ITEM NO. 8

STAFF REPORT

CITY OF OCEANSIDE

DATE: January 20, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **AMENDMENT 1 TO CHANGE A DEADLINE OF THE WATER PURCHASE AGREEMENT WITH POSEIDON RESOURCES LLC**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 adjusting a deadline to the water purchase agreement with Poseidon Resources (Channelside) LLC (Poseidon) of San Diego; and authorize the City Manager to execute the agreement.

BACKGROUND

On December 19, 2007, the City Council approved the water purchase agreement between the City of Oceanside and Poseidon for the purchase of desalinated water. Poseidon, a company that develops water projects, is developing a seawater desalination project at the Encina Power Plant in Carlsbad. They are proposing to sell the water produced at the desalination facility through long-term water sales agreements.

ANALYSIS

Amendment 1 will amend Section 2.3.1 to read as follows:

2.3.1 Certain Events. In the event that by March 31, 2010 either of the following has not occurred, then either Party may terminate this Agreement provided it is not in breach of its obligations hereunder: (i) the Parties have not determined the Interconnection Points pursuant to Section 9.2 (and, if applicable, entered into the Appurtenant Facilities Agreement); (ii) the Environmental Impact Report for the project has not been certified under CEQA; or (iii) the Parties have not determined the Delivery Regime pursuant to Section 9.3.

FISCAL IMPACT

This amendment does not have a fiscal impact.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATIONS

Staff recommends that the City Council approve Amendment 1 adjusting a deadline to the water purchase agreement with Poseidon Resources (Channelside) LLC (Poseidon) of San Diego; and authorize the City Manager to execute the agreement.

PREPARED BY:

Greg Blakely
Administration Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Lauren M. Wasserman, Interim Water Utilities Director

Teri Ferro, Financial Services Director

Exhibit A: Amendment 1
Exhibit B: Water Purchase Agreement

FIRST AMENDMENT TO WATER PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO WATER PURCHASE AGREEMENT (this "First Amendment"), dated as of _____ ___, 2010 is made by and between THE CITY OF OCEANSIDE ("Oceanside"), and POSEIDON RESOURCES (CHANNELSIDE) LLC, a Delaware limited liability company ("Poseidon" and collectively with Oceanside, the "Parties").

RECITALS

WHEREAS, pursuant to the terms of that certain Water Purchase Agreement dated as of December 19, 2007, by and between Oceanside and Poseidon, (the "Agreement"), Poseidon has agreed to sell to Oceanside, and Oceanside has agreed to purchase from Poseidon, up to five thousand (5,000) AF/Y of Product Water (unless otherwise defined herein, capitalized terms shall have the meanings given to them in the Agreement), subject to the terms, conditions and arrangements set forth in the Agreement; and

WHEREAS, the Parties desire to adjust certain of the deadlines in the Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Parties hereto, the Parties covenant and agree as follows:

1. Amendment. Section 2.3.1 is hereby amended by replacing "a date that is twenty-four (24) months after the Effective Date" in the first sentence thereof with "March 31, 2010".

2. Controlling Law. This First Amendment shall be governed by the laws of the State of California in accordance with Section 21.5 of the Agreement.

3. Counterparts. This First Amendment may be executed in any number of duplicate originals or counterparts, each of such duplicate originals or counterparts shall be deemed to be an original and all taken together shall constitute one and the same instrument.

4. Amendment and Modification Only. The Parties hereby ratify and confirm all of their obligations under the provisions of the Agreement as amended by this First Amendment.

IN WITNESS WHEREOF, Oceanside and Poseidon, intending to be legally bound by the provisions herein contained, have executed this First Amendment to Water Purchase Agreement effective as of the date first above written.

CITY OF OCEANSIDE

By: _____
Name: Peter A. Weiss
Title: City Manager

POSEIDON RESOURCES (CHANNELSIDE) LLC

By: _____
Name:
Title:

Document No. 07-D0746-1
12/19/07 (16)
City Original

Execution Version

WATER PURCHASE AGREEMENT

Entered Into

By and Between

City of Oceanside

And

Poseidon Resources (Channelside) LLC

December 19th, 2007

Execution Version

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WATER PURCHASE AGREEMENT

This Water Purchase Agreement ("Agreement"), entered into as of this 19th day of December, 2007 (the "Effective Date"), is made by and between the City of Oceanside ("Oceanside"), and Poseidon Resources (Channelside) LLC, a Delaware limited liability company ("Poseidon") (Oceanside and Poseidon sometimes hereinafter are referred to collectively as the "Parties" and individually as a "Party"), with respect to the following facts:

RECITALS

A. Based on technical, financial, environmental and engineering studies it has conducted since 1998, Poseidon has determined it is feasible to develop a reverse osmosis seawater desalination plant (the "Project") capable of delivering up to fifty (50) million gallons per day ("MGD") or 56,000 acre-feet annually ("AF/Y") of desalinated water ("Product Water") meeting specified water quality standards.

B. The Project will be located at a site described on Schedule 1 (the "Site") owned by Cabrillo Power I LLC in the City of Carlsbad and leased to Poseidon.

C. Poseidon desires to sell to Oceanside, and Oceanside desires to buy from Poseidon, at wholesale, up to five thousand (5,000) AF/Y of Product Water (the "Contract Capacity"), pursuant to an arrangement where the appropriate risks of development, construction and operation of the Project are borne by Poseidon and Oceanside does not have any liability with respect to the financing or operation of the Project.

D. Through the series of contractual rights and obligations contained in this Agreement (including but not limited to Oceanside's right to purchase Product Water from Poseidon) and through agreements between Poseidon and other purchasers of Product Water, the Parties intend to devote the Project and Poseidon's interest in the Site to public use by Oceanside and other purchasers of Product Water so that the Project and Site will be "appropriated to public use" pursuant to Cal. Code of Civil Procedure § 1240.660.

E. Before Oceanside can commit to purchase any Product Water, Oceanside must first comply, as a responsible agency, with the California Environmental Quality Act ("CEQA"), compliance with which is a condition precedent to Oceanside's obligation to purchase Product Water as set forth below. As part of the environmental analysis under CEQA, a final Environmental Impact Report has been prepared and certified by the City of Carlsbad for the proposed Project. Oceanside may rely on the City of Carlsbad's Environmental Impact Report in fulfilling its responsibilities as a responsible agency.

