“Water Authority Fault” means:

- (1) A breach by the Water Authority of any of its obligations (other than payment obligations) under this Water Purchase Agreement or under the Product Water Pipeline Improvements Design-Build Agreement; or
- (2) A breach of any representation or warranty by the Water Authority under this Water Purchase Agreement or under the Product Water Pipeline Improvements Design-Build Agreement; or
- (3) Willful misconduct of an Water Authority Indemnitee; or
- (4) A negligent act or omission of an Water Authority Indemnitee.

“Water Authority Improvements” means the Pipeline 3 Improvements and the TOVWTP Improvements. The Water Authority Improvements do not include the Water Authority Interface Cabinet.

“Water Authority Indemnitee” has the meaning set forth in Section 25.1 (Project Company’s Obligation to Indemnify).

“Water Authority Interface Cabinet” means the programmable logic controller, fiber optic cable, and other equipment to be installed by the Water Authority at the Plant for the operating interface between the Water Authority Distribution System and the Plant, as more particularly described in subsection 3C1.2.2 of Attachment C to Appendix 3 (Project Design and Construction Work).

“Water Authority Representative” means the individual Water Authority employee specified in writing by the Water Authority as the representative of the Water Authority from time to time for all purposes of this Water Purchase Agreement.

“Water Purchase Agreement” means this Water Purchase Agreement, and includes the Transaction Forms and Appendices.

“Water Purchase Agreement Amendment” has the meaning set forth in Section 26.8 (Water Purchase Agreement Amendments).

SECTION 1.2. INTERPRETATION.

This Water Purchase Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Water Purchase Agreement otherwise require.

(A) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(B) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(C) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Water Purchase Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Water Purchase Agreement.

(E) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be.

(F) References to Including. The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation”, respectively.

(G) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(H) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(I) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(J) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(K) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(L) References to Treatment. The terms “treat,” “treated,” “treatment,” “treating” and any similar terms, when used with respect to Raw Seawater, shall mean and refer to the operation of the Plant by the Project Company to clarify, filter, desalinate, disinfect and treat Raw Seawater and supply Product Water to the Water Authority, all in accordance with this Water Purchase Agreement.

(M) Entire Agreement. This Water Purchase Agreement and the Product Water Pipeline Improvements Design-Build Agreement contain the entire agreement between the parties hereto with respect to the transactions contemplated hereby and thereby. Without limiting the generality of the foregoing, this Water Purchase Agreement and the Product Water Pipeline Improvements Design-Build Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

(N) Counterparts. This Water Purchase Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Water Purchase Agreement.

(O) Governing Law. This Water Purchase Agreement shall be governed by and construed in accordance with the applicable laws of the State.

(P) Severability. Each provision of this Water Purchase Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Water Purchase Agreement is held to be invalid, unenforceable or illegal to any extent, such provision be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Water Purchase Agreement. If any such provision of this Water Purchase Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Water Purchase Agreement as nearly as possible to its original intent and effect.

(Q) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Water Purchase Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(R) Rounding of Acre Foot Calculations. All calculations hereunder involving Acre Feet shall be rounded to the nearest one-tenth of an Acre-Foot.

(S) Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(T) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP.

(U) Applicability, Stringency and Consistency of Contract Standards. Where more than one Contract Standard applies to any particular performance obligation of the Project Company hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. Any reference in this Water Purchase Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Project Company to furnish the same, at minimum, in accordance with the grades and standards therefor indicated in this Water Purchase Agreement.

(V) Delivery of Documents in Digital Format. In this Water Purchase Agreement, the Project Company is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Project Company agrees that all such documents shall be submitted to the Water Authority both in printed form (in the number of copies indicated) and, at the Water Authority's request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which the Water Authority may reasonably request to facilitate the administration and enforcement of this Water Purchase Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(W) Obligations to Provide Assistance. The obligations of a party to cooperate with, to assist or to provide assistance to the other party hereunder shall be construed as an obligation to use the party's personnel resources to the extent reasonably available in the context of performance of their normal duties, and not to incur material additional overtime or third party expense unless requested and reimbursed by the assisted party. Any failure of a party entitled to assistance hereunder to perform an obligation under this Water Purchase Agreement shall not be excused on account of any failure of the party obligated to provide assistance.

(X) Third-Party Rights. This Water Purchase Agreement is exclusively for the benefit of the Water Authority and the Project Company and shall not provide any third parties (with the sole exceptions of the rights of any third-party Water Authority Indemnitees as provided in Section 25.1 (Project Company's Obligation to Indemnify) and of the Pipeline Trustee with respect to Operating Period Shortfall Payments as provided in Section 9.11 (Operating Period Shortfall Payments) with any remedy, claim, liability, reimbursement, cause of action or other rights.

(Y) Liquidated Damages. This Water Purchase Agreement provides for the payment by the Project Company of liquidated damages in certain circumstances. The parties agree that the Water Authority's actual damages in each such circumstance would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance are intended to place the Water Authority in the same economic position as it would have been in had the circumstance not occurred. Such liquidated damages shall constitute the only damages payable by the Project Company to the Water Authority in such circumstances of non-performance, breach or default, regardless of legal theory. This limitation, however, is not intended to and shall not limit (1) the Water Authority's step-in rights under Section 19.2 (Water Authority's Temporary Step-In Rights), and its right to terminate this Water Purchase Agreement upon the occurrence of a Project Company Event of Default, or (2) the Project Company's right to terminate this Water Purchase Agreement upon the occurrence of a Water Authority Event of Default.

(Z) Discretion. When a party has "discretion", it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Water Purchase Agreement.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE WATER AUTHORITY.

The Water Authority represents and warrants, as of the Contract Date, that:

(A) Existence and Powers. The Water Authority is a county water authority, validly existing and in good standing under the laws of the State of California, and has the authority to do business in the State and in any other state in which it conducts its activities with full legal right, power and authority to execute, deliver and perform its obligations under this Water Purchase Agreement.

(B) Due Authorization. This Water Purchase Agreement has been duly authorized, executed and delivered by the Water Authority, and constitutes a legal, valid and binding obligation of the Water Authority, enforceable against the Water Authority in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution and delivery by the Water Authority of this Water Purchase Agreement nor the performance by the Water Authority of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Water Authority of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Water Authority; or

(2) Conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the Water Authority is a party or by which the Water Authority or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or prior approval of voters is required for the valid execution and delivery by the Water Authority of this Water Purchase Agreement or the performance by the Water Authority of its payment or other obligations hereunder except otherwise as such have been duly obtained or made.

(E) No Litigation. Except as disclosed in writing to the Project Company, to the best of its knowledge, there is no Legal Proceeding before or by any Governmental Body pending or overtly threatened or publicly announced against the Water Authority, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Water Purchase Agreement by the Water Authority or the validity, legality or enforceability of this Water Purchase Agreement against the Water Authority, or any other agreement or instrument entered into by the Water Authority in connection with the transactions contemplated hereby or on the ability of the Water Authority to perform its obligations hereunder or under any such other agreement or instrument.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE PROJECT COMPANY.

The Project Company represents and warrants, as of the Contract Date, that:

(A) Existence, Powers and Ownership. The Project Company is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Water Purchase Agreement.

(B) Due Authorization and Binding Obligation. This Water Purchase Agreement has been duly authorized, executed and delivered by all necessary action of the Project Company and constitutes a legal, valid and binding obligation of the Project Company, enforceable against the Project Company in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Project Company of this Water Purchase Agreement nor the performance by the Project Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Project Company of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to the Project Company; or

(2) Conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Project Company or any of its Affiliates is a party or by which the Project Company or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Water Purchase Agreement by the Project Company except as such have been duly obtained or made.

(E) No Litigation Affecting the Project Company. Except as discussed in Appendix 16 (Litigation), to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Project Company's knowledge, overtly threatened or publicly announced against the Project Company or any of its Affiliates, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Water Purchase Agreement by the Project Company or the validity, legality or enforceability of this Water Purchase Agreement against the Project Company, or any other agreement or instrument entered into by the Project Company in connection with the transactions contemplated hereby, or on the ability of the Project Company to perform its obligations hereunder or under any such other agreement or instrument.

(F) No Litigation Affecting the Project Contractors. Except as set forth in Appendix 16 (Litigation), to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending, overtly threatened or publicly announced against any Project Contractor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of any Project Contract by the respective Project Contractor or the validity, legality or

enforceability of any Project Contract against the Project Contractor that is party to the Project Contract, or on the ability of any Project Contractor to perform its obligations under its respective Project Contract.

(G) Equity Contribution Agreement. The Equity Contribution Agreement has been duly authorized, executed and delivered by the parties thereto, is definitive and binding, and evidences the equity investor's irrevocable obligation to provide, and the Project Company's obligation to receive, an equity investment in the Project in the amount of \$_____, subject only to the execution of the Water Purchase Agreement and the issuance of the Initial Plant Bonds.

(H) Bond Purchase Agreement. The Bond Purchase Agreement has been duly authorized, executed and delivered by the parties thereto, is definitive and binding, and evidences Barclay Capital, Inc.'s obligation to purchase, and CPCFA's obligation to issue, the Initial Plant Bonds, subject only to reasonable and customary closing conditions.

(I) Sufficiency of Financing Arrangements. The proceeds of the Initial Plant Bonds, together with the equity committed under the Equity Contribution Agreement, are expected to be sufficient to pay the costs of achieving Mechanical Completion and Provisional Acceptance.

(J) Initial Financing of the Product Water Pipeline Improvements. The proceeds of the Initial Pipeline Bonds are expected to be sufficient to pay the cost of the Product Water Pipeline Improvements.

(K) Cabrillo Ground Lease Terms. The Cabrillo Ground Lease grants the Project Company the right to continue to use and to improve the Cabrillo Raw Seawater Intake System so as to permit the intake and conveyance of Raw Seawater to the Plant over the term of the Cabrillo Ground Lease, notwithstanding any closure and decommissioning of the Cabrillo Generating Facility, subject to and in accordance with the terms of the Cabrillo Ground Lease.

(L) Intellectual Property. The Project Company owns, or has sufficient rights to use, all Intellectual Property necessary for the Project without any known material conflict with the rights of others.

(M) Information Supplied by the Project Company. The Project Company has supplied true, correct and complete copies of each document listed in Appendix 17 (List of Certain Documents Provided by the Project Company). In addition, the representations and warranties made by the Project Company and the other factual statements in the documents listed in Appendix 17 (List of Certain Documents Provided by the Project Company), taken as a whole, are true, correct and complete in all material respects.

(N) No Gratuities. The Project Company has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any Water Authority Indemnitee with a view toward securing this Water Purchase Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Water Purchase Agreement.

(O) Compliance with Applicable Law Generally. The Project Company is in compliance in all material respects with Applicable Law pertaining to the Project Company's business and services.

(P) CEQA Notice of Determination. The City filed a notice of determination in accordance with the CEQA guidelines not less than 30 days prior to the Contract Date and the limitations period for a third-party challenge to the environmental impact report for the Project has expired.

(Q) Project Company Interest in the Plant Site. The Project Company has a leasehold interest in the Plant Site pursuant to the Cabrillo Ground Lease sufficient in all material respects for the performance of the Contract Obligations.

(R) Practicability of Performance. The Design Requirements, the technology and the construction management practices to be employed in the Project are furnished exclusively by the Project Company and its Project Contractors and Subcontractors, and the Project Company assumes and shall have exclusive responsibility for their efficacy. The Project Company assumes the risk that the Raw Seawater pilot testing conducted by the Project Company for the Project may, to any extent, have been inadequate or of insufficient duration to provide a proper basis for the design, construction, operation or maintenance of the Project or for the establishment of the Performance Guarantees and the Monthly Water Purchase Payments. The Project Company further assumes the risk of the practicability and possibility of performance of the Project on the scale, within the time for completion, and in the manner required hereunder, and of treating Raw Seawater and producing and delivering Product Water through the design, construction, operation, maintenance and management of the Project in a manner which meets all of the requirements hereof, even though such obligations may involve technological or market breakthroughs or overcoming facts, events or circumstances (other than Uncontrollable Circumstances) which may be different from those assumed by the Project Company in entering into this Water Purchase Agreement. The Project Company agrees that sufficient consideration for the assumption of all such risks and duties is included in the Monthly Water Purchase Payments. No impracticability or impossibility of any of the foregoing shall be deemed to constitute an Uncontrollable Circumstance. Nothing in this paragraph, however, shall be construed to limit or deny the Project Company's right to be excused from performance where specifically provided elsewhere in this Water Purchase Agreement.

ARTICLE 3

TERM

SECTION 3.1. EFFECTIVE DATE AND TERM.

(A) Term. This Water Purchase Agreement shall become effective, and the term hereof (the “Term”) shall commence, on the Contract Date. The Term shall continue to the Expiration Date or, if this Water Purchase Agreement is earlier terminated by either party in accordance with their respective termination rights under Article 22 (Termination), to the Termination Date.

(B) Accrued Rights. No termination of this Water Purchase Agreement shall:

(1) Limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or

(2) Preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

SECTION 3.2. SURVIVAL.

Notwithstanding any other provision of this Water Purchase Agreement, this Section and the following provisions hereof will survive the expiration or any earlier termination of this Water Purchase Agreement:

(1) Section 4.11 (Financial Books and Records);

(2) Subsection 4.13(E) (Fair Employment and Contracting Policy - Indemnification);

(3) Section 10.7 (Project Assets Transfer Condition);

(4) Article 18 (Dispute Resolution);

(5) Article 22 (Termination), as applicable to the obligations of the parties following the Termination Date;

(6) Article 23 (Water Authority Project Assets Purchase Options);

(7) Article 25 (Indemnification);

(8) Section 26.11 (Property Rights);

(9) Section 26.13 (Water Authority’s Confidentiality Obligations);

(10) Section 26.14 (Project Company’s Confidentiality Obligations); and

(11) Section 26.15 (Personal Information);

together with any provisions necessary to give effect to the above provisions.

ARTICLE 4

CONTRACT OBLIGATIONS GENERALLY

SECTION 4.1. GENERAL RESPONSIBILITIES OF THE PARTIES.

(A) Plant Ownership. The Plant shall be owned by the Project Company.

(B) Project Company. The Project Company shall, subject to the terms and conditions of this Water Purchase Agreement, (1) permit, design, construct, finance, operate, maintain and manage the Plant, and (2) produce, deliver and sell Product Water to the Water Authority. The Project Company shall design and construct the Product Water Pipeline Improvements pursuant to the Product Water Pipeline Improvements Design-Build Agreement.

(C) Water Authority. The Water Authority shall, subject to the terms and conditions of this Water Purchase Agreement, (1) construct the Water Authority Improvements, and (2) purchase and take delivery of Product Water.

(D) Party Bearing Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation or responsibility, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other party or through an adjustment to the Unit Price or otherwise.

(E) Grants and Subsidies Benefit the Water Authority. All grants, subsidies or other payments in aid of construction or operation made by any Governmental Body with respect to the Project or desalinated water generally shall be for the exclusive account of the Water Authority, whether paid or made to the Project Company, the Water Authority or any other person. The Project Company shall cooperate with the Water Authority in obtaining all such grants, subsidies or other payments that are available during the Term. This subsection does not apply to the proceeds of a Refinancing.

(F) Public Communications. Public communications concerning the Project shall be handled by the parties in accordance with the principles set forth in Appendix 15 (Public Communications).

SECTION 4.2. LETTER OF CREDIT.

(A) Letter of Credit Requirements. On or before the Financial Closing Date, the Project Company shall provide security for the performance of its obligations hereunder and under the Product Water Pipeline Improvements Design-Build Agreement through an irrevocable direct pay Letter of Credit issued by a Qualified Commercial Bank (the "Letter of Credit"). The Letter of Credit shall be for a term of at least one year, shall be continuously renewed, extended or replaced no less often than every three years so that it remains in effect until 180 days after the Termination Date, and shall be issued substantially in the form set forth in the Transaction Forms (or in such other form as may be reasonably acceptable to the Water Authority). The Letter of Credit shall be in a stated amount (the "Stated Amount") equal to \$5,000,000 (Index Linked through each date of extension or renewal). The required Stated Amount shall, upon each renewal, extension or replacement thereof, be reduced by the aggregate amount of all amounts drawn on all previous Letters of Credit provided under this subsection. The Stated Amount of the Letter of Credit and the Water Authority's estimate of damages for purposes of its drawing rights under this Section shall in no way limit the amount of damages to which the Water Authority may be entitled for any material breach or Project Company Event of Default hereunder or a material breach or event of default by the Project Company in its capacity as design-builder under the Product Water Pipeline Improvements

Design-Build Agreement. In order to evidence the authorized reduction of the Stated Amount hereunder, the Water Authority, at the request of the Project Company, shall deliver to the Qualified Commercial Bank the certificate for reduction in Stated Amount provided for in the Transaction Forms.

(B) Drawings for Non-Renewal or Bankruptcy. The Water Authority shall have the unconditional right to immediately draw upon the Letter of Credit for the full Stated Amount thereof upon the following conditions: (1) in the event that any required renewal, extension or replacement thereof is not made earlier than the date which is 30 days prior to its expiration date; (2) the Project Company (a) has filed a petition of voluntary bankruptcy under the Bankruptcy Code, (b) has consented to the filing of any bankruptcy or reorganization petition against the Project Company, or (c) has filed a petition to reorganize the Project Company pursuant to the Bankruptcy Code; or (3) a court of competent jurisdiction has issued an order appointing a receiver, liquidator, custodian or trustee of the Project Company or of a major part of the Project Company's property, respectively, or a petition to reorganize the Project Company pursuant to the Bankruptcy Code has been filed against the Project Company, and such order has not been discharged or such filing has not been dismissed within 90 days after such issuance or filing. The proceeds of any such drawing shall be held by the Water Authority as cash collateral to secure the performance of the Contract Obligations and, in the event of a Project Company Event of Default following any such drawing, may be retained by the Water Authority as payment or partial payment of damages resulting therefrom.

(C) Drawings for Termination. The Water Authority shall have the unconditional right immediately to draw upon the Letter of Credit in an amount representing the damages the Water Authority has suffered as a result of the termination of this Water Purchase Agreement by the Water Authority pursuant to Section 20.4 (Water Authority Termination Right).

(D) Drawings Upon a Project Company Event of Default. The Water Authority shall have the right to draw upon the Letter of Credit upon the occurrence of a Project Company Event of Default hereunder or an event of default by the Project Company in its capacity as design-builder under the Product Water Pipeline Improvements Design-Build Agreement (and prior to the expiration and notwithstanding the existence of any cure period under the Collateral Agent's Remedies Agreement) in an amount estimated by the Water Authority as representing the damages it has suffered as a result of the Project Company Event of Default hereunder or an event of default by the Project Company in its capacity as design-builder under the Product Water Pipeline Improvements Design-Build Agreement. It shall be a condition to the right of the Water Authority to draw on the Letter of Credit under this subsection that: (1) the General Manager of the Water Authority has given the Project Company written notice of any such event of default, and attached a copy of his or her good faith assessment of the damages the Water Authority has suffered as a result of such event of default; and (2) the Project Company has had an opportunity at a meeting scheduled by the General Manager of the Water Authority to be held not earlier than 15 days nor later than 30 days following delivery of such notice, to present to the General Manager of the Water Authority evidence disputing the Water Authority's assertion of any such event of default or assessment of damages.

(E) Effect of Final Determination of Damages. In the event that subsequent to any drawing on the Letter of Credit it is determined by any court of competent jurisdiction in a final non-appealable decision that such drawing to any extent was not permitted hereunder, the Water Authority promptly shall pay the amount wrongfully drawn to the Project Company together with interest thereon of the Overdue Rate calculated from the date of drawing to the date of payment to the Project Company.

(F) Release or Suspension. The Water Authority shall have the right at any time to release or suspend the Project Company from its obligation to provide the Letter of Credit. Upon any such release and during any such suspension, the Unit Price shall be reduced to account for an amount reasonably determined to be the actual cost savings to the Project Company as a result of the release or suspension of the Letter of Credit obligations hereunder for each Contract Year the Letter of Credit has been released or suspended. Notwithstanding the Water Authority's having elected to release the Letter of Credit hereunder, the Water Authority may direct the Project Company at any time thereafter to reinstate such Letter of Credit and, upon such reinstatement, the Unit Price shall be increased to reflect the actual cost increase to the Project Company as a result of such reinstatement. In such event, the Project Company shall within 45 days following such notice of reinstatement furnish the Water Authority with the reinstated Letter of Credit.

(G) Return. The Letter of Credit shall be returned to the Project Company upon the later of (1) 10 days after the Termination Date and (2) the payment of all amounts owed by the Project Company to the Water Authority under this Water Purchase Agreement.

SECTION 4.3. CONSTRUCTION OF THE PLANT.

(A) Commencement and Prosecution of Construction Work Generally. On the Financial Closing Date, the Project Company shall promptly proceed to undertake, perform and complete the Construction Work in accordance with the requirements of the Design Requirements and the Contract Standards.

(B) Payment of Costs. Except as otherwise specifically provided in this Water Purchase Agreement, the Project Company shall pay directly, and the Water Authority shall have no responsibility for, all costs and expenses of the Construction Work of any kind or nature whatsoever, including all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the Project Company; obtaining and maintaining the Required Insurance; financing costs; payments due under the Project Contracts and Subcontracts or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Project Company; sales, use and similar taxes on building supplies, materials and equipment; general supervision by the Project Company of all Construction Work; the preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve Mechanical Completion, Provisional Acceptance and Project Completion.

(C) Construction on the Plant Site. The Project Company shall construct the Plant on the Plant Site pursuant to its rights as tenant under the Cabrillo Ground Lease.

(D) Project Company Control of the Construction Work; No Water Authority Responsibility. The Project Company shall have total control of the Construction Work and shall effectively direct and supervise the Construction Work so that it is undertaken in compliance with the terms of this Water Purchase Agreement. The Project Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Project hereunder, notwithstanding the Contract Standards or the fact that in negotiating this Water Purchase Agreement the Water Authority participated in certain design review activities. Nothing in this Water Purchase Agreement shall be interpreted as giving any responsibility for the Construction Work to the Water Authority, any Water Authority Indemnatee, or the Water Authority Engineer. Any Water Authority rights of review and comment provided in this Water Purchase Agreement with respect to any aspect of the Construction Work shall be for the Water Authority's benefit only, and no review or comment by the Water Authority Representative shall in any way relieve the Project Company of its obligation for all aspects of the Project.

(E) Construction Work Reviews. During the Construction Period, the Water Authority shall have the right, but not the obligation, to: (1) attend design progress meetings described in Section 3.10 (Water Authority Design Review) of Appendix 3 (Project Design and Construction Work); (2) attend the preconstruction conference described in Section 3.12 (Construction Meetings and Reports) of Appendix 3; (3) attend construction progress meetings described in Section 3.12 of Appendix 3; and (4) review the Construction Work for compliance with Appendix 3 (Project Design and Construction Work). The Project Company shall consider and address in good faith any comments or concerns raised by the Water Authority in connection with such matters in accordance with Appendix 3 (Project Design and Construction Work).

(F) Project Schedule. The Project Company shall deliver and update the Project Schedule in accordance with Appendix 3 (Project Design and Construction Work). Any failure to do so shall constitute a Project Company Remediable Breach.

(G) Construction of Tie-Ins and Connection to the Water Authority Distribution System. In performing the Construction Work and in preparing and updating the Project Schedule, the Project Company shall take into account the time and work necessary for both parties relating to connections and tie-ins with Water Authority Distribution System, including connections and tie-ins required as part of the construction of the Product Water Pipeline Improvements and the Water Authority Improvements, required to achieve Mechanical Completion of the Plant, and required to conduct the Full System Test and the Performance Test. The Project Company shall be responsible for scheduling and constructing all connections and tie-ins to the Water Authority Distribution System at the times required in order to permit planned Water Authority Distribution System shutdowns to proceed as scheduled. Such shutdowns are scheduled two years in advance, typically between November and March. The Project Company shall request and schedule the minimum number of other Water Authority Pipeline shutdowns possible; perform tie-in and connection work to coincide with planned Water Authority Distribution System shutdowns to the maximum extent practicable; and ensure that only one Water Authority pipeline will be removed from service at a time. During any shutdown of a Water Authority pipeline, the Water Authority shall provide the Project Company with a period of at least six and not more than eight consecutive days, as determined by the Water Authority, to perform a tie-in or connection. The Project Company shall be permitted to work on a 24-hour per day, 7-days per week, basis during the Water Authority pipeline shutdowns.

(H) Water Authority Engineer. The Water Authority may engage the services of a Water Authority Engineer to act as its agent and to assist it in connection with this Water Purchase Agreement. The Project Company shall cooperate with the Water Authority Engineer in performing its duties, and provide the Water Authority Engineer all information required hereunder or otherwise reasonably requested in such connection. The obligation of the Project Company to cooperate with the Water Authority Engineer as provided in this Section shall not be construed to create any Water Authority rights in addition to those specifically provided herein. The services of the Water Authority Engineer may include:

- (1) reviewing and monitoring the progress of design and construction;
- (2) reviewing a proposed Design Requirements Change;
- (3) reviewing plans, drawings and specifications for compliance with the Design Requirements;
- (4) reviewing the Commissioning and Performance Test Protocol, the performance of Commissioning and the Performance Tests, and the reports prepared with respect thereto;

(5) reviewing Uncontrollable Circumstance claims and relief requests by the Project Company; and

(6) reviewing matters related to proposed Capital Modifications.

(I) Fees. The fees and expenses of the Water Authority Engineer shall be borne by the Water Authority.

(J) Operating Protocol. The Project Company shall deliver an initial draft of the Operating Protocol to the Water Authority at least 30 days prior to Mechanical Completion.

(K) Water Authority Administrative Space During the Construction Period. The Project Company shall provide construction office space at the Plant Site for the exclusive use of the Water Authority's compliance personnel and advisors in accordance with Appendix 3 (Project Design and Construction Work). The cost related to the Water Authority's use of such office space (including janitorial services to be provided by the Project Company) has been priced into the Monthly Water Purchase Payments.

(L) Hazardous Substances Management During the Construction Period. As between the parties, the Project Company shall be responsible for, and bear the risk and cost of, managing and disposing of Hazardous Substances during the Construction Period. The Project Company shall develop and maintain: (1) the Hazardous Substance Management Program; and (2) the Response Plan.

SECTION 4.4. CONSTRUCTION GOVERNMENTAL APPROVALS.

(A) Generally. The Project Company shall make all applications and take all other action necessary to obtain and maintain all Construction Governmental Approvals, and shall pay all fees, costs and charges due in connection therewith.

(B) Copies. The Project Company shall make available for review and copying by the Water Authority, upon request, copies of the following Construction Governmental Approvals and related applications:

- (1) Demolition permit;
- (2) Rough grading permit;
- (3) Precise grading permit;
- (4) Building permits;
- (5) Solid and hazardous waste disposal permits (as needed);
- (6) Storm water pollution prevention plan;
- (7) Dewatering permit;
- (8) Final inspection / City of Carlsbad approval of Plant occupancy; and

(9) Any other Construction Governmental Approval or related documentation material to the Water Authority's interests hereunder.

(C) Review and Comment. The Project Company shall manage the process of obtaining the following Construction Governmental Approvals in a manner which affords the Water Authority a reasonable opportunity, in advance of submittal, to review and comment upon all material documentation submitted to and issued by the Governmental Body in connection therewith:

- (1) Any proposed revisions to the Encina Power Station precise development plan required by changes to the Project;
- (2) Any proposed revisions to the South Carlsbad Coastal Project Area Redevelopment Plan required by changes in the Project;
- (3) Any amendments to the redevelopment permit required by changes to the Project;
- (4) Any amendments to the Encina Specific Plan No. 144 required by changes to the Project;
- (5) Any amendments to the State Lands Commission lease required by changes to the Project;
- (6) Any amendments to the Coastal Development Permit for the Project;
- (7) Any amendments to the NPDES Project Permit;
- (8) Any CEQA compliance documents required for any revisions to the Project; and
- (9) The issuance of the Project Company New Domestic Water Supply Permit.

(D) Water Authority Interests. The Project Company shall not, unless required by Applicable Law, knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding the Construction Governmental Approvals or the terms and conditions thereof that would impose any cost or material burden on the Water Authority in its capacity as a buyer of Product Water under this Water Purchase Agreement or that would contravene any Water Authority policies with respect to the matters contained therein. The Project Company shall notify the Water Authority of any action which would have the effect described in the preceding sentence promptly upon having knowledge thereof, and the Water Authority reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have any such effect.

(E) Limited Permitting Assistance by the Water Authority. The Water Authority shall provide reasonable assistance to the Project Company in connection with the Project Company's obligation to obtain and maintain the Construction Governmental Approvals required under this Section, including attending public hearings and meetings of the Governmental Bodies charged with issuing the Construction Governmental Approvals, and providing the Project Company with existing relevant data and documents that are within the Water Authority's custody or control or are reasonably obtainable by the Water Authority and which are reasonably required for such purpose; provided, however, that the Water Authority's obligation to provide such reasonable assistance shall be limited, in light of the Project Company's role as the exclusive developer of the Project, only to those actions which are legally required to be taken by the Water Authority as permittee or which involve providing

information which is in the possession of or reasonably obtainable by the Water Authority. Any such assistance shall be provided only upon the reasonable request of the Project Company made directly to the Water Authority, and the Water Authority shall have no affirmative obligation independently to initiate or to provide such assistance. This covenant shall not obligate the Water Authority to staff the Project Company's permitting or development efforts, to undertake any new studies or investigations with respect to the Project, or to affirmatively seek to obtain the issuance of the Construction Governmental Approvals. The Water Authority shall not take any action, however, which seeks to cause the denial or delay of any application for any Construction Governmental Approval.

(F) Project Company Assumption of Permitting Risk for Construction Work Generally. Except as provided in subsection (G) of this Section, the Project Company explicitly assumes the risk of obtaining and maintaining the Construction Governmental Approvals, including the risk of delay, non-issuance or imposition of any term or condition in connection therewith by a Governmental Body; provided, however, that the Project Company shall be afforded relief from the assumption of such risk in the event of the occurrence of any Change in Law Event. In assuming this risk, the Project Company acknowledges in particular that the Governmental Body issuing any Construction Governmental Approval may impose terms and conditions which require the Project Company to make changes or additions to the Project or Project operations which may increase the cost or risk to the Project Company of performing the Contract Obligations, all of which costs or risks shall be for the account of and borne by the Project Company.

(G) Extension of the Scheduled Commercial Operation Date for Certain CDPH Permitting Delays. If (1) the Project Company has submitted a complete application for the Project Company New Domestic Water Supply Permit by the date that is 400 days following the Financial Closing Date, and made timely and complete submittals of all other information reasonably requested by CDPH in connection therewith, and (2) CDPH has not issued an Interim Operations Approval or a Project Company New Domestic Water Supply Permit by the date that is 120 days prior to the anticipated date of Mechanical Completion, a Change in Law Event shall be deemed to have occurred; provided, however, that the only relief the Project Company shall be entitled to upon the occurrence of such an event is an extension of the Scheduled Commercial Operation Date by the number of days reasonably required to take account of such delay after complying with its obligation to mitigate hereunder.

(H) Permits and Approvals Required Upon Completion. Section 7.2 (Interim Operations Approval and Domestic Water Supply Permit) shall apply with respect to Construction Governmental Approvals required upon Mechanical Completion and as conditions to the introduction of Product Water into the Water Authority Distribution System.

SECTION 4.5. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance Obligation. The Project Company shall perform the Contract Obligations in accordance with Applicable Law, and shall cause the Project Contractors and all Subcontractors to comply with Applicable Law, including all registration, licensing and certification requirements imposed by any Governmental Body. The Project Company shall comply with the terms of all Governmental Approvals and other Applicable Law pertaining to the Plant, Raw Seawater, Product Water, Plant By-Products, air emissions, noise, light emissions and odor. At the request of the Water Authority, the Project Company shall participate in general regional facility evaluation surveys conducted by the CDPH or the EPA.

(B) Compliance With Environmental Mitigation Measures. The Project Company has agreed with various Governmental Bodies to perform certain Environmental Mitigation Measures in connection with obtaining Governmental Approvals and with the preparation and certification of the Environmental Impact Report. The Project Company shall

comply with and perform all such Environmental Mitigation Measures in a timely manner to the extent required under applicable Governmental Approvals.

(C) Sampling, Testing and Laboratory Work. The Project Company shall perform and provide all sampling, laboratory testing and analyses, and quality assurance and quality control procedures and programs required by the Contract Standards. All testing laboratories shall be CDPH, State and EPA certified, as applicable, for the applicable test, shall be operated in accordance with Good Management Practice. All sampling and test data shall be available for review by, and reported to, the Water Authority in accordance with subsection 8.8(D) (Reports to Governmental Bodies). The Project Company explicitly assumes the risk of incorrect sampling, testing and laboratory work and any consequences thereof or actions taken or corrections needed based thereon, whether such work is performed by itself or third parties, both as to failures to detect and as to false detections. The Project Company shall permit the Water Authority, at the Water Authority's expense, to perform any testing, sampling or analytical procedure it deems appropriate, using the Plant, laboratory services available to the Project Company, or otherwise.

(D) Registration, Licensing and Certification Requirements. The Project Company shall ensure that all persons performing the Contract Obligations, including the Project Contractors and all Subcontractors, comply with all registration, licensing and certification requirements imposed by Applicable Law.

(E) Investigations of Non-Compliance. In connection with any actual or alleged event of material non-compliance with Applicable Law in the performance of the Contract Obligations, the Project Company shall, in addition to any other duties which Applicable Law may impose:

(1) Fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body;

(2) Attend all meetings and hearings with respect to the Project required by any Governmental Body;

(3) Provide all corrective action plans, reports, submittals and documentation required by any Governmental Body, and shall provide copies of any such plan, report, submittal or other documentation to the Water Authority; and

(4) Promptly upon receipt thereof, provide the Water Authority with a true, correct and complete copy of any written notice of violation or non-compliance with Applicable Law, and true and accurate transcripts of any oral notice of non-compliance with Applicable Law, issued or given by any Governmental Body.

The Project Company shall furnish the Water Authority with a prompt written notice describing the occurrence of any event or the existence of any circumstance which results, or could reasonably be expected to result, in any such notice of violation or non-compliance to the extent the Project Company has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such non-compliance. The Project Company shall provide the Water Authority a reasonable opportunity to review and comment on any proposed Project Company response to any material non-compliance with Applicable Law hereunder prior to its implementing such response.

(F) Fines, Penalties and Remediation. Except to the extent excused by Uncontrollable Circumstances, in the event that the Project Company, a Project Contractor or any Subcontractor fails at any time to materially comply with Applicable Law with respect to the Contract Obligations, the Project Company shall:

- (1) Correct such failure and resume compliance with Applicable Law as soon as practicable;
- (2) Pay any resulting fines, assessments, levies, impositions, penalties or other charges;
- (3) Indemnify, defend and hold harmless the Water Authority and the Water Authority Indemnitees in accordance with Section 25.1 (Project Company's Obligation to Indemnify) from any Loss-and-Expense resulting therefrom;
- (4) Make all commercially reasonable changes in performing the Contract Obligations which are necessary to assure that the failure of compliance with Applicable Law will not recur; and
- (5) Comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Project Company, a Project Contractor or any Subcontractor to comply with Applicable Law.

(G) No Nuisance Covenant. The Project Company shall ensure that the operation of the Project does not create any material odor, litter, noise, rust, corrosion, fugitive dust, vector, excessive light or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law. Should any such nuisance condition occur which is not caused by Uncontrollable Circumstances, the Project Company shall, as soon as practicable remedy the condition, pay any fines or penalties relating thereto, make all commercially reasonable capital investments, improvements or modifications and changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, and indemnify and hold harmless the Water Authority and the Water Authority Indemnitees from any Loss-and-Expense relating thereto in the manner provided in Section 25.1 (Project Company's Obligation to Indemnify).

SECTION 4.6. RESTRICTIONS ON DIRECTED DESIGN REQUIREMENTS CHANGES AND CAPITAL MODIFICATIONS.

The Water Authority shall not, in the exercise of any of its rights hereunder, at any time during the Term require, and the Project Company may refuse to implement, a Design Requirements Change made due to an Uncontrollable Circumstance or a Directed Capital Modification which:

- (1) Would be contrary to Applicable Law;
- (2) Would render any policy of Required Insurance void or voidable unless the Water Authority agrees to provide replacement insurance or other security reasonably satisfactory to the Project Company;
- (3) Would cause the revocation of any Governmental Approval required for the Project Company to perform its obligations under this Water Purchase Agreement;

(4) Would require a new Governmental Approval for the Project Company to perform its obligations under this Water Purchase Agreement which Governmental Approval would not, using reasonable efforts, be obtainable; or

(5) Would materially and adversely affect the risk allocation, ability to perform (including any material increase in the risk of non-performance) or cost of performance under this Water Purchase Agreement with respect to the Contract Obligations, unless the material and adverse effects of such requirement are remedied by the Water Authority to the Project Company's reasonable satisfaction.

SECTION 4.7. CABRILLO RISK.

(A) Project Company Responsibility. Except as and to the extent provided in subsection 4.7(B) (Cabrillo Risk - Exceptions), the Project Company shall bear all risks with respect to the Cabrillo Entities, and all risks with respect to the Cabrillo Generating Facility and Cabrillo Generating Facility Site, including the following, and the occurrence of any such risk shall not constitute an Uncontrollable Circumstance:

(1) The sale, bankruptcy, reorganization, merger or insolvency of any Cabrillo Entity;

(2) A breach or default by any party under the Cabrillo Ground Lease or under any other agreement between any Cabrillo Entity and the Project Company or any Project Company Affiliate; or

(3) The denial, modification or change in a term or condition of any law, regulation or governmental license, permit or approval affecting the Cabrillo Generating Facility, including any such denial modification or change pertaining to the operation by Cabrillo of (1) the Raw Seawater Intake System based on any requirements of Section 316(b) of the federal Clean Water Act or similar regulations of any Governmental Body, and (2) the Cabrillo Generating Facility discharge facilities under the NPDES Project Permit, the federal Clean Water Act or the State Porter-Cologne Act.

(B) Exceptions. It shall constitute an Uncontrollable Circumstance if a force majeure event (of the type that would constitute a Force Majeure Event if it affected the Project) occurs that damages or destroys Cabrillo's Raw Seawater Intake System or any other property at the Cabrillo Generating Facility Site that is necessary for the intake of Raw Seawater for the Plant or the discharge of Concentrate Discharge from the Plant.

SECTION 4.8. CABRILLO RAW SEAWATER INTAKE SYSTEM IMPROVEMENTS.

(A) Closure and Decommissioning of the Cabrillo Generating Facility. The parties acknowledge that the once-through cooling system at the Cabrillo Generating Facility, or the entire Cabrillo Generating Facility, is expected to be closed and decommissioned in approximately 2017 under Applicable Law.

(B) Obligation to Construct Cabrillo Raw Seawater Intake System Improvements Constitutes a Change in Law; Limitations. The closure and de-commissioning of the once-through cooling system at the Cabrillo Generating Facility anticipated by the parties under subsection 4.8(A) (Cabrillo Raw Seawater Intake System Improvements - Closure and Decommissioning of the Cabrillo Generating Facility), if and when it occurs, shall constitute a Change in Law Event. Upon any such occurrence, the procedures set forth in Section 6.3 (Financing Compensation Adjustment Event Capital Costs), Article 14 (Uncontrollable Circumstance Procedures) and the relief to which the Project Company is entitled upon the

occurrence of such an event set forth in Article 16 (Change in Law Events and Other Uncontrollable Circumstances) shall apply; provided, however, that:

(1) The Debt Service Charge and the Equity Return Charge components of the Unit Price shall be adjusted as provided in this subsection. The Compensation Adjustment Event Capital Costs of the Cabrillo Raw Seawater Intake System Improvements shall first be negotiated and established on a lump sum basis as provided in Section 17.20 (Cost Substantiation for Additional Work Required Due to Directed Capital Modifications and Compensation Adjustment Events). Such negotiated lump sum amount shall not exceed [\$21,283,459] (Index-Linked to the Contract Year in which the financing for such improvements closes), even if the actual Compensation Adjustment Event Capital Costs exceed such threshold. Such negotiated lump sum amount shall be the basis of the Compensation Adjustment Event Financing to be undertaken by the Project Company for such improvements pursuant to Section 6.3 (Financing Compensation Adjustment Event Capital Costs), and such Compensation Adjustment Event Financing may be sized in a manner that includes proceeds to be applied to pay costs of issuance, reserve funds, capitalized interest and other related financing costs as necessary and appropriate. Proceeds from the Compensation Adjustment Event Financing in the amount of such negotiated lump sum shall be applied by the Project Company to pay such Compensation Adjustment Event Capital Costs. The Project Company shall bear any such Compensation Adjustment Event Capital Costs in excess of such negotiated, lump sum amount. The Debt Service Charge component of the Unit Price shall be adjusted by adding an amount equal to (a) the annual payments that would be required to amortize an amount equal to 80% of such Permitted Debt at the interest rate of such Permitted Debt, divided by (b) the then-applicable Minimum Annual Demand Commitment. In addition, in connection with any Unit Price adjustment in such circumstances, the Equity Return Charge shall be adjusted by adding an amount equal to (a) the annual payments that would be required to amortize 20% of such Permitted Debt at an assumed interest rate of 15%, divided by (b) the then-applicable Minimum Annual Demand Commitment, whether or not any additional equity is actually issued by the Project Company in connection with the Compensation Adjustment Event Financing. Illustrative examples of the adjustments provided for in this subsection are set forth in Section 5 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments).

(2) The Operating Charge and the intake pump station conversion rate element of the Electricity Charge components of the Unit Price shall be adjusted as provided in this subsection. The costs of operating, maintaining, repairing and replacing the Cabrillo Raw Seawater Intake System Improvements (including electricity costs for the Raw Seawater pumping requirements) shall first be reasonably estimated and negotiated for each Contract Year over the remaining Term, as provided in Section 17.20 (Cost Substantiation for Additional Work Required Due to Directed Capital Modifications and Compensation Adjustment Events)). The parties shall then negotiate an annual amount for such costs (based on the procedures set forth in Section 17.19 (Cost Substantiation for Additional Work Required Due to Directed Capital Modifications and Compensation Adjustment Events) which, if established in the first Contract Year in which such improvements are placed in service and escalated based on reasonable assumptions as to the Inflation Index and the Electricity Price Adjustment Factors, as applicable, would compensate the Project Company for such future costs. Such negotiated annual amount shall not exceed \$2,660,431 per Contract Year, Index-Linked. The adjustment to the Operating Charge and Electricity Charge components of the Unit Price provided for in this subsection shall be made by dividing the respective negotiated lump sum amounts for the Operating Charge and the Electricity Charge by the then-applicable Minimum Annual Demand Commitment and shall apply solely to the Contract Year in which the Cabrillo Raw Seawater Intake

System Improvements are placed in service. Following the adjustments described in this subsection, the Operating Charge and Electricity Charge shall continue to escalate and adjust for the remainder of the Term as provided in Section 17.5 (Operating Charges) and Section 17.6 (Electricity Charges).

(C) Baseline Unit Price Cap Applicability. The compensation adjustment to which the Project Company is entitled under this Section is subject to Section 17.14 (Cap on Increases in the Unit Price Due to Uncontrollable Circumstances).

(D) Governmental Approvals for the Cabrillo Raw Seawater Intake System Improvements. It shall be deemed to be a Change in Law Event, as to which the Project Company shall be entitled to schedule and performance relief but not compensation relief, if the Project Company has submitted a complete application for any Governmental Approval required in connection with the Cabrillo Raw Seawater Intake System Improvements (together with all information reasonably requested with respect thereto by the issuing Governmental Body as soon as reasonably practicable) and such Governmental Approval has not been issued within 180 days of such submittal.

SECTION 4.9. COVENANT NOT TO CONSTRUCT A SEPARATE, STAND-ALONE SEAWATER DESALINATION FACILITY.

The Project Company covenants that neither the Project Company nor any Affiliate shall own, develop, finance or lease a seawater desalination facility in San Diego County that is separate and stand-alone from the Project, whether on or off the Plant Site without the Water Authority's consent, given at its discretion.

SECTION 4.10. GOOD MANAGEMENT PRACTICE AND GOOD DESIGN AND CONSTRUCTION PRACTICE.

Good Management Practice and Good Design and Construction Practice shall be utilized hereunder, among other things, to implement and in no event to displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term, Good Management Practice or Good Design and Construction Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Project Company, the Project Company shall be relieved of its obligation to comply with such evolved Good Management Practice and Good Design and Construction Practice (but not Good Management Practice and Good Design and Construction Practice as of the Contract Date) unless the Water Authority agrees to adjust the Unit Price (subject to Cost Substantiation) to account for such additional costs.

SECTION 4.11. FINANCIAL BOOKS AND RECORDS.

(A) Recordkeeping Requirements. The Project Company shall prepare and maintain proper, accurate, current and complete financial books and records regarding the Contract Obligations, including, to the extent available to the Project Company, all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Contract Obligations, this Water Purchase Agreement, the Project Contracts, any Subcontract or any transactions in which the Water Authority has or may have a financial or other material interest hereunder, in each case to the extent required to determine the costs of Design Requirements Changes, Uncontrollable Circumstance costs, or other adjustments to the Unit Price or other payments based on costs for which the Water Authority is responsible under this Water Purchase Agreement. The Project Company shall produce such financial books and records for examination and copying for all such purposes

promptly upon request by the Water Authority. All such information upon delivery to the Water Authority shall be presented in a format that will enable an independent auditor to perform a review of the information in accordance with GAAP, to the extent applicable. The Project Company shall not be required to provide the Water Authority any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to the Water Authority through the Cost Substantiation process upon the delivery of financial records for the purposes hereof. The Project Company shall keep and maintain all such financial books and records with respect to each Contract Year until at least the tenth anniversary of the last day of each such Contract Year, or such longer period during which any Legal Proceeding with respect to the Project may be pending for which such financial books and records are relevant. In the event the Project Company fails to prepare or maintain any financial books, records or accounts as required under this Section, the Project Company shall not be entitled to any requested payments or adjustments to the extent such failure prevented verification or Cost Substantiation as required by this Water Purchase Agreement.

(B) Inspection, Audit and Adjustment. The Water Authority shall have the right, at its cost and expense, to perform or commission an inspection or independent audit of the financial information required to be kept under this Section, and shall provide the results of such inspection or audit to the Project Company. If an inspection or audit reveals that the Project Company has overstated any component of the Monthly Water Purchase Payments, then the Project Company shall, at the election of the Water Authority, either immediately reimburse the Water Authority or adjust the Monthly Water Purchase Payments based on the overstated amount, plus interest at the Overdue Rate, from the time such amount was initially overpaid until reimbursed or credited to the Water Authority. If the overpayment exceeds 1% of the total amount that should have been properly paid by the Water Authority during the period audited, then the Project Company shall, in addition, reimburse the Water Authority for any and all fees and costs reasonably incurred in connection with the inspection or audit. The foregoing remedies shall be in addition to any other remedies the Water Authority may have, including remedies for a Project Company Event of Default. If an inspection or audit reveals that the Project Company has understated any component of the Monthly Water Purchase Payments, then the Project Company shall include the amount of the understated payment in the next Billing Period invoice for payment in the regular course under Section 17.14 (Billing and Payment).

SECTION 4.12. DELIVERY OF DOCUMENTS.

(A) Project Company. In this Water Purchase Agreement, the Project Company is obligated, subject to the terms and conditions hereof, to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. Except for document submittal governed by Appendix 3 (Project Design and Construction Work), the Project Company agrees that all such documents shall be submitted to the Water Authority in digital form, unless copies are specifically required to be delivered under this Water Purchase Agreement. Digital copies shall consist of computer readable data submitted in any standard interchange format which the Water Authority may reasonably request to facilitate the administration and enforcement of this Water Purchase Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(B) Water Authority. The Water Authority shall provide to the Project Company upon request copies of all information relating to the Project which is in the possession of the Water Authority and material to the Project Company's performance hereunder, subject, however, to rights of attorney-client privilege and Applicable Law, including, for example, any confidentiality of records requirements.

SECTION 4.13. FAIR EMPLOYMENT AND CONTRACTING POLICY.

(A) Compliance with Water Authority Non-Discrimination Policy. The Project Company shall comply with Section 2.24.010 of the Administrative Code, which states that:

(1) It is the policy of the Water Authority to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, or other status protected from workplace discrimination by state or federal law. Water Authority officers, employees and consultants shall not knowingly deny a Water Authority opportunity or benefit to, or, discriminate against or harass, any Water Authority employee, applicant for employment, contractor, vendor, or recipient of Water Authority services on account of the person's race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, or other status protected from workplace discrimination by state or federal law. Water Authority officers, employees and consultants shall not knowingly give preferential treatment to any applicant for employment, bidder, contractor, vendor, or recipient of Water Authority services on the basis of race, color, ethnicity, national origin, ancestry, religion, creed, physical disability, mental disability, medical condition, marital status, sex, sexual orientation.

(2) Subsection (1) of this Section shall be interpreted in a manner that is consistent with the California and United States Constitutions and applicable state and federal statutes governing workplace discrimination. The terms used in this Section shall have the same meaning as defined in state statutes governing the same subject matter.

(3) Nothing in this Section shall be interpreted as prohibiting bona fide occupational qualifications consistent with applicable state and federal law and reasonably necessary to the normal operation of Water Authority employment or contracting. Nothing in this Section shall be interpreted as prohibiting regulations and policies to prevent nepotism or conflicts of interest.

(4) Nothing in this Section shall be interpreted as prohibiting action taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the Water Authority.

(B) Veteran Employment Outreach Program. The Project Company shall establish a reasonable outreach program for employment of recently qualified persons who are recently honorably discharged or retired veterans of the United States military services. The Project Company may meet this requirement through participation in a "Helmets to Hardhats Program" within San Diego County.

(C) Compliance with Statutes. The Project Company agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and the Americans with Disabilities Act of 1990.

(D) Compliance with Policy. The Project Company and its officers, employees, agents and the Project Contractors shall comply with the Water Authority's policy set forth in Appendix 18 (Water Authority's Discrimination/Harassment Prohibition Policy) in the performance of this Water Purchase Agreement.

(E) Indemnification. The Project Company shall indemnify, defend and hold harmless the Water Authority and the Water Authority Indemnitees in the manner provided in Section 25.1 (Project Company's Obligation to Indemnify) from and against all Loss-and-Expense which any of them may incur arising from any claim of harassment, including but not limited to sexual harassment, arising from the conduct of the Project Company or any of the Project Company's officers, employees, agents or Subcontractors. In the event of a harassment complaint against the Project Company or any of the Project Company's officers, employees, agents, or Subcontractors, the Project Company shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of an officer, employee, agent or Subcontractor.

ARTICLE 5

WATER AUTHORITY OBLIGATIONS GENERALLY

SECTION 5.1. WATER AUTHORITY OBLIGATIONS GENERALLY.

The Water Authority, subject to and in accordance with the terms and conditions hereof and in addition to the obligations it has accepted elsewhere in this Water Purchase Agreement, shall:

- (1) Construct the Water Authority Improvements, as provided in Section 5.2 (Water Authority Improvements), including obtaining all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained for such construction;
- (2) Take delivery of and purchase the Minimum Monthly Demand Commitment of Product Water in the applicable Billing Period if and to the extent Product Water is produced and available for delivery by the Project Company in such volume;
- (3) Maintain and repair in good working order Product Water Pipeline Improvements and the Water Authority Improvements that are material to the Project Company's performance of the Operating Work;
- (4) Pay the Monthly Water Purchase Payments and any other amounts due the Project Company; and
- (5) Make available to the Project Company upon request copies of all information relating to the Project which is in the possession of the Water Authority and material to the Project Company's performance hereunder.

SECTION 5.2. WATER AUTHORITY IMPROVEMENTS.

(A) Design, Construction and Financing. In order to provide for the receipt of Product Water by the Water Authority Distribution System, the Water Authority shall design, construct and finance the Water Authority Improvements. Appendix 13 (Water Authority Improvements) sets forth the general nature, capacity and functionality of the Water Authority Improvements intended as of the Contract Date to be constructed by the Water Authority. The Water Authority shall have complete discretion to design and construct the Water Authority Improvements in any manner it chooses, whether consistent or inconsistent with Appendix 13, so long as the Water Authority Improvements have the capacity to receive delivery of Product Water in volumes and in a manner consistent with the Water Authority's Product Water purchase obligations under this Water Purchase Agreement.

(B) Scheduled Water Authority Improvements Completion Date. The Water Authority shall cause construction of the Water Authority Improvements to be substantially complete, and capable of accepting Product Water, by the date that is 915 days following the Financial Closing Date (the "Scheduled Water Authority Improvements Completion Date"). The Water Authority shall regularly apprise the Project Company as to the progress of construction.

(C) Completion Delay. Except as provided in subsection (D) of this Section, for each day, if any, elapsing between (1) the date that is 30 days after the later of (a) the

Scheduled Water Authority Improvements Completion Date, or (b) the date on which the Project Company would have achieved Provisional Acceptance but for the Water Authority's failure for any reason to complete the Water Authority Improvements by the Scheduled Water Authority Improvement Completion Date so as to be capable physically of receiving Product Water available for delivery from the Project Company, and (2) the Commercial Operation Date, the Water Authority shall pay the Project Company an amount equal to (i) the Fixed Annual Costs that would have been payable had the Commercial Operation Date occurred, divided by (ii) 365. There shall be deducted from such amount an amount equal to the Avoidable Costs the Project Company was able to avoid as against the components of such Fixed Annual Costs in the performance of its obligation to mitigate under subsection 26.5(A)(Mitigation by the Project Company) in light of such delay in achieving the Commercial Operation Date. On and after the Commercial Operation Date, the Water Authority shall pay the Project Company the Monthly Water Purchase Payments as provided in Article 17 (Monthly Water Purchase Payments).

(D) Project Company Obligations Relating to the Full System Test. The parties acknowledge that successful passage of the Full System Test by the Water Authority is required (1) in order for the Water Authority to complete construction of the Water Authority Improvements by the Scheduled Water Authority Improvements Completion Date, and (2) the Project Company is required to perform certain obligations in connection with the Full System Test, including the supply of Product Water necessary to conduct the Full System Test. The Water Authority shall not be obligated to make the payments provided for in subsection (C) of this Section to the extent that any delay by the Water Authority in successfully passing the Full System Test and in completing the Water Authority Improvements by the Scheduled Water Authority Improvements Date is caused by the failure of the Project Company to perform its obligations in connection with the Full System Test.

(E) Operation and Maintenance. The Water Authority shall operate and maintain the Water Authority Improvements during the Term so as to permit the delivery of Product Water to the Water Authority Distribution System in accordance with this Water Purchase Agreement.

SECTION 5.3. PRODUCT WATER PIPELINE IMPROVEMENTS.

The parties acknowledge that (1) the Project Company has made certain covenants under the Product Water Pipeline Improvements Design-Build Agreement with respect to the timely completion of the Product Water Pipeline Improvements; (2) the Water Authority has made certain covenants under the Product Water Pipeline Improvements Design-Build Agreement relating to the timely availability of the Pipeline Route; and (3) each party shall have the remedies set forth in the Product Water Pipeline Improvements Design-Build Agreement relating to any breach by the other party of its respective covenants thereunder.

SECTION 5.4. WATER AUTHORITY INTERFACE CABINET.

Each party shall comply with its respective obligations set forth in Attachment 3C of Appendix 3 (Project Design and Construction Work) relating to the timely installation and testing by the Water Authority of the Water Authority Interface Cabinet at the Plant.

SECTION 5.5. PRODUCT WATER PURCHASE RELIEF EVENTS.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of a Product Water Purchase Relief Event, the Water Authority shall give notice of the occurrence of the Product Water Purchase Relief Event to the Project Company as soon as practicable. The Water Authority's notice shall include a written report:

- (1) Describing the Product Water Purchase Relief Event;
- (2) Stating the date on which the Product Water Purchase Relief Event began and its estimated duration, to the extent known; and
- (3) Summarizing the consequences of the Product Water Purchase Relief Event expected impact on the performance of the Water Authority's obligations to receive Product Water under this Water Purchase Agreement.

(B) Updates. The Water Authority shall provide the Project Company with weekly updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Product Water Purchase Relief Event and the matters described in subsection 5.5(A) (Notice and Written Report). In particular, the Water Authority shall notify the Project Company as soon as the Product Water Purchase Relief Event has ceased and of the time when performance of its Product Water purchase obligations can be resumed.

(C) Continuance of Relief. The Water Authority shall not be entitled to relief for a period of longer than 14 days based on the occurrence of a Product Water Purchase Relief Event unless the Board of Directors takes official action declaring the occurrence and continuance of the Product Water Purchase Relief Event. Following any such official action, such entitlement shall continue until the earlier of the date on which normal operations in the Water Authority Distribution System resume or the date on which the Board of Directors takes a further official action declaring the discontinuance of the Product Water Purchase Relief Event.

ARTICLE 6

PROJECT FINANCING AND REFINANCING

SECTION 6.1. PLANT FINANCING.

(A) Project Company Financing. The Project Company is solely responsible for obtaining and repaying all financing necessary for the design, permitting and construction of the Project at its own cost and risk and without recourse to the Water Authority, both initially, as may be required to complete the Project and for any Project purpose during the Term. The Project Company exclusively bears the risk of any changes in the interest rate, payment provisions or the other terms and conditions of any of its financings (other than fluctuations in any variable interest rate on any Plant Bonds on the basis of which the Debt Service Charge is measured, if the issuance of such Plant Bonds on a variable interest rate basis was approved in advance by the Water Authority as required under this Article). The Water Authority shall have no obligation to provide financing for the Project or for any Capital Modifications (other than Directed Capital Modifications pursuant to subsection 11.4(B) (Inability of Project Company to Obtain Approved Financing), for any Uncontrollable Circumstances, or for any other purpose.

(B) Issuance of Initial Plant Bonds. On or before the Contract Date the Project Company has executed (1) the Equity Contribution Agreement, and (2) the Bond Purchase Agreement, each subject to certain terms and conditions. The Project Company shall provide the Water Authority upon request copies of the Equity Contribution Agreement and the Bond Purchase Agreement, together with ownership, governance and similar documentation and any related certificates and opinions, all as requested by and acceptable to the Water Authority, acting reasonably. In the event the Financial Closing Date does not occur for any reason by the date that is 45 days following the Contract Date, either party shall have the right in its discretion to terminate this Water Purchase Agreement upon 15 days written notice to the other party.

(C) Adequacy of Initial Plant Bond Proceeds to Pay Project Costs. The proceeds of the Initial Plant Bonds shall be applied to the payment of Project Costs in the manner provided by the Plant Financing Agreements. In the event the proceeds of the Equity Contribution Agreement and the Initial Plant Bonds are insufficient to pay all Project Costs necessary to achieve Mechanical Completion and Provisional Acceptance, the Project Company shall provide any additional financing required to pay the balance of such Project Costs.

(D) Limitations on Project-Secured Debt. The Project Company shall not issue any Additional Plant Bonds or other debt secured by the Project or its revenues other than the following (the Plant Bonds and such other debt and is collectively referred to herein as "Permitted Debt"): (1) debt for Project Costs, (2) debt for Project completion; (3) debt issued for Refinancing purposes; (4) debt necessary to finance the capital costs of Uncontrollable Circumstances, including Compensation Adjustment Event Capital Costs, subject to the terms of this Water Purchase Agreement; (5) debt to finance short-term Project cash flow requirements; (6) debt to finance Capital Modifications; (7) debt to finance letters of credit to secure the Project Company's obligations under agreements and Governmental Approvals with respect to the Project; (8) debt to finance the costs of compliance with Governmental Approvals; (9) debt in connection with interest rate or other hedging arrangements related to the financing of the Project; and (10) subordinated debt issued for Project purposes. The term of any Permitted Debt issued by the Project Company shall not extend beyond the Expiration Date then in effect, except as provided in subsection 6.3(D) (Negotiated Extension of Expiration Date) and subsection 6.4(D) (Negotiated Extension of Expiration Date).

(E) Permitted Debt Other than Plant Bonds. The Water Authority, notwithstanding any other provision of this Water Purchase Agreement, shall have no obligation under this Water Purchase Agreement for making any payment measured or calculated by or with reference to Permitted Debt (other than Plant Bonds), except (1) Permitted Debt issued to finance Compensation Adjustment Event Capital Costs, and (2) Permitted debt with respect to which the Water Authority has agreed, in its discretion, to assume such an obligation ("Approved Permitted Debt").

(F) Permitted Debt Non-Recourse to Water Authority. All Permitted Debt or other obligations issued or incurred by the Project Company in connection with this Water Purchase Agreement or the Project shall be issued or incurred only in the name of the Project Company. The Water Authority shall have no obligation to pay debt service on any Permitted Debt or such other obligations, or to join in, execute or guarantee any note or other evidence of indebtedness of the Project Company.

(G) Use of Reserve Funds Under the Collateral Trust Agreement. The reserve funds held by the Collateral Agent under the Collateral Trust Agreement shall be applied to pay costs incurred by the Project Company relating to the Project or to make payments with respect to the Permitted Debt or other fund transfers on the terms and conditions set forth therein. Such reserve funds shall not be applied to any Compensation Adjustment Event Capital Costs or other costs required to be borne by the Water Authority hereunder through an adjustment to the Unit Price or as a Direct Payment, except as provided (1) in subsection 6.3(B) (Limitation on Permitted Debt Issued for Compensation Adjustment Event Capital Costs Resulting from an Earthquake), and (2) in Section ____ of the Product Water Pipeline Improvements Design-Build Agreement relating to delays in the availability of the Pipeline Route beyond the reasonable control of either party.

(H) Project Company Liability. Notwithstanding any foreclosure or other enforcement of any security interest created by a Project Financing Agreement, the Project Company shall remain liable to the Water Authority for the payment of all sums owing to the Water Authority under this Water Purchase Agreement and the performance and observance of all of the Project Company's covenants and obligations under this Water Purchase Agreement.

SECTION 6.2. PRODUCT WATER PIPELINE IMPROVEMENTS FINANCING.

(A) Issuance of the Initial Pipeline Bonds. The parties acknowledge that, concurrently with the issuance of the Initial Plant Bonds, they have caused the CPCFA to issue the Initial Pipeline Bonds for the purpose of financing the Product Water Pipeline Improvements. The Product Water Pipeline Improvements shall be designed and constructed by the Project Company pursuant to the Product Water Pipeline Improvements Design-Build Agreement.

(B) Security for the Pipeline Bonds. The Pipeline Bonds shall be secured primarily by the Pipeline Installment Sale and Assignment Agreement, any Operating Period Shortfall Payments to be made by the Project Company hereunder, and any Construction Period Shortfall Payments to be made by the Project Company under the Product Water Pipeline Improvements Design-Build Agreement, which have been assigned by the Water Authority to the CPCFA under the Pipeline Installment Sale and Assignment Agreement.

(C) Delivery of Financing-Related Reports to the Project Company. The Water Authority shall deliver to the Project Company subsequent to the Financial Closing Date and throughout the Term copies of all material reports, notices, certificates and other documents that the Water Authority delivers or causes to be delivered to the Pipeline Trustee under or in connection with the Pipeline Installment Sale and Assignment Agreement,

including continuing disclosure reports required under applicable securities laws, in each case to the extent that such items are in the Water Authority's possession.

SECTION 6.3. FINANCING COMPENSATION ADJUSTMENT EVENT CAPITAL COSTS.

(A) Financing Compensation Adjustment Event Capital Costs. The Project Company shall use all reasonable efforts to finance Compensation Adjustment Event Capital Costs. The parties acknowledge that (1) the primary security for any Compensation Adjustment Event Financing shall be Monthly Water Purchase Payments that reflect the Unit Price adjustments made on account of such circumstances, (2) the resulting increase in the Debt Service Charge will be based on the actual debt service payable by the Project Company on the Permitted Debt issued for such purposes (subject to the limitations set forth in subsection (B) of this Section), (3) the Equity Return Charge will be equitably adjusted to reflect the terms of any Compensation Adjustment Event Financing, (4) such Permitted Debt shall have a final maturity concurrent with the Expiration Date then in effect, except as provided in subsection 6.3(D) (Negotiated Extension of the Expiration Date, and (5) the raising of new equity supported by an increase in the Equity Return Charge will be minimized in preference of financing through issuance of Permitted Debt. The parties acknowledge that the Project Company may finance Compensation Adjustment Event Capital Costs with equity prior to obtaining Compensation Adjustment Event Financing, but the the Equity Return Charge or the Debt Service Charge shall not be adjusted to reflect such equity financing.

(B) Limitation on Permitted Debt Issued for Compensation Adjustment Event Capital Costs Resulting from an Earthquake. The Compensation Adjustment Event Capital Costs resulting from an earthquake or earth movement for which the Water Authority shall be responsible hereunder shall be reduced, as applicable, by (1) the Insurance Proceeds and Insurance Receivables from the builders' risk insurance policy or the earthquake and earth movement insurance policy maintained as part of the Required Insurance during the Construction Period or the Operating Period, as applicable, (2) during the Construction Period, the then-current balance of the Construction Contingency amount held as part of the "Poseidon Project Account" and the "Facility Restoration Fund" under the Collateral Trust Agreement at the time of the occurrence of the earthquake or earth movement, and (3) during the Operating Period, the balance of the "Facility Restoration Fund" under the Collateral Trust Agreement (excluding, however, amounts in the Permanent Pump Shutdown Reserve Account of the Facility Restoration Fund) at the time of the occurrence of the earthquake or earth movement. The Project Company shall not issue Permitted Debt based on Compensation Adjustment Event Capital Costs for such earthquake or earth movement in excess of such Compensation Adjustment Event Capital Costs net of such amounts, and the Unit Price Adjustment based on any such occurrence shall be limited accordingly. If the amount of such net Compensation Adjustment Event Capital Costs is a negative number, there shall be no Permitted Debt issued and no Unit Price adjustment made on account of the earthquake or earth movement.

(C) Water Authority Rights With Respect to Compensation Adjustment Event Financings. The Project Company acknowledges that the Water Authority has a direct interest in the terms under which the Permitted Debt is issued and equity is raised for a Compensation Adjustment Event Financing. Accordingly, the Project Company shall ensure that the Water Authority and its financial advisors are substantially involved in all matters pertaining to the development and execution of the plan of financing for any such Compensation Adjustment Event Financing, including direct participation in and review of the structuring, maturities, interest rates and pricing of any such Permitted Debt and any adjustments to the Equity Return Charge. Permitted Debt issued for such purposes shall not be sold or issued without the approval of the Water Authority, acting reasonably.

(D) Negotiated Extension of Expiration Date. The parties acknowledge that in certain circumstances the Water Authority may determine that the magnitude of the required increase in the Unit Price resulting from a Compensation Adjustment Event Financing is excessive. Such circumstances may arise, for example, where the design and construction costs required to implement a capital project required in response to a Compensation Adjustment Event are extraordinarily high, or where the period remaining before the Expiration Date over which such adjusted Unit Price is payable is relatively short. If the Water Authority makes such a determination it may, in lieu of exercising its right to finance and pay such costs directly to the Project Company pursuant to subsection (E) of this Section, request an extension of the Expiration Date to lessen the required amount of increase in the Unit Price. Upon any such request, the parties shall enter into negotiations to reach a mutually acceptable extension of the Expiration Date and agreement upon amendments to any related terms and conditions of this Water Purchase Agreement. In the event such negotiations are unsuccessful, the Project Company shall use all reasonable efforts to finance such costs based on the unextended Expiration Date as provided in subsection (A) of this Section.

(E) Water Authority Right to Finance Compensation Adjustment Event Capital Costs. The Water Authority shall have the right but not the obligation, in its discretion and in lieu of any Compensation Adjustment Event Financing by the Project Company, to finance any Compensation Adjustment Event Capital Costs itself. In such event, the Water Authority shall pay the Project Company for such costs from the proceeds of a Water Authority direct recourse financing or from Water Authority internally-generated funds, and there shall be no adjustment to the Unit Price on account of such Compensation Adjustment Event Capital Costs. If any such payment is subject to federal and state income Tax to the Project Company (or its beneficial owners, as applicable), such payment shall, subject to Section 6.10 (Procedures Relating to Potential Tax Gross-Ups), be grossed up so that the Project Company (or its beneficial owners, as applicable) receives an amount equal to the amount which it would have received had no such Taxes been payable.

(F) Financing Unavailability for Compensation Adjustment Event Capital Costs. If the Project Company is unable to obtain required financing for Compensation Adjustment Event Capital Costs on terms and conditions and under a plan of financing substantially similar to the terms, conditions and financing plan under which the Project was originally financed for any reason (including the insufficiency of the adjusted Monthly Water Purchase Payments to support such a financing or adverse conditions in the financial markets), and as a consequence thereof (1) the Project Company is unable to pay such Compensation Adjustment Event Capital Costs and make the modifications, improvements or reinstatements that are required to be made due to the Compensation Adjustment Event, and (2) the Water Authority is likely to be denied the benefits of this Water Purchase Agreement for a period of at least 365 days following the occurrence of the Compensation Adjustment Event, then (a) the Water Authority shall have no obligation to make any payment or provide any financing with respect to such Compensation Adjustment Event Capital Costs; (b) the Water Authority, by notice to the Project Company, may terminate this Water Purchase Agreement, without the obligation to make any termination payment; (c) the Water Authority shall have the option, exercisable in its discretion, to purchase the Project Assets under the terms and conditions set forth in Section 23.2 (Project Assets Purchase Option in the Event of Financing Unavailability); and (d) the Project Company shall not be deemed in breach of its obligations under this Water Purchase Agreement and shall not be subject to any damages or liability arising out of any failure to make required modifications, improvements or rectifications related to the Compensation Adjustment Event. Financing shall be deemed available for purposes of this subsection if (a) the debt-to-equity ratio of such financing is similar to the debt-to-equity ratio of the Initial Plant Bond financing, (b) the debt portion of the financing has an investment grade credit rating or, if the debt is unrated, would have an investment grade credit rating if it had been sought and (c) the financing is structured with reserves and other terms and condition similar to those then prevailing in other similar project financings.

SECTION 6.4. FINANCING THE CAPITAL COSTS OF DIRECTED CAPITAL MODIFICATIONS.

(A) Financing Directed Capital Modification Capital Costs. In the event the Water Authority directs the Project Company to make Capital Modifications pursuant to Section 11.4 (Capital Modifications at Water Authority Direction), the Project Company shall use all reasonable efforts to finance the design and construction costs of such Directed Capital Modifications to the extent permitted under the Collateral Trust Agreement. The parties acknowledge that (1) the primary security for any Directed Capital Modification Financing shall be Monthly Water Purchase Payments that reflect the Unit Price adjustments made on account of such circumstances, (2) the resulting increase in the Debt Service Charge will be based on the actual debt service payable by the Project Company on the Permitted Debt issued for such purposes, (3) the Equity Return Charge will be equitably adjusted to reflect the terms of any Directed Capital Modification Financing, and (4) such Permitted Debt shall have a final maturity concurrent with the Expiration Date.

(B) Water Authority Rights With Respect to Directed Capital Modification Financings. The Project Company acknowledges that the Water Authority has a direct interest in the terms under which the Permitted Debt are issued and new equity is raised for a Directed Capital Modification Financing. Accordingly, the Project Company shall assure that the Water Authority and its financial advisors are substantially involved in all matters pertaining to the development and execution of the plan of financing for any such Permitted Debt, including direct participation in and review of the structuring, maturities, interest rates and pricing of any such Permitted Debt. Permitted Debt issued for such purposes shall not be sold or issued without the approval of the Water Authority, acting reasonably.

(C) Negotiated Extension of Expiration Date. The parties acknowledge that in certain circumstances the Water Authority may determine that the magnitude of the required increase in the Unit Price resulting from a Directed Capital Modification Financing is excessive. Such circumstances may arise, for example, where the design and construction costs required to implement a capital project required in response to a Directed Capital Modification are extraordinarily high, or where the period remaining before the Expiration Date over which adjusted Unit Price is payable is relatively short. If the Water Authority makes such a determination it may, in lieu of exercising its right to finance and pay such costs directly to the Project Company pursuant to subsection 6.3(E) of this Section, request an extension of the Expiration Date to lessen the required amount of increase in the Unit Price. Upon any such request, the parties shall enter into negotiations to reach a mutually acceptable extension of the Expiration Date and agreement upon amendments to any related terms and conditions of this Water Purchase Agreement. In the event such negotiations are unsuccessful, the Project Company shall use all reasonable efforts to finance such costs based on the unextended Expiration Date as provided in subsection 6.3(A) of this Section.

(D) Water Authority Right to Finance Directed Capital Modification Capital Costs. The Water Authority shall have the right but not the obligation, in its discretion and in lieu of any Directed Capital Modification Financing by the Project Company, to finance any Directed Capital Modification Capital Costs itself. In such event, the Water Authority shall pay the Project Company for such costs from the proceeds of a Water Authority direct recourse financing or from Water Authority internally-generated funds, and there shall be no adjustment to the Unit Price on account of such Directed Capital Modification Capital Costs. If any such payment is subject to federal and state income Tax to the Project Company (or its beneficial owners, as applicable), such payment shall, subject to Section 6.10 (Procedures Relating to Potential Tax Gross-Ups), be grossed up so that the Project Company (or its beneficial owners, as applicable) receives an amount equal to the amount which it would have received had no such Taxes been payable.

(E) Financing Unavailability for Directed Capital Modifications. If the Project Company is unable to obtain financing for any Directed Capital Modification or the Water Authority does not approve the proposed financing therefor pursuant to this Section, the Project Company shall have no further obligations with respect to the financing of the Directed Capital Modification, and Section 11.4 (Capital Modifications at Water Authority Direction) shall apply to the implementation of the Directed Capital Modification.

SECTION 6.5. FINANCING THE CAPITAL COSTS OF PROJECT COMPANY-REQUESTED CAPITAL MODIFICATIONS.

The Project Company shall finance the cost of Capital Modifications requested by the Project Company pursuant to Section 11.2 (Capital Modifications at Project Company Request). There shall be no adjustment to the Unit Price or any other compensation payable to the Project Company on account of any such Capital Modifications.

SECTION 6.6. COMPLIANCE WITH PLANT FINANCING AGREEMENTS; DELIVERY OF REPORTS TO WATER AUTHORITY.

(A) Compliance. The Project Company shall comply with the Plant Financing Agreements to the extent necessary to perform its obligations under this Water Purchase Agreement and will ensure that none of the terms and conditions of the Plant Financing Agreements will prevent the Project Company from performing its obligations under this Water Purchase Agreement. If at any time the Project Company receives a notice that an “event of default”, any event entitling the Plant Bondholders to enforce any security or any other similar event has occurred under the Project Financing Agreement, the Project Company shall forthwith deliver to the Water Authority a copy of such notice.

(B) Delivery of Financing-Related Reports to the Water Authority. The Project Company shall deliver to the Water Authority subsequent to the Financial Closing Date and throughout the Term copies of all material reports, notices, certificates, audited financial statements and other documents that the Project Company delivers or causes to be delivered to the Collateral Agent or a holder of the Plant Bonds under or in connection with the Plant Financing Agreements, including reports prepared by the consulting engineer in connection with the Plant Bonds and continuing disclosure reports required under applicable securities laws, in each case to the extent that such items are in the Project Company’s possession.

SECTION 6.7. CHANGES TO PLANT FINANCING AGREEMENTS.

The Project Company shall not without the written consent of the Water Authority (which shall not be unreasonably withheld or delayed) terminate, amend or otherwise modify the Plant Financing Agreements, or waive or exercise any of its rights under the Plant Financing Agreements, if such action would materially and adversely affect the Project Company’s ability to perform its obligations under this Water Purchase Agreement or have the effect of materially increasing any liability or potential liability of the Water Authority. In the event the Project Company delivers to the Water Authority a request for its consent to any such proposed termination action, amendment, modification, waiver or exercise of rights, together with the definitive text pertaining to such action or document, and the Water Authority has not responded to the Project Company’s request within 30 days of receipt (whether through rejecting the request or seeking clarification or information), the Water Authority’s consent shall be deemed to have been given. If at any time any material amendment is made to any Project Financing Agreement or the Project Company enters into any replacement Project Financing Agreement (or any agreement which affects the interpretation or application of any Project Financing Agreement), the Project Company shall deliver to the Water Authority a copy of each such material amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Project Company.

SECTION 6.8. REFINANCING GAIN.

(A) Consent Required for Refinancing. The Project Company shall not enter into any Refinancing without the prior written consent of the Water Authority. Such consent will not be unreasonably withheld or delayed if the Refinancing occurs after the Commercial Operation Date, has no material and adverse effect on the Project Company's ability to perform its obligations under this Water Purchase Agreement, and does not increase any liability or potential liability of the Water Authority (unless the Water Authority is specifically compensated for such liability or potential liability).

(B) Water Authority's Share of Refinancing Gain. The Water Authority shall be entitled to receive a 50 percent share of any Refinancing Gain arising from a Refinancing.

(C) Project Company Proposal to Refinance. The Project Company shall promptly provide the Water Authority with full details of any proposed Refinancing, including:

- (1) All proposed revisions to the Plant Financing Agreements; and
- (2) The Water Authority's estimated share of the Refinancing Gain, expressed in terms of the reduction of the Capital Charge described in subsection 6.8(D) (Reduction in the Capital Charge).

The Water Authority shall (before, during and within two years after any Refinancing) have unrestricted rights of audit over any books, records and other documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing; provided, however, that the Project Company shall not be required to provide the Water Authority any income statement showing profit or loss (provided that the Project Company recognizes that profit and loss information may become discernible to the Water Authority through the Cost Substantiation process upon the delivery of financial records for the purposes hereof).

(D) Reduction in the Capital Charge. The Water Authority shall receive its share of any Refinancing Gain as a reduction in the Capital Charge component of the Unit Price, in accordance with subsection 17.13(B) (Form of Compensation Adjustments for Events Occurring After the Contract Date - Adjustments to the Unit Price), over the period ending on the Expiration Date. Any such reduction in the Capital Charge shall reflect the savings in actual debt service payable with respect to the Plant Bonds.

(E) Calculation of Refinancing Gain. The Water Authority and the Project Company shall negotiate in good faith the basis and method of calculation of the Refinancing Gain and the reduction in the Capital Charge component resulting from the Water Authority's share of the Refinancing Gain. The Refinancing Gain will be calculated after taking into account the reasonable and proper professional costs that the Project Company directly incurs in relation to the Refinancing and the Water Authority's costs that the Project Company pays pursuant to subsection 6.8(F) (Water Authority's Expenses). If the Water Authority and the Project Company are unable to agree on the basis and method of calculation of the Refinancing Gain or the reduction in the Capital Charge, the dispute may be referred to Non-Binding Mediation.

(F) Water Authority's Expenses. The Project Company shall pay the Water Authority's reasonable and properly incurred third party professional services costs in connection with a Refinancing, such costs to be paid to the Water Authority by the Project Company within 30 days after receipt of a valid invoice in respect of such amount following the close of the Refinancing.

SECTION 6.9. WATER AUTHORITY REQUESTED REFINANCING.

(A) Refinancing Notice. If the Water Authority, acting reasonably, considers the funding terms generally available in the market to be more favorable than those reflected in the Plant Financing Agreements, the Water Authority may, by notice in writing to the Project Company, require the Project Company to request potential funders to provide terms for a potential Refinancing (a "Refinancing Notice"). The Refinancing Notice shall set out in reasonable detail the grounds upon which the Water Authority believes such funding terms to be available.

(B) Meeting. The Project Company and the Water Authority shall meet to discuss the Refinancing Notice within 30 days. At such a meeting the parties shall consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. The Water Authority shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within ten Business Days following the meeting.

(C) Project Company Action. If the Water Authority serves a Refinancing Notice which is not withdrawn pursuant to subsection 6.9(B) (Water Authority Requested Refinancing - Meeting), then the Project Company shall:

(1) Act promptly, diligently and in good faith with respect to the potential Refinancing;

(2) Use all reasonable efforts to obtain the most favorable available terms from existing or new lenders for any potential Refinancing, provided that the Project Company shall not be required to propose refinancing in a manner which (a) a prudent board of directors of a project company operating a similar business in the State to that operated by the Project Company, in similar circumstances, would not approve (it being acknowledged by the parties that terms which may result in the Project Company not being required to propose a refinancing shall include terms which increase the risk of default, terms would have a material and adverse effect on the Project Company's cash flow, or terms which, taken as a whole, are materially more restrictive than the Plant Financing Agreements, or (b) would materially and adversely affect the risk allocation, ability to perform (including any material increase in the risk of non-performance) or cost of performance under this Water Purchase Agreement with respect to the Contract Obligations, unless the material and adverse effects of such requirements are remedied by the Water Authority to the Project Company's satisfaction; and

(3) Either:

(a) As soon as reasonably practicable after receipt of the Refinancing Notice, provide to the Water Authority (i) full details of the proposed Refinancing, and (ii) initial drafts of any changes to this Water Purchase Agreement, including changes relating to potential compensation on termination which might be required to give effect to the proposed Refinancing; or

(b) At any time at or after the meeting described in subsection 6.9(B) (Water Authority Requested Refinancing - Meeting), if the Project Company, acting reasonably, believes that it is not possible to obtain funding terms which are more favorable than those reflected in the Plant Financing Agreements in accordance with the requirements of subsection (C)(2) of this Section, provide the Water Authority with notice of the Project Company's decision not to pursue the Refinancing and reasonable evidence to the Water Authority that the Project Company has complied with its obligations in subsections (C)(1) and (2) of this Section.

(D) Water Authority Instruction. Following receipt of the information referred to in subsection (C)(3)(a) of this Section the Water Authority shall, in its discretion, either:

- (1) Instruct the Project Company to implement the proposed Refinancing; or
- (2) Instruct the Project Company to discontinue with the proposed Refinancing,

provided that if the Water Authority reasonably considers that the requirements of subsection (C)(3)(a) of this Section have not been satisfied, the Water Authority may require the Project Company to satisfy its obligations under subsection (C)(3)(a) of this Section, whereupon the provisions of subsections (C) and (D) of this Section shall apply as if the Water Authority had served a Refinancing Notice.

(E) Implementation of Refinancing. If the Water Authority instructs the Project Company to implement the proposed Refinancing:

- (1) The Project Company shall, as soon as reasonably practicable, use all reasonable efforts to assure that such proposed Refinancing is implemented; and
- (2) The provisions of Section 6.8 (Refinancing Gain) shall apply.

(F) Project Company Expenses. If:

- (1) The Water Authority instructs the Project Company to discontinue the potential Refinancing pursuant to subsection (D)(2) of this Section; or
- (2) The Project Company provides the Water Authority with notice of the Project Company's decision not to pursue the Refinancing, in accordance with the requirements of subsection (C)(3)(b) of this Section,

then the Water Authority shall reimburse the Project Company for the reasonable and proper third party professional services costs incurred by the Project Company in relation to the potential Refinancing, such costs to be paid to the Project Company by the Water Authority as a Direct Payment within 30 days after receipt of a valid invoice in respect of such amount following discontinuance of the potential Refinancing.

(G) Limitation On Refinancing Notices. The Water Authority shall be entitled to issue a Refinancing Notice under subsection 6.9(A) (Water Authority Requested Refinancing - Refinancing Notice) at any time but not more than once in any three year period. A Refinancing Notice that has been withdrawn under subsection 6.9(B) (Water Authority Requested Refinancing - Meeting) shall be deemed to have been issued for the purpose of this Section.

SECTION 6.10. PROCEDURES RELATING TO POTENTIAL TAX GROSS-UPS.

In order to assist the Water Authority in determining whether to pay Compensation Adjustment Event Capital Costs directly to the Project Company under subsection 6.3(E) (Water Authority Right to Finance Compensation Adjustment Event Capital Costs) or subsection 6.4(D) (Water Authority Right to Finance Directed Capital Modification Costs) in light of the Water Authority's potential tax gross-up obligations under such subsections, the Project Company shall, in advance and in a timely manner, provide the Water

Authority with all information it may reasonably request relating to the potential tax gross-up issue. Such information shall include (1) copies of the Project Company's federal and state income tax returns from the Contract Date to the date of the Water Authority's request, and any relevant Internal Revenue Service correspondence and audit records, and (2) copies of material legal opinions and memoranda prepared by or for the Project Company bearing on the issue and upon the Project Company's relevant tax positions, including opinions and memoranda prepared by outside counsel and accountants. The Project Company shall also, upon request, provide an opinion and analysis of tax counsel to the Project Company as to the reasonably expected tax treatment of any potential direct payment by the Water Authority to the Project Company of such Compensation Adjustment Event Capital Costs or Directed Capital Modification Costs. In the event the Water Authority determines to make any such payment of Compensation Adjustment Event Capital Costs or Directed Capital Modification Costs to the Project Company, the Project Company shall not include such payment in its gross income unless required to do so by the Internal Revenue Service after contest and appeal by the Project Company acting with the reasonable approval of the Water Authority. The Water Authority shall make any Tax gross-up payment required under such subsections on a reimbursable basis as a Direct Payment within 30 days after receiving an invoice therefor from the Project Company, attaching evidence of payment by the Project Company of the tax due and relevant documentation pertaining to the imposition of the Tax.

ARTICLE 7

COMPLETION AND ACCEPTANCE OF THE PLANT

SECTION 7.1. MECHANICAL COMPLETION.

(A) Mechanical Completion Procedures. Mechanical Completion shall be determined on the basis of the Mechanical Completion Procedures set forth in Appendix 4 (Mechanical Completion Procedures).

(B) Commissioning Plan. The Project Company shall prepare and submit to the Water Authority for its approval (the "Commissioning Plan") no later than 60 days prior to the anticipated commencement of commissioning of the Plant for review and comment by the Water Authority. Within 30 days after the Water Authority's receipt of the Commissioning Plan, the Water Authority shall provide written notice to the Project Company either acknowledging that the Commissioning Plan is acceptable to the Water Authority or specifying the deficiencies therein. In the latter instance, the Project Company shall revise and resubmit the Commissioning Plan to the Water Authority until the same is acceptable to the Water Authority (such approval not to be unreasonably withheld). The Commissioning Plan shall also provide for the coordination of any necessary testing of: (1) the Plant with the Water Authority's SCADA system in order to confirm the operability of the communications system, as further described and specified in Appendix 3 (Project Design and Construction Work) prior to the Performance Test; (2) the surge protection system of the Product Water Pipeline, as required by Attachment 3A (Basic Design Requirements) of Appendix 3; (3) any tuning and calibration of the chemical feed systems of the Water Authority Improvements, as required by Appendix 4 (Mechanical Completion Requirements); and (4) calibration and tuning of the instrumentation and control signals from the flow control facility which constitutes a portion of the Product Water Pipeline Improvements to the Water Authority, as required by Appendix 4 (Mechanical Completion Requirements).

(C) Mechanical Completion Procedures Report. The Project Company shall prepare and submit to the Water Authority for its approval a Mechanical Completion Procedures Report prior to the commencement of commissioning of the Plant for review and comment by the Water Authority. Within 15 days after the Water Authority's receipt of the Mechanical Completion Procedures Report, the Water Authority shall provide written notice to the Project Company either acknowledging that the Mechanical Completion Procedures Report is acceptable to the Water Authority or specifying the deficiencies therein. In the latter instance, the Project Company shall revise and resubmit the Mechanical Completion Procedures Report to the Water Authority until the same is acceptable to the Water Authority (such approval not to be unreasonably withheld).

(D) Conditions to Mechanical Completion. "Mechanical Completion" shall occur only when the Project Company has satisfied, except for Punch List items that do not affect the performance, safety or operation of the Plant and except to the extent waived by the Water Authority, the requirements and criteria applicable for the individual Plant components and for the Plant in its entirety as defined in the Mechanical Completion Procedures, including:

(1) Physical Completion. All pipelines (excluding the Product Water Pipeline), facilities, materials and equipment for the Plant have been installed in accordance with the requirements of this Water Purchase Agreement and inspected and approved for alignment, lubrication, rotation, vibration, leakage, noise, and hydrostatic and pneumatic pressure integrity; all systems required to be installed by the Project Company have been installed and tested; the Plant has been flushed and cleaned out as necessary and required by the CDPH;

(2) Project Equipment. The Project Equipment is installed in a manner that does not void any Subcontractor or vendor warranties and such that the Project Equipment can be operated in a safe and prudent manner;

(3) Pre-Commissioning and Certificates of Proper Installation. The Project Company has properly installed, tested and calibrated each specific Plant system and subsystem in accordance with the manufacturers' recommendations and requirements, and delivered to the Water Authority certificates of proper installation for each specific Plant system and subsystem, as set forth in Appendix 4 (Mechanical Completion Requirements);

(4) Design and Process Verification. The Project Company has completed the Construction Work in accordance with the Design Requirements, and delivered to the Water Authority design and process verification checklists for each specific Plant system and subsystem, as set forth in Appendix 4 (Mechanical Completion Requirements);

(5) Dry Commissioning. The Project Company has performed all the dry commissioning activities identified in the Commissioning Plan, and necessary for the Project Equipment to be ready to conduct wet commissioning set forth in item (6) of this subsection;

(6) Wet Commissioning. The Project Company has performed all the wet commissioning activities identified in the Commissioning Plan, and necessary for the verification of operational preparedness set forth in item (8) of this subsection;

(7) Equipment, Instrumentation and Controls Readiness Verification. The Project Company has delivered to the Water Authority certificates of system readiness that certify that all the identified Plant systems, subsystems, equipment, instrument, or control systems have been reviewed by the Project Company and are ready and able to undergo sustained continuous operation as required for its intended purpose in the Project;

(8) Verification of Operational Preparedness. The Plant is ready to physically commence Performance Testing and operations in accordance with the Contract Standards, and (a) the Plant functions properly upon a loss of power, manual start-up and shutdown, and automatic shutdown; (b) the Plant is capable of producing an uninterrupted supply of Product Water; (c) the Plant functions properly over the full range of expected operation modes; and (d) appropriate set points have been established and are fully functional for all alarms and controls;

(9) Verification of Governmental Approval Compliance. The Project Company shall provide documentation that all activities and conditions have been met to comply with all the Governmental Approvals;

(10) Commissioning Plan. The requirements of subsection 7.1(B) (Commissioning Plan) have been met;

(11) Instrument Calibration. The Project Company has demonstrated that all instrument calibration activities that are required to assure all Plant instrumentation provide reading accurate within manufacturer's tolerance;

(12) SCADA. The Plant SCADA system is operational and provides the input and output to and from the Water Authority's SCADA system required pursuant to

Appendix 3 (Project Design and Construction Work), permitting the Water Authority read-only access to all Plant operations data and information;

(13) Operating and Maintenance Staff Training. The Project Company has completed all operation and maintenance staff training on equipment operations and maintenance provided on-site by the equipment manufacturers or membrane supplier sufficient to start-up the Plant in accordance with Good Industry Practices;

(14) Electronic Operation and Maintenance Manual. The Project Company has delivered to the Water Authority a draft copy of the Electronic Operation and Maintenance Manual as required under Section 8.5 (Electronic Operation and Maintenance Manual);

(15) Operating Protocol. The Project Company has delivered to the Water Authority a final copy of the Operating Protocol and obtained the Water Authority's approval for the Operating Protocol, which approval shall not unreasonably be withheld or delayed;

(16) Governmental Approvals. The Project Company has obtained all necessary Governmental Approvals required to commence Performance Testing;

(17) Mechanical Completion Procedures Report. The Project Company has prepared and submitted in Adobe Acrobat electronic format, indexed and fully-searchable (with five copies, if provided on compact disc), of the Mechanical Completion Procedures Report prepared in accordance with the requirements set forth in Appendix 4 (Mechanical Completion Requirements);

(18) Certificate of Occupancy. A temporary or final certificate of occupancy has been issued for the Plant by the City of Carlsbad; and

(19) Punch List. The Project Company has delivered a Punch List to the Water Authority.

(E) Notice of Mechanical Completion. The Project Company shall give the Water Authority Representative at least 10 days' prior written notice of the expected date of Mechanical Completion.

(F) Achievement of Mechanical Completion. In order to accomplish Mechanical Completion, the Project Company (1) shall satisfy the conditions to Mechanical Completion set forth in subsection (D) of this Section, (2) shall comply with the requirements of Appendix 4 (Mechanical Completion Requirements), including those relating to Plant commissioning, and (3) shall satisfy the requirements and criteria applicable for the individual Plant components and for the Plant in its entirety as defined in the Mechanical Completion Procedures. The Project Company shall submit the deliverables defined in the Mechanical Completion Procedures (documents and other items) for review and the Water Authority shall review such deliverables within the times required under the Mechanical Completion Protocol. If, pursuant to the Mechanical Completion Protocol, the Water Authority does not approve an item, such item shall be added to a list prepared by the Project Company of items which remain to be performed in order to achieve Mechanical Completion (the "Mechanical Completion List"). The Project Company shall complete the items on the Mechanical Completion List in accordance with the Mechanical Completion Protocol and the other requirements of this Water Purchase Agreement related to Mechanical Completion prior to achieving Mechanical Completion. Within five Business Days after receipt by the Water Authority of notice that Mechanical Completion has been achieved, the Water Authority shall (a) deliver its written acknowledgment that Mechanical Completion has been achieved, or

(b) notify the Project Company that Mechanical Completion has not been achieved, stating in detail the reasons therefor. If the Water Authority notifies the Project Company that Mechanical Completion has not been achieved, the Project Company shall take such steps as are necessary to achieve Mechanical Completion, and shall resubmit to the Water Authority notice that Mechanical Completion has been achieved. The foregoing procedure shall be repeated until the Water Authority acknowledges that Mechanical Completion has been achieved. Notwithstanding anything in this Section to the contrary, the Water Authority's approval of the individual items identified in the Mechanical Completion Protocol shall not relieve the Project Company of its obligation to meet the requirements of Mechanical Completion at the time that it provides the Water Authority notice that it has achieved Mechanical Completion.

SECTION 7.2. INTERIM OPERATIONS APPROVAL AND DOMESTIC WATER SUPPLY PERMIT.

(A) Authorization of Operation and Water Introduction. The Project Company acknowledges that the operation of the Project and the introduction of Product Water into the Water Authority Distribution System are prohibited by Applicable Law until an Interim Operations Approval, as defined in this subsection, or the Project Company New Domestic Water Supply Permit is issued by CDPH. CDPH may, but is not legally obligated to, issue a letter, permit with provisions, or other instrument authorizing temporary operation of the Project and introduction of Product Water into the Water Authority Distribution System until such time as the conditions of such letter, permit with provisions, or other instrument have been satisfied and the Project Company New Domestic Water Supply Permit is issued (an "Interim Operations Approval"). The Project Company further acknowledges that the terms and conditions, as well as the issuance, of an Interim Operations Approval are a matter of administrative discretion on the part of CDPH.

(B) Responsibilities of the Parties with Respect to the Water Authority Domestic Water Supply Permit Amendment. It is expected the CDPH will require submittals with respect to both the Water Authority Distribution System generally and the Project in connection with the issuance to the Water Authority, as permittee, of the Water Authority Domestic Water Supply Permit Amendment. The Project Company shall, on a timely basis, prepare all information and take all actions which may be necessary in order to submit a completed application with respect to all aspects of the Water Authority Domestic Water Supply Permit Amendment pertaining to the Project. In such connection, the Project Company shall:

- (1) prepare the application, and develop and furnish all necessary supporting material;
- (2) supply all data and information which may be required;
- (3) familiarize itself with the terms and conditions of the Water Authority Domestic Water Supply Permit Amendment;
- (4) attend all required meetings and hearings; and
- (5) take all other actions necessary in obtaining, maintaining, renewing, extending and complying with the terms of the Water Authority Domestic Water Supply Permit Amendment. The Project Company shall manage the process of obtaining and maintaining the Water Authority Domestic Water Supply Permit Amendment on behalf of the Water Authority in a manner which affords the Water Authority a reasonable opportunity to review and comment on such submittals and all material documentation submitted to and issued by the CDPH in connection therewith.