F. Subject to the terms and conditions set forth below, Poseidon now desires to contract with Oceanside, and Oceanside now desires to contract with Poseidon, for the purchase of Product Water from the Project.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and adequacy

of which are hereby acknowledged, the Parties agree as follows:

OPERATIVE PROVISIONS

1. PURCHASE AND SALE OF CONTRACT CAPACITY.

1.1 Contract Capacity. Subject to all of the terms and conditions of this Agreement, Oceanside hereby agrees to buy the Contract Capacity, up to five thousand (5,000) AF/Y, from Poseidon, and Poseidon hereby agrees to sell the Contract Capacity to Oceanside, to be delivered in installments pursuant to the Delivery Regime to be developed by the Parties pursuant to Section 9.

1.2 Oceanside's Requirements.

1.2.1 Poseidon acknowledges that, by entering into this Agreement, Oceanside intends to purchase from the Project the amount of the Contract Capacity and that Oceanside currently has requirements for water equal to or greater than the Contract Capacity. Poseidon agrees that during the Term the Project shall have the capacity to deliver at least the Contract Capacity of Product Water, and without Oceanside's prior written consent, Poseidon shall not enter into any oral or written agreement, contract, instrument, undertaking or any other kind of understanding whatsoever, which, individually or in the aggregate, shall preclude Oceanside from purchasing the Contract Capacity. Oceanside shall have the right to review the regimes for the delivery of Product Water to third parties to confirm that such regimes do not adversely affect Oceanside's rights under this Agreement.

2. TERM. The term ("Term") of this Agreement shall commence on the Effective Date and shall continue for a period of thirty (30) years after the Commercial Operation Date (defined in Section 4.2 below), unless extended or sooner terminated in accordance with the provisions of this Agreement. Oceanside's obligation to purchase Product Water shall commence if and when the conditions set forth in Section 13.2 have been satisfied or waived by Oceanside.

2.1 Extension Terms.

2.1.1 Extension Option. Oceanside may, at Oceanside's option (the "Extension Option"), elect to extend the Term of this Agreement for two (2) consecutive additional periods of thirty (30) years each (severally called "Extension Term"), subject to all the provisions of this Agreement, provided that (i) the Purchase Price for each Extension Term shall be adjusted as provided in Section 2.1.4(c) and (ii) the Carlsbad Municipal Water District does not exercise any option to purchase the Project. Subject to the exercise of an Extension Option becoming effective pursuant to Section 2.1.4(c), an Extension Term shall commence at the expiration of the Term (or the first Extension Term as the case may be) and shall terminate on the thirtieth (30th) anniversary of the date of commencement of that Extension Term, unless sooner terminated as provided herein. In the event that (i) Oceanside desires to exercise its Extension Option and (ii) the Carlsbad Municipal Water District exercises its option to purchase the Project, Poseidon shall use commercially reasonable efforts to have the Carlsbad Municipal Water District enter into a water purchase agreement with Oceanside on substantially the same terms and conditions as if Oceanside had exercised its Extension Option under this Agreement.

2.1.2 Failure to Exercise. If Oceanside fails to exercise the Extension Option for an Extension Term within the time provided in Section 2.1.4(c), then the Extension Option herein granted for such Extension Term shall lapse and be of no further force or effect. Failure to exercise the Extension Option for the first Extension Term shall nullify the Extension Option for the second Extension Term.

2.1.3 References to "Term." After the exercise of any Extension Option, all references in this Agreement to the "Term" shall be considered to mean the Term as extended, and all references to termination or to the end of the Term shall be considered to mean the termination or end of the first or second Extension Term, as the case may be.

2.1.4 Conditions to Exercise. Oceanside's right to the Extension Option are subject to the following conditions:

(a) Agreement in Effect. This Agreement shall be in effect at the time notice of exercise is given and on the last day of the Term (or the first Extension Term, as the case may be).

(b) No Default. No Oceanside Event of Default shall have occurred and be continuing at the time notice of exercise is given.

(c) Procedure. Oceanside may notify Poseidon of its desire to exercise the Extension Option for each Extension Term only by delivering Poseidon written notice of such extension request (each such notice, an "Option Exercise Notice"). Oceanside shall deliver the Option Exercise Notice at least forty-eight (48) months prior to the expiration of the then-current term of the Agreement (the "Existing Term"). Promptly after delivery of the Option Exercise Notice, the Parties shall commence negotiations in good faith on equitable adjustments to the Purchase Price. If the Parties reach agreement on such adjustments no later than twenty-four (24) months prior to the expiration of the Existing Term, the exercise of the Extension Option shall be deemed effective. If the Parties do not reach agreement on such adjustments by twenty-four (24) months prior to the expiration of the Existing Term, the exercise of the Extension Option shall be deemed ineffective and the Agreement will terminate on the last day of the Existing Term (unless otherwise agreed by the Parties).

2.2 Water Year, Defined. As used in this Agreement, "Water Year" means a period of twelve (12) consecutive calendar months, commencing on the first day of January and ending on the last day of December; provided, however, that the first Water Year shall commence on the Commercial Operation Date and shall end on December 31, and the last Water Year shall commence on January 1 prior to the date the Term of the Agreement expires or is terminated, whichever applies, and shall end on the last day of the Term of this Agreement or the effective date of any termination, whichever applies.

2.3 Termination Prior to the Commercial Operation Date.

2.3.1 Certain Events. In the event that by a date that is twenty-four (24) months after the Effective Date (as such date may be extended by mutual agreement of the Parties) (the "Determination Date") either of the following has not occurred, then either Party

may terminate this Agreement provided it is not in breach of its obligations hereunder: (i) the Parties have not determined the Interconnection Points pursuant to Section 9.2 (and, if applicable, entered into the Appurtenant Facilities Agreement); (ii) the Environmental Impact Report for the Project has not been certified under CEQA; or (iii) the Parties have not determined the Delivery Regime pursuant to Section 9.3.

2.3.2 Authority Water Rates. In the event that by the Determination Date Poseidon has reasonably determined that the water rates charged by the Authority are not sufficient to implement the Project, then Poseidon may terminate this Agreement.

2.3.3 Legal Entitlements For Construction. As more specifically set forth in Section 5, Poseidon shall obtain and maintain all Legal Entitlements with respect to the Project. On or before the fourth (4th) anniversary of the Effective Date (the "Construction Permit Deadline") Poseidon shall obtain (or cause its applicable subcontractors to obtain) all Legal Entitlements required for the commencement of construction of the Project. In the event that Poseidon has not obtained such Legal Entitlements by the Construction Permit Deadline, the Parties shall meet to assess the effect of the delay on the implementation of the Project. The Parties shall use commercially reasonable efforts to agree upon an extension of the Construction Permit Deadline. If the Parties cannot agree on such an extension, then either Party may terminate this Agreement.

3. PURCHASE PRICE.

3.1 Purchase Price.

3.1.1 Initial Purchase Price. As the purchase price ("Purchase Price") for the Contract Capacity, Oceanside shall pay to Poseidon in accordance with Section 3.3 an amount equal to (A) an amount per acre foot equal to the lower of (i) the Avoided Water Cost (as defined in Schedule 3) and (ii) the Base Price (as defined below), multiplied by (B) the total number of acre feet actually delivered (or deemed to be delivered pursuant to Section 9.8) to the Delivery Points (defined in Section 9.2). Subject to Sections 3.2, 9.2 and 10, the initial base price (the "Base Price") shall be the sum of (i) Eight hundred and sixty-one Dollars ($861) per acre foot and (ii) the Delivery Charge as determined pursuant to Section 3.2.3.

3.1.2 Subsidies. The Parties shall use commercially reasonable efforts to obtain either (i) a subsidy from the Metropolitan Water District of Southern California ("MWD") under its Seawater Desalination Program in an amount not less than Two Hundred Fifty Dollars ($250.00) per acre foot for Oceanside's purchase of Product Water under this Agreement or (ii) a form of third party financial support for Oceanside's purchase of Product Water under this Agreement which provides Oceanside with the economic equivalent of not less than Two Hundred Fifty Dollars ($250.00) per acre foot for Oceanside's purchase of Product Water under this Agreement (such subsidy or financial support hereinafter referred to as the "Subsidy"). Poseidon shall cooperate with Oceanside in obtaining the Subsidy. The Parties further agree that the Base Price shall be equitably adjusted to reflect any other subsidies, grants or external funding, including without limitation funds available under Proposition 50, that shall reduce Poseidon's capital and/or operating and maintenance costs of the Project (the "Other Grants or

Subsidies"). The Parties shall cooperate with each other in applying for and in obtaining any Other Grants or Subsidies.

3.2 Adjustments to the Base Price.

3.2.1 Schedule 3. The Base Price shall be adjusted as described on Schedule 3.

3.2.2 Change in Law. In the event of any change to or the adoption of any Applicable Law after the Effective Date (a "Change in Law") which would materially and adversely affect the ability of Poseidon to perform any of its material obligations under this Agreement the Base Price shall be equitably adjusted to reflect the costs incurred by Poseidon to comply with such change to or adoption of an Applicable Law. Upon the occurrence of such a Change in Law, Poseidon shall provide Oceanside with Poseidon's proposed equitable adjustment to the Base Price. The Parties shall thereafter negotiate in good faith to reach agreement on such adjustment. In the event that the Parties are unable to reach agreement within thirty (30) Days after Poseidon provides its proposal, either Party may submit the dispute over such equitable adjustment for resolution pursuant to Section 19.

3.2.3 Delivery Charge. Within twelve (12) months after the Effective Date, the Parties shall use commercially reasonable efforts to agree upon a mutually-acceptable per acre foot charge (the "Delivery Charge"), which charge shall reflect the cost of construction, financing, operation and maintenance of the Appurtenant Facilities. The Delivery Charge (as it may be reduced pursuant to Section 9.2) shall be a part of the Base Price as described in Section 3.1.1.

3.3 Time and Manner for Payments. For each month during the Term that deliveries of Product Water are made pursuant to this Agreement (or deemed made pursuant to Section 9.8), Poseidon shall invoice Oceanside for the then-current Purchase Price for Product Water delivered to the Delivery Points in the preceding month and for the cost of any premiums incurred in the preceding month for any Additional Insurance (as described in Section 12). The invoice for the last month of each Water Year also shall include the amount of any Deferred Payment and/or Additional Payment due from Oceanside pursuant to Schedule 3. Within thirty (30) days of receipt of an invoice from Poseidon, Oceanside shall remit to Poseidon the amount invoiced. Invoices and payments shall be delivered to Poseidon at the address for notices to Poseidon set forth in Section 21.4 of this Agreement. If Poseidon has not received payment prior to the thirtieth (30th) day after Oceanside's receipt of the corresponding invoice, Poseidon may send Oceanside a notice (an "Overdue Notice") with respect to such invoice. Payments made more than fifteen (15) days after the date of Oceanside's receipt of an Overdue Notice from Poseidon will bear a late fee/interest charge of one percent (1%) per month (but not to exceed the maximum amount permitted by law) (the "Overdue Rate"), from the thirtieth (30th) day after the date of receipt of the invoice. In the event of a dispute over the amount invoiced by Poseidon, Oceanside promptly shall notify Poseidon of any such dispute and will pay any non-disputed amounts. If the Parties are unable to resolve any such disputes, the disputes shall be resolved in accordance with the procedure set forth in Section 19. If any disputed amount is adjusted in Poseidon's favor, Oceanside shall pay to Poseidon the amount of such adjustment, with interest thereon at the Overdue Rate from the date such disputed amount was due until the date of actual payment.

3.4 Take-if-Delivered Contract. The Parties acknowledge and agree that this Agreement is a "take-if-delivered" contract for the purchase of Product Water from Poseidon during each year of the Term. Payments made by Oceanside shall be based upon the quantity of water actually delivered (or deemed to be delivered pursuant to Section 9.8) to the Delivery Points multiplied by the Purchase Price in effect at the time of delivery, calculated in accordance with Sections 3.1 through 3.2 hereof, unless the Parties otherwise agree in writing.

4. CONSTRUCTION.

4.1 Engineering, Procurement and Construction. Poseidon shall engineer, procure and construct the Project in accordance with: (a) any law, statute, ordinance, rule, code, standard, regulation, requirement, judgment, consent decree, consent order, consent agreement, permit action, determination or order applicable to any activities associated with the designing, building, testing, acceptance, permitting, operation, maintenance, management and ownership of any part of the Project (collectively "Applicable Laws") and any other obligations of the Parties under this Agreement; and (b) those methods, techniques and standards that, at the time a particular service is performed and in light of the circumstances then known or which reasonably should have been known, are generally accepted for use in the design, construction, operation, maintenance, management and ownership of facilities similar to the Project (collectively "Prudent Industry Practices").

4.2 Testing. Prior to the Project having commenced selling Product Water on a continuous basis as contemplated by the Delivery Regime ("Commercial Operation"), the Project shall have completed successfully a performance test (the "Performance Test") of delivery of Product Water of the quality and quantity provided in this Agreement. The criteria for the Performance Test shall be developed by Poseidon in accordance with Prudent Industry Practices and approved by Oceanside within thirty (30) days after Poseidon has delivered the criteria to Oceanside. The criteria for the Performance Test shall be included in Poseidon's engineering, procurement and construction contract for the Project. Oceanside also shall have an opportunity to be present at, and review the results of, the Performance Test. Poseidon may repeat the Performance Test as often as necessary, provided that it gives Oceanside at least three (3) days notice prior to each Performance Test. Once the Project has completed the Performance Test successfully, Poseidon may declare that the Project is ready to enter into Commercial Operation and begin delivery of Product Water to the Delivery Points in accordance with Section 9 (the date of Poseidon's declaration is referred to herein as the "Commercial Operation Date").