(C) Project Company Obligations Generally. The Project Company shall cooperate with CDPH throughout the Construction Period and, except as provided in subsection 7.2(B) (Responsibilities of the Parties with Respect to the Water Authority Domestic Water Supply Permit Amendment), shall make all applications and take all other action necessary to obtain and maintain the Project Company New Domestic Water Supply Permit and any Interim Operations Approval, and shall pay all fees, costs and charges due in connection therewith. Where required under Applicable Law, such applications shall be made in the name of the Water Authority, subject to the Water Authority's rights hereunder. The Project Company shall manage the process of obtaining the Project Company New Domestic Water Supply Permit and any Interim Operations Approval and shall provide the Water Authority at least 10 Business Days to review such submittals and all material documentation submitted to and issued by any Governmental Body in connection therewith as provided in Appendix 2 (Governmental Approvals). The Water Authority shall have the right to take any action it deems reasonably necessary to coordinate the Project Company's efforts with its own efforts pursuant to subsection 7.2(B) (Responsibilities of the Parties with Respect to the Water Authority Domestic Water Supply Permit Amendment). The Project Company shall not, unless required by Applicable Law, knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding the Project Company New Domestic Water Supply Permit and any Interim Operations Approval or the terms and conditions thereof that would impose any material cost or burden on the Water Authority in its capacity as a buyer of Product Water under this Water Purchase Agreement or that would contravene any Water Authority policies with respect to the matters contained therein. The Water Authority reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have the effect described in the preceding sentence.

(D) Project Company Assumption of Risk. The Project Company explicitly assumes the risk of obtaining and maintaining the Project Company New Domestic Water Supply Permit and any Interim Operations Approval from CDPH as contemplated in subsection 7.2 (Interim Operations Approval and Domestic Water Supply Permit - Project Company Obligations Generally), including the risk of delay, non-issuance, withdrawal, expiration, revocation or imposition of any term or condition in connection therewith; provided, however, that the Project Company shall be afforded relief from the assumption of such risk as and to the extent provided in item 3(b) (Exclusions) (regarding Governmental Approvals) of the definition of Change in Law Event. In assuming this risk, the Project Company acknowledges in particular that (1) the delay or non-issuance of the Project Company New Domestic Water Supply Permit or an Interim Operations Approval may delay or prevent the delivery of Product Water to the Water Authority Distribution System, the commencement of the Performance Test, or the occurrence of Provisional Acceptance, and thereby give the Water Authority the right to terminate this Water Purchase Agreement, and (2) CDPH may impose or enforce terms and conditions which require the Project Company to make changes or additions to the Project or Project operations which may increase the cost or risk to the Project Company of performing the Contract Services, all of which costs or risks shall be for the account of and borne by the Project Company. The exercise by CDPH of any of its rights with respect to the Project Company New Domestic Water Supply Permit or an Interim Operations Approval shall not constitute a Change in Law Event. For example, an Interim Operations Approval that is time-limited or revocable, or that conditions its effectiveness on further capital investment in the Project, use of additional technologies or equipment, material changes in expected operating practices, or substantial revision to expected testing protocols, are terms and conditions with respect to which the Project Company assumes the risk.

SECTION 7.3. PERFORMANCE TESTING.

(A) Performance Test Protocol. Within 725 days following the Financial Closing Date, the Project Company shall submit a detailed plan to the Water Authority setting

forth the Performance Test activities, monitoring, calculation methodologies, specific test instruments or equipment, and applicable calibration procedures proposed for demonstration of achievement of the Minimum Performance Criteria as set forth in Appendix 5 (the "Performance Test Protocol"). The Performance Test Protocol shall also include a delivered Product Water schedule, which projects the proposed daily volume of Product Water the Project Company intends to deliver during the Performance Test. Within 30 days after the Water Authority's receipt of the Performance Test Protocol, the Water Authority shall provide written notice to the Project Company either acknowledging that the Performance Test Protocol is acceptable to the Water Authority or specifying the deficiencies therein. In the latter instance, the Project Company shall revise and resubmit the Performance Test Protocol to the Water Authority until the same is acceptable to the Water Authority (such approval not to be unreasonably withheld).

(B) Performance Test and Surge Protection System Test. The Performance Test is to be conducted, and the results calculated, in accordance with the Contract Standards. The Project Company shall keep the Water Authority continuously apprised of the specific schedule, and changes therein, for the commencement and re-performance of the Performance Test. On the last day of the Performance Test, the Project Company shall perform the Surge Protection System Test.

(C) Notice of Commencement of the Performance Test. The Project Company shall notify the Water Authority and the Water Authority Engineer that it wishes to perform a Performance Test complying with this Section 7.3. The Project Company shall provide the Water Authority Engineer and the Water Authority with at least 10 Business Days' prior written notice of the expected initiation of the Performance Test. The Project Company shall not attempt to perform the Performance Test if the Water Authority gives notice to the Project Company of uncompleted Construction Work, the completion of which is required for the safe operation of all or any part of the Plant during the Performance Test.

(D) Conditions to Commencement of the Performance Test. The Project Company shall not commence the Performance Test until the following events have occurred:

(1) The requirements of subsection 7.3(C) (Notice of Commencement of the Performance Test) have been met;

(2) If required by Applicable Law, CDPH has approved the Performance Test plan proposed by the Project Company and approved by the Water Authority Engineer;

(3) Mechanical Completion has occurred;

(4) The portion of the Full System Test described in clause (i) of Section 4.2.2(o)(iii) of Appendix 5 (Minimum Performance Criteria and Performance Testing) has been conducted and successfully passed;

(5) The Project Company New Domestic Water Supply Permit or an Interim Operations Approval has been issued by CDPH, and contains sufficient authorization to permit the Performance Test and post-Performance Test operations to be conducted in accordance herewith;

(6) The Water Authority Domestic Water Supply Permit Amendment or an Interim Operations Approval has been approved by CDPH, and contains sufficient authorization to permit the Performance Test and post-Performance Test operations to be conducted in accordance herewith;

(7) All Utilities specified or required under this Water Purchase Agreement to be arranged for by the Project Company are connected and functioning properly;

(8) The Project Company has met with the Water Authority at least 60 days prior to the scheduled Performance Test to provide a forecast of expected Product Water production and delivery, describe the intended management of Product Water and Off-Specification Product Water, and review the points of contact with the Water Authority staff responsible for the introduction of water into the Water Authority Distribution System; and

(9) The requirements of Section 5.1 (Performance Testing Prerequisites) of Appendix 5 (Minimum Performance Criteria and Performance Testing) have been met.

(E) Conduct of the Performance Test. The Performance Test shall consist of the operation of the Plant as a whole, as described in Appendix 5 (Minimum Performance Criteria and Performance Testing), for the time period mentioned therein, in compliance with the Contract Standards. Achievement of Provisional Acceptance will be determined in accordance with the criteria set forth in Appendix 5 (Minimum Performance Criteria and Performance Testing) and this Water Purchase Agreement. The Water Authority shall designate and make available qualified and authorized representatives to observe the Performance Test and to monitor the taking of measurements to determine the level of achievement of the Performance Guarantees, all in accordance with this Water Purchase Agreement. The Water Authority Engineer shall have the right to observe the Performance Test and the taking of measurements discussed in the preceding sentence. Neither the Water Authority nor the Water Authority Engineer shall interfere with the conduct of the Performance Test. The Project Company's election and report of Performance Test results shall be made in accordance with the requirements defined in Appendix 5 (Minimum Performance Criteria and Performance Testing).

(F) Test Report. Within 45 days following the last day of any Performance Test, the Project Company shall furnish the Water Authority Engineer and the Water Authority with five copies of a written Performance Test report consistent with the requirements specified in Appendix 5 (Minimum Performance Criteria and Performance Testing). The Performance Test results will be calculated in accordance with the Contract Standards. Within 25 days after the Water Authority's and Water Authority Engineer's receipt of the Performance Test results, the Water Authority and Water Authority Engineer shall provide written notice to the Project Company either acknowledging that the Performance Test report is complete and correct or specifying the deficiencies of the Performance Test. In the latter instance the foregoing procedure will be repeated or the report withdrawn; provided, that if such notice specifying deficiencies is provided more than 10 Business Days after receipt of the Performance Test results, the Scheduled Commercial Operation Date shall be extended for each day from the 10th Business Day from receipt of the Performance Test results until the day such notice is provided to the Project Company.

SECTION 7.4. PRODUCT WATER DELIVERIES PRIOR TO THE COMMERCIAL OPERATION DATE.

(A) Performance Tests. During any Performance Test, the Project Company shall notify the Water Authority of the volumes of Product Water to be delivered to the Plant Flow Meter at least one day in advance of such deliveries. The cost of all Performance Test activities, including any repetition of the Performance Tests, has been priced in the Monthly Water Purchase Payments. If repeated Performance Tests are required due to the failure of the Project Company to achieve Provisional Acceptance, the Project Company shall reimburse the Water Authority half of its reasonable costs and expenses incurred in monitoring and reviewing the results of any such repeated Performance Tests, such reimbursements to the Water

Authority representing half of the Water Authority's costs not to exceed \$100,000 for each repeated Performance Test (assuming the repeated Performance Test is fully completed within 45 days).

(B) Interim Operations. If CDPH issues the Project Company New Domestic Water Supply Permit, or an Interim Operations Approval, prior to the Commercial Operation Date, the Water Authority shall take delivery of and purchase Product Water from the Project Company, subject to the following:

(1) The Water Authority shall have completed the Water Authority Improvements;

(2) The Water Authority and the Project Company, acting reasonably, shall have agreed on a schedule of Flow Rates for the delivery and receipt of such Product Water;

(3) The Product Water meets the Product Water Quality Guarantee;

(4) The Water Authority may, on reasonable notice to the Project Company, terminate its obligation to receive such Product Water if the Project Company fails to deliver Product Water substantially in accordance with the agreed-upon delivery schedule;

(5) The Water Authority shall pay the Project Company, for each Unit of Product Water actually delivered and received by the Water Authority at the Product Water Delivery Meter, an amount equal to the Interim Operations Delivered Water Unit Price;

(6) Billing and payment for Product Water delivered and received under this Section shall be made in the manner provided in Article 17 (Monthly Water Purchase Payments) with respect to Monthly Water Purchase Payments; and

(7) The Water Authority's Product Water purchase obligations under this Section shall terminate upon earlier of (a) the expiration or termination of any authority to operate the Project under an Interim Operations Approval, (b) 180 days from the commencement of deliveries of Product Water under this Section, or (c) the termination of this Water Purchase Agreement, whether under Section 7.7 (Failure to Achieve Provisional Acceptance by the Scheduled Commercial Operation Date) or otherwise hereunder.

(C) Other Obligations of the Parties During Interim Operations. During interim operations, the Operating Period shall not have commenced. The parties shall, however, comply with all of their respective obligations hereunder during interim operations as if the Operating Period had commenced, except that: (1) the Project Company's Product Water delivery obligations shall be as described in subsection (B) of this Section; (2) the Water Authority shall have no obligation to pay the Monthly Water Purchase Payments, but shall pay for delivered Product Water on the terms described in subsection 7.4(B) of this Section; and (3) Product Water shall comply at all times with the requirements of Applicable Law.

(D) Water Disposal and Disinfection Required by Curtailments. The Project Company shall be responsible for the Water Authority's actual costs of any required disposal of stagnant water in and disinfection of water at the TOVWTP and in the Product Water Pipeline Improvements, resulting from the Project Company's curtailment of Performance Testing or

interim operations for any reason other than Uncontrollable Circumstances or at the direction of the Water Authority.

SECTION 7.5. PROVISIONAL ACCEPTANCE.

(A) Conditions. The following conditions shall constitute the “Provisional Acceptance Conditions,” each of which shall be and remain satisfied in all material respects by the Project Company in order to achieve Provisional Acceptance and establish the Commercial Operation Date:

(1) Mechanical Completion. Mechanical Completion has been achieved (and all conditions of Mechanical Completion continue to be satisfied) and all equipment and facilities necessary for the operation of the Plant have been properly constructed, installed, erected, insulated and protected where required, and correctly adjusted;

(2) Achievement of the Minimum Performance Criteria. A Performance Test shall have been conducted demonstrating that the Plant has achieved the Minimum Performance Criteria and complied with the Contract Standards, and a Performance Test report shall have been delivered to the Water Authority and the Water Authority Engineer validating such achievement, certified as correct and complete by the Project Company;

(3) Baseline Membrane Normalization Calculations. Unless furnished earlier in connection with Mechanical Completion, the Project Company has (a) protected the reverse osmosis membranes in accordance with the manufacturer’s storage requirements; (b) tested and disinfected the pressure vessels, (c) loaded the reverse osmosis membranes; (d) protected the membranes from damage due to disinfectants in feedwater; (e) obtained membrane data required for normalization by the RO membrane manufacturer’s methodology within 96 hours of the initial operation of each of the membrane trains; and (f) maintained the data to map reverse osmosis element placement;

(4) EPC Contractor Letter of Confirmation. The EPC Contractor shall have delivered a letter to the Water Authority and the Water Authority Engineer confirming the matters stated in item (2) of this subsection;

(5) Operating Governmental Approvals. All Governmental Approvals required under Applicable Law, including the Project Company New Domestic Water Supply Permit, which are required to be obtained by the Project Company as of the Commercial Operation Date for the performance of the Operating Work shall have been duly obtained by the Project Company and shall be in full force and effect. True and correct copies of all such Governmental Approvals, to the extent not in the Water Authority’s possession, shall have been delivered to the Water Authority to the extent required by subsection 4.4(B)(Copies) and subsection 8.8(E) (Copies of Operating Governmental Approvals);

(6) No Encumbrances. There are no Encumbrances registered or recorded on the Plant Site or any part of the Plant other than Permitted Encumbrances;

(7) Governmental Body Readiness Confirmations. To the extent required under Applicable Law, all other Governmental Bodies having jurisdiction have confirmed (and issued all pertinent Governmental Approvals or other documents in respect thereof) that all buildings and structures comprising the Plant on the Plant Site are ready for use and occupancy;

(8) Required Operating Period Insurance. The Project Company has obtained and submitted to the Water Authority endorsements and certificates of insurance for all Required Insurance specified in Section 7.2 (Insurance During the Operating Period) of Appendix 7 (Insurance Requirements);

(9) Final Electronic Operation and Maintenance Manuals. The Project Company has delivered to the Water Authority the final Electronic Operation and Maintenance Manual;

(10) Completion and Acceptance of Product Water Pipeline Improvements. Completion and acceptance of the Product Water Pipeline Improvements shall have occurred, as provided in subsection 7.5(D) (Completion and Acceptance of the Product Water Pipeline Improvements) of this Section; and

(11) Surge Protection System Test. If the Plant failed the Surge Protection System Test, then pursuant to and to the extent required by subsection 5.8.2 (Retesting of the Surge Protection System) of Appendix 5 (Minimum Performance Criteria and Performance Testing)), the Project Company shall have completed all repairs or modifications identified as required before Provisional Acceptance and the Plant shall have subsequently passed the Surge Protection System Test.

(B) Notice and Report of Provisional Acceptance. When the Project Company believes that it has achieved Provisional Acceptance, it shall deliver to the Water Authority and the Water Authority Engineer a notice thereof (the "Notice of Provisional Acceptance"). The Notice of Provisional Acceptance shall contain a report in a form acceptable to the Water Authority, and with sufficient detail to enable the Water Authority to determine that Provisional Acceptance has been achieved.

(C) Achievement of Provisional Acceptance. The Water Authority and the Water Authority Engineer shall, within 20 days following receipt of the Notice of Provisional Acceptance, inspect the Plant and all Construction Work and either (a) deliver a certificate to the Project Company certifying that the requirements under clauses (1) through (10) of subsection 7.5(A) (Conditions) have been satisfied, or (b) notify the Project Company in writing that Provisional Acceptance has not been achieved, stating in detail the reasons therefor. In the event that Provisional Acceptance has not been achieved, the Project Company shall promptly take such action or perform such Construction Work to effect compliance with Provisional Acceptance, and shall issue to the Water Authority and the Water Authority Engineer another Notice of Provisional Acceptance pursuant to subsection 7.5(B) (Notice and Report of Provisional Acceptance). Such procedure shall be repeated as necessary until Provisional Acceptance has been achieved.

(D) Completion and Acceptance of the Product Water Pipeline Improvements. The Project Company is obligated under the Product Water Pipeline Improvements Design-Build Contract to permit, design, build, commission and test the Product Water Pipeline Improvements. The Project Company acknowledges that completion of the Product Water Pipeline Improvements and the successful passage of the acceptance tests for the Product Water Pipeline Improvements are essential preconditions to the ability of the Water Authority to receive Product Water into the Water Authority Distribution System. Accordingly, Provisional Acceptance of the Plant shall not be deemed to have occurred, and the Commercial Operation Date shall not be established, unless and until the Project Company has completed construction of the Product Water Pipeline Improvements and satisfied the acceptance conditions for the Product Water Pipeline Improvements set forth in the Product Water Pipeline Improvements Design-Build Agreement.

(E) Commercial Operation Date. For all purposes of this Water Purchase Agreement, the Commercial Operation Date shall be the date on which the Notice of Provisional Acceptance is delivered to the Water Authority, if, subsequent to such delivery, the Water Authority delivers a certificate to the Project Company certifying, in response to such Notice of Provisional Acceptance, that the Provisional Acceptance Conditions have been satisfied.

(F) Adjustment for Underpayment. As provided in Article 17 (Monthly Water Purchase Payments), the Water Authority shall pay Monthly Water Purchase Payments for Product Water delivered after the Commercial Operation Date. In the event the Water Authority has paid the Interim Operations Delivered Water Unit Price for such water pursuant to subsection 7.4(B) (Interim Operations) pending the Water Authority's review and approval of the Project Company's Notice of Provisional Acceptance, the Water Authority shall make a payment to the Project Company sufficient to account for the amount underpaid. Any such payment shall be a Direct Payment.

SECTION 7.6. SCHEDULED COMMERCIAL OPERATION DATE.

(A) Commercial Operation Date. The Project Company shall achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

(B) Scheduled Commercial Operation Date Defined. The Scheduled Commercial Operation Date is the date that is 1,430 days following the Financial Closing Date, as such Scheduled Commercial Operation Date may be extended as provided in subsection 7.6(C) (Scheduled Commercial Operation Date - Extension for Uncontrollable Circumstances).

(C) Extension for Uncontrollable Circumstances. If an Uncontrollable Circumstance occurs between the Financial Closing Date and the Scheduled Commercial Operation Date, the Scheduled Commercial Operation Date may be extended for such time as is reasonable in the circumstances to take account of the effect of the delay on any matter in the Project Schedule caused by the Uncontrollable Circumstance.

SECTION 7.7. FAILURE TO ACHIEVE PROVISIONAL ACCEPTANCE BY THE SCHEDULED COMMERCIAL OPERATION DATE.

In the event the Project Company fails to satisfy the Provisional Acceptance Conditions by the Scheduled Commercial Operation Date, a Project Company Event of Default shall be deemed to have occurred and the Water Authority may pursue all remedies available under Article 19 (Remedies of the Parties and Water Authority Step-In Rights), Article 20 (Project Company Events of Default) and Article 22 (Termination).

SECTION 7.8. NO WATER AUTHORITY PAYMENT OBLIGATION PRIOR TO COMMERCIAL OPERATION DATE; EXCEPTIONS.

The Water Authority shall have no obligation to purchase Product Water or make any other payment to the Project Company prior to the Commercial Operation Date, except as provided in Section 7.4 (Product Water Deliveries Prior to the Commercial Operation Date).

SECTION 7.9. PROJECT COMPLETION.

(A) Requirements. “Project Completion” shall occur when all of the following conditions have been satisfied:

(1) Provisional Acceptance. The Project Company has achieved Provisional Acceptance in accordance with Section 7.5 (Provisional Acceptance);

(2) Construction Work Completed. All Construction Work (including all items on the Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Water Purchase Agreement;

(3) First Stage Reverse Osmosis Membrane Performance. The individual reverse osmosis trains that make up the first stage shall have complied with the testing requirements set forth in subsection 5.6.3(ii) (Reverse Osmosis, Energy Recovery and Concentrate Discharge System) of Appendix 5 (Minimum Performance Criteria and Performance Testing);

(4) Product Water Pump Facilities. If the Plant failed the Surge Protection System Test, in addition to completion of the repairs or modifications required before Provisional Acceptance (if any), the Project Company shall have completed all other repairs or modifications identified pursuant to subsection 5.8.2 (Retesting of the Surge Protection System) of Appendix 5 (Minimum Performance Criteria and Performance Testing).

(5) Equipment Warranties and Manuals. The Project Company shall have delivered to the Water Authority, copies of the warranties of equipment and fixtures constituting a part of the Plant received from the equipment suppliers, together with copies of all related operating manuals supplied by the equipment suppliers;

(6) Record Drawings. The Project Company has delivered to the Water Authority a final and complete set of as-built construction record drawings, prepared in accordance with Attachment 3E (Water Authority Drawing Requirements) of Appendix 3 (Project Design and Construction Work), and signed and sealed by a California registered engineer; and

(7) Claims Statement. The Project Company has delivered to the Water Authority a claims statement setting forth in detail all claims known to it of every kind whatsoever of the Project Company connected with, or arising out of, the Construction Work Plan, and arising out of or based on events prior to the date when the Project Company gives such statement to the Water Authority.

(B) Notice and Report of Project Completion. When the Project Company believes that it has achieved Project Completion, it shall deliver to the Water Authority and the Water Authority Engineer a written notice thereof (the “Notice of Project Completion”). The Notice of Project Completion shall contain a report in a form acceptable to the Water Authority and the Water Authority Engineer, and with sufficient detail to enable the Water Authority and the Water Authority Engineer to determine the achievement by the Project Company of all Construction Work to be performed under this Water Purchase Agreement, including completed Punch List items, and such other information that the Water Authority or the Water Authority Engineer may require to determine whether Project Completion has been achieved.

(C) Achievement of Project Completion. The Water Authority and the Water Authority Engineer, shall, within 10 days following receipt of the Notice of Project Completion, inspect the Project, review the report submitted by the Project Company and either (a) deliver a certificate to the Project Company stating that clauses (1) through (6) of subsection (A) of this Section have been satisfied, or (b) notify the Project Company in writing that Project Completion has not been achieved, stating in detail the reasons therefor. In the event that the Water Authority or the Water Authority Engineer determines that Project Completion has not been achieved, the Project Company shall promptly take such action or perform such Construction Work as will achieve Project Completion and shall issue to the Water Authority and the Water Authority Engineer another Notice of Project Completion pursuant to Section 7.9(B) (Notice and Report of Project Completion). Such procedure shall be repeated as necessary until Project Completion is achieved.

(D) Obligation to Achieve Project Completion; Punch List Items. The Project Company shall achieve Project Completion within 180 days after the Commercial Operation Date.

ARTICLE 8

OPERATION AND MANAGEMENT OF THE PLANT

SECTION 8.1. PROJECT COMPANY OBLIGATIONS GENERALLY.

(A) Operation and Management Responsibility for the Project. Commencing on the Commercial Operation Date, the Project Company shall operate and manage the Project; treat Raw Seawater; produce, deliver and sell Product Water to the Water Authority; transport and dispose of Plant By-Products, provide all information necessary to secure and maintain Governmental Approvals to the extent required under this Water Purchase Agreement; and otherwise operate and manage the Project so as to comply with the Contract Standards applicable to such activities.

(B) Application of Industry Experience. The Project Company shall use all reasonable efforts to apply at the Project the benefit of the advances and improvements in technology, management practices and operating efficiencies which are developed by the Project Company, the Process Services Contractor, the Operating Service Provider and their Affiliates through the operation of their water treatment businesses and industry research and development activities conducted over the Term, and which are useful and appropriate in the good faith judgment of the Project Company for carrying out the Operating Work in a manner which improves upon the Contract Standards.

(C) Water Authority Administrative Space. The Project Company shall provide office space at the Plant for the exclusive use of the Water Authority's compliance personnel and advisors in accordance with Appendix 6 (Operating and Maintenance Standards). The cost related to the Water Authority's use of such office space (including janitorial services to be provided by the Project Company) has been priced into the Monthly Water Purchase Payments.

SECTION 8.2. SERVICE COORDINATION.

(A) Project Company's Chief Operator. The Project Company shall appoint a full-time manager of the Project (the "Chief Operator"). The Chief Operator shall have a Grade T 5 operator's certification as of the date of the commencement of start-up and commissioning of the Project and shall be otherwise appropriately certified under Applicable Law. The sole employment responsibility of the Chief Operator shall be managing the operation of the Plant. In the event the Water Authority determines that (1) the Chief Operator has persistently failed to manage the operation of the Project in accordance with the Contract Standards, or (2) an unworkable relationship (as defined below) has developed between the Chief Operator and the Water Authority, the Water Authority shall provide the Project Company with written notice, describing such failure or development of an unworkable relationship (as defined below) and its duration in reasonable detail. An unworkable relationship shall be deemed to have developed if the Chief Operator, by his or her persistent conduct, is non-responsive or non-communicative with Governmental Bodies, Cabrillo, the Water Authority or the Project Company; makes material misrepresentations; provides materially false or incomplete information; dishonors commitments; fails to make timely decisions; or fails to manage or control the employees under his or her managerial control. The parties shall thereupon schedule a meeting to discuss and seek to resolve the Water Authority's concerns, to be held not more than 30 days following delivery of such notice, which meeting shall be attended by senior executives of the Water Authority, the Project Company and the Operating Service Provider with authority to resolve the dispute. If, following such meeting, based on the persistent conduct that prompted the Water Authority's concern or conduct occurring following the meeting, the Water Authority, acting reasonably, still determines that an unworkable relationship exists or that the Chief Operator has persistently failed to manage

the operation of the Project in accordance with the Contract Standards, the Water Authority shall so notify the Project Company and the Project Company shall remove such Chief Operator as soon as reasonably practicable, but in no event later than 60 days.

(B) Communications and Meetings. On or before the Commercial Operation Date, the Project Company shall provide the Water Authority with contact information for the Chief Operator and senior management representatives of the Project Company. The Water Authority shall furnish to the Project Company comparable communications information with respect to the Contract Administrator. The Project Company shall meet with the Water Authority each month to review the contents of the monthly operations reports required to be prepared pursuant to Section 8.11 (Periodic Reports). The Chief Operator (or other senior representative of the Operating Services Provider acceptable to the Water Authority) and, if requested by the Water Authority, a senior management representative of the Project Company each shall personally attend the monthly operations meetings with the Water Authority, and all special meetings which the Water Authority may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the Project and this Water Purchase Agreement. The Project Company shall have the right to have a representative present at all such meetings. Any issue in dispute which the parties are unable to resolve at such monthly and special meetings may be referred to Non-Binding Mediation in accordance with Section 18.2 (Non-Binding Mediation), and the resolution of any issues resolved at such meetings or through Non-Binding Mediation shall be reflected in a Contract Administration Memorandum or a Water Purchase Agreement Amendment, as applicable.

(C) Complaints and Communications. The Project Company shall respond in a timely and effective manner to all complaints and communications received by the Project Company or received by the Water Authority and forwarded to the Project Company regarding the treatment and distribution of water, odor and air emissions, noise, light emissions, construction or any other matter related to the Operating Work as to which there is a Contract Standard, to the extent required by the following sentence. The Project Company shall investigate each such complaint and communication and, if it has a valid basis, the Project Company shall promptly respond to or rectify the matter, as applicable; provided, however, that the Project Company shall have no obligation to respond to or rectify a matter raised in a complaint or communication if the Project Company is in compliance with the Contract Standards with respect to the matter. The Project Company shall respond to complaints and communications concerning (1) emergencies related to the Project within one hour; (2) material spillages, leaks, breaks, noise, and light emissions relating to the Project as soon as reasonably possible; and (3) other material communications within two Business Days. All such complaints and communications shall be immediately logged and responded to in writing, faxed to the Water Authority on a daily basis, and reported to the Water Authority as part of the monthly operations reports delivered pursuant to Section 8.11 (Periodic Reports). The Project Company shall establish, maintain and make publicly known a telephone number, e-mail address and mailing address to which customer or citizen complaints and communications may be directed.

(D) Relations with Member Agencies. The Project Company shall cooperate with and assist the Water Authority in performing its obligations under its obligations to or agreements with the Member Agencies, including providing all information, data and reports required under such agreements.

SECTION 8.3. STAFFING AND PERSONNEL.

(A) Staffing Generally. The Project Company shall staff (or cause the Operating Service Provider to staff) the Project during the Term in accordance with the Contract Standards with qualified personnel who meet the licensing and certification

requirements of the State. The Project staff, taken as a whole, shall be trained, experienced and proficient in the management and operation of membrane water treatment systems using membrane treatment similar to the Project. The Project Company shall (or shall cause the applicable Project Contractor to) appropriately discipline or replace, as appropriate, any employee of the Project Company or any Subcontractor engaging in unlawful, unruly or objectionable conduct. The Project Company shall notify the Water Authority of any material change in staffing levels and positions from time to time, and shall not make any such material change if the new staffing level would adversely materially and adversely affect the ability of the Project Company to provide the Operating Work in accordance with the Contract Standards.

(B) Key Operations Staff. Collectively, the Chief Operator and those reporting directly to the Chief Operator shall have experience with all of the advanced technologies utilized in the Project sufficient to operate and maintain the Project in accordance with the Contract Standards.

(C) Training. The Project Company shall be responsible for training the Chief Operator, operations supervisors and other Project Company personnel. No later than the Commercial Operation Date, the Project Company shall prepare a personnel training program which the Project Company proposes to institute in order to ensure that the Project is managed and operated by qualified personnel throughout the Term and in accordance with this Water Purchase Agreement. Such personnel training program shall include the personnel training guidelines, policies and procedures established (1) by the CDPH and the EPA; (2) in any Governmental Approval or operator's certificate required or issued by any Governmental Body; and (3) in any other Applicable Law.

SECTION 8.4. UTILITIES.

(A) Supply. The Project Company shall arrange for and establish the supply of electric, gas, water, sewer and other utility service required for the Project in accordance with the Design Requirements.

(B) SDG&E Special Conditions Contract. The parties acknowledge that the Project Company has arranged for the construction, pursuant to the SDG&E Special Conditions Contract, of certain electric utility system improvements necessary for the supply of electricity to the Project. Such improvements, which are to be constructed by SDG&E and funded from the proceeds of the Initial Plant Bonds, will be the property of SDG&E. The parties further acknowledge that, in consideration of the Project Company's funding of such improvements, certain credits are to be applied by SDG&E to the monthly electrical invoices payable by the Project Company. All such credits shall be for the account of the Project Company. In the event the Water Authority exercises its right under subsection (C) of this Section to change electricity suppliers, the Water Authority shall have no obligation to compensate the Project Company for any credits foregone as a result of any such change in suppliers; provided, however, that in the event the Project Company is unable to make arrangements in connection with any such change in electricity suppliers so as to secure the full benefit of such credits, the Water Authority shall pay the Project Company, as Direct Payments, an amount equal to such foregone credits at the times such credits would have accrued to the benefit of the Project Company under the SDG&E Special Conditions Contract.

(C) Alternative Electricity Suppliers. The Water Authority shall have the right, upon reasonable notice, to direct the Project Company to change electricity suppliers, and to negotiate and establish electric rates with the replacement supplier; provided, however, that the terms and conditions of electricity supply established with the replacement supplier shall not materially and adversely affect the ability of the Project Company to perform the Contract Obligations or the costs thereof. The Project Company shall make no agreement that would materially impair such right of the Water Authority, and shall cooperate with and assist

the Water Authority in making any such alternative electricity supply arrangements. The Water Authority shall give reasonable consideration to any requests and recommendations made by the Project Company as to the terms and conditions of electricity supply, and shall reimburse the Project Company for the reasonable and proper internal costs and external professional costs incurred by the Project Company in relation to the change of electricity suppliers. Any such reimbursement shall be a Direct Payment.

(D) Payment of Utility Costs. The Project Company shall timely pay all utility costs for the Project.

SECTION 8.5. ELECTRONIC OPERATION AND MAINTENANCE MANUAL.

(A) Project Company Responsibility. The Project Company shall deliver a preliminary draft Electronic Operation and Maintenance Manual to the Water Authority for review and comment at least 45 days prior to Mechanical Completion, and a draft final Electronic Operation and Maintenance Manual at least 60 days following Provisional Acceptance. The Water Authority shall have the right to review and comment on such draft final Electronic Operation and Maintenance Manual within a 30-day period following its receipt, and the Project Company shall give reasonable consideration to such comments in finalizing the draft. The Operating Work shall be performed substantially in compliance with the Electronic Operation and Maintenance Manual, the Operating Protocol and the CMMS. The Project Company shall keep the Electronic Operation and Maintenance Manual current in accordance with the Contract Standards, including changes required to reflect updates to record documents made pursuant to subsection 8.10(C) (Record Documents).

(B) Supplements for Capital Modifications. The Project Company shall prepare supplements and revisions to the Electronic Operation and Maintenance Manual which are required due to the design, construction and installation of all Capital Modifications. The cost and expense of all such supplements and revisions shall be borne by the Project Company, except with respect to supplements and revisions necessitated by Capital Modifications directed by the Water Authority or required by a Change in Law Event or other Uncontrollable Circumstance.

SECTION 8.6. SAFETY.

The Project Company shall maintain the safety of the Project at a level consistent with all federal, State and local safety and health rules and regulations, and the Contract Standards. Without limiting the foregoing, the Project Company shall:

(1) take reasonable precautions for the safety of, and provide reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the Project to,

(a) all employees performing the Contract Obligations and other persons who may be directly affected thereby,

(b) all visitors to the Project,

(c) all materials and equipment under the care, custody or control of the Project Company on the Plant Site,

(d) other property constituting part of the Project, and

(e) Water Authority Property affected by Plant operations;

(2) give all notices and comply with all Applicable Laws relating to the safety of persons or property or their protection from damage, injury or loss;

(3) designate a qualified and responsible employee at the Plant whose duty shall be the development and implementation of safety and health requirements at the Plant, the prevention of fires and accidents and the coordination of such activities, with federal, State, local and Water Authority officials;

(4) operate all equipment in a manner consistent with the manufacturer's safety requirements; and

(5) develop and implement a health and safety program that includes a written site-specific health and safety plan designed to implement the requirements of this Section. The Project Company shall make all modifications to the Plant which are or may be required under OSHA., subject to any relief to which it may be entitled based on a Change-in-law Event.

SECTION 8.7. SECURITY.

The Project Company, in accordance with the Contract Standards, shall be responsible for the security and protection of the Project. The Project Company shall prepare and keep current a security plan for the Project and conduct vulnerability assessments in accordance with the requirements of Sections 6.5.5 and 6.5.6 of Appendix 6 (Operating and Maintenance Standards) (the "Security Plan"), and shall comply with the requirements of the Security Plan. The Project Company shall guard against all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties, and shall operate, maintain, repair and replace all surveillance and other security equipment and assets constituting fixtures of the Plant in accordance with the Contract Standards.

SECTION 8.8. OPERATING GOVERNMENTAL APPROVALS.

(A) Applications and Submittals. The Project Company shall make all filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be made, obtained, maintained, renewed or extended by or in the name of the Project Company under Applicable Law in order to operate the Plant, including those set forth in Appendix 2 (Governmental Approvals). All permit and filing fees required in order to obtain and maintain Governmental Approvals for the Operating Work shall be paid by the Project Company, regardless of the identity of the applicant, except with respect to Governmental Approvals required in connection with an Uncontrollable Circumstance.

(B) Data and Information. All data, information and action required to be supplied or taken in connection with the Governmental Approvals required for the Operating Work shall be supplied and taken on a timely basis by the Project Company considering the requirements of Applicable Law. The data and information supplied by the Project Company to the Water Authority and all regulatory agencies in connection therewith shall be correct and complete in all material respects. The Project Company shall provide all material documentation to be submitted to a Governmental Body in connection with the following Governmental Approvals for the Water Authority's review and comment at least 10 days prior to submission to the applicable Governmental Body:

(1) Any proposed revisions to the Encina Power Station Precise Development Plan required by changes to the Project;

- (2) Any proposed revisions to the South Carlsbad Coastal Project Area Redevelopment Plan required by changes in the Project;
- (3) Any amendments to the Redevelopment Permit required by changes to the Project;
- (4) Any amendments to the Encina Specific Plan No. 144 required by changes to the Project;
- (5) Any amendments to the Coastal Development Permit for the Project during the Term of this Water Purchase Agreement;
- (6) Any amendments to the Project Company Domestic Water Supply Permit by the California Department of Public Health;
- (7) Any amendments to the NPDES Project Permit; and
- (8) Any CEQA compliance matter required for any revisions to the Project.

The Project Company shall be responsible for any schedule and cost consequences which may result from the submission of materially incorrect or incomplete information. Unless required under Applicable Law, the Project Company shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals or the terms and conditions thereof that would impose an unreasonable cost or burden on the Water Authority in its capacity as a buyer of Product Water under this Water Purchase Agreement. The Water Authority reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have the effect described in the preceding sentence, provided that any such action by the Water Authority shall not cause the Project Company to fail to comply with Applicable Law.

(C) Non-Compliance and Enforcement. The Project Company shall report to the Water Authority, immediately upon obtaining knowledge thereof, all notices or communications it receives with respect to violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Project. The failure of the Project Company to comply with any Governmental Approval in all material respects shall constitute a breach of this Water Purchase Agreement.

(D) Reports to Governmental Bodies. The Project Company shall, in accordance with the Contract Standards, prepare all periodic reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the Project, including sampling and testing results. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for the Water Authority, if such are acceptable to the Governmental Body. The Project Company first shall provide the Water Authority with copies of such regulatory reports prior to their filing as and to the extent required pursuant to subsection 8.8(B) (Data and Information).

(E) Copies of Operating Governmental Approvals. The Project Company shall make available for review and copying by the Water Authority, upon request, copies of the following Operating Governmental Approvals and related applications:

- (1) Permits and approvals to use water, sewer and other various local utilities;

- (2) Permits to supply and deliver chemicals, materials and other consumables used for Operating Work;
- (3) Permits to dispose of storm water;
- (4) Permits to dispose of waste cleaning chemicals, solids waste, and any other liquid or solid waste materials and soils generated by the Plant during the Term;
- (5) Permits needed to dispose of Plant permeate, concentrate and waste filter backwash that do not comply with the requirements of the applicable regulations and specifications defined in the NPDES Project Permit;
- (6) Operator licensing documents;
- (7) 40 CFR Part 68 Risk Management Plan;
- (8) Section 112(r) Accidental Release Prevention Plan; and
- (9) All other Project operation, maintenance, repair and monitoring related Governmental Approvals not otherwise listed in this subsection that may be required by any Governmental Body, including the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Oceanic & Atmospheric Administration, U.S. National Marine Fisheries Service, U.S. Army Corp of Engineers, CALTRANS, California Department of Public Health, California Department of Fish and Game, City of Carlsbad, and San Diego County.

(F) Potential Regulatory Change. The Project Company shall keep the Water Authority regularly advised as to potential material changes in regulatory requirements affecting the Project of which the Project Company becomes aware, together with recommended responses to such potential changes (including potential Capital Modifications) so as to mitigate any possible adverse economic impact on the Water Authority should a Change in Law Event actually occur.

SECTION 8.9. WATER AUTHORITY ACCESS TO PLANT.

(A) General Access. The Water Authority shall have the right upon reasonable notice (or, in an emergency, at any time) to visit and inspect the Plant and related records and observe the Project Company's performance of the Operating Work in order to determine compliance with the Contract Standards, including the Project Company's obligations under Article 10 (Maintenance, Repair and Replacement). The Project Company shall permit and facilitate access to the Plant for such purposes by Water Authority personnel and by agents and contractors designated by the Water Authority. Keys or passwords, as applicable, for the facilities or structures comprising the Plant shall be provided to the Water Authority's Contract Administrator by the Project Company in accordance with the Project Company's physical security plan and key control program. All visitors shall comply with the Plant Site-specific health and safety plan and rules, and shall not interfere with the Project Company's operation of the Plant. When visiting any portion of the Plant that is staffed by the Project Company at the time of the visit, all Water Authority employees, agents and contractors shall announce themselves to the staff and Project Company employees may elect to accompany any Water Authority employees, agents and contractors during the visit.

(B) Tours. The Project Company shall conduct public tours of the Plant during normal business hours, and take visitors through such portions of the Plant as are suitable for public visitation, all during normal business hours and in a pre-arranged and

mutually agreed upon manner that does not interfere with the Project Company's performance of the Contract Obligations.

SECTION 8.10. ASSET RECORDS.

(A) Information Systems. The Project Company, on and after the Commercial Operation Date, shall establish and maintain computerized information systems with respect to the Plant for operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this Water Purchase Agreement and demonstrate compliance with the Contract Standards. The Project Company shall grant the Water Authority real time, continuous access to such computerized information systems through the Water Authority Interface Cabinet in accordance with Attachment 3C of Appendix 3 (Project Design and Construction Work).

(B) Availability of Plant Records to Water Authority. The Project Company shall make available for inspection and copying by the Water Authority, upon request, copies of all operations, maintenance, performance, Plant By-Products management, process control and similar records and data kept by the Project Company in its performance of the Operating Work.

(C) Record Documents. The Project Company shall maintain at the Plant and make available to the Water Authority upon request for review and copying: (1) all material Design Documents and record drawings and documents pertaining to the Plant copies of which were delivered to the Water Authority by the Project Company pursuant to Appendix 3 (Project Design and Construction Work); and (2) similar documents relating to any Capital Modifications. The Project Company shall: (1) update annually all such records to show any material changes to the Plant made by the Project Company in the performance of the Operating Work (which shall include any change that alters the functionality, performance or usability of any Project Equipment and Project Structures, or which could impact Product Water quality or Water Authority aqueduct operations); and (2) provide advice and assistance to the Water Authority, based on such records, in establishing and maintaining any Water Authority geographic mapping and information systems.

(D) Annual Update of Record Drawings and Documents. The Project Company, within 60 days following the end of each Contract Year, shall deliver to the Water Authority an electronic copy of an updated set of as-built drawings reflecting any material changes to the Project during such Contract Year, of any updates to record drawings and documents that were made during the previous Contract Year. The annual record drawings and documents update shall be prepared in accordance with the requirements of subsection 8.12(D) (Drawing Requirements) and delivered separately from the annual operation and maintenance reports delivered pursuant to subsection 8.11(B) (Annual Operation and Maintenance Reports).

SECTION 8.11. PERIODIC REPORTS.

(A) Monthly Operations. The Project Company shall provide the Water Authority with monthly operations reports no later than 15 days after the end of each Billing Period. In addition to the operating data specified in Appendix 6 (Operating and Maintenance Standards), the monthly operations reports shall include a report by the Project Company as to the following:

- (1) A table or other information format acceptable to the Water Authority setting forth all results of operations pertaining to the delivery or non-delivery of Product Water, presented using each of the categories used for billing and tracking purposes under Article 17 (Monthly Water Purchase Payments);

- (2) Summary of the quantities and characteristics of Raw Seawater and Product Water produced during the prior month, in a manner consistent with the listing of the characteristics set forth in Appendix 8 (Supplemental Performance Guarantee Requirements);
- (3) Summary of all sampling and test data required by this Water Purchase Agreement;
- (4) Quantities of electricity, natural gas, water and other Utility services used during such month;
- (5) Summary of staffing levels, job positions and workforce turnover;
- (6) Statement of any complaints or communications received by the Project Company in relation to the Operating Work as to which the Project Company is obligated to respond under subsection 8.2(C) (Complaints and Communications), and how each such complaint and communication was addressed by the Project Company;
- (7) Description of the maintenance, repair and replacement activities performed and Capital Modifications made during the prior month and anticipated during the current month;
- (8) Description of maintenance backlog and status of work orders of preventative and unplanned maintenance;
- (9) List of material machinery and equipment which was unavailable for service during the prior month, and a timetable for repair and replacement;
- (10) Description of partial or total Project equipment shutdowns for maintenance and repairs during the prior month and anticipated during the current month;
- (11) Adverse conditions which may be expected to arise during the current month that may affect the ability of the Project Company to treat Raw Seawater and produce Product Water in accordance with the terms and conditions of this Water Purchase Agreement;
- (12) Results of any regulatory or insurance inspections conducted during the prior month;
- (13) Information on any Utility outages occurring during the prior month;
- (14) Descriptions of any failures to meet the Performance Guarantees and data required to determine performance liquidated damages under this Water Purchase Agreement, if any;
- (15) Listing and description of any reports or other submittals made to or received from any Governmental Body with respect to any environmental, health or safety tests or monitoring procedures conducted by the Governmental Body during the prior month;
- (16) Notices of material violations of any Governmental Approval received during the prior month;

(17) Summary of any Product Water Supply Commitment Allowance claims made by the Project Company during the prior month, and a cumulative total for the Contract Year to date; and

(18) List of visitors to the Plant in the prior month.

The Project Company shall submit for the Water Authority's review and approval, in accordance with Section 6.4.1 of Appendix 6 (Operating and Maintenance Standards), the proposed format of the monthly operations report required to be provided by the Project Company pursuant to this Section.

(B) Annual Operations and Maintenance Reports. The Project Company shall furnish the Water Authority, within 45 days after the end of each Contract Year following the Commercial Operation Date, an annual summary of the information contained in the monthly operations reports, including a report by the Project Company of any administrative fine, penalty or consent order against it or any of its Affiliates with respect to the performance of operation and maintenance services at other water treatment plants located in the State. The Project Company shall also perform and report to the Water Authority, as part of its annual operations and maintenance report and in accordance with the Contract Standards, a review and analysis of the administrative, operational and maintenance practices employed in the management of the Plant. The annual operations and maintenance report shall also include a summary of all replacements or retirement of material Project Equipment and Capital Modifications. The annual record drawing updates required by subsection 8.10(D) (Annual Update of Record Drawings and Documents) shall be prepared as a separate submittal to the Water Authority.

(C) Default Reports. The Project Company shall provide to the Water Authority, immediately after the receipt thereof, copies of any written notice of a material default, breach or non-compliance received or sent under or in connection with any Project Contract entered into by the Project Company in connection with the Operating Work.

SECTION 8.12. MAINTENANCE OF RECORDS.

(A) Duty to Maintain Records. The Project Company shall retain and maintain all the records (including superseded records) referred to in subsection 8.12(E) (Records to Be Kept) in accordance with this subsection and other applicable terms of this Water Purchase Agreement, in chronological order, in a form that is capable of audit. The Project Company shall make such records (other than books of account) available to the Water Authority for inspection during normal business hours upon reasonable notice.

(B) Maintenance of Records. Wherever practical and unless otherwise agreed, the Project Company shall retain and maintain original records in electronic and hard copy form. True copies of the original records may be kept by the Project Company if it is not practicable to retain original records.

(1) The Project Company shall retain and maintain all records referred to in subsection 8.12(E) (Records to Be Kept) for a period of at least ten years from the Contract Year to which such records relate, or such longer period as may be required by Applicable Law, all in sufficient detail, in appropriate categories and generally in such a manner to enable each party to comply with its obligations and exercise its rights under this Water Purchase Agreement.

(2) On the expiration of such period or at the earlier request of the Water Authority, the Project Company shall deliver all those records (or, if those records are required by statute to remain with the Project Company or a Project Contractor, copies

thereof to the Water Authority in the manner and at the location as the Water Authority specifies, acting reasonably.) The Water Authority shall make available to the Project Company for inspection during normal business hours all records the Project Company delivers pursuant to this Section upon reasonable notice.

(C) Disposal of Records. During the Term, the Project Company may dispose of any records referred to in subsection 8.12(E) (Records to Be Kept) if any are more than 10 years old or in respect of which the required period for their retention has expired, provided that the Project Company first notifies the Water Authority in writing and provides the Water Authority with 60 days to elect to receive delivery of such records.

(D) Drawing Requirements. Any drawings required to be made or supplied pursuant to this Water Purchase Agreement shall be prepared in accordance with the requirements of Attachment 3D (Water Authority Drawing Requirements) of Appendix 3 (Project Design and Construction Work), and shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids. Where by prior agreement with the Project Company the Water Authority has agreed to accept microfilm, microfiche or other storage media (which must include secure back up facilities), the Project Company shall make or supply, or have made or supplied, drawings and other documents in such agreed upon form.

(E) Records to Be Kept.

(1) The Project Company shall retain the following:

(2) This Water Purchase Agreement and the documents executed based on the Transaction Forms, including all amendments to such agreements;

(3) Records relating to the appointment and supervision of the Water Authority Representative and the Project Company Representative;

(4) Documents relating to Governmental Approvals, including applications, refusals and appeals;

(5) Notices, reports, results and certificates relating to completion of the Construction Work, Commissioning, and Capital Modifications;

(6) All operation and maintenance manuals;

(7) Record drawings and documents, and periodic updates;

(8) Documents relating to Uncontrollable Circumstances;

(9) All notices made to or received from the Water Authority Representative;

(10) Documents relating to a request for the consent of the Water Authority to any Change in Control by the Project Company;

(11) Documents relating to a Refinancing of the Project Company (other than an Exempt Refinancing);

(12) Tax invoices and records applicable to the Project (other than any income tax records for the Project Company or records pertaining to other taxes personal to the Project Company);

(13) Records required by Applicable Law (including in relation to health and safety matters) to be maintained by the Project Company with respect to the Construction Work and Operating Work;

(14) Documents relating to the Required Insurance; and

(15) All other records, notices or certificates required to be produced or maintained by the Project Company pursuant to the express terms of this Water Purchase Agreement.

SECTION 8.13. EMERGENCIES.

(A) Emergency Plan. Within 75 days prior to the Scheduled Commercial Operation Date, the Project Company shall provide the Water Authority with a plan of action to be implemented in the event of an emergency, including fire, weather, environmental, health, safety, power outage, and other potential emergency conditions. The plan shall: (1) provide for appropriate notifications to the Water Authority and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by the Water Authority and all such other appropriate Governmental Bodies; (2) specifically include spill prevention and response measures; and (3) assure the timely availability of all personnel required to respond to any emergency (no later than one hour during nights, weekends or holidays). The emergency plan shall be reviewed by the parties annually as part of the review of the annual operations report, and updated when necessary, in accordance with the Operating Protocol.

(B) Emergency Action. Notwithstanding any requirement of this Water Purchase Agreement requiring Water Authority approval or consent to reports or submittals, if at any time the Project Company determines in good faith that an emergency situation exists such that action must be taken to protect the safety of the public or its employees, to protect the safety or integrity of the Project, or to mitigate the immediate consequences of an emergency event, then the Project Company shall take all such action it deems in good faith to be reasonable and appropriate under the circumstances. As promptly thereafter as is reasonable, the Project Company shall notify the Water Authority of the event at an emergency phone number supplied by the Water Authority, and the Project Company's response thereto. The cost of the Project Company's response measures shall be borne by the Project Company except to the extent the emergency event was caused by an Uncontrollable Circumstance, in which case the Water Authority shall bear the cost.

SECTION 8.14. ANNUAL MANAGEMENT FEE.

(A) Fee Calculation. The Water Authority shall pay the Project Company annually, as a Direct Payment made as part of the annual settlement provided for in Section 17.17 (Annual Settlement), a Management Fee equal to (1) the Monthly Delivered Water Units for the applicable Contract Year, multiplied by (2) the sum of (a) \$5.00 (Index Linked) and (b) an amount between zero and \$5.00 (Index Linked), determined by the Water Authority for the applicable Contract Year as an incentive payment for superior service and performance by the Project Company under this Water Purchase Agreement, based on the service and performance criteria set forth in subsection (B) of this Section. The Water Authority's determination as to the level of any such incentive amount within such range shall be made in its discretion, without obligation of any kind, and shall be final when made.

(B) Factors. In making its determination under clause (2) in subsection (A) (Fee Calculation) of this Section, the Water Authority intends to take into account the level of excellence demonstrated by the Project Company in: (1) maintaining Plant safety; (2) cooperating with the Water Authority in the Product Water daily ordering process; (3) invoicing

and record keeping; (4) efficiently and amicably resolving operating and performance issues; (5) pro-actively addressing Product Water quality management issues; (6) maintaining effective communication with the Water Authority; (7) demonstrating responsiveness to Water Authority requests for information and assistance; (8) conducting tours and public outreach and communications; (9) keeping the appearance of the Project neat, clean and tidy; (10) performing its general environmental stewardship responsibilities; and (11) assisting the Water Authority in its relations with legislators, Member Agencies, and other Water Authority stakeholders generally.

SECTION 8.15. HAZARDOUS SUBSTANCE MANAGEMENT DURING THE
OPERATING PERIOD.

As between the parties, the Project Company shall be responsible for, and shall bear the risk and cost, of managing and disposing of Hazardous Substances during the Operating Period. The Project Company shall update as reasonably necessary: (1) the Hazardous Substance Management Program; and (2) the Response Plan.

ARTICLE 9

PERFORMANCE

SECTION 9.1. GENERAL PERFORMANCE RESPONSIBILITIES.

(A) Project Company Acknowledgment. The Project Company acknowledges that the Project will constitute: (1) a primary source of treated drinking water for conveyance to the Member Agencies and their customers through the Water Authority Distribution System; and (2) a critical part of the Water Authority's emergency storage program, which consists of a system of reservoirs, interconnected pipelines and pumping stations designed to make water available to the San Diego region in the event of an interruption in imported water deliveries. The Project Company further acknowledges that the Water Authority, in meeting the water supply requirements of the Service Area, is providing an essential public service and, in complying with Applicable Law, will rely on the performance by the Project Company of the Contract Obligations. The parties acknowledge and agree that this subsection shall not be construed to expand or otherwise modify the Project Company's obligations under this Water Purchase Agreement.

(B) Asset Management. The Water Authority: (1) has and shall retain full management responsibility for the Water Authority Distribution System; and (2) shall be responsible for the operation, maintenance, repair, replacement and management of the Product Water Pipeline Improvements upon completion of construction and testing in accordance with the Product Water Pipeline Improvements Design-Build Agreement. The Project Company shall be responsible, in accordance with this Water Purchase Agreement, for the operation, maintenance, repair, replacement and management of the Project.

(C) Water Ownership. The Water Authority shall become the owner of all Product Water at the Product Water Delivery Point.

(D) Risk of Loss of Product Water. The Project Company shall bear the risk of loss of Product Water at all locations up to the Product Water Delivery Point, beyond which the Water Authority shall bear the risk of loss.

(E) Hydraulic Transients. The Project Company shall operate the Project in accordance with the Operating Protocol so as to avoid the occurrence of any sudden, significant changes in the Flow Rate and pressure of Product Water beyond the Product Water Delivery Point. The Project Company shall reimburse the Water Authority for the cost of making any repairs to the Product Water Pipeline Improvements and the Water Authority Improvements required to repair damage caused by a failure to comply with this subsection. Any such reimbursement shall be a Direct Payment.

(F) Limitations on Project Company Rights. The Project Company shall not treat water other than Raw Seawater, and shall not use the Project for any purpose other than the purposes contemplated hereby or to serve or benefit any person other than the Water Authority. The Project Company shall not deliver Product Water to any person other than the Water Authority, and shall not impose a fee or charge on any person other than the Water Authority for the supply of Product Water. The only compensation to the Project Company for the supply of Product Water and for performing the Operating Work shall be the Monthly Water Purchase Payments and other amounts payable by the Water Authority hereunder.

SECTION 9.2. PRODUCT WATER QUALITY GUARANTEE.

(A) Applicable Law Limits. Except to the extent relieved for Uncontrollable Circumstances, the Project Company shall operate the Project so as to produce Product Water

from Raw Seawater in compliance with the requirements of Applicable Law and this Water Purchase Agreement. In no event shall the Project Company deliver Product Water that is not in compliance with the requirements of Applicable Law.

(B) Additional Product Water Quality Standards. In addition to its obligation to comply with the Product Water requirements imposed by Applicable Law as provided in subsection 9.2(A) (Product Water Quality Guarantee - Applicable Law Limits) and except to the extent relieved for Uncontrollable Circumstances, the Project Company shall produce Product Water from Raw Seawater in compliance with the contract requirements set forth in Table 8-1 of Appendix 8 (Supplemental Performance Guarantee Requirements) (the “Additional Product Water Quality Standards”). The Additional Product Water Quality Standards and the requirements in subsection 9.2(A) (Product Water Quality Guarantee - Applicable Law Limits) shall collectively mean the “Product Water Quality Guarantee”.

(C) Chlorine Residual and Chloramine/Ammonia Ratio. The Water Authority shall have the right to require the Project Company to alter the concentration limits for chlorine residual and chloramine/ammonia ratio set forth in Table 8-2 of Appendix 8 (Supplemental Performance Guarantee Requirements) in order to meet the Water Authority’s requirements for Blended Water being conveyed to the Water Authority Distribution System, subject to the compensation adjustments set forth therein.

(D) Sampling Locations for Determining Compliance With the Product Water Quality Guarantee. Compliance with the Product Water Quality Guarantee shall be measured at the Product Water Quality Sampling Locations.

(E) Remedies for Breach of Product Water Quality Guarantee - Off-Specification Product Water. Except to the extent the Project Company is relieved due to Uncontrollable Circumstances, in the event the Project Company delivers any Off-Specification Product Water to the Water Authority, (1) each Unit of Off-Specification Water received by the Water Authority shall be deemed to constitute a Monthly Delivered Water Unit; (2) the Water Authority shall have the right in its discretion to impose a Deduction in an amount equal to the melded treatment rate per Acre Foot of water that is surcharged by the Water Authority to the Member Agencies as in effect at the time the Deduction is imposed; (3) the Water Authority in its discretion may cease taking delivery of Product Water until the Project Company demonstrates to the Water Authority that appropriate measures have been taken so that Product Water received upon the resumption of deliveries will not constitute Off-Specification Product Water; and (4) the Water Authority shall further have the additional remedies set forth in Section 9.14 (Water Authority Remedies for Non-Compliance With Performance Guarantees). Any Unit of Product Water available for delivery but not taken by the Water Authority pursuant to the exercise of its rights under this Section shall constitute neither a Monthly Delivered Water Unit, a Monthly Unexcused Demand Shortfall Unit, nor a Monthly Excused Supply or Demand Shortfall Unit.

(F) Remedies for Breach of Product Water Quality Guarantee - Unacceptable Water. Except to the extent the Project Company is relieved due to Uncontrollable circumstances, in the event the Project Company delivers Unacceptable Water to the Water Authority: (1) each Unit of Unacceptable Water shall be deemed not to constitute a Monthly Delivered Water Unit; (2) the Water Authority shall have no obligation to compensate the Project Company for such Unit of Unacceptable Water; (3) the Water Authority shall have the right to bring an action for damages; and (4) the Water Authority shall further have the additional remedies set forth in Section 9.14 (Water Authority Remedies for Non-Compliance With Performance Guarantees).

(G) Boil Water Notices. In the event the CDPH requires the issuance of a “boil water” notice on the basis of the quality of Product Water delivered to the Water Authority:

(1) the Project Company shall, if required by the Water Authority, terminate the Operating Service Agreement and enter into a replacement Operating Service Agreement in accordance with Section 12.3 (Project Contracts), (2) the Water Authority may exercise its step-in rights pursuant to Section 19.2 (Water Authority's Temporary Step-In Rights), (3) such notice shall constitute a Project Company Remediable Breach pursuant to Section 20.1(B) (Project Company Remediable Breach Defined), and (4) the Water Authority shall have the further remedies specified herein, including those specified in Section 9.14 (Water Authority Remedies for Non-Compliance with Performance Guarantees). If, at any time during the Term following the issuance of a first such boil water notice, the CDPH subsequently requires the issuance of a second boil water notice on the basis of the quality of Product Water delivered to the Water Authority, a Project Company Event of Default shall be deemed to have occurred and the Water Authority may pursue the remedies available under Article 19 (Remedies of the Parties and Water Authority Step-In Rights), Article 20 (Project Company Events of Default), and Article 22 (Termination).

(H) Reporting Off-Specification Product Water and Unacceptable Product Water. The Project Company shall report to the Water Authority the delivery to the Water Authority of any Off-Specification Product Water and Unacceptable Water immediately upon having actual knowledge of any such delivery.

(I) Indemnity for Loss-and-Expense from Non-Complying Product Water. In the event that any Product Water delivered to the Product Water Delivery Point fails to comply with the Product Water Quality Guarantee, except to the extent such failure of compliance is caused by an Uncontrollable Circumstance, the Project Company shall indemnify, defend and hold harmless the Water Authority and the Water Authority Indemnitees in accordance with Section 25.1 (Project Company's Obligation to Indemnify) from any Loss-and-Expense resulting from the supply of such non-complying Product Water. This indemnity shall extend to any liability resulting from property loss or damage or death or personal injury suffered or alleged to be suffered by any party from exposure to or as a result of using or consuming such non-complying Product Water based on any theory of recovery, including theories of product liability, toxic tort or environmental impairment. The Loss-and-Expense relating to such liabilities to third parties to which the indemnity provided in this Section extends shall include any special, incidental, consequential, punitive and other similar damages awarded to such third parties, notwithstanding waivers contained with respect to such damages in Section 19.9 (No Special, Consequential or Punitive Damages).

(J) Change in Law Event Affecting Product Water. The parties acknowledge that a Change in Law Event may affect Product Water standards or impose more stringent requirements relating to equipment or processes than those established hereunder as of the Contract Date. In the event a Change in Law Event occurs, the Project Company shall not be entitled to performance relief or additional compensation under Article 16 (Change in Law Events and Other Uncontrollable Circumstances) unless: (1) such Change in Law Event imposes a regulatory standard or operating requirement with respect to any particular Product Water characteristic or parameter which is more stringent than the Contract Standards in effect as of the Contract Date applicable to such characteristic or parameter, or requires equipment or processes not then in place or practiced at the Plant; and (2) the Project Company is unable, after taking all mitigation measures required under Section 14.1 (Uncontrollable Circumstances Generally) and Section 26.5 (General Duty to Mitigate) with respect to such a Change in Law Event, to avoid the necessity for such performance relief or additional compensation.

SECTION 9.3. MAXIMUM ANNUAL SUPPLY COMMITMENT AND ADJUSTED ANNUAL SUPPLY COMMITMENT.

(A) Maximum Annual Supply Commitment Defined. “The Maximum Annual Supply Commitment”, for the purposes of this Water Purchase Agreement, is 56,000 Acre Feet (prorated for any Contract Year of less than 365 days), modified as provided in subsection (B) of this Section to permit the Project Company to reduce its Product Water supply commitment to the Water Authority on an annual basis in the event of a “buy-down” of the Plant’s capacity by the EPC Contractor under the Plant EPC Contract. The purpose of establishing the Maximum Annual Supply Commitment is to provide the basis for determining the Maximum Monthly Supply Commitments pursuant to subsection 9.5(A) (Establishment).

(B) Decrease in Maximum Annual Supply Commitment Based on Performance Test. If the amount of Product Water produced by the Project Company during the Performance Test (on the basis of which Provisional Acceptance is established hereunder) is less than 4,800 Acre Feet, the Maximum Annual Supply Commitment shall be reduced to an amount equal to 56,000 Acre Feet, multiplied by a fraction, the numerator of which is the number of Acre Feet of Product Water produced during such Performance Test and the denominator of which is 4,800 Acre Feet (such fraction constituting the “Supply Commitment Reduction Percentage”). In no event shall the Maximum Annual Supply Commitment be less than 50,128 Acre Feet. No adjustment shall be made to the Maximum Annual Supply Commitment unless the Provisional Acceptance Conditions have been satisfied and the Commercial Operation Date has been established.

(C) Scheduled Shutdown Hours. The Project Company may designate, in the Maximum Annual Supply Commitment schedule, up to 240 specific hours during the Contract Year during which the Plant may be shut down for scheduled maintenance (“Scheduled Shutdown Hours”). The Water Authority shall not demand, and the Project Company shall not be obligated to supply, Product Water during any Scheduled Shutdown Hour, as provided in subsection 9.8(F) (Limitations on the Project Company’s Product Water Supply Obligations). The designation of Scheduled Shutdown Hours shall not, however, serve to lessen the Maximum Annual Supply Commitment or any Maximum Monthly Supply Commitment, which shall be met during Operating Hours.

(D) Adjusted Annual Supply Commitment. The Adjusted Annual Supply Commitment for a Contract Year shall be the sum of the Adjusted Monthly Supply Commitments for each Billing Period of the Contract Year. Illustrative examples of the determination of the Adjusted Annual Supply Commitment are provided in Tables 2.2 and 3.2 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments).

SECTION 9.4. MINIMUM ANNUAL DEMAND COMMITMENT.

(A) Minimum Annual Demand Commitment Defined. The “Minimum Annual Demand Commitment”, for purposes of this Water Purchase Agreement, is 48,000 Acre-Feet (pro-rated for any Contract Year of less than 365 days), except as otherwise provided in this Section. The purpose of the Minimum Annual Demand Commitment is to provide the basis for determining the Minimum Monthly Demand Commitment.

(B) Decrease in Minimum Annual Demand Commitment. In the event the Maximum Annual Supply Commitment is decreased pursuant to subsection 9.3(B) (Decrease in Maximum Annual Supply Commitment Based on Performance Test), the Water Authority shall have the right, in its discretion, to elect to reduce the Minimum Annual Demand Commitment by any number of Acre-Feet not in excess of an amount equal to the product of (1) the unadjusted Minimum Annual Demand Commitment, and (2) the Supply Commitment Reduction Percentage; provided, however, that in any event the Minimum Annual Demand

Commitment shall be reduced at least to the extent necessary to account for any reduction in the daily maximum supply commitment made pursuant to subsection 9.8(F)(2) (Limitations on the Project Company's Product Water Supply Obligations).

(C) Decrease to the Fixed Unit Price and the Operating Period Shortfall Payment Unit Price. Following the Water Authority's election pursuant to Subsection 9.4(B) (Decrease in Minimum Annual Demand Commitment), the Debt Service Charge for each Contract Year, the Equity Return Charge for each Contract Year, the Operating Period Shortfall Payment Unit Price for each Contract Year, the Fixed Operating Charge, and the Fixed Electricity Charge shall each be reduced, if necessary, by the same percentage amount such that the Fixed Annual Costs, when calculated at the revised Minimum Annual Demand Commitment shall be reduced by the same percentage as the Maximum Annual Supply Commitment has been reduced pursuant to Subsection 9.3(B) (Decrease in Maximum Annual Supply Commitment Based on Performance Test).

SECTION 9.5. MAXIMUM MONTHLY SUPPLY COMMITMENT AND ADJUSTED MONTHLY SUPPLY COMMITMENT.

(A) Establishment. The Project Company shall establish for each Contract Year in cooperation with the Water Authority, not later than 60 days prior to the commencement of each Contract Year (or, for the first Contract Year, not later than 60 days prior to the Commercial Operation Date), the Maximum Monthly Supply Commitment for each Billing Period in the Contract Year. The Maximum Monthly Supply Commitment for each Billing Period shall be stated in Acre-Feet and shall be established such that the sum of the Maximum Monthly Supply Commitments for the Contract Year equals the Maximum Annual Supply Commitment. Illustrative examples of scheduling of the Maximum Monthly Supply Commitment are provided in Tables 2.1 and 3.1 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments).

(B) Adjusted Monthly Supply Commitment Defined. The Adjusted Monthly Supply Commitment for a Billing Period, for purposes of this Water Purchase Agreement, shall be an amount equal to the lesser of (1) the Maximum Monthly Supply Commitment for such Billing Period, or (2) the Monthly Product Water Order for such Billing Period. Illustrative examples of the determination of the Adjusted Monthly Supply Commitment are provided in Tables 2.2 and 3.2 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments).

SECTION 9.6. MINIMUM MONTHLY DEMAND COMMITMENT.

(A) Establishment. The Water Authority shall establish for each Contract Year in cooperation with the Project Company, subsequent to the establishment by the Project Company of the Maximum Monthly Supply Commitment and not later than 30 days prior to the commencement of each Contract Year (or, for the first Contract Year, not later than 30 days prior to the Commercial Operation Date), the Minimum Monthly Demand Commitment for each Billing Period in the Contract Year. The Minimum Monthly Demand Commitment for each Billing Period shall be stated in Acre-Feet and shall be established such that (1) the Minimum Monthly Demand Commitment for a particular Billing Period does not exceed the Maximum Monthly Supply Commitment for the same Billing Period, and (2) the sum of the Minimum Monthly Demand Commitments for the Contract Year equals the Minimum Annual Demand Commitment. Illustrative examples of scheduling of the Minimum Monthly Demand Commitment are provided in Tables 2.1 and 3.1 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments).

(B) Water Authority Take or Pay Obligation. The Water Authority shall take delivery of and purchase the Minimum Monthly Demand Commitment of Product Water in the

applicable Billing Period if and to the extent Product Water is produced and available for delivery by the Project Company in such volume, all subject to and in accordance with the terms and conditions of this Water Purchase Agreement. The Water Authority shall pay for Product Water by making Monthly Water Purchase Payments in accordance with Article 17 (Monthly Water Purchase Payments).

SECTION 9.7. PROJECTED ANNUAL DELIVERY SCHEDULES.

(A) Projected Annual Delivery Schedules. During the Term, the Project Company and the Water Authority shall negotiate and establish a proposed Product Water production plan (the “Projected Annual Delivery Schedule”) for each Contract Year (commencing with the Contract Year in which the Commercial Operation Date occurs) setting forth the daily and monthly volumes of Product Water that the Project Company proposes to produce and deliver and the Water Authority proposes to take and purchase during each Billing Period of such Contract Year. The Projected Annual Delivery Schedule shall be prepared on an estimated basis not later than 365 days prior to the commencement of each such Contract Year, and on a definitive basis not later than 30 days prior to the commencement of each such Contract Year (or, for the first such Contract Year, not later than 30 days prior to the Commercial Operation Date). The Projected Annual Delivery Schedule (a) shall reflect the requirements of subsection 9.8(F) (Limitations on the Project Company’s Product Water Supply Obligations), (b) for any Billing Period, shall not (with respect to the definitive Projected Annual Delivery Schedule) project Product Water deliveries in volumes less than the applicable Minimum Monthly Demand Commitment or greater than the Maximum Monthly Supply Commitment, and (c) for any Contract Year, shall not project Product Water deliveries in volumes less than the Minimum Annual Demand Commitment or greater than the Maximum Annual Supply Commitment. The Project Company acknowledges that the Projected Annual Delivery Schedule will be incorporated into the Water Authority’s annual aqueduct operating plan. The Projected Annual Delivery Schedule shall take into account the following:

(1) Downtime for Scheduled Maintenance, Repair and Replacement. Planned Project maintenance, repair and replacement, which shall be scheduled for and limited to the months of December, January, February and March (to the extent reasonably practicable), with complete Plant shutdowns limited to a maximum total of 10 days during such four month period;

(2) Water Authority Scheduled Maintenance. Planned shutdowns or partial outages of any part of the Water Authority Distribution System for scheduled maintenance, repair and replacement, which may limit the Water Authority’s ability to receive Product Water during the period of Water Authority shutdown;

(3) Cabrillo Generating Facility Maintenance. Planned shutdowns of the Cabrillo Generating Facility;

(4) Capital Modifications. The timing of any Capital Modification work to be performed during the Contract Year; and

(5) Other Operating Considerations. Other considerations material to Project and Water Authority Distribution System operations.

(B) Modifications by Mutual Agreement. The parties may at any time, by mutual agreement, modify the Projected Annual Delivery Schedule.

SECTION 9.8. PLANNED AND ACTUAL DAILY DELIVERIES OF PRODUCT WATER.

(A) Planned Daily Deliveries. The volume of Product Water planned to be delivered on each day of the Contract Year under the Projected Annual Delivery Schedule shall be the “Scheduled Daily Delivery Volume” applicable to such day. The daily deliveries of Product Water set forth in the Projected Annual Delivery Schedule shall be for planning purposes only. The Project Company shall actually deliver Product Water solely based on the specific demands for Product Water made by the Water Authority pursuant to this Section, and not on the basis of the Projected Annual Delivery Schedule.

(B) Expected Firm Daily Demand Schedule. Not later than 4:00 PM on each day during the Operation Period, the Water Authority shall furnish the Project Company with an expected firm Product Water demand schedule for the following day (midnight to midnight). The demand schedule shall specify the Flow Rates for the entire 24-hour period and (subject to the limitations set forth in subsection (C) of this Section) may call for no more than two Flow Rate changes.

(C) Modified Firm Daily Demand Schedule and Allowable Ordinary Flow Rates. The Water Authority shall have the right on any day to modify the expected firm Product Water Flow Rate demand schedule which was established on the prior day, subject to the following limitations: (1) no modification to the Flow Rate set forth in such demand schedule shall be required to take effect less than eight hours after the modification is requested; (2) the Flow Rate shall not change more than twice during any day, with a minimum of eight hours between consecutive Flow Rate changes; (3) there shall be no more than six changes in Flow Rates specified during any seven consecutive days; and (4) there shall be no more than 12 changes in Flow Rates specified during any 30 consecutive days. The Flow Rates permitted to be established by the Water Authority under subsections (B) and (C) of this Section shall constitute the “Allowable Ordinary Flow Rates”. The Water Authority shall have the right to establish Flow Rates other than Allowable Ordinary Flow Rates only as provided, and subject to the limitations set forth, in Section 9.9 (Flow Rate Limitations), including particularly those limitations provided in subsection 9.9(F) (Extraordinary Flow Rate Changes).

(D) Establishing the Firm Daily Demand Order. The “Firm Daily Demand Order”, for purposes of this Water Purchase Agreement, shall be the volume of Product Water demanded by the Water Authority based on the Flow Rates specified in the “day-before” projected firm Product Water demand schedule furnished by the Water Authority pursuant to subsection (B) of this Section (Expected Firm Daily Demand Schedule), as adjusted by any “day-of” modifications thereto made by the Water Authority pursuant to subsection (C) of this Section (Modified Firm Daily Demand Schedule). The Water Authority and the Project Company, by mutual agreement from time to time and as appropriate, shall establish the means of communication by which (1) definitive Water Authority Product Water demands may be made, (2) definitive Project Company confirmations may be given, and (3) appropriate evidence thereof may be furnished. The right of the Water Authority to establish Flow Rates for the delivery of Product Water under this subsection is subject to the limitations set forth in subsection 9.8(F) (Limitations on the Project Company’s Product Water Supply Obligations).

(E) Project Company’s Product Water Delivery Covenants. The Project Company shall use all reasonable efforts to produce and deliver Product Water to the Water Authority, and the Water Authority shall use all reasonable efforts to take and receive Product Water deliveries by the Project Company, at the specific Flow Rates established by the Water Authority in the Firm Daily Demand Order. The failure or inability of the Water Authority to take delivery of Product Water to any degree or for any reason shall not constitute a breach of this Water Purchase Agreement or the basis of a Water Authority Event of Default. Without the express approval, given in advance, by the Water Authority in its discretion: (1) the Project

Company shall not deliver Product Water to the Water Authority at a Flow Rate that is less than 95% nor greater than 105% of the specific Flow Rate demanded by the Water Authority in effect at any given time; and (2) the Project Company shall not deliver Product Water to the Water Authority in any Billing Period in volumes in excess of the Monthly Product Water Order for such Billing Period.

(F) Limitations on the Project Company's Product Water Supply Obligations.

The Project Company shall not be obligated to supply Product Water:

- (1) During any Scheduled Shutdown Hour;
- (2) On any day, in volumes in excess of 163 Acre Feet, multiplied by the Supply Commitment Reduction Percentage;
- (3) On any day on which the average daily temperature of Raw Seawater is 14° centigrade or colder, in volumes in excess of 153 Acre-Feet, multiplied by the Supply Commitment Reduction Percentage;
- (4) At Flow Rates other than those required under this Section and Section 9.9 (Flow Rate Limitations);
- (5) In any Billing Period, in volumes in excess of the Maximum Monthly Supply Commitment for the Billing Period;
- (6) In any Contract Year, in volumes in excess of the Maximum Annual Supply Commitment;
- (7) In Three Pump Mode during any Supplemental High Pressure Pump Service Period, at any time a High Pressure Pump is out of service for any reason, provided that the Project Company is expediting repairs consistent with its duty to mitigate under subsection 26.5(A) (Mitigation by the Project Company);
- (8) In Supplemental High Pressure Pump Mode, during any Supplemental High Pressure Pump Service Period, at any time the Supplemental High Pressure Pump is out of service for any reason, provided that the Project Company is in compliance with the Contract Standards and is expediting repairs consistent with its duty to mitigate under subsection 26.5(A) (Mitigation by the Project Company); and
- (9) During any period not exceeding 24 hours in duration when the Project Company is installing or removing the Supplemental High Pressure Pump in response to a Water Authority request made pursuant to subsection (G) of this Section.

except that the Project Company shall use all reasonable efforts to provide Product Water in excess of the limitations of this subsection when requested by the Water Authority if such Product Water can be provided while operating the Plant in accordance with Applicable Law, Good Management Practice and within its design limits. The Project Company shall be compensated, as a Direct Payment, for any additional costs of providing Product Water in the circumstances described in items (1) and (4) above. The Project Company shall not be compensated for any additional costs of providing Product Water in the circumstances described in items (2), (3), (5) and (6) above, as such costs have been taken into account in the pricing for Additional Product Water Units and Excess Product Water Units set forth in Section 17.8 (Monthly Water Purchase Payments). In the circumstances described in item (7) above, the Plant will not be capable of producing additional Product Water, and accordingly no additional costs will be incurred.

(G) Supplemental High Pressure Pump. The Project Company shall procure and keep in storage at the Plant the 12 MGD-capacity Supplemental High Pressure water pump (the “Supplemental High Pressure Pump”) described in Attachment 3A (Basic Design Requirements) of Appendix 3 (Project Design and Construction Work). The purpose of the Supplemental High Pressure Pump is to give the Water Authority the option, during periods of low demand for treated water in the Water Authority Distribution System, to demand a Flow Rate lower than the minimum Flow Rate at which the Plant is capable of operating in the One Pump Mode. The Project Company shall maintain, and repair and replace as necessary, the Supplemental High Pressure Pump in accordance with the Contract Standards. Commencing at the end of the Second Operating Period and for the remainder of Term, the Water Authority shall have the right to direct the Project Company to remove the Supplemental High Pressure Pump from storage and install it in the Plant’s process train for a single period (the “Supplemental High Pressure Pump Service Period”) not exceeding four months in length during each Contract Year. The Water Authority shall give the Project Company 30 days’ notice of its intent both to commence and end a Supplemental High Pressure Pump Service Period, and seven days’ definitive notice of its directive to install and to remove from service the Supplemental High Pressure Pump, such installation and removal dates demarcating the beginning and the end of the Supplemental High Pressure Pump Service Period. The Project Company shall promptly notify the Water Authority of the beginning and of the end of any outage occurring with respect to any High Pressure Pump (including the Supplemental High Pressure Pump) for any reason during a Supplemental High Pressure Pump Service Period. During any Supplemental High Pressure Pump Service Period, the Water Authority shall have the right to direct and redirect the Project Company to operate in any of the Operating Modes described in subsection 9.9(A) (Operating Modes), including Shutdown Mode.

(H) Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term. If an Uncontrollable Circumstance limits or precludes the Project Company from producing and delivering, or if a Product Water Purchase Relief Event limits or precludes the Water Authority from taking and receiving, Product Water as required by subsection (E) of this Section, the volume of Product Water not delivered or received on account thereof shall be produced and delivered by the Project Company and taken and purchased by the Water Authority subsequent to such occurrence, based on the production capacity of the Plant, at a price per Unit equal to the sum of the Fixed Unit Price and the Variable Unit Price prevailing at the time of subsequent purchase or shall be deemed to be produced and delivered in accordance with the provisions of Section 17.3 (Excused Supply Shortfall Unit Tacking Account and Excused Demand Shortfall Unit Tracking Account) and Section 17.9 (Annual Water Purchase Payment True-Up Amount). The schedule for such subsequent deliveries, receipts and purchases shall be negotiated by the parties in developing and modifying the Projected Annual Delivery Schedules. The Term shall be extended for a period not to exceed three years as and to the extent required to allow for all such subsequent purchases not completed as of the unextended Expiration Date, as such subsequent purchases are reflected in the balance of Units in the Excused Supply Shortfall Unit Tracking Account and the Excused Demand Shortfall Unit Tracking Account as of such unextended Expiration Date.

(I) Metering Point for Determining Product Water Deliveries. The volume of Product Water delivered to the Water Authority shall be metered, for all purposes of this Water Purchase Agreement, by the Plant Flow Meter.

SECTION 9.9. FLOW RATE LIMITATIONS.

(A) Operating Modes. For the purposes of this Water Purchase Agreement: (1) “Three Pump Mode” shall mean the operation of the Plant (using three Standard High Pressure Pumps) to produce a Flow Rate between 74.4 CFS (+0% and -10%) and 83.7 CFS (both such CFS amounts to be multiplied by the Supply Commitment Reduction Percentage);

(2) “Two Pump Mode” shall mean the operation of the Plant (using two Standard high pressure pumps) to produce a Flow Rate between 49.6 CFS (+0% and -10%) and 62 CFS (+10% and -0%) (both such CFS amounts to be multiplied by the Supply Commitment Reduction Percentage); (3) “One Pump Mode” shall mean the operation of the Plant (using one Standard high pressure pump) to produce a Flow Rate between 24.8 CFS (+0% and -10%) and 31 CFS (+10% and -0%) (both such CFS amounts to be multiplied by the Supply Commitment Reduction Percentage); (4) Supplemental High Pressure Pump Mode shall mean the operation of the Plant (using the Supplemental High Pressure Pump) to provide a Flow Rate between 18.6 CFS and 21.67 CFS ; (5) “Shutdown Mode” shall mean the shutdown of the Plant; (6) “Operating Mode” shall mean any of a Three Pump Mode, Two Pump Mode, One Pump Mode, Supplemental High Pressure Pump Mode and Shutdown Mode; and (7) “Operating Mode Change” shall mean Water Authority-requested change in Flow Rate requiring the Plant to switch from one Operating Mode to another. When the Plant is not operating in a Supplemental High Pressure Pump Service Period, the Water Authority shall not have the right to direct the Project Company to operate in the Supplemental High Pressure Mode.

(B) First Operating Period. During the 60 day period commencing on the Commercial Operation Date (the “First Operating Period”), the Water Authority shall have the right to demand the delivery of Product Water only at Flow Rates in Three Pump Mode, subject to subsection 9.9(F)(2) (Emergency Water Authority Distribution Events).

(C) Second Operating Period. During the 60 day period commencing at the end of the First Operating Period (the “Second Operating Period”), the Water Authority shall have the right to demand the delivery of Product Water at any Flow Rate produced by any Operating Mode, subject to subsection 9.9(F) (Extraordinary Flow Rate Changes) and provided that the Water Authority shall use reasonable efforts to order at least three Flow Rate changes which require an Operating Mode Change in each seven day period during the Second Operating Period. Such Operating Mode Changes shall be implemented at times acceptable to the Project Company and the Operating Service Provider.

(D) Operating Mode Change Performance Test. The Project Company shall conduct the Operating Mode Change Performance Test during the Second Operating Period as provided in Appendix 6 (Operating and Maintenance Standards). During the Operating Mode Change Performance Test and any repeated test, the Product Water Quality Guarantee, the other Performance Guarantees, and the Water Authority’s rights and remedies with respect to any non-compliance therewith (including rights and remedies with respect to the delivery of Off-Specification Product Water and Unacceptable Product Water) shall apply. If the Project Company fails to pass the Operating Mode Change Performance Test, Product Water in the following categories shall be deemed to be Off-Specification Product Water until the Project Company successfully passes a subsequent Operating Mode Change Performance Test (even if Product Water in such categories meets the Product Water Quality Guarantee): (1) Product Water delivered during the conduct of an Operating Mode Change Performance Test which the Project Company fails, and (2) Product Water delivered during the period of time in which any Operating Mode Change is occurring. The Water Authority may exercise any of its rights and remedies hereunder available upon the delivery of Off-Specification Product Water. Such rights and remedies include those set forth in Section 9.14 (Water Authority Remedies for Non-Compliance With Performance Guarantees), including the right to require the Project Company to make necessary capital improvements, modifications, repairs and replacements at the cost and expense of the Project Company. The Project Company shall have the right to conduct the Operating Mode Change Performance Test as often as necessary to achieve passage, in coordination with Flow Rate Changes reasonably acceptable to the Water Authority.

(E) Remaining Operating Period. Commencing at the end of the Second Operating Period and for the remainder of the Term, the Water Authority shall have the right to demand the delivery of Product Water at any Flow Rate produced by any Operating Mode,

subject to the provisions of Section 9.8 (Planned and Actual Daily Deliveries of Product Water) and subsection 9.9(F) (Extraordinary Flow Rate Changes).

(F) Extraordinary Flow Rate Changes. The Project Company shall use reasonable efforts to change the Flow Rate from the Flow Rate established by the Firm Daily Demand Order within the Allowable Ordinary Flow Rates to respond to the following ("Extraordinary Flow Rate Changes"):

(1) Water Authority-Requested Extraordinary Flow Rate Changes. The Water Authority shall have the right, at any time and for any reason (including, without limitation, if a problem occurs with the Product Water Pipeline Improvements or the Water Authority Distribution System), notwithstanding subsections (A) through (E) of this Section, to demand an extraordinary change in the Flow Rates to any other newly designated Flow Rate. In such event, the following shall apply:

(a) In the case of downward Flow Rate changes, the Project Company shall use reasonable efforts to reduce the volume of Product Water delivered at the Plant Flow Meter to the demanded Flow Rate within 30 minutes of the Water Authority's demand therefor and to reduce the volume of Product Water produced by the Plant to the requested Flow Rate within four hours of the Water Authority's demand, it being understood and agreed that the difference between the volume produced and the volume delivered shall be discharged into the Plant's discharge pipeline (and ultimately to the ocean).

(b) In the case of the Water Authority's demand for upward Flow Rate changes, the Project Company shall use reasonable efforts to effectuate the requested Flow Rate change within four hours of the Water Authority's demand.

(c) The Flow Rate designated under the Water Authority's demand for Extraordinary Flow Rate Changes shall be maintained until further notice from the Water Authority, at which time the ordinary procedures for establishing the Flow Rate shall again apply.

(2) Emergency Water Authority Distribution System Events. If a problem occurs in the Product Water Pipeline Improvements or the Water Authority Distribution System (including the occurrence of a Product Water Purchase Relief Event), the Project Company shall, notwithstanding subsections 9.8(A) through (D), assist the Water Authority in responding to such problem by using all reasonable efforts to permit a necessary change in the Flow Rate. The Project Company shall be responsible for using all reasonable efforts to maintain the necessary Flow Rate changes until such time as the problem is resolved or the Water Authority issues a stop request.

(G) Extraordinary Flow Rate Change Payments. The Water Authority shall compensate the Project Company for Extraordinary Flow Rate Changes as follows:

(1) For each of the following Operating Mode Changes (or the reverse of any such changes) resulting from an Extraordinary Flow Rate Change pursuant to subsection 9.9(E) (Extraordinary Flow Rate Changes), the Water Authority shall pay the Project Company \$442 (Index-Linked):

(a) Three Pump Mode to Two Pump Mode;

(b) Two Pump Mode to One Pump Mode or Supplemental High Pressure Pump Mode; and

(c) One Pump Mode or Supplemental High Pressure Pump Mode to Shutdown Mode.

(2) For each of the following Operating Mode Changes (or the reverse of any such changes) resulting from an Extraordinary Flow Rate Change pursuant to subsection 9.9(E) (Extraordinary Flow Rate Changes), the Water Authority shall pay the Project Company \$884 (Index-Linked);

(a) Three Pump Mode to One Pump Mode or Supplemental High Pressure Pump Mode; and

(b) Two Pump Mode to Shutdown Mode.

(3) For an Operating Mode Change of Three Pump Mode to Shutdown Mode (or the reverse) resulting from an Extraordinary Flow Rate Change pursuant to subsection 9.9(E) (Extraordinary Flow Rate Changes), the Water Authority shall pay the Project Company \$1,326 (Index-Linked).

(4) For an Operating Mode Change of One Pump Mode to Supplemental High Pressure Pump Mode (or the reverse of such change), no payment shall be required.

(H) Limitations. The Project Company shall be under no obligation to make any Flow Rate changes pursuant to subsection 9.9(F) (Extraordinary Flow Rate Changes) unless such changes can be made while operating the Plant in accordance with Applicable Law, Good Management Practice and within its design limits.

SECTION 9.10. WATER AUTHORITY-DIRECTED CURTAILMENTS AND SHUTDOWNS.

The Project Company acknowledges that operating conditions in the Water Authority Distribution System as a whole may require the Water Authority to immediately curtail receipt of Product Water, and that such conditions may therefore require the immediate curtailment or cessation of ordinary operations at the Plant. Such conditions may occur as a result of mechanical or structural failure within the Water Authority Distribution System, emergency conditions originating in the Water Authority Distribution System or other unexpected factors. The Project Company shall cooperate with the Water Authority during such conditions and shall curtail or cease operations at the Plant to the extent necessary to respond to such conditions immediately upon receipt by the Project Company's Contract Representative or the Chief Operator of such a directive by the Water Authority's Contract Representative. The issuance of any such directive shall constitute an Uncontrollable Circumstance. In responding to any curtailment or shutdown under this Section, the Project Company shall use reasonable efforts to meet the curtailed water delivery level and all of the other Performance Guarantees; provided, however, that the Project Company shall be under no obligation to do so unless such requirements can be met while operating the Plant in accordance with Applicable Law, Good Management Practice, and within its design limits. The Project Company shall resume operations of the Plant within 24 hours of receipt by the Project Company of a written resumption directive issued by the Water Authority's Contract Representative.

SECTION 9.11. OPERATING PERIOD SHORTFALL PAYMENTS.

(A) General. The Project Company shall pay Operating Period Shortfall Payments to the Water Authority, the Water Authority shall pay Monthly Operating Period Shortfall Restoration Payments to the Project Company, and the Project Company shall pay the

Annual Operating Period Shortfall Payment True-Up Payment to the Water Authority in the circumstances and in the amounts set forth in this Section. The parties acknowledge that (1) under the Pipeline Installment Sale and Assignment Agreement, the Operating Period Shortfall Payments have been assigned for the payment of the Pipeline Bonds and related costs and shall be paid directly to the Pipeline Trustee, and (2) the amount thereof that is due and payable (whether or not actually paid) shall reduce the Water Authority's Installment Payment obligations. Upon the discharge and satisfaction of the Water Authority's obligations under the Pipeline Installment Sale and Assignment Agreement, such assignment shall no longer be effective and the Project Company shall make any Operating Period Shortfall Payments that are due after such discharge and satisfaction to the Water Authority as Direct Payments. The amount of any such Operating Period Shortfall Payments paid directly to the Water Authority that is measured or calculated by or with reference to principal and interest on the Pipeline Bonds shall remain so measured, notwithstanding the fact that the Pipeline Bonds have been discharged and may have been refunded with other Water Authority obligations.

(B) Operating Period Shortfall Payments. "Operating Period Shortfall Payments" shall consist of (1) Monthly Operating Period Shortfall Payments, and (2) Termination Operating Period Shortfall Payments.

(C) Monthly Operating Period Shortfall Payments. The "Monthly Operating Period Shortfall Payment" for any Billing Period, for purposes of this Water Purchase Agreement, shall be the amount determined in this subsection. Illustrative examples of recording of Monthly Operating Period Shortfall Payment Units are provided in Tables 2.6, 2.7, and 2.8 and Tables 3.6, 3.7 and 3.8 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments).

(1) Minimum Demand Progress Benchmark. The Parties shall measure the Project Company's progress month to month in satisfying the Minimum Annual Demand Commitment as set forth in this paragraph and in the illustrative examples provided in Tables 2.7 and 3.7 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments). Progress shall be measured by (i) the cumulative sum of Monthly Delivered Water Units, Monthly Unexcused Demand Shortfall Units and Monthly Unscheduled Outage Units for such Contract Year, minus (ii) the cumulative sum of the Minimum Monthly Demand Commitment for such Contract Year. Each such cumulative sum shall include all preceding Billing Periods in the Contract Year, plus the current Billing Period. A positive result shall represent a surplus in satisfying the Minimum Annual Demand Commitment. A negative result shall represent a shortfall in satisfying the Minimum Annual Demand Commitment.

(2) Monthly Excused and Unexcused Supply Shortfall Units. The "Monthly Excused and Unexcused Supply Shortfall Units" for each Billing Period shall be the sum of Monthly Excused Supply Shortfall Units and Monthly Unexcused Supply Shortfall Units for such Billing Period.

(3) Monthly Operating Period Shortfall Payment Units. "Monthly Operating Period Shortfall Payment Units" shall be determined in accordance with this paragraph. In any Billing Period in which Monthly Excused and Unexcused Supply Shortfall Units are incurred, the amount of Monthly Excused and Unexcused Supply Shortfall Units shall be treated in the context of the Minimum Demand Progress Benchmark for such Billing Period. If the Minimum Demand Progress Benchmark for such Billing Period is zero or a positive amount, the Monthly Excused and Unexcused Supply Shortfall Units for such Billing Period shall not be deemed Monthly Operating Period Shortfall Payment Units. If the Minimum Demand Progress Benchmark for such Billing Period is a negative amount, the Monthly Excused and Unexcused Supply Shortfall Units for such Billing Period shall be deemed Monthly Operating Period Shortfall Payment Units,

provided that the amount of Monthly Operating Period Shortfall Payment Units so deemed for such Billing Period shall be reduced as necessary so that the ending balance of the Monthly Operating Period Shortfall Payment Unit Tracking Account for such Billing Period shall not exceed the shortfall amount indicated by the Minimum Demand Progress Benchmark for such Billing Period.

(4) Monthly Operating Period Shortfall Payments. In the event that in any Billing Period there are Monthly Operating Period Shortfall Payment Units, the Project Company shall pay to the Pipeline Trustee as assignee of the Water Authority an amount equal to the product of (1) the number of Monthly Operating Period Shortfall Payment Units for such Billing Period, and (2) the Operating Period Shortfall Payment Unit Price for such Contract Year ("Monthly Operating Period Shortfall Payments").

(5) Monthly Operating Period Shortfall Payment Unit Tracking Account. The Project Company shall establish and maintain a Monthly Operating Period Shortfall Payment Unit Tracking Account, in which it shall record and track the number of Monthly Operating Period Shortfall Payment Units for each Contract Year. The opening balance of the Monthly Operating Period Shortfall Payment Unit Tracking Account for the first Billing Period in each Contract Year shall be zero. Each Billing Period, the Monthly Operating Period Shortfall Payment Unit Tracking Account shall be (i) increased by the amount of Monthly Operating Period Shortfall Payment Units for such Billing Period and (ii) decreased by the amount of Monthly Operating Period Shortfall Restoration Payment Units for such Billing Period. The resulting balance of the Monthly Operating Period Shortfall Payment Unit Tracking Account shall be treated as the opening balance for the subsequent Billing Period, provided that there shall be no carry-over of a balance from Contract Year to Contract Year.