5. LEGAL ENTITLEMENTS. Poseidon, at its sole cost and expense, shall be solely responsible for obtaining and maintaining (or causing its applicable subcontractors to obtain and maintain) any and all permits, licenses, approvals, authorizations, consents, easements, rights-of-way and entitlements of whatever kind and however described (collectively, "Legal Entitlements") which are required to be obtained or maintained with respect to the Project or the activities to be performed by Poseidon (or its applicable subcontractors) under this Agreement and which are required to be issued by any federal, state, city or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body or any official thereof having jurisdiction with respect to any matter which is subject

to this Agreement, including without limitation the San Diego County Water Authority, the California Coastal Commission, the Regional Water Quality Control Board, the City and the Carlsbad Housing and Redevelopment Commission ("RDA") (each, a "Governmental Authority"). Poseidon also shall be responsible for compliance with and for all costs and expenses necessary for compliance with CEQA, to enable Poseidon to make Product Water available to Oceanside pursuant to this Agreement, and Poseidon shall be responsible for initiating any procedures required for compliance with CEQA with regard to this Agreement.

6. PROJECT OPERATION AND MAINTENANCE.

6.1 Continuous Operation. Poseidon shall operate the Project at the level necessary to satisfy Poseidon's obligation to provide the Contract Capacity to Oceanside under this Agreement in accordance with the Delivery Regime.

6.2 Operations, Maintenance, Management and Repair. Poseidon, at its sole cost and expense, shall operate, maintain and manage or cause its subcontractors (including plant managers and operators) to operate, maintain and manage the Project in accordance with this Agreement, all Applicable Laws and Prudent Industry Practice. Without limiting the generality of the foregoing, Poseidon shall maintain the Project, including without limitation each material portion thereof, in good mechanical and operating repair and condition, perform maintenance in accordance with all Applicable Laws (whether now in force or hereafter adopted), Prudent Industry Practice and manufacturers' recommendations, ordinary wear and tear excepted. Poseidon shall repair or cause to be repaired the Project, including without limitation each material portion thereof, for damage caused by: (a) acts or omissions over which Oceanside has no control; (b) acts or omissions of Poseidon or its officers, directors, shareholders, principals, agents, servants, employees, or third parties; or (c) Poseidon's failure to perform its obligations under this Agreement or its obligations under any other agreement in any way related to the ownership, use or operation of the Project.

6.3 Operation and Maintenance Manual. Poseidon shall prepare and amend periodically, in accordance with Prudent Industry Practices, an operation and maintenance manual (the "O&M Manual") which sets forth the installation, operation, maintenance, record keeping and reporting requirements for each material component of the Project and applicable licensing and qualification requirements for Project personnel.

7. DAMAGE TO THE PROJECT.

7.1 Damage To the Project. If during the Term the Project or any material portion thereof is totally or partially destroyed or damaged from any cause whatsoever, Poseidon, at its sole cost and expense, shall make or cause to be made such repairs or replacements as are necessary to restore operation of the Project as soon as possible to the extent necessary to provide the Contract Capacity under this Agreement.

8. WATER QUALITY.

8.1 [Intentionally Omitted]

8.2 Quality Standards. Compliance with Law, Pressure Parameters and Water Quality Standards. All Product Water produced by the Project and delivered to the Delivery Points must meet all of the following standards (collectively the "Quality Standards"): (a) all drinking water quality standards under Applicable Law (whether now in force or hereafter adopted) and action levels now in force or hereafter adopted by the California Department of Health Services, and (b) the water quality specifications set forth in Schedule 8.2. Attached as Schedule 8.2 are the Quality Standards with respect to the Project as of the Effective Date. The Quality Standards in Schedule 8.2 include permitted variations for each water quality parameter specified. If the Product Water produced by the Project at any time fails to meet all Quality Standards, then Poseidon immediately shall notify Oceanside, and Oceanside and Poseidon shall meet promptly thereafter to determine what corrective measures, if any, need to be taken. The Parties acknowledge that corrective measures may include, without limitation, segregating Product Water that fails to meet all Quality Standards. Poseidon shall be responsible for any and all state and federal fines resulting from Product Water that does not meet Applicable Law for drinking water quality.

8.3 Oceanside's Non-Acceptance. Oceanside shall not be obligated to accept or pay for Product Water of quality that does not meet the Quality Standards.

9. DELIVERY OF WATER.

9.1 Delivery of Water. Subject to Sections 3.2.2 and 9.2, Poseidon shall pay for all costs and expenses whatsoever of the delivery of Product Water to the Delivery Points in accordance with this Agreement, including without limitation all costs and expenses of compliance with all Applicable Laws related to the delivery of Product Water by Poseidon under the provisions of this Agreement. Oceanside shall be responsible for all costs and expenses incurred after delivery of Product Water at the Delivery Points by Poseidon in compliance with this Agreement. Oceanside shall accept all Product Water meeting the Quality Standards made available at the Delivery Points in accordance with the Delivery Regime.

9.2 Delivery Points. The Parties shall use commercially reasonable efforts to determine, within twenty-four (24) months after the Effective Date, mutually-acceptable interconnection points ("Interconnection Points") for the interconnection of the Appurtenant Facilities with the applicable water distribution system. Poseidon, at its cost and expense, shall construct all conveyance facilities, pipelines, pumps, pump stations and any other infrastructure (the "Appurtenant Facilities") necessary or required to deliver the Product Water to the Interconnection Points. At any time after the Interconnection Points have been determined, Oceanside may notify Poseidon that Oceanside elects to: (i) own the Appurtenant Facilities solely dedicated to delivery of Product Water to Oceanside upon their completion or (ii) have a joint powers authority own the Appurtenant Facilities, provided such joint powers authority has equivalent capabilities to those of Oceanside to operate and maintain the Appurtenant Facilities. If Oceanside makes such an election, the Parties shall negotiate in good faith on the terms of an agreement (the "Appurtenant Facilities Agreement") to: (i) transfer the Appurtenant Facilities to Oceanside (or a joint powers authority as described above) for a nominal amount; and (ii) provide for the operation and maintenance of the Appurtenant Facilities by Oceanside (or a joint powers authority as described above) (including their operation to transport Product Water

in excess of the Contract Capacity for third-parties on terms sufficient to support Poseidon's obligations to such third-parties). If Oceanside makes such an election, the "Delivery Point" for the purpose of this Agreement shall be the connection of the Project and the Appurtenant Facilities; otherwise the Delivery Point(s) shall be the Interconnection Point(s). If Oceanside (or a joint powers authority as described above) operates the Appurtenant Facilities the Base Price shall be reduced by the non-capital portion of the Delivery Charge which represents Poseidon's projected cost of operating and maintaining the Appurtenant Facilities. If Oceanside has elected to own, or have a joint powers authority own, the Appurtenant Facilities, Oceanside may, at any time up to one hundred and eighty (180) days before the Projected Commencement Date, elect to finance the cost of the Appurtenant Facilities; provided that Oceanside's proposed financing structure shall not adversely affect Poseidon's ability to finance the Project or perform its other obligations under this Agreement. If Oceanside makes such an election, the Base Price shall be reduced by the capital portion of the Delivery Charge which represents Poseidon's projected cost of financing construction and operation of the Appurtenant Facilities.

9.3 Delivery Schedule. Poseidon and Oceanside shall use commercially reasonable efforts to develop, within twenty-four (24) months after the Effective Date, a mutually acceptable delivery regime (the "Delivery Regime") for the delivery of Product Water from the Project to Oceanside. The Delivery Regime shall include a schedule of delivery so that the average daily amount delivered to Oceanside after the Commercial Operation Date is sufficient to meet Oceanside's requirements for the Contract Capacity. The Delivery Regime also shall be developed in coordination with the delivery regimes for other purchasers of Product Water from the Project and for Product Water delivery prior to the Commercial Operation Date to the extent Product Water meets the Quality Standards and can be sold to Oceanside prior to the Commercial Operation Date under Applicable Law.

9.4 Conveyance Losses. Poseidon shall be responsible for any water losses incurred in the delivery of Product Water to Oceanside up to the Delivery Point.

9.5 Meters and Records. The Delivery Regime shall include mutually acceptable procedures addressing the locations, testing and use of appropriate measurement devices to measure the quantity and quality of Product Water delivered to Oceanside. At a minimum, all water release structures at the Delivery Points shall be equipped with totalizing flow meters and Poseidon shall prepare and keep monthly readings therefrom. Throughout the Term, Poseidon shall maintain records in accordance with the requirements of Applicable Laws and generally accepted accounting principles, as appropriate, pertaining to the quantity and quality of water delivered pursuant to this Agreement. Oceanside shall be entitled to read the meters at least once per month during regular business days and hours and to request and receive from Poseidon copies of all such water delivery, quantity and quality records.

9.6 Reports. On or before the tenth (10th) day of each month during the Term commencing after the Commercial Operation Date, Poseidon shall send written reports to Oceanside setting forth the amount of Product Water and the quality of Product Water delivered to the Delivery Points during the immediately preceding month pursuant to this Agreement.

9.7 Liquidated Damages for Failure to Deliver. If Poseidon shall fail to deliver at least ninety-six percent (96%) (the "Threshold") of the Product Water meeting the Quality

Standards required by the Delivery Regime for any Initial Period or Extended Period (as each are defined below) for any reason other than a Force Majeure event (as defined in Section 17 hereof) or a breach of this Agreement by Oceanside, then Poseidon shall pay Oceanside as liquidated damages and not as a penalty: (i) for an Initial Period, an amount equal to the positive difference, if any, between the (A) per acre foot cost incurred by Oceanside to obtain water and (B) Purchase Price, for each acre foot of Product Water below the Threshold for the Initial Period that Poseidon failed to deliver; and (ii) for an Extended Period, an additional amount equal to fifty dollars ($50) per acre foot, for each acre foot of Product Water below the Threshold for the Extended Period that Poseidon failed to deliver. "Initial Period" shall mean, as of any day commencing on or after the thirtieth (30th) day after the Commercial Operation Date, the thirty (30) days immediately preceding such day. "Extended Period" shall mean, as of any day commencing on or after the one hundred and eightieth (180th) day after the Commercial Operation Date, the one hundred and eighty (180) days immediately preceding such day. Poseidon shall make payment of any liquidated damages by the thirtieth (30th) day of the month immediately following the month containing the last day of the Initial Period(s) or Extended Period(s) for which such liquidated damages arose. If Poseidon pays liquidated damages pursuant to this Section 9.7 for any Initial Period for Product Water Poseidon failed to deliver, Poseidon shall, solely for the purpose of determining whether Poseidon has met the Threshold in subsequent Initial Periods, be deemed to have delivered such Product Water. If Poseidon pays liquidated damages pursuant to this Section 9.7 for any Extended Period for Product Water Poseidon failed to deliver, Poseidon shall, solely for the purpose of determining whether Poseidon has met the Threshold in subsequent Extended Periods, be deemed to have delivered such Product Water. Poseidon expressly acknowledges that this provision is reasonable under the circumstances existing as of the date of this Agreement. The Parties acknowledge that (i) the determination of the actual damages which are liquidated pursuant to this Section 9.7 is impracticable or extremely difficult, (ii) otherwise obtaining an adequate remedy is inconvenient and (iii) the liquidated damages provided for under this Section 9.7 constitute a reasonable approximation of the harm or loss. The Parties agree that unless the failure to deliver Product Water constitutes a Poseidon Event of Default pursuant to Section 14.1.1 (in which case, this Section 9.7 shall no longer apply in the event Oceanside pursues its remedies for a Poseidon Event of Default), the payment of such liquidated damages shall be Oceanside's sole remedy for Poseidon's failure to deliver Product Water to Oceanside. Poseidon's obligations under this Section 9.7 shall not be reduced or otherwise affected by any balance in the Tracking Account.

9.8 Oceanside Failure to Accept Product Water. To the extent Poseidon is unable to deliver Product Water as required by the Delivery Regime as a result of a breach of this Agreement by Oceanside, Oceanside shall make payment for such undelivered Product Water ("Undelivered Water") as if such Undelivered Water had been delivered to Oceanside. Upon the request of Oceanside, Poseidon shall use commercially reasonable efforts to sell such Undelivered Water to third parties. Amounts received by Poseidon from the sale of such Undelivered Water shall be paid to Oceanside until Oceanside has been reimbursed for the amount paid by Oceanside for such Undelivered Water pursuant to this Agreement. The Parties agree that, unless the failure to accept Product Water constitutes an Oceanside Event of Default pursuant to Section 14.3.2 (in which case, this Section 9.8 shall no longer apply in the event Poseidon pursues its remedies for an Oceanside Event of Default), Oceanside's payment for

Undelivered Water shall be Poseidon's sole remedy for Oceanside's failure to accept Product Water as a result of a breach by Oceanside.