(D) Monthly Operating Period Shortfall Restoration Payments. The Project Company shall have the opportunity to recover amounts it has paid as Monthly Operating Period Shortfall Payments during each Contract Year through Monthly Operating Period Shortfall Restoration Payments, and the Water Authority shall have the obligation to make Monthly Operating Period Shortfall Restoration Payments to the Project Company during each Contract Year, as described in this subsection. Any Monthly Operating Period Shortfall Restoration Payments shall be added to the Monthly Water Purchase Payment set forth in Section 17.8 (Monthly Water Purchase Payments).

(1) Monthly Operating Period Shortfall Restoration Payment Units. To the extent that the Monthly Operating Period Shortfall Payment Unit Tracking Account has a positive opening balance in any Billing Period, the Project Company shall compare such opening balance with its cumulative shortfall in meeting its Annual Minimum Demand Requirement as quantified by the Minimum Demand Progress Benchmark. If the Minimum Demand Progress Benchmark for such Billing Period is zero or positive, the entire balance of the Monthly Operating Period Shortfall Payment Unit Tracking Account shall be deemed Monthly Operating Period Shortfall Restoration Payment Units. If the Minimum Demand Progress Benchmark for such Billing Period is negative, but the cumulative shortfall so represented is less than the opening balance Monthly Operating Period Shortfall Payment Unit Tracking Account, the amount by which the Monthly Operating Period Shortfall Payment Unit Tracking Account exceeds the Minimum Demand Progress Benchmark shall be deemed Monthly Operating Period Shortfall Restoration Payment Units. If the Minimum Demand Progress Benchmark for such Billing Period is negative, and the cumulative shortfall so represented is equal to or greater than the opening balance of the Monthly Operating Period Shortfall Payment Unit Tracking Account, no Monthly Operating Period Shortfall Restoration Payment Units shall be designated for the Billing Period.

(2) Monthly Operating Period Shortfall Restoration Payments. In the event that in any Billing Period there are Monthly Operating Period Shortfall Restoration Units, the Water Authority shall pay the Project Company an amount equal to the product of (1) the number of Monthly Operating Period Shortfall Restoration Units for such Billing Period, and (2) the Operating Period Shortfall Payment Unit Price for such Contract Year (“Monthly Operating Period Shortfall Restoration Payments”).

(3) Adjustments to the Monthly Operating Period Shortfall Payment Unit Tracking Account. The number of units in each Billing Period that are deemed Monthly Operating Period Shortfall Restoration Payment Units shall be deducted from the opening balance of the Monthly Operating Period Shortfall Payment Unit Tracking Account for such Billing Period.

(E) Termination Operating Period Shortfall Payments. If the Water Authority terminates the Water Purchase Agreement upon the occurrence of a Project Company Event of Default during any period in which an assignment of the Operating Period Shortfall Payments described in subsection (A) of this Section is effective, the Project Company shall be obligated to pay Monthly Operating Period Shortfall Payments in an amount equal to (1) one-twelfth, multiplied by (2) the dollar amount list in Table 1.3 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments) under the heading “Annual Pipeline Bond Costs” for the applicable Contract Year until such time as the Pipeline Bonds are accelerated. Upon such an acceleration, the Project Company shall pay the Water Authority an amount equal to the sum of the amounts listed in Table 1.3 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments) under the heading “Pipeline Bond Principal” from the Contract Year in which such an acceleration occurs through the last Contract Year listed in such Table, plus accrued and unpaid interest thereon and any related fees and expenses of the Collateral Agent, the Pipeline Trustee, the CPCFA and the Pipeline Bond Rating Service. If the Water Authority terminates this Water Purchase Agreement upon the occurrence of a Project Company Event of Default during any period in which the assignment of the Operating Period Shortfall Payments described in subsection (A) of this Section is no longer effective, the Project Company shall pay the Water Authority an amount equal to the sum of the amounts listed in Table 1.3 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments) under the heading “Pipeline Bond Principal” from the Contract Year in which such a termination occurs through the last Contract Year listed in such Table. The Pipeline Bond Principal amounts referenced in this subsection shall be revised to reflect the issuance of any Additional Pipeline Bonds, and as required under subsection 9.4(C) (Decrease to the Fixed Unit Price and Annual Operating Period Shortfall Unit Payment Price), based on the results of the Performance Test.

(F) Annual Operating Period Shortfall Payment True-Up Payment. The Project Company shall make an Annual Operating Period Shortfall Payment True-Up Payment at the end of each Contract Year in the manner provided in this subsection. The Annual Operating Period Shortfall True-Up Payment is intended to compensate the Water Authority for any failure by the Project Company to make Additional Product Water Deliveries to the Water Authority in a Contract Year (if and to the extent any such Additional Product Water Deliveries requested by the Water Authority hereunder), which compensation is in addition to the compensation payable by the Project Company pursuant to subsection (C) of this Section (which compensation payable under subsection (C) is intended to compensate the Water Authority only for any failure by the Project Company to make Base Product Water Deliveries to the Water Authority in the same Contract Year).

(1) Annual Unexcused Supply Shortfall Units Reduction. The Excess Product Water Deliveries for such Contract Year shall be applied to reduce the amount of Annual Unexcused Supply Shortfall Units for such Contract Year. The “Annual Unexcused Supply Shortfall Units Reduction” shall be the amount of such reduction.

(2) Annual Excused Supply Shortfall Units Reduction. The sum of the Additional Product Water Deliveries for such Contract Year and any Excess Product Water Deliveries remaining after Item (1) above shall be applied to reduce the amount of Annual Excused Supply Shortfall Units for such Contract Year. The “Annual Excused Supply Shortfall Units Reduction” shall be the amount of such reduction.

(3) Adjusted Annual Operating Period Shortfall Payment Units. The “Adjusted Annual Operating Period Shortfall Payment Units” shall be (a) the amount of Monthly Operating Period Shortfall Payment Units for such Contract Year, minus (b) the Annual Unexcused Supply Shortfall Units Reduction, minus (c) the Annual Excused Supply Shortfall Units Reduction.

(4) Annual Operating Period Shortfall Payment Target Amount. The “Annual Operating Period Shortfall Payment Target Amount” shall be (a) the Adjusted Annual Operating Period Shortfall Payment Units as determined in the preceding paragraph, times (b) the Annual Pipeline Bond Costs as set forth in Table 1.3 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments), divided (c) by the Adjusted Annual Supply Commitment. The Annual Operating Period Shortfall Payment Target Amount is understood by the parties to be the amount that is intended to be paid by the Project Company to the Water Authority, in consideration of the Project Company’s failure to fully satisfy its Adjusted Annual Supply Commitment.

(5) Annual Operating Period Shortfall Payment True-Up Payment. The “Annual Operating Period Shortfall Payment True-Up Payment” shall be (a) the Annual Operating Period Shortfall Payment Target Amount, minus (b) the total amount of Monthly Operating Period Shortfall Payments paid by the Project Company during a Contract Year net of the total amount of Monthly Operating Period Shortfall Restoration Payments received by the Project Company during a Contract Year.

(6) No Offset. The obligation of the Project Company to make any Annual Operating Period Shortfall Payment True-Up Payment is independent of the charges and credits on the basis of which the Monthly Water Purchase Payments are determined, and shall not be used to offset Monthly Water Purchase Payments.

(7) Subordination. The Project Company shall be obligated to make Annual Operating Period Shortfall Payment True-Up Payments as a Direct Payment solely from amounts available for such purposes in the Stabilization Account established under the Collateral Trust Agreement and upon the terms and conditions set forth therein. The parties acknowledge, accordingly, that (1) the right of the Water Authority to receive Annual Operating Period Shortfall Payment True-Up Payments is subordinate to the right of the holders of the Plant Bonds to receive debt service payments, and (2) the right of the Project Company to receive distributions is subordinate to the right of the Water Authority to receive Annual Operating Period Shortfall Payment True-Up Payments. Any Annual Operating Period Shortfall Payment True-Up Payment that is due to the Water Authority with respect to a Contract Year and not paid within 30 days following the end of such Contract Year shall accrue interest until paid in accordance with Section 17.23 (Interest on Overdue Amounts).

(G) Operating Period Shortfall Payment Statement of Account. The Project Company, concurrently with the delivery to the Water Authority of its Monthly Water Purchase Payment invoice for each Billing Period pursuant to subsection 17.15(A) (Invoicing and Monthly Water Purchase Payment Due Date), shall deliver a separate statement of account with respect to Operating Period Shortfall Payments (the “Operating Period Shortfall Payment Statement of Account”). The Operating Period Shortfall Payment Statement of Account shall set forth all data and calculations relevant to the determination of any Operating Period Shortfall Payment

due with respect to the Billing Period, and annually with respect to any Annual Operating Period Shortfall Payment True-Up Payment.

(H) Water Authority Review and Determination. The Water Authority shall promptly review the statements of accounts submitted by the Project Company pursuant to subsection (G) of this Section and determine whether to confirm or dispute and revise the statement. Copies of the Operating Period Shortfall Payment Statement of Account as confirmed or revised by the Water Authority (accompanied by a description of the basis of any revision) shall be delivered to the Project Company, the Collateral Agent and the Pipeline Trustee within 10 Business Days following receipt by the Water Authority of the Project Company's original statement. The Project Company shall pay the amount of the Operating Period Shortfall Payment and the Annual Operating Period Shortfall Payment True-Up Payment shall be established based on the amounts set forth in the Water Authority's confirmed or revised Operating Period Shortfall Payment Statement of Account, pending confirmation or further revision pursuant to the procedures set forth in Article 18 (Dispute Resolution) in the event the Project Company disputes the Water Authority's determination.

(I) Non-Payment During the Assignment Period. During any period in which the assignment of the Operating Period Shortfall Payments described in subsection (A) of this Section is effective, any failure by the Project Company to timely make an Operating Period Shortfall Payment shall not be a breach of this Water Purchase Agreement unless and until there are insufficient amounts available to the Pipeline Trustee to pay debt service on the Pipeline Bonds as a result of (1) an accumulation of all such failures by the Project Company to make Operating Period Shortfall Payments, and (2) the unavailability of other amounts in the debt service reserve fund or in other funds for such debt service payment purposes. The amount of any such Operating Period Shortfall Payment shall not be a Deduction or otherwise constitute an offset against the Monthly Water Purchase Payments. To the extent any Operating Period Shortfall Payment is not timely made, the Project Company shall make such payment as soon as funds are available for such payment under the terms of the Collateral Trust Agreement.

(J) Non-Payment Following the Assignment Period. During any period in which the assignment of the Operating Period Shortfall Payments described in subsection (A) of this Section is no longer effective, any failure by the Project Company to make an Operating Period Shortfall Payment may be enforced directly by the Water Authority for its own account, but only at such time, to such extent and following such procedures as the Pipeline Trustee would have been able to exercise remedies under the Pipeline Indenture for a payment default with respect to the Pipeline Bonds arising out of the Project Company's failure to pay such Operating Period Shortfall Payments had such Pipeline Bonds not been discharged and satisfied.

SECTION 9.12. DROUGHT SHORTFALL PAYMENTS.

If in any Billing Period (1) the Water Authority has activated Stage 2 (Supply Enhancement) of its formally promulgated water shortage management and drought response plan, and (2) an amount equal to the sum of the Monthly Delivered Water Units, the Monthly Excused Supply or Demand Shortfall Units, the Monthly Unexcused Demand Shortfall Units and the Monthly Unscheduled Outage Shortfall Units is less than 90% of the Maximum Monthly Supply Commitment for such Billing Period, the Project Company shall make a payment to the Water Authority. Such payment (the "Drought Shortfall Payment") shall be an amount equal to (a) the number of Units of the delivery shortfall as so calculated, multiplied by (b) the Equity Return Charge (the "Drought Shortfall Payment"). In the event such Stage 2 activation is effective for a portion of any month, the amount of the Drought Shortfall Payment shall be prorated based on the number of days of such effectiveness and the total number of days in the Billing Period. Product Water deliveries in any other Billing Period in excess of the

maximum monthly supply commitment for such other Billing Period shall not be taken into account in making determinations with respect to Drought Shortfall Payments with respect to Billing Periods in which delivery shortfalls (as so calculated) occur. The Drought Shortfall Payments are additive to the Operating Period Shortfall Payments, are not pledged under the Pipeline Installment Payment and Assignment Agreement, and constitute Direct Payments.

SECTION 9.13. RAW SEAWATER QUALITY AND UNCONTROLLABLE CIRCUMSTANCES.

(A) Relief Generally. The Project Company shall be entitled to relief from the Performance Guarantees and its other performance obligations hereunder (but not to compensation relief except as provided in subsection (E) of this Section) on account of variations in the nature, condition or quality of Raw Seawater only as and to the extent set forth in this Section.

(B) Raw Seawater Quality-Specified Parameters. The Project Company shall not be entitled to relief under this Section on account of Raw Seawater quality conditions so long as concentration levels or characteristics of any Raw Seawater quality parameter which is listed among the Specified Raw Seawater Quality Parameters are within the applicable range set forth in Table 8-4 of Appendix 8 (Supplemental Performance Guarantee Requirements). If the concentration levels or characteristics of any such Raw Seawater quality parameter are outside the applicable parameter range, however, the Project Company shall have the right to assert the occurrence of an Uncontrollable Circumstance and to claim performance relief (but not compensation relief), based thereon in accordance with the requirements of this Water Purchase Agreement.

(C) Raw Seawater Quality-Unspecified Parameters. The Project Company shall not be entitled to assert the occurrence of an Uncontrollable Circumstance if the concentration levels or characteristics of any Raw Seawater quality parameter which is not specifically listed among the Specified Raw Seawater Quality Parameters vary at any time during the Term so as to affect the ability of the Project Company to successfully achieve Provisional Acceptance, to meet the Performance Guarantees or otherwise to perform the Construction Work or the Operating Work or increase the cost thereof to the Project Company, and the Project Company shall not be entitled to any relief on account thereof; provided, however, that the Project Company may assert the occurrence of an Uncontrollable Circumstance and shall be entitled to performance relief on account thereof (but not to an adjustment to the Unit Price or other compensation relief) if the concentration levels or characteristics in any such unlisted parameter pose a threat to health or safety or result in the Project Company being required by a Governmental Body to reduce or cease Plant operations.

(D) "Red Tide" Algae Blooms. The parties acknowledge that, notwithstanding the fact that "red tide" algae is not listed among the Specified Raw Seawater Quality Parameters, the Project Company shall nonetheless be entitled to relief based on the occurrence of an Uncontrollable Circumstance only as and to the extent specified in subsection 9.13(B) (Raw Seawater Quality - Specified Parameters) if a "red tide" algae bloom occurs that causes the TSS, TOC, turbidity or any other listed Raw Seawater Quality Parameter to be outside the applicable parameter range.

(E) Raw Seawater Quality-Contamination. The Project Company may assert the occurrence of an Uncontrollable Circumstance, and shall be entitled to schedule, performance and compensation relief on account thereof as and to the extent provided in Section 16.3 (Other Uncontrollable Circumstances), if a spill, release, leak or other similar significant event not caused by Project Company Fault takes place which introduces contaminants (other than contaminants which are listed among the Specified Raw Seawater Quality Parameters) into the Raw Seawater in concentrations which materially and adversely

affect the ability of the Project Company to meet the Performance Guarantees or perform the Operating Work, or materially increase the cost thereof to the Project Company. If such an event occurs during the Performance Test, the compensation relief entitled to the Project Company pursuant to this subsection shall be limited to that set forth in subsection 5.6.8 (Plant Shutdown During a Performance Test) of Appendix 5 (Minimum Performance Criteria and Performance Testing).

(F) Claim Requirements. In order to assert an Uncontrollable Circumstance claim under this Section based on Raw Seawater quality conditions, the Project Company, in addition to following the generally applicable procedures set forth in Article 14 (Uncontrollable Circumstance Procedures), shall demonstrate the specific manner in which such conditions meet the criteria for relief set forth in the definition of an Uncontrollable Circumstance and in Appendix 8 (Supplemental Performance Guarantee Requirements), and the specific manner in which it mitigated the effect of the occurrence pursuant to Section 26.5 (General Duty to Mitigate).

(G) Effect on Water Authority Obligations. Nothing in this Section shall obligate the Water Authority to accept or purchase Unacceptable Water.

SECTION 9.14. WATER AUTHORITY REMEDIES FOR NON-COMPLIANCE WITH PERFORMANCE GUARANTEES.

(A) Remedies. If the Project Company fails to comply with any Performance Guarantee and is not excused from performance as a result of an Uncontrollable Circumstance, the Project Company shall, without relief under any other Performance Guarantee, and in addition to the payment of Deductions and any other remedy provided herein, allowed by Applicable Law or required by a Governmental Body:

(1) notify the Water Authority promptly (and in any event not later than 24 hours) of the Project Company's having knowledge of any such non-compliance;

(2) provide the Water Authority promptly (and in any event not later than 24 hours) with copies of any notices sent to or received from the EPA, the CDPH or any other Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law;

(3) pay any other resulting fines, levies, assessments, impositions, penalties or other charges resulting therefrom;

(4) take any commercially reasonable action (including making all capital investments, improvements or modifications or repairs, replacements and operating and management practices changes) necessary in order to comply with such Performance Guarantee, continue or resume performance hereunder and eliminate the cause of, and avoid or prevent recurrences of non-compliance with such Performance Guarantee; and

(5) assist the Water Authority with all public relations matters necessary to adequately address any public concern caused by such non-compliance, including, but not limited to, preparation of press releases, attendance at press conferences, and participation in public information sessions and meetings.

(B) Example of Water Authority Remedies. As an example of the actions to be taken by the Project Company under item (4) of subsection 9.14(A) (Water Authority Remedies for Non-Compliance with Performance Guarantees - Remedies), if the capacity of the structures and equipment installed by the Project Company for the pretreatment or

desalination of Raw Seawater persistently proves to be inadequate to meet the Contract Standards, the Project Company shall be obligated to install additional membranes or implement other measures, which may include the construction of additional pretreatment or membrane facilities and equipment, at its sole cost and expense, in order to prevent the recurrence of such failures, regardless of their magnitude. The Project Company shall consult with the Water Authority regarding the appropriate remedy and the Water Authority shall not unreasonably object to the Project Company's chosen method of remedy so long as the Project Company's chosen method of remedy is consistent with this Water Purchase Agreement.

(C) Performance Testing. In the event that the Project Company fails to meet the Performance Guarantees for six Billing Periods in a row, the Water Authority may require a performance test to be conducted by the Project Company, at the Water Authority's cost and expense, to determine the cause of such failure; provided, however, that such test shall not materially and adversely affect the Project or the Project Company's performance of (or cost of the performance of) the Contract Obligations. If the cause of such failure to meet the Performance Guarantees is determined, the Project Company shall use reasonable efforts to make all necessary repairs and replacements, including major repairs and replacements, or capital investments, improvements or modifications.

SECTION 9.15. SERVICE COORDINATION.

At least 60 days prior to the commencement of each Contract Year following the Commercial Operation Date, the Project Company shall update, subject to the approval of the Water Authority, the Operating Protocol consistent with the Contract Standards. In the event the Water Authority fails to respond to a request by the Project Company for a proposed update to the Operating Protocol, the existing Operating Protocol shall remain effective until the Water Authority's approval is received. The Operating Protocol shall set forth all practices, procedures and protocols which are necessary or useful in coordinating the activities of the parties hereunder, including particularly the establishment and modification from time to time of the Water Authority's demands for Product Water, all operational and informational communications between the Water Authority and the Project Company, and all data and information required to demonstrate the extent to which the Plant is being operated in compliance with the Performance Guarantees. The Operating Protocol also shall provide for such matters as the parties may mutually deem necessary or desirable in the implementation of this Water Purchase Agreement. The Water Authority's Contract Representative and the Chief Operator shall be responsible for coordinating all matters relating to the Operating Protocol.

SECTION 9.16. METERING AND TESTING.

(A) Testing. The Project Company shall conduct all tests of Raw Seawater and Product Water in accordance with the Contract Standards and in accordance with the Operating Protocol. The tests shall be made at State-certified laboratories to the extent required by the Contract Standards and shall be conducted at the Project Company's sole cost and expense, except to the extent such tests are required by a Change in Law Event or any other Uncontrollable Circumstances and are not required under the terms hereof as of the Contract Date. All Raw Seawater and Product Water sampling and testing for contract performance shall be conducted at the testing locations identified in the testing and sampling standards set forth in Appendix 8 (Supplemental Performance Guarantee Requirements) and the other Contract Standards.

(B) Metering. The Project Company shall maintain in good working order, and repair and replace when necessary, devices capable of: (1) metering the daily total volume of Raw Seawater received at the Plant at the Raw Seawater Delivery Point; and (2) metering separately the daily total volume of Product Water delivered to the Plant Flow Meter. To the

extent any metering device is incapacitated or is being tested, the Project Company shall estimate as accurately as practicable the data required by the Project Company to perform the Contract Services. This estimate and methodology shall, with the Water Authority's approval (which shall not be unreasonably withheld), be used as the basis for determining the operating data required hereunder during the outage. All flow metering devices for Product Water shall be designed, calibrated, tested, installed and maintained as set forth in Attachment 3C, Part 1, of Appendix 3, and shall be calibrated at the Utah Research Facility as indicated in the Water Authority's standard flow meter specifications.

SECTION 9.17. RELEASES, LEAKS AND SPILLS.

(A) Unauthorized Releases. The Project Company shall operate the Plant in such a manner that Raw Seawater, Product Water, Plant By-Products or chemicals will not contaminate, or be released, leaked or spilled on or into, or discharged to the environment, other than as permitted by the most stringent of any of the Contract Standards.

(B) Notification and Reporting. The Project Company shall be responsible for fulfilling all notification and reporting requirements established by Applicable Law related to any unauthorized release of Raw Seawater, Product Water, Plant By-Products or chemicals into the environment from or in connection with its operation and management of the Plant. The Project Company shall prepare a memorandum evidencing such notification and reporting and provide copies thereof to the Water Authority, along with any documents provided to the relevant Governmental Body regarding the release.

(C) Site Assessment Upon Termination or Expiration. The Water Authority may conduct an assessment of the Plant Site upon the Water Authority's election to purchase the Project Assets pursuant to Section 23.1 (Project Assets Purchase Option During the Term), Section 23.2 (Project Assets Purchase Option in the Event of Unavailability of Financing) or Section 23.3 (Project Assets Purchase Option at the Expiration Date) to determine whether any Raw Seawater, Product Water, Plant By-Products or chemicals have been released, leaked or spilled on or into, or discharged into the environment in violation of this Section. The Project Company shall be responsible for the remediation of any such release discovered by the Water Authority through any such assessment of the Plant Site in the manner and to the extent provided in subsection 9.17(D) (Cleanup and Costs).

(D) Cleanup and Costs. The Project Company shall coordinate with the Water Authority and all appropriate Governmental Bodies in effectuating the prompt remediation of any unauthorized release. The Project Company shall, in the most expeditious manner possible under the circumstances, cause any Raw Seawater, Product Water, Plant By-Products or chemicals released without authorization to be cleaned up or remediated in accordance with Applicable Law. All costs associated with performing any such clean up and remediation measures, including any fines, assessments, penalties or damages resulting from the unauthorized release, shall be borne by the Project Company, except to the extent the unauthorized release of Raw Seawater, Product Water, Plant By-Products or chemicals resulted from an Uncontrollable Circumstance, in which case the appropriate portion of such costs shall be borne by the Water Authority on a reimbursable basis.

SECTION 9.18. PROJECT COMPANY DISPOSAL OF RESIDUALS.

(A) Residuals Management. The Project Company shall locate an Acceptable Disposal Site and shall make all necessary arrangements with the owner or operator thereof for the disposal of all Residuals during the Term of this Water Purchase Agreement. The Project Company shall collect, segregate, treat and store Residuals from treatment operations at the Plant in accordance with Applicable Law. The Project Company shall transport all Residuals to an Acceptable Disposal Site in a safe and environmentally sound manner and in accordance

with Applicable Law. All cost and expense of Residuals disposal shall be borne by the Project Company.

(B) Acceptable Disposal Site. An “Acceptable Disposal Site”, as used herein, means either a sanitary landfill or other waste disposal or management facility, which:

- (1) is located in the United States;
- (2) does not appear on any federal or state list of sites, such as but not limited to the National Priority List or the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) database maintained under CERCLA, maintained for the purpose of designating landfills which are reasonably expected to require remediation on account of the release or threat of release of Hazardous Substances; and
- (3) is being operated at the time of disposal or delivery in accordance with Applicable Law, as evidenced by the absence of any significant regulatory sanctions or any significant enforcement actions with respect to material environmental matters.

(C) Transportation Operations. In the event of a release, spill, leak or loss of Residuals during transfer or transit within the Project Company’s control or responsibility or under its supervision, the Project Company shall immediately arrange for the clean-up of the material and transportation to an Acceptable Disposal Site, and shall pay any resulting fines, assessments, penalties or damages assessed against the Project Company.

(D) Acceptable Disposal Site Information. The Project Company shall keep and maintain such logs, records, manifests, bills of lading or other documents pertaining to the Residuals as are necessary or appropriate to comply with Governmental Approvals and to monitor and confirm compliance by the Project Company with the requirements of this Section, and shall make available for review and copying by the Water Authority, upon request, copies of all weights and measures data and information relating to Residuals quantities generated and disposed of hereunder.

(E) Indemnity. The Project Company shall indemnify, defend and hold harmless the Water Authority and the Water Authority Indemnitees in accordance with Section 25.1 (Project Company’s Obligation to Indemnify) from all Loss-and-Expense resulting from the generation, processing, transportation or disposal of Residuals, including Hazardous Residuals.

SECTION 9.19. PROJECT COMPANY DISPOSAL OF CONCENTRATE DISCHARGE.

The Project Company shall manage all Concentrate Discharge produced at the Plant and the Plant Site during the Term in accordance with Applicable Law.

SECTION 9.20. ADMINISTRATIVE OBLIGATIONS.

Except to the extent excused by Uncontrollable Circumstances, the Water Authority shall have the right to require the Project Company to make a Direct Payment to the Water Authority in the amount provided in this Section for failure to perform the following administrative obligations:

- (1) report any material violation of any Governmental Approval or Applicable Law as required by Section 8.11 (Periodic Reports);

- (2) respond to a written request for information related to this Water Purchase Agreement made by the Contract Administrator and designated as a “priority request” within three business days as required by subsection 26.7(A) (Authority of Water Authority Representative);
- (3) respond to complaints and communications received by the Project Company as required by subsection 8.2(C) (Complaints and Communications);
- (4) report complaints or communications to the Water Authority as required by subsection 8.2(C) (Complaints and Communications);
- (5) attend Water Authority meetings, as reasonably requested, with advance notice from the Water Authority;
- (6) provide the Water Authority with any report, record, logs or other document required hereunder on time;
- (7) respond to alarms at the Plant as required hereunder;
- (8) provide any plan, proposal, report or other deliverable required hereunder with respect to Uncontrollable Circumstances or any regulatory deadline agreed to by the parties thereto;
- (9) properly sample, test or report the results thereof as required by Applicable Law or by this Water Purchase Agreement; and
- (10) mitigate noise complaints as required by subsection 8.2(C) (Complaints and Communications).

The amount of such Direct Payment shall be \$500 (Index Linked) per occurrence for the Project Company’s failure to comply with the administrative obligations set forth above (an occurrence being deemed to have taken place where, in any Contract Year, there are three instances of non-compliance for the same obligation or three instances of non-compliance for different obligations). The Project Company shall have the right to discuss with the Water Authority any such occurrence prior to being obligated to make any such Direct Payment.

ARTICLE 10

MAINTENANCE, REPAIR AND REPLACEMENT

SECTION 10.1. MAINTENANCE, REPAIR AND REPLACEMENT GENERALLY.

(A) Ordinary Maintenance, Repair and Replacements. The Project Company shall perform all normal and ordinary maintenance of the machinery, equipment structures, improvements and all other property constituting the Project, shall keep the Project in good working order, condition and repair, in a neat and orderly condition and in accordance with the Contract Standards, and shall maintain the aesthetic quality of the Project as originally constructed and in accordance with the Design Requirements. The Project Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, and services which are necessary for the normal and ordinary maintenance of the Project and shall conduct predictive, preventive and corrective maintenance of the Project as required by the Contract Standards. The Project Company shall keep maintenance logs in accordance with the maintenance, repair and replacement plan set forth in Appendix 6 (Operating and Maintenance Standards).

(B) Major Maintenance, Repairs and Replacements. The Project Company shall perform all major maintenance, repair and replacement of the machinery, equipment, structures, improvements and all other property constituting the Project during the Term of this Water Purchase Agreement required under the Contract Standards, including all maintenance, repair and replacement which may be characterized as “major” or “capital” in nature. The obligations of the Project Company under this Article are intended to assure that the Project is fully, properly and regularly maintained, repaired and replaced in order to preserve its long-term reliability, durability and efficiency.

(C) Repair and Maintenance of Plant Site. The Project Company, in accordance with the Contract Standards, shall keep the grounds of the Plant Site in a neat and orderly condition (including the cleanup of litter and debris on a daily basis or more frequently as required). The Project Company shall also maintain and repair all Plant Site signage, fencing and other security systems. In addition, the Project Company shall provide all landscaping services for the Plant Site, including the replacement of all dead or dying plants in the manner provided in Appendix 6 (Operating and Maintenance Standards), and shall service and maintain the on-site irrigation system in compliance with the Precise Development Plan.

SECTION 10.2. MAINTENANCE, REPAIR AND REPLACEMENT PLAN AND MAINTENANCE, REPAIR AND REPLACEMENT SCHEDULE.

(A) Maintenance, Repair and Replacement Plan. Appendix 6 (Operating and Maintenance Standards) contains requirements for preparing the Maintenance, Repair and Replacement Plan. The Maintenance, Repair and Replacement Plan is intended to establish a minimum standard by which to measure the Project Company’s performance of its ongoing maintenance, repair and replacement obligations hereunder, and to assure that no material deferred or sub-standard maintenance, repair or replacement occurs. Within 90 days following the Commercial Operation Date, the Project Company shall incorporate the Maintenance, Repair and Replacement Plan into the Electronic Operation and Maintenance Manual. The Project Company shall adhere to these plans as incorporated in the Electronic Operation and Maintenance Manual, except where it can demonstrate to the Water Authority that changes are reasonable under Good Management Practice. The timing and extent of maintenance, repair and replacement activities performed by the Project Company hereunder with respect to the Project, taken as a whole, shall equal or exceed the standard set for those activities by Appendix 6 (Operating and Maintenance Standards), as incorporated in the Electronic Operation and Maintenance Manual. The Project Company shall also perform any additional

maintenance, repair and replacement work which is necessary in order to comply with the Contract Standards.

(B) Maintenance, Repair and Replacement Schedule. Appendix 6 (Operating and Maintenance Standards) sets forth the requirements for major equipment repair and replacement activities which would be required to be performed by the Project Company over the Term hereof in order to achieve the standard of overall Project maintenance and repair for the proper operability, durability and reliability of the Project in accordance with the Contract Standards. Without limiting any of the Project Company's obligations under this Section, the Project Company shall make and complete all major equipment repairs and replacements which are necessary to achieve such standard of repair and replacement by performing maintenance, repair and replacement in accordance with the Maintenance, Repair and Replacement Schedule and the Reverse Osmosis System Replacement Schedule, as such plan and schedules may be altered or amended pursuant to this subsection. Downtime for scheduled maintenance, repair and component replacement shall, to the extent practicable, be scheduled for the months of December, January, February and March. The parties acknowledge that, in light of the long term nature of the Water Purchase Agreement and the practical limitations on predicting with specificity the useful life of any particular asset, it may be appropriate from time to time to alter the Maintenance, Repair and Replacement Schedule and the Reverse Osmosis System Replacement Schedule. Accordingly, the Project Company shall have the right to deviate from the Maintenance, Repair and Replacement Schedule and the Reverse Osmosis System Replacement Schedule at any time during the Term, provided that the Project Company provides the Water Authority with a reasonable justification in advance for such deviation and that such deviation shall be consistent with the requirements set forth in Appendix 6 (Operating and Maintenance Standards). Any alterations to the Maintenance, Repair and Replacement Schedule or the Reverse Osmosis System Replacement Schedule shall be reflected in a Contract Administration Memorandum. The Project Company shall coordinate with the Water Authority with respect to any unscheduled or unanticipated maintenance or repair which would reasonably lead to failure to comply with the Contract Obligations.

SECTION 10.3. PLANT EVALUATIONS.

(A) Asset Registry. The Project Company shall, prior to the Commercial Operation Date, photograph, videotape (to the extent reasonably accessible) and prepare an itemized inventory of all material property constituting the Plant, including records of assets originally installed, manufacturer and model number, identification number and, to the extent available, original cost data (the "Asset Registry"). The Asset Registry shall be prepared in accordance with Appendix 6 (Operating and Maintenance Standards) based on information and data collected in achieving Mechanical Completion, and shall reflect, based on the Construction Price and the Design Requirements, the condition, functionality and value of the Plant as originally constructed by the Project Company hereunder. The purpose of the Asset Registry shall be to establish an informational baseline for determining compliance by the Project Company with its maintenance, repair and replacement obligations under this Article. The Asset Registry shall be kept in a secure environment at a location other than the Plant Site. The Project Company shall provide an electronic copy of the Asset Registry to the Water Authority in a form reasonably acceptable to the Water Authority. The Asset Registry (except the photographs and video components thereof) shall be annually updated by the Project Company as required by Appendix 6 (Operating and Maintenance Standards), and reflected in a report that is separate from the annual Operations and Maintenance Reports prepared pursuant to subsection 8.11(B) (Annual Operations and Maintenance Reports).

(B) Final Evaluation of the Plant. Within 15 days after the Water Authority has delivered its notice pursuant to subsection 23.5(B)(1) (Notice of Intent Required for Certain Purchase Options) of its intent to exercise its Project Assets Purchase Option during the Term, or its notice pursuant to subsection 23.5(B)(2) (Notice of Intent Required for Certain Purchase

Options) of its intent to exercise its Project Assets Purchase Option on the Expiration Date, the Independent Evaluator shall conduct a final evaluation of the Plant in accordance with the protocol established in Appendix 11 (End of Term Project Condition Requirements) and shall utilize standard utility property evaluation methods. In connection with the final asset evaluation, the Project Company shall furnish the Water Authority and the Independent Evaluator with the Asset Registry and record documentation prepared pursuant to Appendix 11 (End of Term Project Condition Requirements) and all database information developed in connection with the implementation of the CMMS.

(C) Disputes. The expense of the Independent Evaluator for all services performed pursuant hereto shall be borne equally by the parties. The final determination by the Independent Evaluator as to any matter arising under this Section involving amounts less than \$250,000 (Index Linked) which is in dispute between the Water Authority and the Project Company shall be final and binding upon the parties. For disputes involving amounts greater than \$250,000 (Index Linked), the Independent Evaluator's determination shall be advisory only, and such dispute shall be handled as provided in Sections 18.1 (Forum for Dispute Resolution) and 18.2 (Non-Binding Mediation).

SECTION 10.4. PERIODIC MAINTENANCE INSPECTIONS.

(A) Annual Maintenance Inspection. The Water Authority may, upon reasonable written notice, perform an inspection of the Plant and relevant records of the Project Company each Contract Year following the Commercial Operation Date to determine compliance with the Contract Standards. The Water Authority's annual inspection may include the inspection of: (1) the Plant and the Plant Site; (2) all in-house laboratories where tests are conducted for samples from the Plant; (3) all areas where chemicals are stored or used; and (4) all operations, maintenance, repair and replacement records kept by the Project Company.

(B) Full-Scale Biennial Inspections. Every full second Contract Year following the Commercial Operation Date, the Water Authority may, upon reasonable written notice, perform a full-scale inspection and review of the state of repair, working condition and performance capability of the Plant, including testing of equipment to determine its physical and operational conditions, and inspection of the general status of repairs of all Project Equipment and Project Structures, grounds, utility lines, spare parts, inventories, and operation, maintenance, repair and replacement records. Any such inspection and review shall be performed by or on behalf of the Water Authority by a Water Authority Engineer at the Water Authority's expense, and shall take place at such time as the Water Authority shall determine upon three months' written notice to the Project Company. The principal purpose of the inspection and review shall be to permit the Water Authority to ascertain on a comprehensive and focused basis the extent to which the Plant is being properly maintained, repaired and replaced in accordance with the Contract Standards. The inspection shall include a concurrent review of all relevant data, records and reports.

(C) Non-Interference. The Project Company shall cooperate fully with all inspections conducted pursuant to this Section, which shall not materially interfere with the Project Company's performance of the Contract Services and shall not impose any material costs on the Project Company.

SECTION 10.5. COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM.

The Project Company shall develop and maintain a computerized maintenance management system (the "CMMS") as part of the Construction Work that it is capable of providing a record of repair and replacement of the Plant on a detailed, item-by-item basis; scheduling, carrying out, monitoring and controlling predictive, preventive and corrective

maintenance programs; and monitoring routine operations within the Plant. The CMMS shall be developed consistently with the Asset Registry and the requirements of Appendix 6 (Operating and Maintenance Standards), and shall be modified as and when appropriate during the Term to take account of removals from and additions to the Plant. The Project Company shall utilize the CMMS to provide the Water Authority with documentation which allows it to efficiently monitor compliance by the Project Company with its maintenance, repair and replacement obligations hereunder. The Water Authority shall have computer-based real time, read-only access to the CMMS as provided in Appendix 3 (Plant Design and Construction Work). The Project Company shall permit all electronic data to be replicated and provided to the Water Authority for review by the Water Authority Engineer.

SECTION 10.6. END OF TERM PERFORMANCE EVALUATION REQUIREMENTS.

(A) Applicability of End of Term Performance Evaluation Requirements. The provisions of this Section shall apply only in the event the Water Authority exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase Option During the Term) or Section 23.4 (Project Assets Purchase Options at the Expiration Date), and not otherwise.

(B) Compliance With End of Term Performance Evaluation Requirements. If, during the applicable exit performance period described in subsection (D) of this Section, the Project Company complies with the End of Term Performance Evaluation Requirements, the Project Company shall have no obligation to perform the Exit Performance Test.

(C) Non-Compliance With End of Term Performance Evaluation Requirements. If, during the applicable exit performance period described in subsection (D) of this Section, the Project Company has not complied with the End of Term Performance Evaluation Requirements, the Project Company shall, at its cost and expense, conduct an Exit Performance Test of the Plant (the "Exit Performance Test"). The Exit Performance Test shall be conducted in the same manner and over the same timeframes as required hereunder for the Performance Test that established Provisional Acceptance. In the event the Exit Performance Test does not demonstrate that the Minimum Performance Criteria were achieved, the Project Company at its own cost and expense shall make all repairs and replacements necessary so that the Plant is capable of achieving the Minimum Performance Criteria. Upon completion of the repair and replacement work, the Exit Performance Test shall again be conducted. This procedure shall be repeated until an Exit Performance Test demonstrates that the Minimum Performance Criteria have been achieved.

(D) Applicable Exit Performance Period. The applicable exit performance period under this Section shall be a period of six full Billing Periods, designated by the Project Company by written notice to the Water Authority, commencing no later than 60 days after the Water Authority has delivered its notice (pursuant to subsection 23.5(B)(1) (Notice of Intent Required for Certain Purchase Options)) of its intent to exercise its Project Assets Purchase Option during the Term; and (ii) 90 days after the Water Authority has delivered its notice (pursuant to subsection 23.5(B)(2) (Notice of Intent Required for Certain Purchase Options)) of its intent to exercise its Project Assets Purchase Option on the Expiration Date.

(E) Condition of Project Structures and Project Equipment. In addition to either complying with the End of Term Performance Evaluation Requirements or the Exit Performance Test, the Project Company shall meet the End of Term Transfer Condition Requirements.

SECTION 10.7. PROJECT ASSETS TRANSFER CONDITION.

(A) Water Authority Exercise of End-of-Term Purchase Option. The provisions of this Section shall apply only in the event the Water Authority exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase Option During the Term), or Section 23.4 (Project Assets Purchase Option at the Expiration Date), and not otherwise.

(B) Required Project Condition. On the Termination Date, the Project shall be in a condition:

(1) Which is consistent with the Project Company having performed the Contract Obligations;

(2) Which, with respect to buildings, structures and pipelines that as of the Contract Date were expected to have a useful life of more than 20 years (as set forth in Appendix 11 (End of Term Project Condition Requirements), have functional or structural ratings of at least “3” (as defined in Appendix 11); and

(3) Which, with respect to Project Equipment’s maintenance, repair and replacement status, meets the standards set forth in subsection 11.6.1 (General) of Appendix 11 (End of Term Project Condition Requirements).

The requirements of this subsection constitute the “Transfer Condition Requirements”.

(C) Transfer Condition Survey and Work Plan. Within 15 days after the Water Authority has delivered its notice pursuant to subsection 23.5(B)(1) (Notice of Intent Required for Certain Purchase Options) of its intent to exercise its Project Assets Purchase Option during the Term, or its notice pursuant to subsection 23.5(B)(2) (Notice of Intent Required for Certain Purchase Options) of its intent to exercise its Project Assets Purchase Option on the Expiration Date, the Project Company and the Water Authority shall conduct a joint inspection and survey of the Project Structures and a separate joint inspection and survey of the Project Equipment over a 45 day period. If these surveys indicate that any element of the Project, on the Termination Date, is not reasonably expected to be in a condition consistent with the Transfer Condition Requirements upon the Project Company implementing the plans and programs required under Appendix 6 (Operating and Maintenance Standards) over the remainder of the Term, within 60 days of completion of the survey the Project Company shall deliver to the Water Authority the Project Company’s plan to perform the additional work necessary to meet the Transfer Condition Requirements, together with a cost estimate for the work.

(D) Determination of Transfer Condition Retainage. Upon completion of the Project condition survey and work plan required by subsection 10.7(C) (Transfer Condition Survey and Work Plan), the Water Authority:

(1) May review and comment on the Project Company’s work plan;

(2) May direct the Project Company to amend its work plan to incorporate corrective work which the Water Authority reasonably determines is necessary to meet the Transfer Condition Requirements and the cost of such work; and

(3) Shall, after giving due consideration to the Project Company’s cost estimate and the Independent Evaluator’s assessment conducted pursuant to subsection 10.3(B) (Final Evaluation of the Plant) and Section 11.6 (End of Term Project

Condition Assessment) of Appendix 11 (End of Term Project Condition Requirements), determine in good faith the amount the Water Authority reasonably believes is necessary to complete the additional work required to meet the Transfer Condition Requirements (the "Transfer Condition Retainage").

(E) Establishment and Use of Transfer Condition Retainage Account. The Water Authority shall hold back and retain from each Monthly Water Purchase Payments (starting with the monthly payment for the first month after the Water Authority determines the amount of Termination Condition Retainage pursuant to subsection 10.7(D)(3) an amount equal to (1) the Transfer Condition Retainage, divided by (2) the number of months between the first monthly payment for which Termination Condition Retainage is withheld and the Termination Date, and shall deposit such amount in an interest bearing account held by a Qualified Commercial Bank. The account shall be the property of the Water Authority, subject to the Project Company's withdrawal rights under this Section; provided, however, that any Transfer Condition Retainage remaining in the Transfer Condition Retainage Account shall be reimbursed to the Project Company when the Transfer Condition Requirements have been met. The Project Company shall have the right, upon the submittal of certified requisitions to the Water Authority with full supporting receipts or other evidence of payment, to withdraw from such account amounts necessary to reimburse itself for amounts actually expended in the performance of the additional work necessary to meet the Transfer Condition Requirements. Notwithstanding the foregoing, the Project Company shall be entitled to post a letter of credit with the Water Authority in an amount equal to the Transfer Condition Retainage in lieu of such holdback from the Monthly Water Purchase Payments.

(F) Performance of the Transfer Condition Work and Further Inspection. The Project Company shall implement the transfer condition plan proposed under subsection 10.7(C) (Transfer Condition Survey and Work Plan) and take all other steps necessary to assure compliance with the Transfer Condition Requirements, notwithstanding the Water Authority's participation in the transfer condition survey or review of the Project Company's work plan or the fact that the actual cost of compliance may be higher than the amount of the Transfer Condition Retainage. At least 120 days prior to the Termination Date or a date that is mutually agreed upon, the Project Company and the Water Authority shall conduct a further joint inspection and survey of the condition of the Project and the progress of the transfer condition work. If, 90 days prior to the Termination Date, the Plant (1) has failed to demonstrate that it has the capacity to meet the requirements of subsection 11.5.1 (Evaluation of Six Months of Plant Performance) of Appendix 11 (End of Term Project Condition Requirements) or, if applicable, the Exit Performance Test; or (2) is not being operated or maintained in compliance with the Contract Standards, then the Water Authority may, acting reasonably, increase the amount of the Transfer Condition Retainage to make the repairs and modifications to the Project that would be necessary to allow the Project to meet the requirements of the Exit Performance Test.

(G) Final Water Authority Condition Assessment. On, or within five Business Days after, the Termination Date, the Water Authority shall either:

(1) Issue to the Project Company a transfer condition certificate confirming compliance with the Transfer Condition Requirements and return any remaining Transfer Condition Retainage to the Project Company; or

(2) Notify the Project Company of its decision not to issue the transfer condition certificate, setting out each respect in which the Project does not comply with the Transfer Condition Requirements and stating the Water Authority's estimate of the cost of completing all work required for the Project to comply with the Transfer Condition Requirements.

(H) Final Project Company Condition Assessment. The Project Company may, within 30 days after receipt of the notice given in accordance with subsection (G)(2) of this Section, object to any matter set forth in the notice giving details of the grounds of each such objection and setting out the Project Company's proposals in respect of such matters.

(I) Final Compliance. If the Project did not, at the Termination Date, comply in all respects with the Transfer Condition Requirements, the Water Authority will promptly either (1) use any remaining proceeds of the Termination Condition Retainage to complete any work necessary to cause such compliance; or (2) draw upon the Letter of Credit in an amount equal to the estimated value of completing such work, and use such amount to complete such work; provided, however, that any such proceeds of the Termination Condition Retainage or any amounts drawn upon the Letter of Credit which are not spent on such work shall be paid to the Project Company upon the completion of such work.

ARTICLE 11

CAPITAL MODIFICATIONS

SECTION 11.1. CAPITAL MODIFICATIONS GENERALLY.

A Capital Modification for purposes of this Water Purchase Agreement means a material change to the physical assets constituting the Plant (including the alteration, addition, demolition, removal, extension or expansion of the physical assets constituting the Plant, or the installation of new structures, equipment, systems or technology) made after the Commercial Operation Date for any reason that, individually or in the aggregate with any related changes, exceeds \$10,000,000 (Index Linked) in capital cost or that materially impairs the quality, integrity, durability or reliability of the Plant or materially alters the original design of the Plant as set forth in the Design Requirements. Repairs or replacements of the Project Equipment or the Project Structures (including replacements of membranes or other Project Equipment or Project Structures with more advanced or efficient membranes or other Project Equipment or Project Structures) shall not constitute Capital Modifications.

SECTION 11.2. CAPITAL MODIFICATIONS MADE AT PROJECT COMPANY REQUEST.

(A) General. The Project Company shall give the Water Authority written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at the Project Company's request. Any such Capital Modification shall be financed and paid for by the Project Company, and there shall be no increase in the Unit Price or other compensation payable by the Water Authority on account thereof.

(B) Water Authority Approval. The Water Authority shall have the right, in its discretion, to approve any Capital Modification requested by the Project Company under subsection (A) of this Section. The Water Authority may condition the exercise of its approval right in any manner it chooses. To assist the Water Authority in the exercise of its approval right under this Section, the notice shall contain sufficient information for the Water Authority to determine that the Capital Modification:

- (1) Does not materially diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (2) Does not materially impair the quality, integrity, durability and reliability of the Project; and
- (3) Is feasible.