10. PRIORITY FOR PROJECT WATER, PRICE REDUCTION.

10.1 Priority Poseidon shall not prefer any person, public corporation, agency, or other consumers over Oceanside with respect to delivery of water from the Project as a customer of Poseidon; provided, however, that in the event that the Project does not produce enough Product Water for Poseidon to meet its obligations to Oceanside under this Agreement and to other purchasers of Product Water (a "Shortfall"), then for the first five (5) days of any such Shortfall Poseidon may allocate Product Water so that the effects of the Shortfall are first borne by the Carlsbad Municipal Water District for such five (5) day period. If the Shortfall lasts more than five (5) days, then Poseidon shall allocate Product Water so that the effects of the Shortfall are first borne by Oceanside and such other purchasers (other than the Carlsbad Municipal Water District) for the second five (5) day period of such Shortfall. If a Shortfall lasts more than ten (10) days, Poseidon shall allocate Product Water for the remainder of the Shortfall proportionately among all purchasers (including Oceanside) based upon amounts of Product Water each purchaser is obligated to purchase from Poseidon. Nothing in this Section 10.1 shall limit Poseidon's obligations under Section 9.7 or Oceanside's remedies upon the occurrence of a Poseidon Event of Default. Poseidon's obligations under this Agreement shall not be affected by any agreements entered into by Poseidon and other purchasers of Product Water.

10.2 Price Reduction If Poseidon sells, conveys or transfers Product Water for a price per acre foot that is less than the Base Price but otherwise on substantially the same terms and conditions as contained in this Agreement, the Base Price immediately shall be lowered to such lesser price per acre foot for all purchases of Product Water during the period Poseidon makes such third-party sales. If Poseidon fails to lower the Base Price as aforesaid, then for all such sales of Product Water for which the Base Price was not lowered, Oceanside shall receive a credit toward the Purchase Price that is equal to the amount by which the Base Price charged under this Agreement exceeded such lesser price per acre foot for the amount of Product Water sold by Poseidon at such lesser price per acre foot.

11. [INTENTIONALLY OMITTED]

12. INSURANCE. From commencement of construction of the Project, Poseidon shall obtain and maintain, or cause to be obtained and maintained, the types and amounts of insurance coverages for the Project set forth on Schedule 12. Oceanside may require Poseidon to obtain and maintain insurance coverages in addition to those described on Schedule 12 (the "Additional Insurance"), subject to (i) such Additional Insurance being commercially available and (ii) Oceanside reimbursing Poseidon for the cost of the premiums for such Additional Insurance. Poseidon shall deliver proof reasonably acceptable to Oceanside of properly executed insurance coverages evidencing compliance with the insurance requirements herein at least ten (10) days prior to Poseidon's anticipated date for commencement of construction of the Project (the "Projected Commencement Date").

12.1 Form. Each policy required under Section 12 shall: (a) be provided at Poseidon's expense; (b) be issued by an insurance company which maintains a Best's rating of at

least A- during the term of the applicable policy or is otherwise reasonably acceptable to Oceanside and (c) require the insurer to provide Oceanside thirty (30) days prior written notice (ten (10) days for non-payment of premium), by certified mail, return receipt requested, of cancellation or intent not to renew any policy of insurance required in this Agreement. Certificates and endorsements evidencing such insurance coverage shall be delivered to Oceanside by Poseidon prior to the Projected Commencement Date. To the extent that an insurance company providing a policy required under this Section 12 fails to maintain a Best's rating of at least A- and is not otherwise reasonably acceptable to Oceanside, Poseidon shall promptly replace such insurance company with a company meeting the requirements of this Section 12.1. Current Insurance Service Office (ISO) or other reasonable and customary policies, forms and endorsements or broader shall be used where applicable.

12.2 Oceanside's Right to Procure. If Poseidon (or any third party on behalf of Poseidon) fails to keep the insurance coverages required in this Agreement in full force and effect with insurance companies which maintain a Best's rating of at least A- or which are otherwise reasonably acceptable to Oceanside, Oceanside, subject to the rights of Poseidon's lenders, may (but shall have no obligation to) at any time or from time to time, after giving notice thereof to Poseidon, procure such insurance and pay the premiums therefor, in which event Poseidon shall repay Oceanside all sums paid by Oceanside, and any costs or expenses incurred by Oceanside in connection therewith, together with interest thereon at the Overdue Rate from the date due until paid in full, within ten (10) days following Oceanside's written demand to Poseidon for such payment. The cost of such insurance premium and the cost of any claims or losses for which Poseidon would be liable to Oceanside under this Agreement which fall within the applicable deductibles or self-insured retention amounts may be deducted, at the option of Oceanside, from payments otherwise due Poseidon. Oceanside shall be under no obligation to purchase such insurance or be responsible for the coverages purchased or the financial stability or responsibility of the insurance company used. The decision to purchase such insurance coverages shall in no way be construed as a waiver of Oceanside's rights under this Agreement.

12.3 Deductibles, Excess Claims. Oceanside shall not be responsible for the amount of any deductibles, self-insured retention, or claims which are not covered and claims which exceed available insurance coverage.

12.4 Additional Insureds. Oceanside shall be named as an additional insured on all policies of liability insurance required by this Agreement, other than workers' compensation, but including employer's liability.

12.5 Waiver of Subrogation. Poseidon shall require its insurance carrier(s) furnishing the insurance required herein to waive all rights of subrogation against Oceanside, including without limitation each of its directors, officers, agents, representatives and employees, for any and all amounts of claims paid from insurance proceeds. Oceanside shall waive all rights of subrogation against Poseidon, including its directors, officers, agents, representatives and employees, for any and all amounts of claims paid from insurance proceeds.

12.6 Statement of Insurance. If at any time Oceanside requests a written statement from any of Poseidon's insurers as to any impairments to any aggregate policy limit, Poseidon promptly shall authorize and have delivered such statement to Oceanside.

12.7 Primary Insurance for Additional Insureds. Poseidon's insurance policies shall provide that the insurance afforded by those policies to the additional insureds is primary to all insurance or self-insurance carried by Oceanside. Poseidon acknowledges that all insurance or self-insurance carried by Oceanside is strictly excess and shall not contribute with Poseidon's liability insurance.

13. CONDITIONS, ADDITIONAL ASSISTANCE.

13.1 Poseidon's Conditions. Poseidon's obligations to sell Product Water to Oceanside pursuant to this Agreement shall be subject to satisfaction or waiver by Poseidon, in its reasonable discretion, of the following conditions prior to the Commercial Operation Date:

13.1.1 CEQA Compliance. All requirements for complying with CEQA shall have been satisfied, and no legal challenge to compliance with CEQA shall have been filed within thirty-five (35) days of such compliance, or, if filed, a court of competent jurisdiction shall have entered a final judgment sustaining or validating such CEQA compliance.