Capital Modifications required due to Compensation Adjustment Events shall not constitute Capital Modifications requested by the Project Company under this Section.

SECTION 11.3. CAPITAL MODIFICATIONS REQUIRED DUE TO COMPENSATION ADJUSTMENT EVENT.

(A) General. Upon the occurrence of a Compensation Adjustment Event, if a Capital Modification is required on account thereof, the required Capital Modification shall be financed and paid for as provided and subject to the limitations set forth in Section 6.3 (Financing Compensation Adjustment Event Capital Costs), Section 15.2 (Uninsurable Force Majeure Events), Section 16.1 (Change in Law Events), and Section 16.3 (Other Uncontrollable Circumstances), with the attendant increase in the Unit Price described in such Sections.

(B) Water Authority Approval. The Water Authority shall have the right, acting reasonably, to approve any Capital Modification required to be made on account of a Compensation Adjustment Event.

SECTION 11.4. CAPITAL MODIFICATIONS AT WATER AUTHORITY DIRECTION.

(A) General. The Water Authority shall have the right to direct the Project Company to make Capital Modifications (whether above or below the \$10,000,000 cost threshold) at any time and for any reason whatsoever after the Commercial Operation Date (including Capital Modifications to expand the capacity of the Plant), whether and however the exercise of such rights affects this Water Purchase Agreement ("Directed Capital Modifications"), so long as the implementation of any such Directed Capital Modification does not contravene the limitations referred to in Section 4.6 (Restrictions on Water Authority-Directed Design Requirements Changes and Directed Capital Modifications). The design and construction costs of any such Directed Capital Modification, shall be financed by the Project Company as and to the extent as provided in Section 6.4 (Financing the Capital Costs of Directed Capital Modifications).

(B) Inability of Project Company to Obtain Financing. If the Project Company is unable to obtain financing for Directed Capital Modifications, or if the Water Authority does not approve the proposed financing therefor, in either case as provided in Section 6.4 (Financing the Capital Costs of Directed Capital Modifications), the Water Authority (1) shall withdraw its direction to make the Directed Capital Modification, or (2) shall pay the Project Company directly on a milestone basis (separately from the Monthly Water Purchase Payments) an amount equal to the negotiated lump sum price for the design and construction of such Directed Capital Modifications, as such lump sum price is negotiated in accordance with Section 17.20 (Cost Substantiation for Additional Work Required Due to Directed Capital Modifications and Compensation Adjustment Events). The Water Authority shall make any such payments for design and construction work from its own available funds or reserves, or shall finance such payments using its own borrowing capacity.

(C) No Plant Bondholder Obligation. The Water Authority acknowledges that the Plant Bondholders have no obligation to provide the financing referred to in this Section or to subordinate or share their security.

SECTION 11.5. PROCEDURES FOR IMPLEMENTING DIRECTED CAPITAL MODIFICATIONS AND COMPENSATION ADJUSTMENT EVENT CAPITAL MODIFICATIONS.

(A) Primary Implementation Procedure. The implementation procedures set forth in this Section shall apply with respect to Directed Capital Modifications and Compensation Adjustment Event Capital Modifications. The Project Company may implement Capital Modifications under Section 11.2 (Capital Modifications made at Project Company Request) by any means of its own choosing in accordance with Applicable Law.

(B) Project Company Conceptual Plan and Water Authority Review. At the request of the Water Authority, the Project Company shall prepare and deliver to the Water Authority a conceptual plan for the implementation of the Capital Modification. The conceptual plan shall include the Project Company's recommendations as to technology, design, construction, equipment, materials, and operating and performance impacts. The foregoing recommendations shall seek to allow for maximum competition in price and shall not favor the Project Company or any of its Affiliates. Preliminary schedule and lifecycle capital and operating cost estimates shall be included, together with an assessment of possible alternatives. The conceptual plan shall specifically evaluate reasonable alternatives to the mix of Capital Modifications and changed operating and management practices which the Project

Company is recommending. The Water Authority shall review the Project Company's conceptual plan and recommendations, and undertake discussions with the Project Company in order to reach agreement on a basic approach to the Capital Modification.

(C) Project Company Implementation Proposal. Following agreement on a basic approach to the Capital Modification, at the request of the Water Authority the Project Company shall submit a formal implementation proposal to the Water Authority for its consideration. The Capital Modification implementation proposal shall contain (1) a Project Company services element, to be implemented through a Water Purchase Agreement Amendment, and (2) a third-party services element, to be implemented through third-party contracting.

(1) Project Company Services Element. The Project Company services element shall contain: (a) the Project Company's offer to perform design, construction management and performance testing services and obtain and maintain Governmental Approvals with respect to the Capital Modification for a fixed price, and, shall include a guarantee of the performance of the Capital Modification through a performance test and a guaranteed maximum construction price if so requested by the Water Authority and agreed to by the Project Company; and (b) as applicable, the Project Company's offer to operate, maintain, repair, replace, obtain and maintain Governmental Approvals for, and manage the Capital Modification following construction and commissioning for an Index-Linked fixed fee and shall include long-term performance guarantees with respect to the Capital Modification.

(2) Third-Party Services Element. The third-party services element shall be a proposal by the Project Company to conduct either qualification-based selection process for design engineers and a bidding process for the construction work or a competitive proposal process for the design-build work involved in completing the Capital Modification. The resulting design services and construction contracts or design-build contract shall be held by and executed in the name of the Project Company.

(D) Preparation Costs. The cost and expense of preparing a conceptual plan and any formal implementation proposed under this Section shall be borne by the Water Authority as a Direct Payment or through an adjustment to the Unit Price.

(E) Negotiation and Finalization of Project Company Implementation Proposal. The parties shall proceed, promptly following the Water Authority's review of the Project Company's submittal and quotation, to negotiate to reach an agreement on the required Unit Price adjustment (based on the fixed prices in the Project Company's implementation proposal) and any related adjustment to the terms and conditions of this Water Purchase Agreement. Any final negotiated agreement for the implementation of a Capital Modification under this Section shall address, as applicable:

- (1) Design requirements;
- (2) Construction management services;
- (3) Performance tests, standards and procedures;
- (4) A guarantee of completion;
- (5) Performance guarantees;

- (6) Any changes to the Contract Standards to take effect as a consequence of the Capital Modification;
- (7) A payment schedule for the design and construction management-related services;
- (8) Any adjustments to the Unit Price resulting from the Capital Modification, including any related operation, maintenance, repair and replacement costs;
- (9) A financing plan; and
- (10) Any other appropriate amendments to this Water Purchase Agreement.

The Project Company shall not be obligated to undertake any Directed Capital Modification or Compensation Adjustment Event Capital Modification, nor shall the Unit Price be adjusted or any Direct Payment be due the Project Company on account of any such Capital Modification, except following agreement by the parties as to all matters affected thereby, unless otherwise required on an emergency basis or on account of an Uncontrollable Circumstance.

(F) Implementation Procedures. The Water Authority shall have the same substantive and procedural rights with respect to the implementation of each Capital Modification that it has with respect to the design, construction, commissioning and performance testing of the Project as originally built (with appropriate changes in light of the nature of the particular Capital Modification), as set forth in this Water Purchase Agreement.

SECTION 11.6. OPERATING, MAINTENANCE, REPAIR AND REPLACEMENT COSTS RELATED TO CAPITAL MODIFICATIONS.

(A) Directed Capital Modifications and Compensation Adjustment Events. Any operation, maintenance, repair and replacement costs resulting from a Directed Capital Modification or from a Compensation Adjustment Event shall be paid by the Water Authority as an adjustment to the Unit Price, negotiated pursuant to subsection 17.20(B) (Negotiated Price Based on Expected Costs).

(B) Project Company-Requested Capital Modifications. Any operation, maintenance, repair and replacement costs resulting from a Capital Modification made at the request of the Project Company shall be borne by the Project Company with no compensation adjustment hereunder.

ARTICLE 12

CONTRACTING AND LABOR PRACTICES

SECTION 12.1. USE OF PROJECT CONTRACTORS AND SUBCONTRACTORS.

(A) Project Contractors and Subcontractors. The Water Authority acknowledges that the Project Company may carry out the Contract Obligations by contracting such obligations to Project Contractors, who in turn may contract all or part of their obligations under any Project Contract to one or more Subcontractors.

(B) Bonds. The Project Company shall cause the EPC Contractor to provide the performance and payment bonds required under the Plant EPC Agreement, and shall cause the Operating Service Provider to provide the operations performance bond required under the Operating Service Agreement.

(C) Use of Project Contractors and Key Individuals. The Project Company shall use the Project Contractors and Key Individuals listed in Appendix 14 (Project Company and Project Contractor Information) or such others as the Water Authority may approve, acting reasonably and without unreasonable delay, for the performance of the Contract Obligations in the roles indicated in Appendix 14 (Project Company and Project Contractor Information).

(D) Restricted Persons. In performing the Contract Obligations, the Project Company shall not contract with, or allow any of its Project Contractors or any material Subcontractors to contract with, any person that, is a Restricted Person. In the event that the Water Authority determines that the Project Company has contracted with, or allowed a Project Contractor to enter into a material contract with, a person that is, in the Water Authority's reasonable opinion, a Restricted Person, the Water Authority shall notify the Project Company and the Project Company shall replace (or use commercially reasonable efforts to cause the Project Contractor to replace) such person within 30 days.

(E) Water Authority Access to and Communications with Project Contractors. The Project Company shall provide the Water Authority with access to the Project Contractors as follows:

(1) General Communications. The Project Company shall grant the Water Authority's Director of Engineering and Director of Operations (or management personnel senior to such positions) direct access to the Project Contractors and their senior management personnel for meetings and email, telephone and fax communications regarding any material aspect of the work being performed by the Project Contractor which the Water Authority believes has resulted or may result in a breach of this Water Purchase Agreement. This right of direct access shall apply during normal business hours and at any time during emergencies. The Project Company, upon request, shall have the right to be present at any such meetings, and to receive copies of any such communications (including reasonable advance notice of any meetings). The Operating Service Agreement shall expressly obligate the Operating Service Provider to respond promptly to any communication from the Water Authority's Director of Engineering and Director of Operations (or management personnel senior to such positions), to attend any meeting reasonably called by such Water Authority personnel, and to furnish any information requested by the Water Authority personnel, in each case that has a bearing on the performance of the Contract Obligations with respect to which the Project Contractor has responsibility, involvement or knowledge.

(2) Other Communications During the Construction Period. During the Construction Period, the Construction Superintendent or his or her delegate shall be

available to be contacted by the Water Authority's on-site representative: (1) on a 24 hours per day basis for emergency response; and (2) during normal business hours for safety concerns or others issues requiring immediate attention.

(3) Other Communications During the Operating Period. During the Operating Period, the Chief Operator or its designee shall be available to be contacted by the Water Authority on a 24 hours per-day basis for emergency response and operational coordination.

(F) Incentive Compensation Payable to Operating Service Provider. If for any Billing Period the Project Company receives compensation pursuant to subsection 17.8(A)(4) (Monthly Payments), the Project Company shall, within 30 days of receipt of such amount, pay the Operating Service Provider an amount equal to (1) \$125 (Index-Linked), multiplied by (2) the Excess Product Water Deliveries for such Billing Period.

SECTION 12.2. PROJECT CONTRACTS AND SUBCONTRACTS.

(A) Terms and Actions. The Project Company shall retain full responsibility to the Water Authority under this Water Purchase Agreement for all matters related to the Contract Obligations. No failure of any Project Contractor or Subcontractor used by the Project Company in connection with the provision of the Contract Obligations shall relieve the Project Company from its obligations hereunder to perform the Contract Obligations. The Project Company shall be responsible for settling and resolving with all Project Contractors and Subcontractors all claims arising from the actions or inactions of the Project Company or a Project Contractor or Subcontractor.

(B) Indemnity for Claims. The Project Company shall pay or cause to be paid to the EPC Contractor and the Operating Service Provider all amounts due in accordance with their respective Project Contracts and Subcontracts. No Project Contractor or Subcontractor shall have any right against the Water Authority for labor, services, materials or equipment furnished for the Contract Obligations. The Project Company acknowledges that its indemnity obligations under Section 25.1 (Project Company's Obligation to Indemnify) shall include all claims for payment or damages by any Project Contractor or Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract Obligations to the extent that those claims fall within the scope of the indemnity in Section 25.1 (Project Company's Obligation to Indemnify).

(C) Assignability. All Project Contracts (and any related parent company guaranty) entered into by the Project Company with respect to the Project shall be assignable to the Water Authority (provided, with respect to the Process Services Agreement, that only Project Company's rights under such agreement shall be assignable to the Water Authority), solely at the Water Authority's election and without cost or penalty, upon the expiration or termination of this Water Purchase Agreement.

SECTION 12.3. PROJECT CONTRACTS.

(A) Water Authority Consents. Unless the Water Authority has consented to such course of action, such consent not to be unreasonably withheld or delayed, the Project Company shall not:

(1) Terminate, or agree to or permit the termination of, all or any material part of any Project Contract; provided, however, that the Project Company may terminate the Operating Service Agreement if it enters into a replacement Operating Service Agreement on terms reasonably acceptable to the Water Authority with an Operating Service Provider listed on Appendix 14 (Project Company and Project

Contractor Information) or who is otherwise reasonably acceptable to the Water Authority;

(2) Make, or agree to or permit the making of:

(a) any material amendment of any Project Contract (other than material amendments directly resulting from Compensation Adjustment Events or Directed Capital Modifications); or

(b) any departure by any party from any material provision of any Project Contract;

(3) Permit any Project Contractor to assign or transfer to any person any of such Project Contractor rights or obligations under a Project Contract other than by way of a Subcontract that is not a subcontract of all or substantially all of the obligations under the Project Contract; or

(4) Enter into, or permit the entering into of, any replacement of a Project Contract entered on or before the Contract Date.

(B) Timeframe for Consents. The Water Authority shall give or deny such consent within:

(1) 10 Business Days of receipt of such notice and all relevant documentation, if the Project Company is seeking to terminate a Project Contract immediately; and

(2) 20 Business Days of receipt of such notice and all relevant documentation in all other cases.

If the Water Authority fails to give or deny its consent within such time periods it shall be deemed to have given its consent. The giving or denial of consent by the Water Authority shall not create any liability of the Water Authority to the Project Company or to any third party.

(C) Costs of Request for Consent. The Project Company shall pay, without duplication, the Water Authority's reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any request for consent by the Project Company pursuant to this Section. At the time of the request the Project Company shall make a payment to the Water Authority against its obligation under this Section of \$15,000 (Index Linked). After the Water Authority's decision is rendered, the Water Authority will either refund any overpayment or invoice the Project Company for any additional amounts due under this Section.

SECTION 12.4. REPLACEMENT PROJECT CONTRACTS.

If any Project Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiration or otherwise), unless the goods, services or rights which were the subject matter of such Project Contract are no longer reasonably required for the Project, the Project Company:

(1) Will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and

- (2) Will forthwith enter into, or cause the replacement Project Contractor to enter into, a Project Contractor Collateral Agreement.

SECTION 12.5. DELIVERY OF AMENDED OR REPLACEMENT PROJECT CONTRACTS.

If at any time any amendment is made to any Project Contract, or a replacement Project Contract (or any agreement which materially affects the interpretation or application of any Project Contract) is entered into, the Project Company shall deliver to the Water Authority a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Project Company.

SECTION 12.6. LABOR RELATIONS AND DISPUTES.

(A) Labor Relations. As between the Water Authority and the Project Company, the Project Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Project Company, the Project Contractor and Subcontractors. The Water Authority shall have no responsibility whatsoever for any such disputes or issues and the Project Company shall indemnify, defend and hold harmless the Water Authority and the Water Authority Indemnitees in accordance with Section 25.1 (Project Company's Obligation to Indemnify) from any and all Loss-and Expense resulting from any such labor dispute.

(B) Labor Disputes. If the Project Company has knowledge of an actual or potential labor dispute that would reasonably be expected to materially and adversely affect any of the Contract Obligations, the Project Company shall promptly:

- (1) Give notice thereof to the Water Authority, including all relevant information related to the dispute of which the Project Company has knowledge; and
- (2) Take all reasonable steps to ensure that such labor dispute does not materially and adversely affect the performance of any of the Contract Obligations including, if necessary, by applying for relief to appropriate tribunals or courts.

ARTICLE 13

INSURANCE, DAMAGE AND DESTRUCTION

SECTION 13.1. INSURANCE.

(A) Required Insurance. At all times during the Term, the Project Company shall obtain, maintain and comply with the terms and conditions of the Required Insurance, and shall pay all premiums with respect thereto as the same become due and payable; provided, however, that the Project Company shall not be obligated to carry Required Insurance to the extent and for any period that coverage for any particular risk or event is not available on commercially reasonable terms. The Water Authority in any such circumstances shall bear no risk or responsibility upon the occurrence of any such uninsured or underinsured risk or event, and (2) the unavailability of insurance coverage shall not cause any such risk or event to be considered an Uninsurable Force Majeure Event.

(B) Project Contractors and Subcontractors. The Project Company shall ensure that all Project Contractors and Subcontractors secure and maintain all insurance coverage and other financial sureties required by Applicable Law in connection with their presence and the performance of their duties at or concerning the Project.

(C) Compliance with Insurer Requirements. The Project Company shall comply promptly with the requirements of all insurers providing the Required Insurance pertaining to the Project. The Project Company shall not knowingly do or permit anything to be done that results in the cancellation or the reduction of coverage under any policy of Required Insurance.

(D) Proof of Insurance Coverage. Annually, the Project Company shall furnish, or shall cause a Project Contractor to furnish, the Water Authority with (1) any endorsements to the policies for such insurance obtained for the Project, and (2) certificates of insurance from each insurance carrier showing that the insurance required under such Project Contract is in force, the amount of the carrier's liability thereunder, and further providing that the insurance will not be canceled, changed or not renewed until the expiration of at least 30 days (or 10 days in the case of cancellation due to non-payment of premiums after written notice (by certified mail, return receipt requested) of such cancellation, change or non-renewal has been received by the Water Authority). Each policy of insurance (or renewal policy of insurance) furnished hereunder shall: (a) evidence the existence and coverage amounts of the Required Insurance; and (b) show the Water Authority as an "additional insured" or "named insured", as required by Appendix 7 (Insurance Requirements) for the particular policy of Required Insurance.

(E) Failure to Provide Insurance Coverage. If the Project Company fails to pay or cause to be paid any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Project Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, the Water Authority may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer and upon such payment by the Water Authority the amount thereof shall be immediately reimbursable as a Direct Payment to the Water Authority by the Project Company. The failure of the Project Company to obtain and maintain any Required Insurance shall not relieve the Project Company of its liability for any losses, be a satisfaction of any Project Company liability under this Water Purchase Agreement or in any way limit, modify or satisfy the Project Company's indemnity obligations hereunder.

(F) Reductions for Insurance Proceeds and Insurance Receivables. Whenever this Water Purchase Agreement obligates the Water Authority to pay any amount to

the Project Company in respect of an event or circumstance for which, or with respect to the consequences of which, an insurance claim may be made by the Project Company under the Required Insurance, the amount which the Water Authority is obligated to pay will be reduced by the amount of Insurance Proceeds and Insurance Receivables which the Project Company recovers or would have been entitled to recover if it had complied with the requirements of this Water Purchase Agreement or any policy of Required Insurance.

SECTION 13.2. PROTECTION OF PROJECT AND PRIVATE PROPERTY FROM LOSS, DAMAGE AND DESTRUCTION.

(A) **Protection.** The Project Company shall use care and diligence, and shall take all reasonable and appropriate precautions, to protect the Project from loss, damage or destruction. The Project Company shall report to the Water Authority and the applicable insurers providing the Required Insurance, immediately upon obtaining knowledge thereof, any material damage or destruction to the Project and as soon as practicable thereafter shall submit a full report to the Water Authority. Upon any such occurrence the Project Company also shall comply with the reporting requirements of any insurer providing Required Insurance. The Project Company shall submit to the Water Authority within five Business Days of receipt copies of all accident and other reports filed with, or given to the Project Company by, any insurer, adjuster or Governmental Body.

(B) **Repair of Property.** The Project Company shall promptly repair or replace all property owned by the Water Authority that is damaged by the Project Company or any Project Company Person in connection with the performance of, or the failure to perform, the Contract Obligations. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to at least its character and condition existing immediately prior to the damage.

SECTION 13.3. WATER PURCHASE AGREEMENT NOT AFFECTED BY DAMAGE OR DESTRUCTION.

Except as otherwise expressly provided herein, the partial destruction or damage or complete destruction of the Project by fire or other casualty will not permit either party to terminate this Water Purchase Agreement or to demand any increase in any amounts payable to the Project Company under this Water Purchase Agreement.

ARTICLE 14

UNCONTROLLABLE CIRCUMSTANCE PROCEDURES

SECTION 14.1. UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Extent of Relief Available to the Project Company. If an Uncontrollable Circumstance occurs, the Project Company may be entitled to relief from its obligations and extensions of time, and may claim compensation, but only as and to the extent provided in this Article, Article 15 (Insurable and Uninsurable Force Majeure Events), and Article 16 (Change in Law Events and Other Uncontrollable Circumstances). Such relief shall be available irrespective of whether an obligation of this Water Purchase Agreement expressly states that it is excused by Uncontrollable Circumstances.

(B) Mitigation Given Effect. Any relief to which the Project Company is entitled under this Article on account of Uncontrollable Circumstances shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Project Company in compliance with its duty to mitigate under Section 26.5 (General Duty to Mitigate).

(C) Applicable Law Compliance. Nothing in this Article shall be interpreted as relieving the Project Company of its obligation, following any and all Uncontrollable Circumstances, to perform its obligations under this Water Purchase Agreement in compliance with Applicable Law.

SECTION 14.2. PROCEDURES UPON THE OCCURRENCE OF AN UNCONTROLLABLE CIRCUMSTANCE.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of an Uncontrollable Circumstance, the Project Company shall give notice of the occurrence of the Uncontrollable Circumstance to the Water Authority as soon as practicable, and in any event within ten Business Days of the date the Project Company has knowledge that the Uncontrollable Circumstance has caused or is likely to cause an entitlement under this Water Purchase Agreement. The Project Company's notice shall include a written report:

- (1) Describing the Uncontrollable Circumstance and the cause thereof, to the extent known;
- (2) Stating the date on which the Uncontrollable Circumstance began and its estimated duration, to the extent known;
- (3) Summarizing the consequences of the Uncontrollable Circumstance and the expected impact on the performance of the Project Company's obligations under this Water Purchase Agreement; and
- (4) Indicating the nature and scope of the Project Company's potential entitlement to relief.

(B) Updates. The Project Company shall provide the Water Authority with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Uncontrollable Circumstance and the matters described in subsection 14.2(A) (Notice and Written Report). In particular, the Project Company shall notify the Water Authority as soon as the Uncontrollable Circumstance has ceased and of the time when performance of its affected obligations can be resumed.

(C) Submittal of Relief Request. The Project Company shall submit to the Water Authority a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested relief within 30 days after the notice referred to in subsection 14.2(A) (Notice and Written Report). If the specific relief cannot reasonably be ascertained within such 30-day period, the Project Company shall furnish such notice within such longer period as necessary to detail the event and ascertain such relief.

(D) Delay in Notification. If any Uncontrollable Circumstance notice or any required information is submitted by the Project Company to the Water Authority after the dates required under this Section, then the Project Company shall be entitled to relief provided due to the occurrence of the Uncontrollable Circumstance except to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information.

(E) Multiple and Overlapping Claims. The Project Company may make multiple but not duplicative claims with respect to an Uncontrollable Circumstance.

(F) Burden of Proof and Mitigation. The Project Company shall bear the burden of proof in establishing the occurrence of an Uncontrollable Circumstance and the entitlement to relief based thereon, and shall demonstrate that the Project Company complied with its mitigation obligations under Section 26.5 (General Duty to Mitigate).

(G) Resumption of Performance. Promptly following the occurrence of an Uncontrollable Circumstance, the Project Company shall use all reasonable efforts to eliminate the cause thereof and resume performance of this Water Purchase Agreement.

(H) Project Company Information. The Water Authority shall provide the Project Company information reasonably requested in order for the Project Company to reasonably assert an Uncontrollable Circumstance claim.

(I) Water Authority Response. Within 30 days after receipt of a relief request by the Project Company pursuant to subsection 14.2(C) (Submittal of Relief Request), the Water Authority shall issue a written determination as to the extent, if any, to which it concurs with the Project Company's request, and the reasons therefor.

(J) Agreement or Dispute. The agreement of the parties as to the specific relief to be given the Project Company on account of an Uncontrollable Circumstance shall be evidenced by a Contract Administration Memorandum or a Water Purchase Agreement Amendment, as applicable. Either party may refer any dispute for resolution pursuant to Article 18 (Dispute Resolution).

ARTICLE 15

INSURABLE AND UNINSURABLE FORCE MAJEURE EVENTS

SECTION 15.1. INSURABLE FORCE MAJEURE EVENTS.

(A) Project Company Reinstatement. If all or any part of the Project is damaged or destroyed on account of an Insurable Force Majeure Event, the Project Company shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction in compliance with Applicable Law and in accordance with Section 15.3 (Project Company's Obligations Upon Material Damage or Destruction).

(B) Schedule and Performance Relief. The Project Company shall be relieved from its obligation to perform the Contract Obligations to the extent that any failure to perform results from an Insurable Force Majeure Event. With respect to schedule relief:

(1) The Scheduled Commercial Operation Date shall be extended as and to the extent provided in Section 7.6 (Scheduled Commercial Operation Date); and

(2) Except as provided in Section 9.8(H) (Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term), the occurrence of an Insurable Force Majeure Event shall not operate to extend the Expiration Date, and accordingly shall not extend the period of time during which the Project Company is obligated to perform the Contract Obligations and entitled to receive the Monthly Water Purchase Payments.

(C) No Compensation Relief. If an Insurable Force Majeure Event occurs,

(1) The Unit Price shall not be increased, nor shall any other compensation be payable, on account of the occurrence of the Insurable Force Majeure Event;

(2) The Water Authority shall continue to have the right to impose Deductions for any failure to meet the Product Water Quality Guarantee; and

(3) The Project Company shall bear all costs resulting from the occurrence of an Insurable Force Majeure Event.

(D) Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration. The Water Authority and the Project Company shall cause an insurance proceeds account to be created and held by the Collateral Agent pursuant to the terms of the Collateral Trust Agreement. Upon the occurrence of an Insurable Force Majeure Event, all property Insurance Proceeds available for the repair, replacement or restoration of the Project shall be deposited in such insurance proceeds account and applied to such repair, replacement or restoration purposes in accordance with the terms of this Water Purchase Agreement and following the procedures set forth in the Collateral Trust Agreement, except in the event such proceeds are permitted to be applied to the payment of the Permitted Debt as provided therein.

(E) Water Authority Remedies and Termination Right. The failure of the Project Company to comply with its obligations under subsection 15.1(A) (Project Company Reinstatement) shall constitute a Project Company Remediable Breach which, if not remedied by the Project Company, shall entitle the Water Authority to exercise all of its remedies, including the right, by notice to the Project Company, (1) to terminate this Water Purchase

Agreement in accordance with Section 20.4 (Water Authority Termination Right), and (2) to step in and perform the Contract Obligations in accordance with Section 19.2 (Water Authority's Temporary Step-In Rights).

(F) Earthquakes. The parties acknowledge that Public Contracts Code Section 7105 is not applicable to the Project or this Water Purchase Agreement. The parties further acknowledge that earthquakes are defined and shall be treated as Uninsurable Force Majeure Events, notwithstanding the obligation of the Project Company to obtain and maintain earthquake insurance as part of the Required Insurance, as and to the extent provided in Appendix 7 (Insurance Requirements). In the event an earthquake occurs, the Insurance Proceeds from earthquake insurance maintained as part of the Required Insurance shall be applied to the repair, replacement or restoration on the Project with the effect on the Water Authority's payment obligations described in subsection 13.1(F) (Reductions for Insurance Proceeds and Insurance Receivables), (b) the Water Authority shall be responsible for all deductible amounts and for costs exceeding the policy coverage limits pursuant to its obligations under Section 15.2 (Uninsurable Force Majeure Events), and (c) the Unit Price shall be adjusted, and the parties shall have their respective rights, set forth in Section 15.2 (Uninsurable Force Majeure Events); provided, however, that the Unit Price adjustment to be made under this subsection shall be limited as and to the extent provided in subsection 6.3(B) (Limitation on Permitted Debt Issued for Compensation Adjustment Event Capital Costs Resulting from an Earthquake).

SECTION 15.2. UNINSURABLE FORCE MAJEURE EVENTS.

(A) Project Company Reinstatement. If all or any part of the Project is damaged or destroyed on account of an Uninsurable Force Majeure Event, the Project Company shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition hereof existing immediately prior to the damage or destruction and in compliance with Applicable Law.

(B) Schedule and Performance Relief. The Project Company shall be relieved from its obligation to perform the Contract Obligations to the extent that any failure to perform results from an Uninsurable Force Majeure Event. With respect to schedule relief:

(1) The Scheduled Commercial Operation Date shall be extended as and to the extent provided in Section 7.6 (Scheduled Commercial Operation Date); and

(2) Except as provided in Section 9.8(H) (Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term), the occurrence of an Uninsurable Force Majeure Event shall not operate to extend the Expiration Date, and accordingly shall not extend the period of time during which the Project Company is obligated to perform the Contract Obligations and entitled to receive the Monthly Water Purchase Payments.

(C) Compensation for Uninsurable Force Majeure Events Occurring Prior to the Commercial Operation Date. If any Uninsurable Force Majeure Event occurs prior to the Commercial Operation Date:

(1) The Project Company shall not be entitled to any adjustment to the Unit Price or other compensation with respect thereto prior to the Commercial Operation Date, nor any adjustment to the Unit Price or other compensation at all if the Commercial Operation Date never occurs; and

(2) If the Commercial Operation Date occurs, the Project Company's entitlement to compensation shall be solely through an adjustment to the Unit Price as

provided in subsection 15.2(D) (Compensation Relief for Uninsurable Force Majeure Events Occurring On and After the Commercial Operation Date).

(D) Compensation Relief for Uninsurable Force Majeure Events Occurring On and After the Commercial Operation Date. If an Uninsurable Force Majeure Event occurs on or after the Commercial Operation Date:

(1) The Unit Price (subject to the cap thereon provided in Section 17.14 (Cap on Increases in the Unit Price Due to Uncontrollable Circumstances) shall be:

(a) Reduced by an amount equal to Avoidable Costs; and

(b) Increased by an amount necessary to compensate the Project Company for any increase in the cost to the Project Company of performing the Contract Obligations, to the extent resulting from the Uninsurable Force Majeure Event; and

(2) The Water Authority shall not have the right to exercise its rights upon any failure to comply with the Product Water Quality Guarantee, to the extent caused by Uninsurable Force Majeure Event.

(E) Disaster Relief Funds. Upon the occurrence of an Force Majeure Event for which the Project Company is required to repair, replace or restore any part of the Project damaged or destroyed pursuant to Article 15 (Insurable and Uninsurable Force Majeure Events), the Water Authority shall promptly apply for and use all reasonable efforts to obtain any available State and federal disaster relief funds and shall make such funds available to repair, replace or rebuild the Project.

(F) Financing Unavailability Following an Uninsurable Force Majeure Event. In the event that financing is required to pay Compensation Adjustment Event Capital Costs in connection with the occurrence of an Uninsurable Force Majeure Event, the parties shall have their respective rights and obligations set forth in Section 6.3 (Financing Compensation Adjustment Event Capital Costs).

SECTION 15.3. PROJECT COMPANY'S OBLIGATIONS UPON MATERIAL DAMAGE OR DESTRUCTION.

(A) Draft Reinstatement Plan. If the Project suffers damage or destruction that is likely to cost more than \$5,000,000, Index Linked, to repair, replace and restore, the Project Company shall, as soon as practicable and in any event within 30 days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Project or to facilitate the continued operations of other parts of the Project, provide the Water Authority with a draft plan (the "Draft Reinstatement Plan") for the carrying out of the works necessary (the "Reinstatement Works") to repair, replace and restore the damaged or destroyed portions of the Project and related assets, and containing to the extent possible the details required to be included in the Reinstatement Plan under subsection 15.3(D) (Reinstatement Plan Details).

(B) Comment on Draft Reinstatement Plan. As soon as reasonably practicable and in any event within 15 Business Days after the delivery of the Draft Reinstatement Plan, the Water Authority shall provide the Project Company with any comments it may have on the Draft Reinstatement Plan.

(C) Reinstatement Plan. As soon as reasonably practicable and in any event within 15 Business Days after receipt of the Water Authority's comments, the Project Company shall deliver to the Water Authority a revised plan (the "Reinstatement Plan") to reasonably take into account the comments received from the Water Authority and making changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalized) with the person effecting the Reinstatement Works;

(D) Reinstatement Plan Details. The Reinstatement Plan shall set forth in as much detail as is reasonable in the circumstances:

(1) The identity of the person, or (if the Project Company is conducting a competitive process) persons, intended to effect the Reinstatement Works;

(2) The terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date upon which the Project is reasonably expected to become fully operational again and the Contract Obligations to be fully performed);

(3) The impact that implementation of the Reinstatement Plan will have on the revenues of the Project Company under this Water Purchase Agreement and on the payment obligations of the Project Company under the Project Contracts; and

(4) The total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works.

Thereafter, unless the damage or destruction was caused by an Uninsurable Force Majeure Event and a party elects to terminate this Water Purchase Agreement in accordance with the provisions of Section 22.1 (Termination Rights), the Project Company shall repair, replace or restore the Project, subject to Applicable Law.

SECTION 15.4. STANDARDS OF REPLACEMENT, REPAIR OR RECONSTRUCTION.

Any replacement, repair, or reconstruction of the Project or any part thereof pursuant to the provisions of Sections 15.1 (Insurable Force Majeure Events) or 15.2 (Uninsurable Force Majeure Events) shall be made or done in compliance with the Design Requirements and the requirements set forth in Appendix 3 (Project Design and Construction Work), subject to any agreement made between the Water Authority and the Project Company to revise the Design Requirements or the requirements set forth in Appendix 3 (Project Design and Construction Work) as they pertain to the replacement, repair or reconstruction work.

SECTION 15.5. UNAVAILABILITY OF REQUIRED INSURANCE.

The Project Company shall bear the risk of the unavailability of Required Insurance with Qualified Insurers and the risk that the premiums payable or the terms and conditions for insuring the risks intended to be covered by the Required Insurance are to any degree in excess of or are more burdensome than the premiums, terms and conditions existing on the Contract Date or assumed by the Project Company in entering into this Water Purchase Agreement.

ARTICLE 16

CHANGE IN LAW EVENTS AND OTHER UNCONTROLLABLE CIRCUMSTANCES

SECTION 16.1. CHANGE IN LAW EVENTS.

(A) Schedule and Performance Relief. The Project Company shall be relieved from its obligation to perform the Contract Obligations to the extent that any failure to perform results from a Change in Law Event. With respect to schedule relief:

(1) The Scheduled Commercial Operation Date shall be extended as and to the extent provided in Section 7.6 (Scheduled Commercial Operation Date); and

(2) Except as provided in Section 9.8(H) (Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term), the occurrence of a Change in Law Event shall not operate to extend the Expiration Date, and accordingly shall not extend the period of time during which the Project Company is obligated to perform the Contract Obligations and entitled to receive the Monthly Water Purchase Payments.

(B) Compensation Relief for Changes Occurring Prior to the Commercial Operation Date. If a Change in Law Event (except for a Change in Law Event described in item (1)(d) (Inclusions) (regarding CDPH permitting delay) of the definition thereof) occurs prior to the Commercial Operation Date:

(1) The Project Company shall not be entitled to any adjustment to the Unit Price or other compensation with respect thereto prior to the Commercial Operation Date, nor any adjustment to the Unit Price or other compensation at all if the Commercial Operation Date never occurs for any reason; and

(2) If the Commercial Operation Date occurs, the Project Company shall be compensated as provided in subsection 16.1(C) (Compensation Relief for Changes On or After the Commercial Operation Date), such compensation to be reflected in the Unit Price.

(C) Compensation Relief for Changes On or After the Commercial Operation Date. If a Change in Law Event (except for a Change in Law Event described in item (1)(d) (Inclusions) (regarding CDPH permitting delay) of the definition thereof) occurs on or after the Commercial Operation Date,

(1) The Unit Price (subject to the compensation adjustment limitations set forth in Section 4.8 (Cabrillo Raw Seawater Intake System Improvements), and further subject to the cap on adjustments to the Unit Price set forth in Section 17.14 (Cap on Increases in the Unit Price Due to Uncontrollable Circumstances)) shall be:

(a) Reduced by an amount equal to Avoidable Costs; and

(b) Increased by an amount necessary to compensate the Project Company for any increase in the cost to the Project Company of performing the Contract Obligations in compliance with Applicable Law, to the extent resulting from the Change in Law Event; and

(2) The Water Authority shall not have the right to exercise its rights upon any failure to meet the Product Water Quality Guarantee, to the extent caused by a Change in Law Event.

(D) Financing Unavailability Following a Change in Law Event. In the event that financing is required to pay Compensation Adjustment Event Capital Costs in connection with a Change in Law Event, the parties shall have their respective rights and obligations set forth in Section 6.3 (Financing Compensation Adjustment Event Capital Costs).

SECTION 16.2. DISCRIMINATORY OR SPECIFIED CHANGES IN TAX LAW.

(A) Changes Prior to the Commercial Operation Date. If a Discriminatory Change in Tax Law or Specified Change in Tax Law occurs prior to the Commercial Operation Date:

(1) Neither party shall be entitled to any compensation with respect thereto prior to the Commercial Operation Date, nor any compensation at all if the Commercial Operation Date never occurs for any reason; and

(2) If the Commercial Operation Date occurs, the Project Company or the Water Authority shall be entitled to additional compensation for any revenue loss or revenue gain for the Project Company or any Shareholder (as the case may be) directly attributable thereto, such compensation to be reflected through an adjustment to the Unit Price (subject to the cap on Unit Price adjustments set forth in Section 17.14 (Cap on Increases in the Unit Price Due to Uncontrollable Circumstances)).

(B) Changes On or After the Commercial Operation Date. If a Discriminatory Change in Tax Law or a Specified Change in Tax law occurs on or after the Commercial Operation Date, the Project Company or the Water Authority shall be entitled to additional compensation for any revenue loss or revenue gain for the Project Company or any Shareholder (as the case may be) directly attributable thereto.

SECTION 16.3. OTHER UNCONTROLLABLE CIRCUMSTANCES.

(A) Schedule and Performance Relief. The Project Company shall be relieved from its obligation to perform the Contract Obligations to the extent that any failure to perform results from an Other Uncontrollable Circumstance (except that, with respect to Regulated Site Conditions or Differing Site Conditions, the Project Company shall be entitled only to schedule relief). With respect to schedule relief:

(1) The Scheduled Commercial Operation Date shall be extended as and to the extent provided in Section 7.6 (Scheduled Commercial Operation Date); and

(2) Except as provided in subsection 9.8(H) (Product Water Not Delivered or Received Due to Uncontrollable Circumstances; Extension of Term), the occurrence of an Other Uncontrollable Circumstance shall not operate to extend the Expiration Date, and accordingly shall not extend the period of time during which the Project Company is obligated to perform the Contract Obligations and entitled to receive the Monthly Water Purchase Payments.

(B) Compensation for Other Uncontrollable Circumstances Occurring Prior to the Commercial Operation Date. If an Other Uncontrollable Circumstance that is listed or referred to in "Inclusions - Performance, Schedule and Compensation Relief" in the definition of Uncontrollable Circumstances (and subject to any specific limitations provided herein with

respect to the amount of compensation relief to be provided upon the occurrence of the particular event or circumstance) occurs prior to the Commercial Operation Date:

(1) The Project Company shall not be entitled to any adjustment to the Unit Price or other compensation with respect thereto prior to the Commercial Operation Date, nor any adjustment to the Unit Price or other compensation at all if the Commercial Operation Date never occurs; and

(2) If the Commercial Operation Date occurs, the Project Company shall be compensated as provided in subsection 16.3(C) (Compensation Relief for Other Uncontrollable Circumstances Occurring On and After the Commercial Operation Date), such compensation to be reflected in the Unit Price.

(C) Compensation Relief for Other Uncontrollable Circumstances Occurring On and After the Commercial Operation Date. If an Other Uncontrollable Circumstance that is listed or referred to in “Inclusions - Performance, Schedule and Compensation Relief” in the definition of Uncontrollable Circumstances (and subject to any specific limitations provided herein with respect to the amount of compensation relief to be provided upon the occurrence of the particular event or circumstance) occurs on or after the Commercial Operation Date:

(1) The Unit Price (subject to the cap on adjustments to the Unit Price set forth in Section 17.14 (Cap on Increases in the Unit Price Due to Uncontrollable Circumstances)) shall be:

(a) Reduced by an amount equal to Avoidable Costs; and

(b) Increased by an amount necessary to compensate the Project Company for any increase in the cost to the Project Company of performing the Contract Obligations, to the extent resulting from the Other Uncontrollable Circumstance; and

(2) The Water Authority shall not have the right to exercise its rights upon any failure to meet the Product Water Quality Guarantee, to the extent caused by an Uncontrollable Circumstance.

(D) Financing Unavailability Following an Other Uncontrollable Circumstance. In the event that financing is required to pay Compensation Adjustment Event Capital Costs in connection with an Other Uncontrollable Circumstance, the parties shall have their respective rights and obligations set forth in Section 6.3 (Financing Compensation Adjustment Event Capital Costs).

ARTICLE 17

MONTHLY WATER PURCHASE PAYMENTS

SECTION 17.1. PAYMENTS GENERALLY.

(A) Monthly Water Purchase Payments Following the Commercial Operation Date. From and after the Commercial Operation Date and through the Termination Date, the Water Authority shall pay the Project Company Monthly Water Purchase Payments in accordance with the terms hereof.

(B) Limitation on Payments. Other than the payments expressly provided for herein, the Project Company shall have no right to any further compensation from the Water Authority in connection with the delivery of Product Water, the performance of the Contract Obligations, or otherwise in connection with the Project.

SECTION 17.2. MONTHLY DELIVERY RECORDS.

(A) Monthly Product Water Deliveries. The Project Company shall record the Firm Daily Demand Order, the Monthly Product Water Order and the number of Monthly Delivered Water Units for each Billing Period, rounding the number of Units of the Monthly Delivered Water Units to the nearest one-tenth of one Acre Foot.

(B) Monthly Demand Shortfall Units. “Monthly Demand Shortfall Units” for any Billing Period shall mean the amount by which the Monthly Product Water Order is less than the Minimum Monthly Demand Commitment. Monthly Demand Shortfall Units shall, without double counting, be characterized and recorded as Monthly Excused Demand Shortfall Units or Monthly Unexcused Demand Shortfall Units, as applicable. Illustrative examples of the recording and categorization of Monthly Demand Shortfall Units are provided in Tables 2.2 and 3.2 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments).

(C) Monthly Supply Shortfall Units. “Monthly Supply Shortfall Units” for any Billing Period shall mean the amount by which Monthly Delivered Water Units are less than the Adjusted Monthly Supply Commitment. Monthly Supply Shortfall Units shall, without double counting, be characterized and recorded as Monthly Excused Supply Shortfall Units, Monthly Unexcused Supply Shortfall Units, or Monthly Unscheduled Outage Units, as applicable, provided that the cumulative amount of Monthly Unscheduled Outage Units for any Contract Year shall not exceed the Annual Unscheduled Outage Unit Allowance. Illustrative examples of the recording and categorization of Monthly Supply Shortfall Units are provided in Tables 2.3 and 3.3 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments).

(D) Base Product Water Deliveries. Beginning at the start of each Contract Year, the Project Company shall keep a running cumulative total of Monthly Delivered Water Units, Monthly Unexcused Demand Shortfall Units, and Monthly Unscheduled Outage Units, until such cumulative total equals the Minimum Annual Demand Commitment. Monthly Delivered Water Units, Monthly Unexcused Demand Shortfall Units and Monthly Unscheduled Outage Units so recorded shall be deemed to be “Base Product Water Deliveries”. Illustrative examples of the recording of Base Product Water Deliveries are provided in Tables 2.4 and 3.4 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments).

(E) Additional Product Water Deliveries. Once Base Product Water Deliveries for a Contract Year have reached the Minimum Annual Demand Commitment, the Project Company shall keep a further running cumulative total of additional Monthly Delivered Water Units delivered in such Contract Year, until such cumulative total equals the Maximum Annual

Supply Commitment. Monthly Delivered Water Units so recorded shall be deemed to be “Additional Product Water Deliveries”. Illustrative examples of the recording of Additional Product Water Deliveries are provided in Tables 2.5 and 3.5 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments).

(F) Excess Product Water Deliveries. Monthly Delivered Water Units in any Contract Year in excess of the Maximum Annual Supply Commitment shall be deemed to be “Excess Product Water Deliveries”.

SECTION 17.3. EXCUSED SUPPLY SHORTFALL UNIT TRACKING ACCOUNT AND EXCUSED DEMAND SHORTFALL UNIT TRACKING ACCOUNT.

(A) Account Establishment, Maintenance and Use. The Project Company shall establish and maintain an Excused Demand Shortfall Unit Tracking Account and an Excused Supply Shortfall Unit Tracking Account, in which it shall record and track the number of Monthly Excused Demand Shortfall Units and Monthly Excused Supply Shortfall Units occurring throughout the Term that have not been cured pursuant to the provisions of subsection 17.3(B) (Changes to Excused Demand Shortfall Tracking Account Balance) and subsection 17.3(C) (Changes to Excused Supply Shortfall Tracking Account). The Excused Demand Shortfall Unit Tracking Account and the Excused Supply Shortfall Tracking Account shall be used, among other things, to make determinations with respect to the extension of the Term pursuant to subsection 9.8(H) (Product Water Not Delivered or Received Due to Uncontrollable Circumstances; Extension of Term). Table 4.2 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments) provides various examples of the tracking account adjustments set forth in this Section.

(B) Changes to the Excused Demand Shortfall Unit Tracking Account Balance. For each Contract Year:

(1) Opening Balance. The opening balance of the Excused Demand Shortfall Unit Tracking Account shall be the closing balance from the prior Contract Year, except that, in the first Contract Year of operations, the opening balance shall be zero.

(2) Additions for Current Year Excused Demand Shortfall Units. The opening balance of the Excused Demand Shortfall Unit Tracking Account shall be increased by the lesser of (a) the total amount of Monthly Excused Demand Shortfall Units for such Contract Year, or (b) an amount equal to (i) the amount by which Base Product Water Deliveries for such Contract Year falls short of the Minimum Annual Demand Commitment, multiplied by (ii) a fraction, the numerator of which is the total amount of Monthly Excused Demand Shortfall Units for such Contract Year and the denominator is the sum of the Monthly Excused Demand Shortfall Units and the Monthly Excused Supply Shortfall Units for such Contract Year. Monthly Excused Demand Shortfall Units incurred during such Contract Year that are not added to the Excused Demand Shortfall Unit Tracking Account pursuant to the preceding sentence shall be deemed to have been cured during the Contract Year. For avoidance of doubt, satisfaction of the Minimum Annual Demand Commitment in any Contract Year through Base Product Water Deliveries is deemed as curing all Excused Demand Shortfall Units incurred during such Contract Year.

(3) Reductions for Curing of Prior Year Excused Demand Shortfall Units. The opening balance of the Excused Demand Shortfall Unit Tracking Account shall be reduced by (a) the sum of the Additional Product Water Deliveries and Excess Product Water Deliveries incurred during such Contract Year, multiplied by (b) a fraction, the numerator of which is the opening balance of the Excused Demand Shortfall Unit Tracking Account and the denominator is the sum of the opening balances of the

Excused Demand Shortfall Unit Tracking Account and the Excused Supply Shortfall Unit Tracking Account, provided that the balance of the Excused Demand Shortfall Unit Tracking Account shall never be reduced below zero.