13.1.2 Compliance with Applicable Laws. Poseidon shall have completed construction of the Project in accordance with all Applicable Laws and Prudent Industry Practices.

13.1.3 Governmental Approvals. Poseidon shall have obtained and maintained (or caused its appropriate subcontractors to obtain and maintain) all Governmental Approvals for the construction of the Project, including the Appurtenant Facilities, and for the sale and delivery of Product Water.

13.1.4 Product Water Delivery and Quality. The Parties shall have agreed upon the Delivery Points, the Delivery Charge and the Delivery Regime.

13.2 Oceanside's Conditions. Oceanside's obligations to purchase Product Water (other than the Purchase of Product Water prior to the Commercial Operation Date pursuant to the Delivery Regime and to the extent permitted under Section 9.3) from Poseidon pursuant to this Agreement shall be subject to satisfaction or waiver by Oceanside, in its reasonable discretion, of the following conditions prior to the Commercial Operation Date:

13.2.1 CEQA Compliance. All requirements for complying with CEQA shall have been satisfied, and no legal challenge to compliance with CEQA shall have been filed within thirty-five (35) days of such compliance, or, if filed, a court of competent jurisdiction shall have entered a final judgment sustaining or validating such CEQA compliance.

13.2.2 Compliance with Applicable Laws. Poseidon shall have completed construction of the Project in accordance with all Applicable Laws and Prudent Industry Practices in all material respects.

13.2.3 Performance Test. Poseidon shall have completed the Performance Test successfully.

13.2.4 Governmental Approvals. Poseidon shall have obtained and maintained (or caused its appropriate subcontractors to obtain and maintain) all Governmental Approvals for the construction of the Project, including the Appurtenant Facilities, and for the sale and delivery of Product Water.

13.2.5 Subsidy. Oceanside shall have entered into agreements with all appropriate parties on mutually acceptable terms and conditions pursuant to which Oceanside shall receive, either in cash or in credit, the Subsidy.

13.2.6 Product Water Delivery and Quality. The Parties shall have agreed upon the Delivery Points, the Delivery Charge, and the Delivery Regime.

13.2.7 Back-up Water Supply. Oceanside shall have received an acknowledgment from the Authority that Oceanside is eligible to receive a back-up supply of water from the Authority on terms generally available to the Authority's member agencies.

13.2.8 Other Acknowledgements. Oceanside shall have received an acknowledgement from the Authority and the MWD that the water delivered to Oceanside pursuant to this Agreement will be treated for the purpose of all of the MWD's and the Authority's water allocation plans, ordinances, programs, rules and regulations as independently owned local water.

14. DEFAULTS AND REMEDIES.

14.1 Default by Poseidon. The occurrence of any of the following (unless caused by a Force Majeure event or a breach of this Agreement by Oceanside) shall constitute a "Poseidon Event of Default" under this Agreement:

14.1.1 Failure to Deliver Water Supply. Poseidon's failure to deliver at least (i) eighty seven and one half percent (87.5%) of the Product Water required to be delivered to Oceanside in accordance with the Delivery Regime for any Year Period and (ii) at least fifty percent (50%) of the Product Water required to be delivered to Oceanside in accordance with the Delivery Regime for the six (6) month period commencing on the Commercial Operation Date. For the purpose of this Section 14.1.1 and Section 14.3.2, "Year Period" shall mean, as of any day commencing on or after the one (1) year anniversary of the Commercial Operation Date, the three hundred and sixty five (365) days immediately preceding such day;

14.1.2 Extended Water Supply Shortfall. Poseidon's failure to supply at least the Threshold amount of the Product Water required to be delivered to Oceanside pursuant to the Delivery Regime for any five (5) out of eight (8) Water Years (an "Extended Shortfall"); provided, however that the occurrence of an Extended Shortfall shall not constitute a Poseidon Event of Default unless upon such occurrence: Oceanside is unable to acquire water from an alternative source sufficient to make up the shortfall in the Contract Capacity to be provided to Oceanside hereunder;

14.1.3 Failure to Meet Water Quality Standards. Poseidon's failure to comply with its obligations under Section 8.2;

14.1.4 Failure to Perform. Poseidon's failure to observe or perform any of the provisions of this Agreement to be observed or performed by Poseidon (other than the failure to deliver Product Water, to which Sections 14.1.1 and 14.1.2 apply, or the failure to comply with Section 8.2, to which Section 14.1.3 applies), where such failure shall continue for a period of thirty (30) days after written notice of such failure from Oceanside to Poseidon; provided, however, that if the nature of Poseidon's default under this Section 14.1.4 is such that more than thirty (30) days are required for its cure, then Poseidon shall not be deemed to be in default if Poseidon commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion;

14.1.5 Failure to Perform Related Agreements. The occurrence of an event of default of Poseidon under any other agreement between the Parties which specifically provides that an event of default under such agreement shall constitute an Event of Default under this Agreement;

14.1.6 Representations and Warranties. Any representation or warranty under Section 16 of this Agreement was, when made or supplied, materially untrue and (i) such misrepresentation shall continue uncured for thirty (30) or more days from the date Poseidon notifies Oceanside of such misrepresentation or (ii) Poseidon fails to notify Oceanside of such misrepresentation within thirty (30) days after Poseidon has knowledge of such misrepresentation; and

14.1.7 Bankruptcy. The making by Poseidon of any general arrangement or assignment for the benefit of creditors; Poseidon's becoming bankrupt, insolvent or a "debtor" as defined in the United States Bankruptcy Code or any successor statute (unless, in the case of a petition filed against Poseidon, such petition is dismissed within ninety (90) days after its original filing); the institution of proceedings under the bankruptcy or similar laws in which Poseidon is the debtor or bankrupt; the appointing of a trustee or receiver to take possession of substantially all of Poseidon's assets or of Poseidon's interest in this Agreement (unless possession is restored to Poseidon within ninety (90) days after such taking); the attachment, execution or judicial seizure of substantially all of Poseidon's assets or Poseidon's interest in this Agreement (unless such attachment, execution or judicial seizure is discharged within ninety (90) days after such attachment, execution or judicial seizure).

14.2 Oceanside's Remedies. If a Poseidon Event of Default as set forth above shall occur, Oceanside, upon the lapse of the applicable cure period, if any, as also set forth above, may terminate this Agreement and/or pursue any remedy available to it at law or in equity, including without limitation commencing an action against Poseidon for damages recoverable under Section 14.5 incurred by Oceanside in connection with any such event of default.