(4) Closing Balance. The closing balance of the Excused Demand Shortfall Unit Tracking Account shall be the opening balance for the subsequent Contract year as provided in item (1) of this subsection, as adjusted as provided in items (2) and (3) of this subsection.

(C) Changes to the Excused Supply Shortfall Unit Tracking Account Balance.
For each Contract Year:

(1) Opening Balance. The opening balance of the Excused Supply Shortfall Unit Tracking Account shall be the closing balance from the prior Contract Year, except that, in the first Contract Year of operations, the opening balance shall be zero.

(2) Additions for Current Year Excused Supply Shortfall Units. The opening balance of the Excused Supply Shortfall Unit Tracking Account shall be increased by the lesser of (a) the total amount of Monthly Excused Supply Shortfall Units for such Contract Year or (b) an amount equal to (i) the amount by which Base Product Water Deliveries for such Contract Year falls short of the Minimum Annual Demand Commitment, multiplied by (ii) a fraction, the numerator of which is the total amount of Monthly Excused Supply Shortfall Units for such Contract Year and the denominator is the sum of the Monthly Excused Demand Shortfall Units and the Monthly Excused Supply Shortfall Units for such Contract Year. Monthly Excused Supply Shortfall Units incurred during such Contract Year that are not added to the Excused Demand Shortfall Unit Tracking Account pursuant to the preceding sentence shall be deemed to have been cured during the Contract Year. For avoidance of doubt, satisfaction of the Minimum Annual Demand Commitment in any Contract Year through Base Product Water Deliveries is deemed as curing all Excused Supply Shortfall Units incurred during such Contract Year.

(3) Reduction for Curing of Prior Year Excused Supply Shortfall Units. The opening balance of the Excused Supply Shortfall Unit Tracking Account shall be reduced by the sum of the Additional Product Water Deliveries and Excess Product Water Deliveries incurred during such Contract Year times (ii) the fraction in which the numerator is the opening balance of the Excused Supply Shortfall Unit Tracking Account and the denominator is the sum of the opening balances of the Excused Demand Shortfall Unit Tracking Account and the Excused Supply Shortfall Unit Tracking Account, provided that the balance of the Excused Supply Shortfall Unit Tracking Account shall never be reduced below zero.

(4) Closing Balance. The closing balance of the Excused Supply or Demand Shortfall Unit Tracking Account shall be the opening balance for the subsequent Contract year as provided in item (1) of this subsection, as adjusted as provided in items (2) and (3) of this subsection.

SECTION 17.4. CAPITAL CHARGES.

(A) Debt Service Charge. The Debt Service Charge for each Contract Year shall be the per Acre-Foot amount set forth in Table 1.1 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments). The Debt Service Charge is fixed for each Contract Year as of the Contract Date (except as provided in subsection 9.4(C) (Decrease in the Fixed Unit Price and the Operating Period Shortfall Payment Unit Price) and in subsection 17.13(B) (Adjustments to the Unit Price), and shall not be Index-Linked.

(B) Equity Return Charge. The Equity Return Charge for each Contract Year shall be the per Acre-Foot amount set forth in Table 1.2 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments). The Equity Return Charge is fixed for each Contract Year as of the Contract Date (except as provided in subsection 9.4(C) (Decrease in the Fixed Unit Price and the Operating Period Shortfall Payment Unit Price) and in subsection 17.13(B) (Adjustments to the Unit Price), and shall not be Index-Linked.

SECTION 17.5. OPERATING CHARGES.

(A) Fixed Operating Charge. The Fixed Operating Charge as of the Financial Closing Date shall be the per-Acre Foot amount set forth in Table 1.4 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments). The Fixed Operating Charge shall be Index Linked and is subject to adjustment as provided in subsection 9.4(C) (Decrease in the Fixed Unit Price and the Operating Period Shortfall Payment Unit Price) and in subsection 17.13(B) (Adjustments to the Unit Price).

(B) Variable Operating Charge. The Variable Operating Charge as of the Financial Closing Date shall be the per-Acre Foot amount set forth in Table 1.4 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments). The Variable Operating Charge shall be Index-Linked, and shall be subject to adjustment as provided in subsection 17.13(B) (Adjustments to the Unit Price).

SECTION 17.6. ELECTRICITY CHARGES.

(A) Fixed Electricity Charge. The Fixed Electricity Charge for each Contract Year shall be the per-Acre Foot amount determined in accordance with Appendix 9 (Electricity Charge), subject to adjustment as provided in subsection 9.4(C) (Decrease in the Fixed Unit Price and the Operating Period Shortfall Payment Unit Price) and in subsection 17.13(B) (Adjustments to the Unit Price).

(B) Variable Electricity Charge. The Variable Electricity Charge for each Billing Period in each Contract Year shall be the per-Acre Foot amount determined in accordance with Appendix 9 (Electricity Charge), subject to adjustment as provided in subsection 17.13(B) (Adjustments to the Unit Price).

SECTION 17.7. UNIT PRICES.

(A) Fixed Unit Price. The Fixed Unit Price shall be an amount equal to the sum of (1) the Debt Service Charge, (2) the Equity Return Charge, (3) the Fixed Operating Charge, and (4) the Fixed Electricity Charge.

(B) Variable Unit Price. The Variable Unit Price shall be an amount equal to the sum of (1) the Variable Operating Charge, and (2) the Variable Electricity Charge.

(C) Excess Product Water Deliveries Incentive Unit Price. The Excess Product Water Deliveries Incentive Unit Price is \$195 (Index-Linked).

SECTION 17.8. MONTHLY WATER PURCHASE PAYMENTS.

(A) Monthly Payments. The Water Authority shall pay the Project Company a Monthly Water Purchase Payment for each Billing Period during the Term equal to:

- (1) the number of Monthly Delivered Water Units delivered during such Billing Period that constitute Base Product Water Deliveries, multiplied by the sum of the Fixed Unit Price and the Variable Unit Price; plus
- (2) the number of Monthly Unexcused Demand Shortfall Units and Monthly Unscheduled Outage Units that constitute Base Product Water Deliveries occurring during such Billing Period, multiplied by the Fixed Unit Price; plus
- (3) the number of Monthly Delivered Water Units delivered during such Billing Period that constitute Additional Product Water Deliveries, multiplied by the Variable Unit Price; plus
- (4) the number of Monthly Delivered Water Units delivered during such Billing Period that constitute Excess Product Water Deliveries, multiplied by the sum of the Variable Unit Price and the Excess Product Water Deliveries Incentive Unit Price; plus or minus
- (5) Direct Payments,

all subject to the adjustments and cap provided for in this Article. No payments shall be due for Monthly Unexcused Demand Shortfall Units or Monthly Unscheduled Outage Units that are either Additional Product Water Deliveries or Excess Product Water Deliveries. To the extent the Project Company receives compensation pursuant to item (A)(4) of this Section, it shall compensate the Operating Service Provider as provided in subsection 12.1(F) (Incentive Compensation Payable to Operating Services Provider).

(B) Annual Tracking Account Reduction Charge Applicable to July Monthly Payments. The Annual Tracking Account Reduction Charge determined for any Contract Year pursuant to Section 17.9 (Annual Tracking Account Reduction Charge) shall be applied to increase the July Monthly Water Purchase Payment due in the next-subsequent Contract Year.

SECTION 17.9. ANNUAL TRACKING ACCOUNT REDUCTION CHARGE.

(A) Annual Tracking Account Reduction Charge. “Annual Tracking Account Reduction Charge”, for purposes of this Water Purchase Agreement, means the sum of (1) the Annual Excused Demand Shortfall Unit Tracking Account Reduction Charge, and (2) the Annual Excused Supply Shortfall Unit Tracking Account Reduction Charge.

(B) Annual Excused Demand Shortfall Unit Tracking Account Reduction Charge. To the extent that Additional Product Water Deliveries or Excess Product Water Deliveries are applied to reduce the Excused Demand Shortfall Unit Tracking Account Balance pursuant to subsection 17.3(B) (3) (Reductions for Curing of Prior Year Excused Demand Shortfall Units), such application will result in an Annual Excused Demand Shortfall Unit Tracking Account Reduction Charge equal to (1) the number of Units so applied, multiplied by (2) the Fixed Unit Price.

(C) Annual Excused Supply Shortfall Unit Tracking Account Reduction Charge. To the extent that Additional Product Water Deliveries or Excess Product Water Deliveries are applied to reduce the Excused Demand Shortfall Unit Tracking Account Balance pursuant to item (3) of subsection 17.3(C) (3) (Reductions for Curing of Prior Year Supply Shortfall Units), such application will result in an Annual Excused Supply Shortfall Unit Tracking Account Reduction Charge equal to (1) the number of Units so applied, multiplied by (2) the sum of the Fixed Unit Price and the Operating Period Shortfall Payment Unit Price.

SECTION 17.10. ANNUAL ADJUSTED SUPPLY COMMITMENT TRUE-UP PAYMENT BY THE PROJECT COMPANY.

(A) Annual Adjusted Supply Commitment True-Up Payment. The Project Company shall make an Annual Adjusted Supply Commitment True-Up Payment to the Water Authority at the end of each Contract Year in the manner provided in subsection (C) of this Section. The “Annual Adjusted Supply Commitment True-Up Payment” shall be an amount equal to the positive balance, if any, of:

(1) The Base Product Water Deliveries for such Contract Year, multiplied by the Fixed Unit Price, minus

(2) (a) a fraction, the numerator of which is the sum of the Base Product Water Deliveries and the Additional Product Water Deliveries for such Contract Year, and the denominator of which is the Adjusted Annual Supply Commitment for such Contract Year, multiplied by (b) the Fixed Annual Costs.

(B) No Offset. The obligation of the Project Company to make any Annual Adjusted Supply Commitment True-Up Payment is independent of the charges and credits on the basis of which the Monthly Water Purchase Payments are determined, and shall not be used to offset Monthly Water Purchase Payments.

(C) Subordination. The Project Company shall be obligated to make Annual Adjusted Supply Commitment True-Up Payments solely from amounts available for such purposes in the Stabilization Account established under the Collateral Trust Agreement and upon the terms and conditions set forth therein. The parties acknowledge, accordingly, that (1) the right of the Water Authority to receive Annual Adjusted Supply Commitment True-Up Payments is subordinate to the right of the holders of the Plant Bonds to receive debt service payments, and (2) the right of the Project Company to receive distributions is subordinate to the right of the Water Authority to receive Annual Adjusted Supply Commitment True-Up Payments. Any Annual Adjusted Supply Commitment True-Up Payment that is due to the Water Authority with respect to a Contract Year and not paid within 30 days following the end of such Contract Year shall accrue interest until paid in accordance with Section 17.23 (Interest on Overdue Amounts).

SECTION 17.11. DEDUCTIONS CREDIT.

The Deductions Credit component of the Direct Payments component of the Monthly Water Purchase Payments shall be the sum of all Deductions imposed with respect to the applicable Billing Period.

SECTION 17.12. DIRECT PAYMENTS.

The Direct Payments component of the Monthly Water Purchase Payments, which may be a charge or a credit, shall be equal to the net amount of the Direct Payments with respect to the applicable Billing Period.

SECTION 17.13. FORM OF COMPENSATION ADJUSTMENTS FOR EVENTS OCCURRING AFTER THE CONTRACT DATE.

(A) General. The Water Purchase Agreement provides increased or decreased compensation to the Project Company over the Term based on the occurrence of specified events following the Contract Date (“Compensation Adjustment Events”). Such payments and adjustments shall be paid and made either as an adjustment to the Unit Price or

a Direct Payment, as provided in this Section. The Project Company shall substantiate its entitlement to additional compensation in the manner required by Section 17.20 (Cost Substantiation for Additional Work Required Due to Compensation Adjustment Events).

(B) Adjustments to the Unit Price. Compensation to the Project Company shall be payable as an adjustment to the appropriate Charge component of the applicable Unit Price ("Unit Price Adjustments"), and other adjustments to the appropriate Charge component of the applicable Unit Price shall be made, in accordance with and subject to the terms and conditions of this Water Purchase Agreement (including Section 17.14 (Cap on Increases in the Unit Price Due to Uncontrollable Circumstances)), upon the occurrence of the events described in the following Sections and subsections:

- (1) Subsection 4.2(F) (Letter of Credit - Release or Suspension);
- (2) Section 4.8 (Cabrillo Raw Seawater Intake System Improvements);
- (3) Section 4.10 (Good Management Practice and Good Design and Construction Practice);
- (4) Subsection 6.3(A) (Financing Compensation Adjustment Event Capital Costs);
- (5) Subsection 6.4(A) (Financing Directed Capital Modification Capital Costs);
- (6) Section 6.8 (Refinancing Gain);
- (7) Subsection 9.17(D) (Cleanup and Costs);
- (8) Subsection 11.5(D) (Preparation Costs);
- (9) Subsection 11.6(A) (Directed Capital Modifications and Compensation Adjustment Events);
- (10) Section 15.2 (Uninsurable Force Majeure Events);
- (11) Section 16.1 (Change in Law Events);
- (12) Section 16.2 (Discriminatory or Specified Changes in Tax Law); and
- (13) Section 16.3 (Other Uncontrollable Circumstances).

The adjustment to one or more of the Charge components of the Unit Price to be made under this subsection shall be established at the time the appropriate compensation relief is agreed upon, and such compensation shall be payable solely to the extent that the Water Authority is obligated to make Monthly Water Purchase Payments based on the Unit Price with respect to Product Water delivered or available for delivery hereunder. The Project Company acknowledges, accordingly, that any failure by the Project Company to deliver or make available for delivery Product Water for which it would have been entitled to payment based on the Unit Price (including the adjustment to one or more Charge components thereof reflecting such compensation relief) will result in a reduction in the compensation relief to which it would have been entitled upon the occurrence of the compensation relief circumstance had the Project Company delivered or made available for delivery such Product Water.

(C) Direct Payments. The Water Authority shall pay the Project Company as a direct payment (and not as part of an adjustment to the Unit Price under subsection (B) of this Section), and the Project Company shall pay the Water Authority as a direct payment, any amounts due under or referred to in the following Sections. The net amount shall constitute the Direct Payment and applied as a credit or debit in calculating the Monthly Water Purchase Payment:

- (1) Subsection 6.9(F) (Project Company Expenses);
- (2) Section 6.10 (Procedures Relating to Potential Tax Gross-Ups);
- (3) Subsection 7.5(F) (Adjustment for Underpayment);
- (4) Subsection 8.4(B) (SDG&E Special Conditions Contract);
- (5) Subsection 8.4(C) (Alternative Electricity Suppliers);
- (6) Section 8.14 (Annual Management Fee);
- (7) Subsection 9.1(E) (Hydraulic Transients);
- (8) Subsection 9.2(E) (Remedies for Breach of Product Water Quality Guarantee-Off-Specification Product Water);
- (9) Subsection 9.8(F) (Limitations on the Project Company's Product Water Supply Obligations);
- (10) Subsection 9.9(G) (Extraordinary Flow Rate Change Payments);
- (11) Subsection 9.11(A) (General);
- (12) Subsection 9.11(F) (Annual Operating Period Shortfall Payment True-Up Payment);
- (13) Section 9.12 (Drought Shortfall Payments);
- (14) Section 9.20 (Administrative Obligations);
- (15) Subsection 11.5(D) (Preparation Costs);
- (16) Subsection 13.1(E) (Failure to Provide Insurance Coverage);
- (17) Section 17.10 (Deductions Credit);
- (18) Article 19 (Remedies of the Parties and Water Authority Step-In Rights);
- (19) Section 23.10 (Project Company to Cooperate);
- (20) Section 25.1 (Project Company's Obligation to Indemnify), and any other term or condition hereof, under which indemnification payments are owed by the Project Company;
- (21) Appendix 7 (Insurance Requirements), Section 7.2.10 with respect to any additional insurance coverage requested by the Water Authority;

(22) Appendix 8 (Supplemental Performance Guarantee Requirements), with respect to payment adjustments due to Water Authority-directed chlorine residual and chloramine/ammonia ratio levels made pursuant to subsection 9.2(C) (Chlorine Residual and Chloramine/Ammonia Ratio);

(23) Any term or condition hereof, under which non-compliance results in actual or liquidated damages payable by either party; and

(24) Any other term or condition hereof, under which payment is owed by one party to the other that (a) has not been accounted for by an adjustment to the Unit Price under subsection (B) of this Section, and (b) and has not been paid to the Project Company on a lump sum basis for Compensation Adjustment Event Capital Costs as provided in Section 11.4 (Lump Sum Payments for Directed Capital Modification Capital Costs and Compensation Adjustment Event Capital Costs) of this Section.

(D) Lump Sum Payments for Directed Capital Modification Capital Costs and Compensation Adjustment Event Capital Costs. Subsection 6.3(E) (Water Authority Right to Finance Compensation Adjustment Event Capital Costs) provides for an election by the Water Authority to compensate the Project Company for Compensation Adjustment Event Capital Costs on a lump sum basis, rather than through an adjustment to the Unit Price. Any such lump sum payment shall be made on a negotiated progress payment basis, separate and apart from the Monthly Water Purchase Payments.

SECTION 17.14. CAP ON INCREASES IN THE UNIT PRICE DUE TO UNCONTROLLABLE CIRCUMSTANCES.

(A) Baseline Unit Price. The “Baseline Unit Price” at any time for purposes of this Water Purchase Agreement shall be (1) the sum of the Fixed Unit Price and the Variable Unit Price at such time, and (2) the sum of all Unit Price Adjustments referred to in subsection 17.13(B) (Adjustments to the Unit Price) to be made based on the events or circumstances referred to in items (1), (3), (4), (5), (6), (7), (8), and (9) and effective at such time that increase the Fixed Unit Price and the Variable Unit Price. The Baseline Unit Price shall not include any Unit Price Adjustments under such subsection and effective at such time that decrease the Fixed Unit Price or the Variable Unit Price, such as decreases resulting from a Refinancing Gain.

(B) Baseline Unit Price Cap. The sum of the increases in the Fixed Unit Price and the Variable Unit Price to be made based on the events or circumstances referred to in items (2), (10), (11), (12) and (13) of subsection 17.13(B) (Adjustments to the Unit Price) (which increases reflect the cumulative cost of all Uninsurable Force Majeure Events, Change in Law Events, Other Uncontrollable Circumstances, and Discriminatory or Specified Changes in Tax Law) occurring in the aggregate up to the time of any particular calculation) shall not exceed an amount equal to 30% of the Baseline Unit Price at any time, nor shall the sum of such increases effective in any one Contract Year exceed an amount equal to 10% of the Baseline Unit Price effective in the immediately preceding Contract Year (such limitations together constituting the “Baseline Unit Price Cap”). Accordingly, the Project Company shall not be entitled to, and shall forego, any compensation on account of such event or circumstance to the extent the sum of any such increases would at any time cause the Baseline Unit Price Cap to be exceeded. There shall be no deferral or carry forward of any such foregone compensation.

(C) Recordkeeping. The Project Company shall maintain current records of the amount of the Baseline Unit Price and the Baseline Unit Price Cap (and the basis of calculating such amounts) in effect from time to time, and provide the Water Authority with copies thereof upon request, any change in such amounts, and upon making a claim for

compensation based on any of the events or circumstances referred to in subsection(B) of this Section.

SECTION 17.15. BILLING AND PAYMENT.

(A) Invoicing and Monthly Water Purchase Payment Due Date. The Project Company shall provide the Water Authority with an invoice for each Billing Period by the tenth Business Day following the end of such Billing Period. The invoice shall set forth the amount of the Monthly Water Purchase Payment due with respect to such Billing Period and, in addition, shall state the accumulated payments to the date of such invoice and such other documentation or information as the Water Authority may reasonably require to determine the accuracy and appropriateness of the invoice in accordance with this Water Purchase Agreement. The Water Authority shall pay the invoice within 30 days of receipt.

(B) Late Annual Monthly Water Purchase Payments. In the event the Water Authority fails to make a Monthly Water Purchase Payment when due under subsection (A) of this Section, interest shall accrue and be payable thereon, as and to the extent provided in Section 17.23 (Interest on Overdue Amounts).

SECTION 17.16. ESTIMATES AND ADJUSTMENTS.

(A) First and Last Billing Periods. If the first or last Billing Period is a partial month, any computation made on the basis of a Billing Period shall be adjusted on a pro-rata basis to take account of the partial period of service.

(B) Budgeting. For Water Authority budgeting purposes, (1) no later than 60 days prior to the Commercial Operation Date, and (2) no later than 90 days preceding each Contract Year, the Project Company shall provide to the Water Authority a written statement setting forth for such Contract Year its reasonable estimate of the Monthly Water Purchase Payments, each component thereof, the Inflation Index, and the adjustments to the Fixed Electricity Charge and Variable Electricity Charge provided for in Section ___ of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments). The estimate shall not be binding on the Project Company but, in the event that any component of the Monthly Water Purchase Payments for a Billing Period cannot be determined when the invoice for such Billing Period is being submitted, then such estimate shall be used, subject to an appropriate adjustment in a subsequent invoice when the actual value of such component becomes available.

SECTION 17.17. ANNUAL SETTLEMENT.

Within 60 days after the end of each Contract Year, the Project Company shall provide to the Water Authority an annual settlement statement (the "Annual Settlement Statement") setting forth the actual aggregate Monthly Water Purchase Payments payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by the Water Authority with respect to such Contract Year. The Water Authority or the Project Company, as appropriate, shall pay all known and undisputed amounts within 60 days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Project Company of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the Project Company shall file with the Water Authority an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

SECTION 17.18. TAXES.

The Project Company shall pay, without reimbursement from the Water Authority, all Taxes imposed with respect to the Plant or the Contract Obligations, including:

- (1) any property tax on the Plant;
- (2) any possessory interest tax imposed with respect to the Plant;
- (3) any sales or use tax imposed on building materials incorporated in the Plant; and
- (4) any sales or use tax imposed on operating or maintenance supplies and services,

whether any such Tax exists on the Contract Date or is imposed at any time during the Term. The Project Company acknowledges that all such Taxes have been taken into account in establishing the Monthly Water Purchase Payments; provided, however, that with respect to new or changed Taxes resulting from a Discriminatory Change in Tax Law or a Specified Change in Tax Law, the Project Company or the Water Authority shall be entitled to an adjustment to the Unit Price on account of the occurrence of a Change in Law Event as provided in Section 16.2 (Discriminatory or Specified Changes in Tax Law).

SECTION 17.19. RISK OF ADVERSE TAX OR ACCOUNTING TREATMENT.

There shall be no adjustment of the Monthly Water Purchase Payments or any other amount payable to, and no relief from any obligation of, the Project Company hereunder on account of:

- (1) Except as provided in Section 16.1 (Change in Law Events) with respect to a Discriminatory Change in Tax Law, any change in any provision of Income Tax law to take effect after the Contract Date pertaining to the transactions contemplated hereby which affects the Project Company or any other person (including, without limitation, any provisions thereof pertaining to Income Tax rates or to the Income Tax treatment of the Monthly Water Purchase Payments or any other payment between the parties), notwithstanding any assumptions made by the Project Company in entering into this Water Purchase Agreement or any Project Contract as to the provisions of Income Tax law which would be applicable to this transaction or their effect on the Project Company or such other person,
- (2) Any administrative or judicial determination which is adverse to the Project Company or any other person as to any Income Tax treatment or consequence arising in connection herewith, including any such determination made with respect to depreciation, amortization or credits with respect to equity invested in the Project or with respect to the exclusion of interest on any obligation issued to finance the Project where such interest was intended to be excludable from taxpayer gross income,
- (3) Any inability of the Project Company or other person to fully utilize any Income Tax benefits which may have been assumed to accrue on account of the transactions contemplated hereby, or
- (4) Any application of or change in accounting standards to the transactions contemplated hereby which may be inconsistent with the accounting standards or

application thereof which may have been assumed by the Project Company or any other person in connection with such transactions.

SECTION 17.20. COST SUBSTANTIATION FOR ADDITIONAL WORK REQUIRED DUE TO DIRECTED CAPITAL MODIFICATIONS AND COMPENSATION ADJUSTMENT EVENTS.

(A) General. The Project Company shall substantiate all costs for which it claims compensation based on the occurrence of a Directed Capital Modification or a Compensation Adjustment Event ("Cost Substantiation"), whether compensation is to be paid as part of adjustment to the Unit Price or as a lump sum, as provided in Section 17.13 (Form of Compensation Payments and Adjustments for Events Occurring After the Contract Date).

(B) Negotiated Price Based on Expected Costs. It is the expectation of the parties that most Directed Capital Modifications and Compensation Adjustment Events will occur in a manner which permits the parties to negotiate in advance a price for the work required in response to the Directed Capital Modifications or the Compensation Adjustment Event. In such circumstances the Project Company shall substantiate the costs it expects to incur in performing the work, and deliver a Cost Substantiation Certificate as to such expected costs. The Cost Substantiation Certificate shall form the basis of the negotiations of parties as to the compensation payable on account of the Directed Capital Modifications or the Compensation Adjustment Event as provided in subsection 17.13(B) (Adjustments to the Unit Price). For example, if a Change in Law Event occurs, as required under Article 16 (Change in Law Events and Other Uncontrollable Circumstances), the parties will assess the impact of the Change in Law Event, take all appropriate mitigation steps, determine any necessary Capital Modifications and operating changes, and agree upon lump sum or other fixed pricing with respect to the additional work to be performed or costs to be incurred. Once the parties agree upon the lump sum or other fixed price compensation, the Project Company's actual costs of performance shall not be subject to further substantiation.

(C) Price Payable Based on Incurred Costs. The parties acknowledge that the Project Company may be required to incur costs to perform the Contract Obligations in response to a Compensation Adjustment Event involving an emergency or other immediate need to respond to an Uncontrollable Circumstance before a price for the required work can be negotiated. In such circumstances the Project Company shall substantiate its entitlement to a compensation adjustment after the fact through the delivery of a Cost Substantiation Certificate setting forth its costs actually incurred.

(D) Competition Practices. In incurring costs for additional work required due to Directed Capital Modifications or Compensation Adjustment Events which are or may be subject to Cost Substantiation, the Project Company shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing quotes or estimates for costs expected to be in excess of \$50,000 (Index Linked)), and shall enter into Subcontracts on commercially reasonable terms and prices in light of the work to be performed and the Water Authority's potential obligation to pay for it; provided, however, that during the Construction Period, the Project Company shall not be required to utilize competitive practices for additional work self-performed by the EPC Contractor or by a Subcontractor that is an original party to (and not an assignee under) Subcontracts that pre-existed the need and request for additional work. If the Project Company is not required to utilize competitive practices, it shall instead demonstrate to the Water Authority that the additional costs in response to a Directed Capital Modification or a Compensation Adjustment Event hereunder are commercially reasonable.

(E) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate expected or incurred cost shall state the amount of such cost and the provisions

of this Water Purchase Agreement under which compensation is payable by the Water Authority, shall describe the competitive or other process utilized by the Project Company to obtain the commercially reasonable price, and shall state that such services and materials are reasonably required pursuant to this Water Purchase Agreement. The Cost Substantiation Certificate shall be accompanied by copies of such documentation as shall be necessary to demonstrate the reasonableness of the cost. Such documentation shall be in a format reasonably acceptable to the Water Authority and shall include reasonably detailed information concerning all Subcontracts and self-perform work.

(F) Evidence of Costs Incurred. To the extent reasonably necessary to confirm actual incurred costs that are subject to Cost Substantiation, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to the Water Authority, with the request for reimbursement of such costs.

(G) Mark-Ups. For any self-performed work requiring Cost Substantiation, the Project Company shall be entitled to a mark-up of 6% for a combination of overhead, risk, profit and contingency for costs of its own personnel, and for subcontracted work a mark-up of 6% for a combination of overhead, risk, profit and contingency for costs of its Subcontractors.

SECTION 17.21. WATER AUTHORITY'S RIGHT OF SET OFF.

Once the Water Authority determines that any credits, payments, reimbursements or liquidated damages are owed to the Water Authority in accordance with the terms and conditions of this Water Purchase Agreement and have not been reflected in any previously submitted Billing Statement, the Water Authority shall notify the Project Company and the Project Company shall include such amounts as an Extraordinary Item in the next Billing Period invoice provided to the Water Authority under this Article. In the event the Project Company does not include such amounts in the next Billing Period invoice provided to the Water Authority in accordance with this Section, the Water Authority shall have the right to offset the Monthly Water Purchase Payment otherwise payable for such Billing Period invoice by the amount of such credits, payments, reimbursements or liquidated damages. Notwithstanding the foregoing, the Water Authority shall have the right to offset the Monthly Water Purchase Payment otherwise payable to the Project Company for the final three Billing Period invoices during the Term by the amount of any credits, payments, reimbursements or liquidated damages due to the Water Authority under this Water Purchase Agreement.

SECTION 17.22. BILLING STATEMENT DISPUTES.

If the Water Authority disputes in good faith any amount billed by the Project Company, the Water Authority shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Project Company with a written objection indicating the amount being disputed and the reasons then known to the Water Authority for the dispute. In the event that the Project Company disputes any amounts offset by the Water Authority, it shall provide the Water Authority with a written objection indicating the amount being disputed and the reasons then known to the Project Company. When any billing dispute is finally resolved, if payment by the Water Authority to the Project Company of amounts withheld is required, such payment shall be made within 30 days of the date of resolution of the dispute, together with interest thereon, from the date originally due, determined as provided in Section 17.23 (Interest on Overdue Amounts).

SECTION 17.23. INTEREST ON OVERDUE AMOUNTS.

If payment of any amount payable under this Water Purchase Agreement is not made when due (including the Project Assets Purchase Price), simple interest will be payable on such amount at the Overdue Rate and shall be calculated on the basis of a 365-day year from

the date such payment is due (or was determined to have been due, in the case of amounts being disputed by the Water Authority) under this Water Purchase Agreement until paid. The party to whom payment is owed and overdue shall notify the other party at least quarterly of the overdue amount.

ARTICLE 18

DISPUTE RESOLUTION

SECTION 18.1. FORUM FOR DISPUTE RESOLUTION.

(A) Court Jurisdiction. It is the express intention of the parties that all Legal Proceedings related to this Water Purchase Agreement or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in the County of San Diego, California. The Project Company and the Water Authority each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding.

(B) Disputes as to Provisional Acceptance. In the event (1) the Water Authority and the Project Company become involved in any mediation or judicial proceeding with respect to whether Provisional Acceptance has been achieved, and (2) the Project Company determines that it would be appropriate that any corresponding dispute between the Project Company and the Plant EPC Contractor under the Plant EPC Agreement (with respect to issues that are substantially identical under both the Water Purchase Agreement and the Plant EPC Agreement) be resolved in that proceeding, the Water Authority consents to the EPC Contractor's joinder to, and consolidated resolution of such substantially identical issues in, that proceeding.

SECTION 18.2. NON-BINDING MEDIATION.

(A) Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Water Purchase Agreement. The non-requesting party may decline the request in its discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of the Mediator shall be divided equally between the Water Authority and the Project Company.

(B) Procedure. The Mediator shall be a professional mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Water Purchase Agreement. No Mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Water Purchase Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

ARTICLE 19

REMEDIES OF THE PARTIES AND WATER AUTHORITY STEP-IN RIGHTS

SECTION 19.1. REMEDIES FOR BREACH.

The parties agree that in the event that either party breaches this Water Purchase Agreement, the other party may exercise any legal rights it may have under this Water Purchase Agreement, under the Letter of Credit and under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Water Purchase Agreement except as provided or referred to in Article 22 (Termination). Any such damage payment shall be a Direct Payment.

SECTION 19.2. WATER AUTHORITY'S TEMPORARY STEP-IN RIGHTS.

If the Water Authority reasonably considers that the Project Company has breached any obligation under this Water Purchase Agreement, or another event has occurred, that is likely to create an immediate and serious threat to public health or safety on account of the quality or quantity of Product Water being delivered or not being delivered to the Water Authority Distribution System, then the Water Authority, acting reasonably, may either:

(1) If it considers that there is sufficient time and that it is likely that the Project Company shall be willing and able to provide assistance, require the Project Company by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs including, if applicable due to breach of any Project Contract, suspension of the Project Contractor, and the Project Company shall use all reasonable efforts to comply with the Water Authority's requirements as soon as reasonably practicable; or

(2) If it considers, acting reasonably, there is not sufficient time, or that the Project Company is not likely to be willing and able to take the necessary steps, take such steps as it considers are appropriate (either itself or by engaging others) to mitigate or rectify such state of affairs. The Water Authority will carry out such steps as quickly as is practicable, and in such manner as will minimize interference with the Project Company's performance of its obligations under this Water Purchase Agreement.

The Project Company shall ensure that no Project Contract prevents the Water Authority from exercising its rights under this Section.

SECTION 19.3. NOTICE OF CAPITAL MODIFICATION.

The Water Authority shall notify the Project Company of any Capital Modification which the Water Authority intends to make pursuant to the exercise of the Water Authority's rights under Section 19.2 (Water Authority's Temporary Step-In Rights) and provide the Project Company a reasonable opportunity, taking into account all the circumstances, to comment on the proposed Capital Modification. In making such Capital Modification, the Water Authority will reasonably consider comments received in a timely manner from the Project Company on the proposed Capital Modification.

SECTION 19.4. NO EFFECT ON CONTRACT OBLIGATIONS.

The exercise by the Water Authority of any of its rights under this Article 19 (Remedies of the Parties and Water Authority Step-In Rights) shall not reduce or affect in any way the Project Company's responsibility hereunder to perform the Contract Obligations.

SECTION 19.5. ALLOCATION OF COSTS FOR WATER AUTHORITY'S EXERCISE OF STEP-IN RIGHTS.

To the extent that any of the circumstances set forth in Section 19.2 (Water Authority's Temporary Step-In Rights) arise as a result of any breach by the Project Company of its obligations under this Water Purchase Agreement, then the Project Company shall pay the Water Authority the amount of all costs and expenses reasonably incurred by the Water Authority in exercising its rights under Section 19.2 (Water Authority's Temporary Step-In Rights) and an additional mark-up of 6% of such costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights. In all other cases, the Water Authority shall compensate the Project Company for actions taken under Section 19.2 (Water Authority's Temporary Step-In Rights) in the manner provided in Article 16 (Change in Law Events and Other Uncontrollable Circumstances) as if such circumstances constituted an Uncontrollable Circumstance affecting the Project Company.

SECTION 19.6. WAIVER OF REMEDIES.

No failure to exercise, and no delay in exercising, any right or remedy under this Water Purchase Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Water Purchase Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 19.7. EXERCISE OF REMEDIES.

(A) Remedies Cumulative. The rights and remedies of the parties under this Water Purchase Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

(B) Similar Rights and Remedies. A party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter.

(C) Single or Partial Exercise of Remedies. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

SECTION 19.8. NO DUPLICATIVE RECOVERY OR CLAIMS OUTSIDE CONTRACT.

Every right to claim compensation, indemnification or reimbursement under this Water Purchase Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Water Purchase Agreement. Neither party shall be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Water Purchase Agreement.

SECTION 19.9. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other party any special, incidental, consequential, punitive or similar losses or damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Water Purchase Agreement, or any representation made in this Water Purchase Agreement being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty or any other legal theory. This Section shall not limit the recovery of any such losses or damages under Article 25 (Indemnification) in respect of claims by third parties.

ARTICLE 20

PROJECT COMPANY EVENTS OF DEFAULT

SECTION 20.1. PROJECT COMPANY EVENTS OF DEFAULT.

(A) Project Company Events of Default Defined. For the purposes of this Water Purchase Agreement, “Project Company Event of Default” means any of the following events or circumstances:

(1) The occurrence of a Project Company Remediable Breach that is not remedied in accordance with Section 20.3 (Project Company Remediable Breach Cure and Remedial Program), unless such occurrence is the result of an Uncontrollable Circumstance;

(2) The failure of the Project Company to timely satisfy the Provisional Acceptance Conditions, as provided in Section 7.7 (Failure to Achieve Provisional Acceptance by the Scheduled Commercial Operation Date), unless such failure is the result of an Uncontrollable Circumstance;

(3) The occurrence of a Project Company Bankruptcy-Related Event;

(4) The Project Company abandons the Project, other than pursuant to its right to suspend performance due to a Force Majeure Event;

(5) The Project Company breaches Section 24.1 (Limitation on Assignment by Project Company) or a Change in Control occurs which is prohibited by Section 24.2 (Limitations on Change in Control);

(6) The occurrence of either of the following with respect to Product Water quality, unless the occurrence is the result of an Uncontrollable Circumstance: (a) an exceedance of the same primary drinking water standard MCL in three consecutive months, or four times in any consecutive 12 month period; or (b) the issuance by the CDPH of a second “boil water” notice with respect to Product Water, as provided in subsection 9.2(G) (Boil Water Notices);

(7) In any rolling period of 36 consecutive Billing Periods, the sum in 24 or more of such 36 Billing Periods of (1) all Monthly Delivered Water Units, (2) Monthly Unexcused Demand Shortfall Units, (3) Monthly Excused Supply or Demand Shortfall Units occurring in each of such 24 or more Billing Periods, and (4) Monthly Scheduled Outage Units is less than an amount equal to 75% of the sum of the Monthly Product Water Orders for the corresponding Billing Periods;

(8) The termination of the Cabrillo Ground Lease following an event of default thereunder; or

(9) The Pipeline Trustee accelerates the due date for the payment of the principal amount of all outstanding Pipeline Bonds upon the occurrence of an Event of Default under the Pipeline Installment Sale and Assignment Agreement caused by the failure of the Project Company to make Operating Period Shortfall Payments.

(B) Project Company Remediable Breach Defined. For purposes of this Water Purchase Agreement, “Project Company Remediable Breach” means:

(1) A failure by the Project Company to pay any amount due and owing to the Water Authority under this Water Purchase Agreement on the due date (which amount is not being disputed in good faith) and the Project Company has not remedied such failure to pay within 10 Business Days following notice from the Water Authority;

(2) A failure by the Project Company to maintain the policies of insurance required to be maintained by the Project Company under this Water Purchase Agreement and to comply with its obligation under Appendix 7 (Insurance Requirements) to name the Water Authority as an insured party;

(3) A failure by the Project Company to comply with its obligation under Section 15.1 (Insurable Force Majeure Events) to repair, replace or restore the Project following the occurrence of an Insured Force Majeure Event;

(4) The Project Company fails to immediately take all appropriate action in the event that the Water Authority notifies the Project Company that a public health or safety emergency exists or is threatened due to the Project Company's failure to comply with the Contract Standards;

(5) A Project Company Persistent Breach;

(6) Except as provided for in items (1) through (4) of this subsection, a breach, or series of breaches, by the Project Company of any agreement, covenant or undertaking made to the Water Authority (other than a breach for which the Water Authority may impose Deductions) or any representation or warranty made by the Project Company to the Water Authority in this Water Purchase Agreement (or any ancillary certificate, statement or notice issued hereto) being incorrect when made or at any time during the Term, the consequence of which is:

(a) a material risk to the health or safety of the public;

(b) a risk of material liability of the Water Authority to third persons;

(c) an adverse effect on the performance of the Contract Obligations to the extent that the Water Authority is reasonably likely to be materially deprived of the benefit of this Water Purchase Agreement; or

(d) any material provision of this Water Purchase Agreement being unenforceable against the Project Company; or

(7) Any other fact or circumstance designated as a "Project Company Remediable Breach" under this Water Purchase Agreement.

(C) Project Company Persistent Breach Defined. For purposes of this Water Purchase Agreement, "Project Company Persistent Breach" means a breach by the Project Company of any term, covenant or undertaking to the Water Authority (other than a breach for which Deductions could be imposed) which, due to the fact that such breach has continued for 60 days or more or that the same breach has occurred four or more times in the previous 12 months, demonstrates either a persistent inability, or a persistent unwillingness, to comply with its obligations under this Water Purchase Agreement.

(D) Project Company Bankruptcy-Related Event Defined. For purposes of this Water Purchase Agreement, "Project Company Bankruptcy-Related Event" means any of the following events:

(1) A receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of the Project Company; or

(2) Any proceedings with respect to the Project Company being commenced under the Bankruptcy Law and if such proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 90 days of such proceedings being instituted; or

(3) The Project Company making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Project Company under the Bankruptcy Law or otherwise and, if proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not stayed, dismissed or otherwise remedied within 90 days of such proceedings being instituted; or

(4) The Project Company ceasing to carry on business.

SECTION 20.2. NOTIFICATION BY THE PROJECT COMPANY.

The Project Company shall notify the Water Authority of the occurrence, and details, of any Project Company Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Company Event of Default, in either case promptly on the Project Company becoming aware of its occurrence.

SECTION 20.3. PROJECT COMPANY REMEDIABLE BREACH CURE AND REMEDIAL PROGRAM.

(A) Notice and Remedy or Remedial Program. After the occurrence of a Project Company Remediable Breach and while it is continuing, the Water Authority may serve a notice on the Project Company specifying in reasonable detail the type and nature of the Project Company Remediable Breach and:

(1) The Project Company shall remedy such Project Company Remediable Breach referred to in such notice (if it is continuing) within 60 days after such notice or within such longer period as is reasonably required for the Project Company to rectify or remedy such Project Company Remediable Breach as long as the Project Company is diligently pursuing such rectification or remedy, but in no event exceeding 180 days after such notice; or

(2) If either the Water Authority (as set forth in its notice) or the Project Company reasonably considers that a Project Company Remediable Breach cannot reasonably be remedied within 60 days of such notice, the Project Company shall deliver to the Water Authority within 10 Business Days of such notice a reasonable program (set forth, if appropriate, in stages) for remedying the Project Company Remediable Breach. The program will specify in reasonable detail the manner in, and the latest date by which the Project Company Remediable Breach is proposed to be remedied (which date shall be no longer than the maximum cure period provided under subsection (A)(1) of this Section.

(B) Water Authority Acceptance or Non-Acceptance. If the Project Company puts forward a program in accordance with subsection (A)(2) of this Section, the Water Authority will have 20 Business Days from receipt of the program within which to notify the Project Company that the Water Authority, acting reasonably, does not accept the program, failing which the Water Authority will be deemed not to have accepted the program. If the Water Authority notifies the Project Company that it does not accept the program as being reasonable, or is deemed not to have accepted the program, the parties will use all reasonable efforts within the following five Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such ten Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such Project Company Remediable Breach in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party to Non-Binding Mediation.

(C) Remediable Program Limited to Project Company Remediable Breaches. The Project Company Remediable Breach and remedial program provisions of this Section shall apply only to a Project Company Remediable Breach, and not to any other event or circumstance constituting a Project Company Event of Default.

SECTION 20.4. WATER AUTHORITY TERMINATION RIGHT.

(A) Termination Right. If a Project Company Event of Default occurs, then the Water Authority may (if the Project Company Event of Default continues unwaived and unremedied), subject to Section 22.1(E) (Continued Performance) and the terms of the Collateral Agent's Remedies Agreement, terminate this Water Purchase Agreement by notice to the Project Company. The right of the Water Authority to terminate this Water Purchase Agreement under this Section is in addition, and without prejudice, to any other right which the Water Authority may have in connection with the Project Company's non-compliance with this Water Purchase Agreement, including those set forth in Article 19 (Remedies of the Parties and Water Authority Step-In Rights).

(B) Collateral Agent's Remedies Agreement. The rights of the Water Authority under this Section are subject to the terms of the Collateral Agent's Remedies Agreement.

ARTICLE 21

WATER AUTHORITY EVENTS OF DEFAULT

SECTION 21.1. WATER AUTHORITY EVENTS OF DEFAULT.

For the purposes of this Water Purchase Agreement, “Water Authority Event of Default” means any of the following events or circumstances:

- (1) A failure by the Water Authority to pay any amount due and owing to the Project Company under this Water Purchase Agreement within 45 days of the due date for such amount;
- (2) Except as provided in subsection (1) of this Section, a breach, or series of breaches, by the Water Authority of any term, covenant or undertaking to the Project Company or any representation or warranty made by the Water Authority to the Project Company in this Water Purchase Agreement being incorrect when made, the consequence of which is:
 - (a) a material and adverse effect on the performance of the Contract Obligations; or
 - (b) any material provision of this Water Purchase Agreement being unenforceable against the Water Authority to the extent that the Project Company is reasonably likely to be materially deprived of the benefit of this Water Purchase Agreement;
- (3) The authorized filing by the Water Authority of a petition seeking relief under the Bankruptcy Code, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature; provided that the appointment of a financial control or oversight board by the State for the Water Authority shall not in and of itself constitute a Water Authority Event of Default hereunder; or
- (4) The Water Authority breaches Section 24.4 (Limitation on Assignment by the Water Authority).

SECTION 21.2. PROJECT COMPANY OPTIONS UPON A WATER AUTHORITY EVENT OF DEFAULT.

(A) Notice. After the occurrence of a Water Authority Event of Default and while a Water Authority Event of Default is continuing, the Project Company may, at its option, serve notice on the Water Authority of the occurrence and specifying the details of such a Water Authority Event of Default.

(B) Remediable Water Authority Events of Default. If the relevant matter or circumstance has not been rectified or remedied by the Water Authority:

- (1) in the case of a Water Authority Event of Default under subsection 21.1(1) (Water Authority Events of Default), within 10 days of such notice; or
- (2) in the case of a Water Authority Event of Default under subsection 21.1(2) (Water Authority Events of Default), within 60 days after the notice provided by the Project Company pursuant to subsection (A) of this Section or within such longer period as is reasonably required for the Water Authority to rectify or remedy

such Water Authority Event of Default as long as the Water Authority is diligently pursuing such rectification or remedy, but in no event exceeding 180 days after such notice.

the Project Company may serve a further notice on the Water Authority terminating this Water Purchase Agreement with immediate effect and, in the case of a Water Authority Event of Default under subsection 21.1(1) (Water Authority Events of Default), within 30 days of such notice, the Project Company also may bring an action to enforce payment of the amount due.

(C) Non-Remediable Water Authority Events of Default. In the case of a Water Authority Event of Default under subsection 21.1(3) or 21.1(4), concurrently with, or at any time after, the delivery of notice under subsection (A) of this Section, the Project Company may serve a further notice on the Water Authority terminating this Water Purchase Agreement with immediate effect.

(D) Other Rights Upon Water Authority Non-Compliance. The right of the Project Company to terminate this Water Purchase Agreement under this Section is in addition, and without prejudice, to any other right which the Project Company may have in connection with the Water Authority's non-compliance with this Water Purchase Agreement.

ARTICLE 22

TERMINATION

SECTION 22.1. TERMINATION RIGHTS.

(A) Water Authority Termination Rights. This Water Purchase Agreement may be terminated by the Water Authority prior to the Expiration Date:

(1) In the event the Financial Closing Date does not occur by the date that is 45 days following the Contract Date, pursuant to subsection 6.1(B) (Issuance of Initial Plant Bonds);

(2) In connection with a Project Company Event of Default, pursuant to Section 7.7 (Failure to Achieve Provisional Acceptance by the Scheduled Commercial Operation Date);

(3) In connection with the inability of the Project Company to finance the reinstatement of the Project following the occurrence of an Uninsurable Force Majeure Event, pursuant to subsection 15.2(F) (Insufficiency of Monthly Water Purchase Payments to Support Financing for Project Reinstatement);

(4) In connection with the inability of the Project Company to finance certain costs, pursuant to subsection 16.1(D) (Insufficiency of Adjusted Monthly Water Purchase Payments to Support Financing for the Capital Costs of Complying with a Change in Law Event);

(5) In connection with the inability of the Project Company to finance certain costs, pursuant to subsection 16.3(D) (Insufficiency of Adjusted Monthly Water Purchase Payments to Support Financing for the Capital Costs of Making Rectifications With Respect to an Other Uncontrollable Circumstance);

(6) In connection with a Project Company Event of Default, pursuant to Section 20.4 (Water Authority Termination Right);

(7) Upon the exercise by the Water Authority of any of its options to purchase the Project Assets pursuant to Section 23.1 (Project Assets Purchase Option During the Term), in which event this Water Purchase Agreement shall terminate upon the date of purchase; or

(8) If the Cabrillo Ground Lease terminates on account of the condemnation or taking by eminent domain of the whole or substantially all of the Plant Site and the Plant as provided in Section 14.1 of the Cabrillo Ground Lease.

(B) Project Company Termination Rights. This Water Purchase Agreement may be terminated by the Project Company prior to the Expiration Date:

(1) In the event the Financial Closing Date does not occur by the date that is 45 days following the Contract Date, pursuant to subsection 6.1(B) (Issuance of Initial Plant Bonds); or

(2) In connection with an Water Authority Event of Default, pursuant to Section 21.2 (Project Company Options Upon a Water Authority Event of Default).

(C) Extent of Termination Rights. Except as provided or referred to in subsections (A) and (B) of this Section, neither party shall have the right to terminate this Water Purchase Agreement.

(D) Termination Date. The Termination Date for any early termination of this Water Purchase Agreement as provided in subsections (A) or (B) of this Section shall be the date notice of termination is given by one party to the other party in accordance herewith.

(E) Continued Performance. The parties shall continue to perform their obligations under this Water Purchase Agreement (including the Water Authority continuing to pay the Monthly Water Purchase Payments) until the Termination Date, notwithstanding the giving of any notice of default.

(F) Completion or Continuance by Water Authority. After the Termination Date, and whether termination occurs due to a Project Company Event of Default or otherwise, the Water Authority may at any time (but without any obligation to do so) enter into contracts with the Process Services Contractor, Operating Service Provider and other operators, contractors and technology and equipment suppliers. The Project Company waives any right at law or in equity it may have to restrict the Water Authority from entering into any such contracts excluding, however, any rights the Project Company has under any confidentiality arrangements with third parties.

ARTICLE 23

WATER AUTHORITY PROJECT ASSETS PURCHASE OPTIONS

SECTION 23.1. PROJECT ASSETS PURCHASE OPTION DURING THE TERM.

(A) Option. The Water Authority shall have the option, exercisable in its discretion, to purchase the Project Assets at any time following the date that is 10 years following the Commercial Operation Date.

(B) Project Assets Purchase Price. If the Water Authority exercises its Project Assets purchase option under this Section, the Water Authority shall pay to the Project Company on the Project Assets Purchase Date a Project Assets Purchase Price (adjusted as appropriate as provided in subsection 23.5(C) (Project Company Notice and Determination)) equal to the aggregate amount, without duplication, of:

(1) the aggregate principal amount of Plant Bonds and Approved Permitted Debt outstanding as of the Project Assets Purchase Date, together with accrued interest thereon and any applicable bond redemption premium, and any other Plant Bond and Approved Permitted Debt breakage, prepayment or other termination costs;

(2) the Employee Payments and the Operating Service Provider Breakage Costs; and

(3) the net present value, calculated annually as of the Project Assets Purchase Date using a discount rate of 5%, of the Annual Equity Return Target Amount for each of the Contract Years from the Contract Year in which the Project Assets Purchase Date occurs through final Contract Year.

SECTION 23.2. PROJECT ASSETS PURCHASE OPTION IN THE EVENT OF FINANCING UNAVAILABILITY.

The Water Authority shall have the option, exercisable in its discretion, to purchase the Project Assets for the Project Assets Purchase Price specified in subsection 23.1(B) (Project Assets Purchase Price) in the event financing is unavailable to pay Compensation Adjustment Event Capital Costs as provided in subsection 6.3(F) (Financing Unavailability for Compensation Adjustment Event Capital Costs).

SECTION 23.3. PROJECT ASSETS PURCHASE OPTION UPON A PROJECT COMPANY EVENT OF DEFAULT.

The Water Authority shall have the option, exercisable in its discretion, to purchase the Project Assets upon a Project Company Event of Default for a Project Assets Purchase Price equal to (1) the aggregate principal amount of Plant Bonds and Approved Permitted Debt outstanding as of the Termination Date, together with any accrued interest thereon, minus (2) an amount equal to all amounts on deposit in the funds and accounts held under the Collateral Trust Agreement or the Plant Indenture for the benefit of the holders of the Plant Bonds and Approved Permitted Debt on the Project Assets Purchase Date (except amounts held in the Contractor Security Account to the extent the EPC Contractor is entitled to receive such amounts under Applicable Law).

SECTION 23.4. PROJECT ASSETS PURCHASE OPTION AT THE EXPIRATION DATE.

The Water Authority shall have the option, exercisable in its discretion, to purchase the Project Assets on the Expiration Date for a Project Assets Purchase Price equal to one dollar.

SECTION 23.5. PURCHASE OPTION PROCEDURES.

(A) Notice of Exercise of Project Assets Purchase Option. The Water Authority shall give the Project Company irrevocable prior written notice of its election to exercise its option to purchase the Project Assets:

- (1) At least 270 days prior to the Project Assets Purchase Date, in the case of a purchase under Section 23.1 (Project Assets Purchase Option During the Term);
- (2) On or following the date upon which it is determined under subsection 6.4(E) (Financing Unavailability for Compensation Adjustment Event Capital Costs) that the Project Company is unable to obtain financing for the Compensation Adjustment Event Capital Costs (in which case the Project Assets Purchase Date shall be the date that is 180 days following such notice date), in the case of a purchase under Section 23.2 (Project Assets Purchase Option in the Event of Financing Unavailability);
- (3) On or following the date on which a Project Company Event of Default occurs, in the case of a purchase under Section 23.3 (Project Assets Purchase Option Upon a Project Company Event of Default); and
- (4) At least 365 days prior to the Project Assets Purchase Date, in the case of a purchase under Section 23.4 (Project Assets Purchase Option at the Expiration Date).

The written notice shall specify the closing date for the purchase and sale of the Project Assets (the "Project Assets Purchase Date").

(B) Notice of Intent Required for Certain Purchase Options. As a condition of the Water Authority's right to exercise its Project Assets Purchase Options under Section 23.1 (Project Assets Purchase Option During the Term) or Section 23.4 (Project Assets Purchase Option at the Expiration Date), the Water Authority shall give the Project Company a notice of intent to exercise its Project Assets Purchase Option:

- (1) At least 365 days prior to the Project Assets Purchase Date, in the case of a purchase under Section 23.1 (Project Assets Purchase Option During the Term); and
- (2) At least 730 days prior to the Project Assets Purchase Date, in the case of a purchase under Section 23.4 (Project Assets Purchase Option at the Expiration Date).

Notwithstanding the delivery of a notice of intent under this subsection, the Water Authority shall have no obligation to exercise the Project Assets Purchase Option that was the subject of such notice.

(C) Project Company Notice and Determination. As soon as practicable after receipt of the Water Authority's notice of its election to purchase the Project Assets under Section 23.1 (Project Assets Purchase Option During the Term) or Section 23.2 (Project Assets Purchase Option in the Event of Unavailability of Financing), the Project Company shall, acting reasonably, notify the Water Authority of the Project Company's determination of the amount of

the Project Assets Purchase Price due, and include in such notice the details and calculations of each component thereof, including certificates from agents of the Plant Bondholders as to the amounts owed to them. The Project Company shall provide to the Water Authority all such documents and information as may be reasonably required by the Water Authority to support and confirm the amount of the Project Assets Purchase Price due under such subsection.

(D) Adequacy of Project Assets Purchase Price. The Project Company agrees that any applicable Project Assets Purchase Price provided for in this Article shall constitute the only compensation from the Water Authority to the Project Company for all costs, foregone potential profits and any charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and other similar wind-down costs, attributable to the termination of the Project Company's right to perform this Water Purchase Agreement in connection with the purchase of the Project Assets under this Article.

(E) Reliance on Plant Bondholders and Approved Permitted Debt Holders Certification. The Water Authority shall be entitled to rely on one or more certificates of agents of the Plant Bondholders and holders of Approved Permitted Debt as conclusive evidence of the amount of the Plant Bonds and Approved Permitted Debt outstanding, and any accrued interest and redemption premium, in any calculation of a Project Assets Purchase Price. Upon receipt of this amount by Project Company, the Plant Bondholders and holders of Approved Permitted Debt or their agents shall discharge the Water Authority's obligation to pay any portion of compensation due to the Project Company that is attributable to the Plant Bonds and Approved Permitted Debt.

(F) Termination. Upon payment of the Project Assets Purchase Price on the Project Assets Purchase Date pursuant to this Article, the Termination Date shall be deemed to have occurred and this Water Purchase Agreement shall terminate.

SECTION 23.6. CONVEYANCE.

(A) Project Assets. Upon payment of the applicable Project Assets Purchase Price under this Article, the Project Company shall sell, assign, transfer, convey and deliver to the Water Authority on the Project Assets Purchase Date all of its right, title and interest in the Project Assets, free and clear of all Encumbrances other than items listed in paragraphs (4), (5), (6), (7), (8), (12), (18) and (19) of the definition of Permitted Encumbrances. The Project Assets shall not include the Excluded Assets. The Cabrillo Ground Lease and any other operative agreements related to the Project Assets shall not restrict the exercise of the rights of the Water Authority under this Article.

(B) Condition of Project Assets Upon Conveyance. Except as provided or referred to in Section 10.7 (Project Assets Transfer Condition) and Appendix 12 (Project Assets and Liabilities), the conveyance of the Project Assets shall be "as is, where is" and the Project Company shall not make any representation with respect to the Project Assets or any matter related to such conveyance.

(C) Project Liabilities. Upon the purchase of the Project Assets pursuant to this Article, the Water Authority shall assume the Assumed Liabilities as and to the extent provided in Section 12.4 of Appendix 12 (Project Assets and Liabilities). The Assumed Liabilities shall not include the Excluded Liabilities.

(D) Intellectual Property Rights. The Company acknowledges that the grant of Intellectual Property rights made by the Project Company in Section 26.11 (Property Rights) shall continue perpetually following any purchase by the Water Authority of the Project Assets under this Article.

SECTION 23.7. FULL SETTLEMENT; ANTECEDENT AND POST-TERMINATION LIABILITIES.

Any and all amounts paid by the Water Authority to the Project Company upon a purchase of the Project Assets, and the related termination of this Water Purchase Agreement, under this Article will be the full and final settlement of each party's rights and claims against in connection with such purchase or with respect to the Project Assets, whether under contract, tort, restitution or otherwise, but without prejudice to:

(1) Any antecedent liability of either party to the other that arose prior to the date of termination of this Water Purchase Agreement (but not from the termination itself); and

(2) Any liability of either party to the other that may arise after the Termination Date of this Water Purchase Agreement (but not from the termination itself), including liabilities arising under the provisions of this Water Purchase Agreement which are intended by Section 3.2 (Survival) to survive termination.

SECTION 23.8. ADDITIONAL OBLIGATIONS UPON PROJECT ASSETS PURCHASE.

(A) Transfer Responsibilities. If the Water Authority exercises its right to purchase the Project Assets under this Article, then on or promptly after the Termination Date:

(1) The Project Company shall, or will use reasonable efforts to cause any Project Contractor to, offer to sell to the Water Authority at fair market value, free from any security interest, all or any part of the stocks of material and other assets, spare parts and other moveable property owned by the Project Company or any Project Contractor and reasonably required by the Water Authority in connection with the operation of the Project or the provision of the Contract Obligations;

(2) The Project Company shall deliver to the Water Authority (to the extent not already delivered to the Water Authority):

(a) relevant information pertaining to any Legal Proceedings against the Project Company by the Project Contractors, any Subcontractor or other third parties relating to the termination of the Contract Obligations (or any Subcontracts); and

(b) to the extent reasonably available to the Project Company, copies of all Subcontracts (with confidential or commercially sensitive information redacted), together with a statement of:

(i) the items ordered and not yet delivered pursuant to each agreement;

(ii) the expected delivery date of all such items;

(iii) the total cost of each agreement and the terms of payment; and

(iv) the estimated cost of canceling each agreement;

(3) The Project Company shall deliver to the Water Authority a complete list and description of all Licensed IP as of the Termination Date.

(4) The Project Company shall give written notice of termination, effective as of the Expiration Date, promptly under each policy of Required Insurance (with a copy of each such notice to the Water Authority), but permit the Water Authority to continue such policies thereafter at its own expense, if possible; and

(5) The Project Company shall take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters.

(B) No Additional Compensation. The Project Company shall ensure that provision is made in all applicable contracts to ensure that the Water Authority will be in a position to exercise its rights, and the Project Company shall be in a position to comply with its obligations, under this Section without additional payment or compensation to any person.

SECTION 23.9. TRANSITIONAL ARRANGEMENTS.

If the Water Authority exercises its right to purchase the Project Assets under this Article, the Project Company shall, in connection with the expiration or termination of this Water Purchase Agreement:

(1) Stop the Contract Obligations on the Termination Date;

(2) On the Termination Date deliver to the Water Authority:

(a) all keys, access codes or other devices required to operate the Project; and

(b) any Project Intellectual Property required to be delivered by the Project Company pursuant to subsection 23.8(A)(3) (Transfer Responsibilities);

(3) As soon as practicable after the Termination Date vacate, and cause the Project Company Persons to vacate, the Plant Site, and leave the Project in a safe, clean and orderly condition;

(4) On request by the Water Authority and on payment of the Project Company's reasonable costs (including costs payable to the Operating Service Provider under the Operating Service Agreement) by the Water Authority, for a period not to exceed 90 days after the Termination Date, co-operate fully with the Water Authority and any successor providing to the Water Authority services in the nature of any of the Contract Obligations or any part of the Contract Obligations, in order to achieve a smooth transfer of the manner in which the Water Authority obtains services in the nature of the Contract Obligations;

(5) As soon as practicable following the Termination Date, remove from the Plant Site all property of the Project Company or any Project Company Person that does not constitute Project Assets or does not belong to the Water Authority and if it has not done so within 60 days after any notice from the Water Authority requiring it to do so, the Water Authority may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of the Project Company; and

(6) Comply with all requirements of Section 10.7 (Project Transfer Condition).

SECTION 23.10. PROJECT COMPANY TO COOPERATE.

If the Water Authority exercises its right to purchase the Project Assets under this Article and wishes to conduct a competition prior to the Termination Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Operating Work following the Termination Date), the Project Company shall prior to the Termination Date co-operate with the Water Authority fully in such competition process, including by:

(1) Providing any information in the Project Company's control or possession which the Water Authority may reasonably require to conduct such competition, except that information which is commercially sensitive to the Project Company or a Project Company Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of the Project Company or a Project Company Person give that competitor a material competitive advantage over the Project Company or the Project Company Person and thereby prejudice the business of the Project Company or the Project Company Person); and

(2) Assisting the Water Authority by providing any participants in such competition process with access to the Plant Site, provided such access does not affect the Contract Obligations in a way that results in any reduction in Monthly Water Purchase Payments.

The Project Company shall be entitled to reimbursement for all reasonable out of pocket expenses and internal costs incurred in connection with the foregoing services and an additional mark-up of 6% of such costs and expenses.

SECTION 23.11. RECORDING.

This Water Purchase Agreement, or a memorandum hereof, shall be recorded in the land records of the County in order to preserve the Water Authority's purchase options for the Project Assets under this Article.

ARTICLE 24

ASSIGNMENT AND CHANGE IN CONTROL

SECTION 24.1. LIMITATION ON ASSIGNMENT BY PROJECT COMPANY.

The Project Company shall not assign, transfer or otherwise dispose of any interest in this Water Purchase Agreement or a Project Contract except:

(1) As security (in accordance with the Collateral Agent's Remedies Agreement or otherwise substantially in a form approved by the Water Authority, acting reasonably) for any loan made to the Project Company under the Plant Financing Agreements;

(2) In connection with the exercise of rights of the Plant Bondholders under the Plant Financing Agreements in accordance with the Collateral Agent's Remedies Agreement; or

(3) Otherwise:

(a) prior to the day that is two years after the Commercial Operation Date (the "Transfer Restriction Date"), with the prior written consent of the Water Authority, which may be given or withheld in the Water Authority's discretion; and

(b) after the Transfer Restriction Date, with the prior written consent of the Water Authority, which will not be unreasonably withheld or delayed;

provided that in the case of an assignment under subsections (2) or (3) of this Section, the assignee assumes all the obligations of the Project Company under this Water Purchase Agreement.

SECTION 24.2. LIMITATIONS ON CHANGE IN CONTROL.

(A) Change in Control Defined. For purposes of this Water Purchase Agreement "Change in Control" means with respect to a person any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, Shares or equity in the person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner, a managing member or other managers), including changes arising from assignment or transfer of existing shares, Shares or equity, issuance of new shares, Shares or equity or amalgamation, merger consolidation, amendment of a limited partnership certificate or other reorganization, or any other direct or indirect change which results in a person or group of persons, other than the equity holders of the entity immediately prior to the change, directly or indirectly:

(1) Controlling the composition of the majority of the board of directors of the entity or of a general partner or manager of the entity;

(2) Controlling the decisions made by or on behalf of the person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of any of the entity, a general partner of the entity or a manager of the entity or otherwise;

(3) Holding equity (either beneficially or otherwise) of that entity with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited partnership) or equity (either beneficially or otherwise) of that entity with more than one half of the voting rights; or

(4) Having the ability to direct or cause the direction of the management, actions or policies of the entity;

provided, however, that any of the foregoing with respect to Poseidon Water, LLC shall not be considered to be a Change in Control for the purposes of this Water Purchase Agreement.

(B) Limitations. No Change in Control of the Project Company shall be permitted (whether by the Project Company or otherwise) to occur except:

(1) In connection with the exercise of rights of the Plant Bondholders under the Plant Financing Agreements in accordance with the Collateral Agent's Remedies Agreement;

(2) Arising from any bona fide open market transaction in any shares or other securities of the Project Company or of any Affiliate of a Shareholder effected on a recognized public stock exchange;

(3) Any assignment, sale or transfer by a shareholder, general partner, manager or member of the Project Company of any legal, beneficial or equitable interest in any shares, Shares or equity of the Project Company to Stonepeak Partners Infrastructure Fund LP and any subsequent assignment, sale or transfer by Stonepeak Partners Infrastructure Fund LP or any subsequent assignee, purchaser or transferee of part or all of such transferred interest; or

(4) Otherwise:

(a) prior to the Transfer Restriction Date, with the prior written consent of the Water Authority, which may be given or withheld in the Water Authority's discretion; and

(b) after the Transfer Restriction Date, with the prior written consent of the Water Authority, which will not be unreasonably withheld or delayed.

In determining whether to give its consent to any Change in Control under item (4)(b) above, the Water Authority shall take into consideration the following factors: (1) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (2) the backgrounds and reputations of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors, and employers and each of their respective Affiliates (including the absence of criminal, civil, or regulatory claims or actions against any such person and the quality of any such person's past or present performance on the other projects); (3) compliance with the Water Authority's conflict of interest requirements; and (4) the ability of the Project Company to meet its obligations under this Water Purchase Agreement after the transfer.

SECTION 24.3. FACTORS THE WATER AUTHORITY MAY CONSIDER.

In determining whether to provide its consent under subsections 24.1(3)(b) (Limitation on Assignment by Project Company), 24.2(A)(1) (Change in Control Defined) or 24.2(B)(4)(b) (Limitations), and without limiting the Water Authority's consent rights thereunder, it will be reasonable for the Water Authority to refuse its consent if:

- (1) The proposed assignee or the new party in control of the Project Company, as the case may be, or any of their Affiliates, is a Restricted Person;
- (2) The proposed assignee or the new party in control of the Project Company, as the case may be, is, in the reasonable opinion of the Water Authority, less creditworthy than the assignor; or
- (3) The assignment or Change in Control could, in the reasonable opinion of the Water Authority, have a material and adverse effect on the Water Authority or the Project.

SECTION 24.4. LIMITATION ON ASSIGNMENT BY THE WATER AUTHORITY.

The Water Authority shall not assign, transfer or otherwise dispose of any interest in this Water Purchase Agreement except to another Governmental Body which assumes, and is legally capable of discharging, all the obligations of the Water Authority under this Water Purchase Agreement without the prior written consent of the Project Company, which may be given or withheld in the Project Company's discretion.

SECTION 24.5. COSTS OF REQUEST FOR CONSENT.

If the Project Company requests consent to an assignment, transfer or disposition pursuant to Section 24.1 (Limitation on Assignment by Project Company) or to a Change in Control pursuant to Section 24.2 (Limitations on Change in Control), the Project Company shall pay the Water Authority's reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any such request. At the time of the request the Project Company shall make a payment to the Water Authority against its obligation under this Section of \$25,000 (Index Linked). After the decision of the Water Authority is rendered, the Water Authority will either refund any over payment or invoice the Project Company for any additional amounts due under this Section.

ARTICLE 25

INDEMNIFICATION

SECTION 25.1. PROJECT COMPANY'S OBLIGATION TO INDEMNIFY.

The Project Company shall indemnify and keep elected officials, members, appointed officers, employees, representatives, agents and contractors of the Water Authority (each a "Water Authority Indemnatee") indemnified at all times from and against all Loss-and-Expense that any Water Authority Indemnatee may sustain in connection with any loss of or physical damage to property or assets of any Water Authority Indemnatee, or any claim made by one or more third parties (including for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any person, including any Water Authority Indemnatee, arising by reason of any:

- (1) Breach of any representation or warranty by the Project Company under this Water Purchase Agreement;
- (2) Negligent act or omission of the Project Company;
- (3) Willful misconduct of the Project Company;
- (4) Non-compliance by the Project Company with any of the provisions of this Water Purchase Agreement or any document, instrument or agreement delivered to the Water Authority as required under this Water Purchase Agreement;
- (5) Release of Hazardous Substances by the Project Company;
- (6) Breach by the Project Company of, or non-compliance by the Project Company with, any Governmental Approval or Applicable Law, or the failure of the Project Company to obtain all necessary Governmental Approvals in accordance with this Water Purchase Agreement; or
- (7) Legal Proceeding brought by a third party prior to the date that is one year following the Contract Date seeking to prevent construction or operation of the Project (including Legal Proceedings relating to environmental reviews and Governmental Approvals), other than Legal Proceedings relating to the power of the Water Authority to enter into the Water Purchase Agreement or the proceedings of the Water Authority conducted in connection with;

except to the extent caused by Water Authority Fault. The Project Company's indemnity obligations under this Section shall not be limited by any coverage exclusions or other provisions in any policy of Required Insurance or other insurance maintained by the Project Company which is intended to respond to such events. Notwithstanding the foregoing, the Water Authority Indemnitees' right to indemnification pursuant to this Section shall be reduced by all insurance, settlement proceeds or third party indemnification proceeds actually received by the Water Authority Indemnitees. This Section may be relied upon by the Water Authority Indemnitees and may be enforced directly by any of them against the Project Company in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Project Company.

SECTION 25.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If a Water Authority Indemnatee receives any notice, demand, letter or other document concerning any claim for which it appears that the Water Authority Indemnatee is, or may become entitled to, indemnification or compensation under this Water Purchase Agreement in respect of the entire claim, the Water Authority Indemnatee shall give notice in writing to the Project Company as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof.

(B) Project Company Right to Dispute Claim. If notice is given as provided in subsection 25.2(A) (Indemnification Procedures - Notice), the Project Company shall be entitled to dispute the claim in the name of the Water Authority Indemnatee at the Project Company's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Water Authority Indemnatee will give the Project Company all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(C) Conflicts of Interest. In defending any claim as described in subsection 25.2(B) (Indemnification Procedures - Project Company Right to Dispute Claim) in which there is a conflict of interest between the Project Company and the Water Authority Indemnatee, the Water Authority Indemnatee may appoint independent legal counsel in respect of such claim and, if it is determined that the Water Authority Indemnatee is entitled to indemnification by or compensation from the Project Company, all reasonable costs and expenses incurred by the Water Authority Indemnatee in so doing will be included in the indemnity or compensation from the Project Company.

(D) Rights and Duties of the Parties. With respect to any claim conducted by the Project Company pursuant to subsection 25.2(B) (Indemnification Procedures - Project Company Right to Dispute Claim):

(1) The Project Company shall keep the Water Authority Indemnatee fully informed and consult with it about material elements of the conduct of such defense;

(2) The Project Company shall demonstrate to the Water Authority Indemnatee, at the reasonable request of the Water Authority Indemnatee, that the Project Company has sufficient means to pay all costs and expenses that it may incur by reason of conducting such defense; and

(3) The Project Company shall have full control of such defense and proceedings, including any compromise or settlement thereof; provided, however, that any such compromise or settlement involving non-monetary obligations of the Water Authority, or otherwise having a direct effect upon its continuing operations, shall (1) contain a full release of the Water Authority and (2) be subject to the consent of the Water Authority, which consent shall not be unreasonably withheld, conditioned or delayed. If requested by the Project Company, the Water Authority shall, at the sole cost and expense of the Project Company, cooperate with the Project Company and its counsel in contesting any claim which the Project Company elects to contest, including, without limitation, the making of any related counterclaim against the person asserting the claim or any cross-complaint against any person.

(E) Water Authority Indemnatee Rights to Conduct Defense. The Water Authority Indemnatee may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(1) The Project Company is not entitled to take conduct of the claim in accordance with subsection 25.2(B) (Project Company Right to Dispute Claim); or

(2) The Project Company fails to notify the Water Authority Indemnatee of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Water Authority Indemnatee under subsection 25.2(B) (Indemnification Procedures - Project Company Right to Dispute Claim) or notifies the Water Authority Indemnatee that it does not intend to take conduct of the claim; or

(3) The Project Company fails to comply in any material respect with subsection 25.2(D) (Indemnification Procedures - Rights and Duties of the Parties).

(F) Transfer of Conduct of Claim to Water Authority Indemnatee. The Water Authority Indemnatee may at any time give notice to the Project Company that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which subsection 25.2(B) (Indemnification Procedures - Project Company Right to Dispute Claim) applies. On receipt of such notice the Project Company will promptly take all steps necessary to transfer the conduct of such claim to the Water Authority Indemnatee, and will provide to the Water Authority Indemnatee all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

(G) Infringement of Intellectual Property Rights. In response to any claim of infringement or alleged infringement of the Intellectual Property rights of any person, the Project Company may replace such infringing or allegedly infringing item provided that:

(1) The replacement is performed without additional cost to the Water Authority; and

(2) The replacement has at least equal quality performance capabilities when used in conjunction with the Project.

ARTICLE 26

MISCELLANEOUS PROVISIONS

SECTION 26.1. COVENANT AGAINST SALE OF THE PLANT.

The Project Company shall not sell, lease, assign, convey, move or otherwise transfer its ownership interest in the Plant or the Plant Site without the consent of the Water Authority given in its discretion, except in connection with an assignment of this Water Purchase Agreement pursuant to Section 24.1 (Limitation on Assignment by Project Company).

SECTION 26.2. RELATIONSHIP OF THE PARTIES.

The Project Company is an independent contractor of the Water Authority and the relationship between the parties shall be limited to performance of this Water Purchase Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Water Purchase Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Water Purchase Agreement or the performance thereof.

SECTION 26.3. NO OTHER BUSINESS.

The Project Company shall not engage in any business or activity other than the business or activities conducted for the purposes of the Project or its performance under the Product Water Pipeline Improvements Design-Build Agreement, or otherwise expressly permitted hereunder.

SECTION 26.4. GENERAL PROJECT COMPANY ASSUMPTION OF RISK.

Except to the extent expressly allocated to the Water Authority or otherwise provided for under this Water Purchase Agreement, all risks, costs and expenses in relation to the performance by the Project Company of its obligations under this Water Purchase Agreement are allocated to, and accepted by, the Project Company as its entire and exclusive responsibility.

SECTION 26.5. GENERAL DUTY TO MITIGATE.

(A) Mitigation by the Project Company. In all cases where the Project Company is entitled to receive any relief from the Water Authority or exercise any rights, including the right to receive any payments, costs, damages or extensions of time, whether on account of Uncontrollable Circumstances or otherwise, the Project Company shall use all reasonable efforts to mitigate such amount required to be paid by the Water Authority to the Project Company under this Water Purchase Agreement, or the length of the extension of time. Upon request from the Water Authority, the Project Company shall promptly submit a detailed description, supported by all such documentation as the Water Authority may reasonably require, of the measures and steps taken by the Project Company to mitigate and meet its obligations under this subsection.

(B) Mitigation by the Water Authority. In all cases where the Water Authority is entitled to receive from the Project Company any compensation, costs or damages,

but not in any other cases, the Water Authority shall use all reasonable efforts to mitigate such amount required to be paid by the Project Company to the Water Authority under this Water Purchase Agreement, provided that such obligation shall not require the Water Authority to:

- (1) Take any action which is contrary to the public interest, as determined by the Water Authority in its discretion;
- (2) Undertake any mitigation measures that might be available arising out of its status as a Governmental Body, but which measure would not normally be available to a private commercial party; or
- (3) Alter the amount of Deductions it is entitled to make in accordance with subsection 9.2(E) (Remedies for Breach of Product Water Quality Guarantee).

The Water Authority shall have no obligation to mitigate, implied or otherwise, except as set forth in this subsection or otherwise as expressly provided in this Water Purchase Agreement. Upon request by the Project Company, the Water Authority shall promptly submit a detailed description, supported by all such documentation as the Project Company may reasonably require, of the measures and steps taken by the Water Authority to mitigate and meet its obligations under this subsection.

SECTION 26.6. OPPORTUNITIES.

Except as expressly provided herein, or as may be specifically agreed in writing between the Water Authority and the Project Company during the Term, the Water Authority reserves the right to all commercial and other opportunities for, or related to, the Project.

SECTION 26.7. CONTRACT ADMINISTRATION.

(A) Authority of Water Authority Representative. The Project Company understands and agrees that the Water Authority Representative has only limited authority with respect to the implementation of this Water Purchase Agreement, and cannot bind the Water Authority with respect to any Water Purchase Agreement Amendment, to waivers, or to incurring costs in excess of the amounts appropriated therefor. Within such limitations, the Project Company shall be entitled to rely on the written directions of the Water Authority Representative. The Water Authority Representative shall have the right at any time to issue the Project Company a written request for information relating to a possible breach of this Water Purchase Agreement. Any such written request with respect to a material breach designated as a "priority request" shall be responded to by the Project Company within three Business Days.

(B) Operating Notices. Operating Notices hereunder shall be given by fax or e-mail, and may be given personally or by telephone promptly followed by fax or e-mail confirmation. Operating Notices to the Project Company shall be given by the Water Authority Representative and Operating Notices to the Water Authority shall be given by the Project Company Representative.

(C) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of these matters, once resolution is reached, can be formally reflected

in the common records of the parties so as to permit the orderly and effective administration of this Water Purchase Agreement.

(D) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Water Purchase Agreement between the parties which do not require a Water Purchase Agreement Amendment shall be a "Contract Administration Memorandum." A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the Water Authority and the Project Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example:

- (1) Issues as to the meaning, interpretation or application of this Water Purchase Agreement in particular circumstances or conditions;
- (2) Calculations required to be made;
- (3) Notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and
- (4) Other similar routine contract administration matters.

(E) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the Water Authority reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the Water Authority Representative and the Project Company Representative. The Water Authority and the Project Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from the Water Purchase Agreement Amendments and all other documents relating to the administration and performance of this Water Purchase Agreement.

(F) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Water Purchase Agreement.

SECTION 26.8. WATER PURCHASE AGREEMENT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of Section 26.7 (Contract Administration), no material change, alteration, revision or modification of the terms and conditions of this Water Purchase Agreement shall be made except through a written amendment to this Water Purchase Agreement (a "Water Purchase Agreement Amendment") duly authorized by the Water Authority and by the Project Company. Water Purchase Agreement Amendments shall be dated and signed by the Water Authority Representative and the Project Company Representative.

(B) Water Purchase Agreement Amendments and Contract Administration Memoranda. In order to maintain a complete file of all agreements made with respect to the administration of this Water Purchase Agreement, when a Water Purchase Agreement Amendment or other agreement with respect to this Water Purchase Agreement is entered into and executed by the parties, a Contract Administration Memorandum shall be prepared attaching and acknowledging the Water Purchase Agreement Amendment or other agreement, but need not be executed by the parties.

SECTION 26.9. WATER AUTHORITY APPROVALS AND CONSENTS.

When this Water Purchase Agreement requires any approval or consent by the Water Authority to a Project Company submittal, request or report, the approval or consent shall, within the limits of the authority of Section 26.7 (Contract Administration), be given by the Water Authority Representative in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by the Water Authority with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Water Purchase Agreement, and except for (1) approvals provided for in Appendix 3 (Project Design and Construction Work), and (2) requests, reports and submittals made by the Project Company that do not, by their terms or the terms of this Water Purchase Agreement, require a response or action, if the Water Authority does not find a request, report or submittal acceptable, it shall provide written response to the Project Company describing its objections and the reasons therefor within 30 days of the Water Authority's receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless the Water Authority's approval or consent may not be unreasonably delayed by the express terms hereof, and the Project Company may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by the Water Authority pursuant to some specific term of this Water Purchase Agreement shall be deemed acceptable to the Water Authority if the Water Authority shall not have objected thereto within 30 days of the receipt thereof.

SECTION 26.10. DISCLOSED DATA.

It is the Project Company's responsibility to have conducted its own analysis and review of the Project and, before the execution of this Water Purchase Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of any Disclosed Data upon which it places reliance and to assess all risks related to the Project. The Project Company shall not be entitled to and will not make (and will ensure that no Project Contractor or Subcontractor makes) any claim against any Water Authority Indemnatee, whether in contract, tort or otherwise, including any claim in damages for extensions of time or for additional payments under this Water Purchase Agreement on the grounds:

- (1) Of any misunderstanding or misapprehension in respect of the Disclosed Data;
- (2) That the Disclosed Data was incorrect or insufficient; or
- (3) That incorrect or insufficient information relating to the Disclosed Data was given to it by any person other than the Water Authority,

nor will the Project Company be relieved from any obligation imposed on or undertaken by it under this Water Purchase Agreement on any such ground.

SECTION 26.11. PROPERTY RIGHTS.

(A) Protection from Infringement. The Project Company shall indemnify, defend and hold harmless the Water Authority and the Water Authority Indemnities in the manner provided in Section 25.1 (Project Company's Obligation to Indemnify) from and against any and all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the Construction Work and the Operating Work. At its option, the Project Company shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent

in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe.

(B) Intellectual Property Developed by the Project Company. The following provisions shall apply with respect to Intellectual Property developed in connection with the Project:

(1) License Grant. The Project Company hereby grants to the Water Authority a perpetual, limited, fully paid, royalty-free, personal and non-transferable (except as provided below) non-exclusive license to use the Intellectual Property resulting from or developed during the course of development, design, construction or operation of the Project under the Project Company's rights to such Intellectual Property (the "Licensed Intellectual Property"), which for the purposes hereof shall include without limitation the Project Company's license under US patent no. 6,946,081 in the Service Area but shall exclude Intellectual Property of persons or entities other than the Project Company (except to the extent of the Project Company's license rights in such Intellectual Property). The license granted under this subsection shall be solely for projects owned by the Water Authority or the Water Authority's Member Agencies in their respective service territories, and the Metropolitan Water District of Southern California and its member agencies and their sub-agencies. The Project Company shall assure that all Project Contracts provide subsequent owners of the Plant the rights to Intellectual Property provided to the Project Company under such Project Contracts.

(2) Maintenance and Enforcement. Except as otherwise provided herein, the Project Company shall have the sole right, but not the obligation, to maintain the Licensed Intellectual Property and to enforce or protect the Licensed Intellectual Property against infringers relating to the Licensed Intellectual Property. Except as otherwise provided herein, the Water Authority agrees that any proceeds received (by settlement or otherwise) in connection with any such action shall belong to the Project Company.

(3) Ownership. The Water Authority acknowledges that the Project Company is the sole and exclusive owner of the Licensed Intellectual Property. Nothing contained herein shall create or be construed as an assignment to the Water Authority of any right, title or interest in or to the Licensed Intellectual Property, other than the license granted by this subsection (B).

(4) Improvements. The Water Authority may make sole or joint improvements, developments, extensions or modifications to the subject matter of the Licensed Intellectual Property ("Improvements"). The Water Authority hereby grants and agrees to grant to the Project Company a perpetual, irrevocable, unlimited, worldwide, fully-paid, royalty-free non-exclusive license to use the Improvements for any purpose, including but not limited to incorporating Improvements into desalination plants operated by the Project Company or its customers. The Water Authority agrees to promptly disclose such Improvements to the Project Company.

(5) No Warranties. THE PROJECT COMPANY DISCLAIMS ALL WARRANTIES EXPRESSED OR IMPLIED AS TO THE LICENSED INTELLECTUAL PROPERTY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR VALIDITY. In particular, and without limiting the foregoing, nothing in this License Agreement shall be construed as: (i) a warranty or representation by the Project Company as to the validity or scope of the Licensed Intellectual Property; or (ii) a warranty or representation that anything made, used, sold, or otherwise disposed of under this subsection (B) is or will be free from infringement of any type, including patent or copyright infringement, or from the

misappropriation of trade secrets; or (iii) a requirement that the Project Company shall file any patent or copyright application, secure any patent or copyright registration, or maintain any patent or copyright registration in force; (iv) an obligation to bring or prosecute actions or suits against third parties for infringement or otherwise; or (v) an obligation to defend a suit or action brought by a third party which challenges or concerns the validity of any of the Licensed Intellectual Property or which concerns the infringement of any rights of third parties by practice of the Licensed Intellectual Property. The Project Company makes no representation, extends no warranties of any kind, either express or implied, and assumes no responsibility whatsoever with respect to the use, sale, or other disposition by the Water Authority, or any of its vendees or other transferees of articles incorporating or made under the Licensed Intellectual Property.

(6) Assignment. The Project Company may freely assign the Licensed Intellectual Property in whole or in part without prior consent of any kind from the Water Authority, and the Water Authority's rights under this subsection (B) may not be assigned nor may the Licensed Intellectual Property be sublicensed by the Water Authority without the Project Company's prior written consent. Notwithstanding the foregoing, the Water Authority shall have the right to have its contractors use the Licensed Intellectual Property solely for projects owned by the Water Authority in its Service Area, provided such contractors shall have agreed to be bound by the provisions of this subsection (B) by signing an acknowledgement of this subsection (B) and delivering it to the Project Company.

SECTION 26.12. ACTIONS OF THE WATER AUTHORITY IN ITS GOVERNMENTAL CAPACITY.

Nothing in this Water Purchase Agreement shall be interpreted as limiting the rights and obligations of the Water Authority under Applicable Law in its governmental capacity (including police power actions to protect health, safety and welfare), or as limiting the right of the Project Company to bring any action against the Water Authority, not based on this Water Purchase Agreement, arising out of any act or omission of the Water Authority in its governmental capacity.

SECTION 26.13. WATER AUTHORITY'S CONFIDENTIALITY OBLIGATIONS.

(A) General. The Water Authority shall have the right to disclose and make public any information received from the Project Company, except for (1) information that the Project Company requests be kept confidential in a manner permitted by the California Public Records Act, and (2) the information described in subsection (C) of this Section (the "Confidential Project Company Information").

(B) Disclosable Information. Unless listed in subsection (C) of this Section, the Water Authority shall have the right to disclose and make public the following information, whether or not such information may be subject to the confidentiality provisions of the California Public Records Act:

(1) information which is or comes into the public domain other than through any disclosure prohibited by this Water Purchase Agreement;

(2) reports, notices, certificates, audited financial statements and other documents that the Project Company delivers or causes to be delivered to the Plant Trustee under or in connection with the Plant Financing Agreements, including reports prepared by the Plant Bondholders' consulting engineer and continuing disclosure reports required under applicable securities laws;

(3) information supplied to any Governmental Body, including regulating reports and the information and sampling and testing results provided pursuant to subsection 8.8(D) (Reports to Governmental Bodies);

(4) periodic reports prepared by the Project Company pursuant to Section 8.11 (Periodic Reports);

(5) records required to be retained and maintained pursuant to Section 8.12 (Maintenance of Records);

(6) the Performance Test Report delivered to the Water Authority pursuant to subsection 7.3(F) (Test Report);

(7) other than the information set forth in clause (C)(4) of this Section, any information related to the maintenance, repair and replacement of the Project provided pursuant to Article 10 (Maintenance, Repair and Replacement); and

(8) photographs and videos of the exterior of the Plant, or of the interior of the Plant that provide a general overview of the interior of the Plant but do not show the details of the advanced technologies of the Project.

(C) Non-Disclosable Information. Unless disclosure is required under the California Public Records Act, the Water Authority shall not disclose the following information:

(1) Personal Information;

(2) detailed plans, drawings and specifications of the Project;

(3) detailed data and information supporting the Performance Test Report delivered to the Water Authority pursuant to subsection 7.3(F);

(4) detailed data and information supporting or contained in the Asset Registry, the CMMS, maintenance inspection reports, and any Exit Performance Test provided for under Article 10 (Maintenance, Repair and Replacement);

(5) detailed operating procedures plans;

(6) financial information regarding Project Contractors;

(7) details of any Subcontracts;

(8) details of any Project Contracts, other than as specifically described herein; and

(9) information provided to the Water Authority pursuant to Section 6.10 (Procedures Relating to Potential Tax Gross-Ups).

(D) Use of Confidential Project Company Information by Water Authority's Professional Advisers and Consultants. The Water Authority may disclose or grant access to Confidential Project Company Information to its professional advisers and consultants to the extent necessary to enable the Water Authority to perform (or to cause to be performed) or to enforce its rights or obligations under this Water Purchase Agreement (provided that such advisers and consultants agree not to disclose such Confidential Project Company Information and the Water Authority shall be liable to the Project Company for disclosure by such advisers

and consultants which if made by the Water Authority would constitute a breach of this Section).

(E) Procedures Upon Third Party Requests for Confidential Project Company Information. The obligation to maintain the confidentiality of Confidential Project Company Information does not apply to the extent the Water Authority is required to disclose such Confidential Project Company Information under the California Public Records Act. The Water Authority shall deliver prompt written notice to the Project Company of any third-party request for such disclosure so that the Project Company may seek, at its sole cost, a protective order or other appropriate remedy. In the event the Project Company contests disclosure of Confidential Project Company Information pursuant to this subsection, the Project Company shall pay any attorneys' fees or costs awarded against the Water Authority in connection with such contest.

(F) Equitable Relief. Without prejudice to any other rights and remedies that the Project Company may have, the Water Authority agrees that damages may not be an adequate remedy for a breach of this Section, and that the Project Company shall, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this Section.

SECTION 26.14. PROJECT COMPANY'S CONFIDENTIALITY OBLIGATIONS.

(A) Confidential Water Authority Information. The Project Company shall treat as confidential and proprietary to the Water Authority all information obtained from the Water Authority in connection with the Contract Obligations that is not in the public domain other than through any disclosure prohibited by this Water Purchase Agreement and that (1) is Personal Information of employees or agents at the Water Authority or (2) pertains to the physical assets or operation of the Water Authority Distribution System and the disclosure of which would reasonably be expected under prudent water utility management practice to present a security risk to the Water Authority or its personnel, property or operations (the "Confidential Water Authority Information"). The Project Company shall not (a) use Confidential Water Authority Information for any purpose other than the performance of the Contract Obligations, or (b) disclose any Confidential Information to any person other than its own employees, agents, Project Contractors or Subcontractors who have a need for such information in the performance of their work relating to the Project, unless such disclosure is specifically authorized in writing by the Water Authority.

(B) Security Plan. If requested by the Water Authority, the Project Company shall prepare a security plan to assure that Confidential Water Authority Information is not used for any unauthorized purpose or disclosed to unauthorized persons by the Project Company or any of its Project Contractors or Subcontractors. The Project Company shall advise the Water Authority of any request for disclosure of such information or of any actual or potential disclosure of such information, whether or not a security plan has been prepared by the Project Company.

(C) Equitable Relief. Without prejudice to any other rights and remedies that the Project Company may have, the Project Company agrees that damages may not be an adequate remedy for a breach of this Section, and that the Water Authority will, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this Section.

SECTION 26.15. PERSONAL INFORMATION.

The Project Company shall, and will require the Project Contractors and Subcontractors to, only collect, hold, process, use, store and disclose Personal Information of employees or agents of the Water Authority:

- (1) (1) with the prior consent of the Water Authority;
- (2) (2) to the extent necessary to perform the Project Company's obligations under this Water Purchase Agreement; and
- (3) (3) in accordance with Applicable Law, including the California Public Records Act as if the provisions of such Applicable Law applied directly to the Project Company, the Project Contractors and Subcontractors.

The Project Company shall allow the Water Authority on reasonable notice to inspect the measures of the Project Company and its Project Contractors and Subcontractors to protect Personal Information.

SECTION 26.16. COMPLIANCE WITH MATERIAL AGREEMENTS.

The Project Company shall comply with its obligations under agreements of the Project Company which are material to the performance of its obligations under this Water Purchase Agreement. The Water Authority shall comply with its obligations under agreements of the Water Authority which are material to the performance of its obligations hereunder.

SECTION 26.17. BINDING EFFECT.

This Water Purchase Agreement shall inure to the benefit of and shall be binding upon the Water Authority and the Project Company and any assignee acquiring an interest hereunder consistent with Article 24 (Assignment and Change in Control).

SECTION 26.18. CONSENTS.

Any consent required to be given under this Water Purchase Agreement shall be in writing.

SECTION 26.19. NOTICES.

(A) Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this Water Purchase Agreement (other than Operating Notices as provided in subsection 26.7(B) (Contract Administration - Operating Notices), will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

- (1) if delivered by hand during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;
- (2) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, during

business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission; and

(3) if delivered by electronic mail during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

(B) Water Authority Notice Address. Notices (other than Operating Notices) required to be given to the Water Authority shall be addressed as follows:

San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123
Attention: General Manager

Fax No.: 858-522-6562
Email: _____

with a copy to:

San Diego County Water Authority
Office of General Counsel
4677 Overland Avenue
San Diego, CA 92123

Fax No.: 858-522-6566
Email: _____

(C) Project Company Notice Address. Notices required to be given to the Project Company shall be addressed as follows:

Poseidon Resources (Channelside) LP
501 W. Broadway, Suite 2020
San Diego, CA 92101
Attention: Project Manager

Fax No.: _____
Email: _____

with a copy to:

Poseidon Resources (Channelside) LP
1055 Washington Boulevard
Stamford, CT 06901
Attention: President

Fax No.: _____
Email: _____

SECTION 26.20. NOTICE OF LITIGATION.

In the event the Project Company or Water Authority receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in

connection with the Project, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, "timely notice" shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

SECTION 26.21. FURTHER ASSURANCES.

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Water Purchase Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Water Purchase Agreement.

SECTION 26.22. CONTRACTOR LICENSE AND COMPLAINT INFORMATION.

(A) Owner's License. The Project Company represents that it is a licensed contractor in the State of California. Its license number is 956630.

(B) Notice Regarding California Contractors. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, CA 95826.

SECTION 26.23. NO PUBLIC UTILITY.

Nothing contained in this Water Purchase Agreement shall be construed as an intent by the Project Company to dedicate its property or any Project facilities to public use or subject itself to regulation as a "public utility" (as defined in the California Public Utilities Code or any other Applicable Law).

SECTION 26.24. FORWARD CONTRACT.

The parties acknowledge and agree that the transaction contemplated under this Water Purchase Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the parties further acknowledge and agree that each party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Water Purchase Agreement to be executed by their duly authorized representatives as of the day and year first above written.

APPROVED AS TO FORM:
Office of the General Counsel

By: _____
Name: _____
Title: _____
Date: _____

SAN DIEGO COUNTY WATER AUTHORITY

By: _____
Name: _____
Title: _____
Date: _____

POSEIDON RESOURCES (CHANNELSIDE) LP

By: _____
Name: _____
Title: _____
Date: _____