14.3 Default by Oceanside. The occurrence of any of the following (unless caused by a Force Majeure event or a breach of this Agreement by Poseidon) shall constitute an "Oceanside Event of Default" under this Agreement:

14.3.1 Failure to Pay. Oceanside's failure to pay amounts under this Agreement as and when due, where such failure shall continue for a period of fifteen (15) days after Oceanside has received an Overdue Notice from Poseidon;

14.3.2 Oceanside Failure to Accept Product Water. Oceanside's failure to: (i) accept at least eighty-seven and one half percent (87.5%) of the Product Water required to be accepted by Oceanside in accordance with the Delivery Regime for any Year Period.

14.3.3 Failure to Perform. Oceanside's failure to observe or perform any of the provisions of this Agreement to be observed or performed by Oceanside (other than the failure to make any payments under this Agreement, to which Section 14.3.1 applies or the failure to accept Product Water, to which Section 14.3.2 applies), where such failure shall continue for a period of thirty (30) days after written notice of such failure from Poseidon to Oceanside; provided, however, that if the nature of Oceanside's default is such that more than thirty (30) days are required for its cure, then Oceanside shall not be deemed to be in default if Oceanside commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion;

14.3.4 Failure to Perform Related Agreements. The occurrence of an event of default of Oceanside under any other agreement between the Parties which specifically provides that an event of default under such agreement shall constitute an Event of Default under this Agreement; and

14.3.5 Representations and Warranties. Any representation or warranty under Section 15 of this Agreement was, when made or supplied, materially untrue and (i) such misrepresentation shall continue uncured for thirty (30) or more days from the date Oceanside notifies Poseidon of such misrepresentation, or (ii) Oceanside fails to notify Poseidon of such misrepresentation within thirty (30) days after Oceanside has knowledge of such misrepresentation.

14.4 Poseidon's Remedies. If an Oceanside Event of Default as set forth above shall occur, Poseidon, upon the lapse of the applicable cure period, as also set forth above, may terminate this Agreement and/or pursue any remedy available to it at law or in equity, including without limitation commencing an action against Oceanside for damages recoverable under Section 14.5 incurred by Poseidon in connection with any such event of default.

14.5 Damages Recoverable. For the breach of a contractual obligation under this Agreement, the measure of damages is the amount which will compensate the non-breaching party for the detriment proximately caused thereby, or which, in the ordinary course of things, is foreseeable as a probable result of the breach, subject to any applicable defenses with respect to such damages. Loss may be foreseeable as a probable result of the breach (a) in the ordinary course of events, or (b) as a result of special circumstances, beyond the ordinary course of events, of which as of the Effective Date the breaching party knew or should have known. Damages are not recoverable for loss that the breaching party did not have reason to foresee as of the Effective Date as a probable result of the breach.

15. REPRESENTATIONS AND WARRANTIES OF OCEANSIDE. Oceanside hereby makes the following representations and warranties to Poseidon, as of the Effective Date and (unless specifically made only as of the Effective Date) as of the Commercial Operation Date:

15.1 Organization. Oceanside is a city, organized and validly existing under the laws of the State of California.

15.2 Authorization. Oceanside has the power and authority to enter into and to perform its obligations under this Agreement. Oceanside has: (a) duly authorized this Agreement; (b) approved the execution and delivery of this Agreement; and (c) duly executed and delivered this Agreement by a duly authorized individual.

15.3 Enforceability. This Agreement constitutes the valid and legally binding obligation of Oceanside, enforceable against Oceanside in accordance with its terms.

15.4 Governmental Consents. No Legal Entitlement from any Governmental Authority is required in connection with the execution and performance of this Agreement by Oceanside. All Legal Entitlements required in connection with Oceanside's performance of this Agreement will be obtained as and when required by Applicable Laws.

15.5 No Litigation. As of the Effective Date, there is no action, suit, proceeding or investigation pending or, to Oceanside's actual knowledge, threatened against Oceanside which, if adversely determined, would affect the validity of this Agreement.

15.6 No Conflict. The execution and performance of this Agreement by Oceanside does not breach or constitute a default by Oceanside under any law, regulation, ruling, court order, agreement, indenture, certificate of preference, or undertaking or other instrument to which Oceanside is a party or by which Oceanside or any of its property may be bound or affected.

16. REPRESENTATIONS AND WARRANTIES OF POSEIDON. Poseidon hereby makes the following representations and warranties to Oceanside, as of the Effective Date and (unless specifically made only as of the Effective Date) as of the Commercial Operation Date:

16.1 Organization. Poseidon is a limited liability company, duly formed and validly existing under the laws of the State of Delaware, and duly qualified to do and doing business in the State of California.

16.2 Authorization. Poseidon has the power and authority to enter into and to perform its obligations under this Agreement. Poseidon has: (a) duly authorized this Agreement; (b) approved the execution and delivery of this Agreement; and (c) duly executed and delivered this Agreement by a duly authorized individual.

16.3 Enforceability. This Agreement constitutes the valid and legally binding obligation of Poseidon, enforceable against Poseidon in accordance with its terms.

16.4 Governmental Consents. No Legal Entitlement from any Governmental Authority is required in connection with the execution and performance of this Agreement by Poseidon. All Legal Entitlements required in connection with Poseidon's performance of this Agreement will be obtained as and when required by Applicable Laws.

16.5 No Litigation. As of the Effective Date, there is no action, suit, proceeding or investigation pending or, to Poseidon's actual knowledge, threatened against Poseidon which, if adversely determined, would affect the validity of this Agreement.

16.6 No Conflict. The execution and performance of this Agreement by Poseidon does not breach or constitute a default by Poseidon under any law, regulation, ruling, court order, agreement, indenture, certificate of preference, or undertaking or other instrument to which Poseidon is a party or by which Poseidon or any of its property may be bound or affected.

17. FORCE MAJEURE.

17.1 Defined. "Force Majeure" as used herein means any act, event or condition affecting the Project, Oceanside, Poseidon or any of Oceanside's or Poseidon's respective subcontractors to the extent that it materially and adversely affects the ability of either Party to perform any obligation under this Agreement (except for payment obligations) as long as such act, event or condition is beyond the reasonable control of such Party and is not a result of the willful or negligent action of the Party relying thereon. Neither Party shall have any right to obtain reimbursement from the other Party for the costs of any Force Majeure event.

17.2 Force Majeure Examples. Acts or events constituting Force Majeure may include without limitation the following: (a) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Project), landslide, earthquake, fire, explosion, flood, sabotage or similar occurrence; (b) acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance; (c) the failure of any appropriate Governmental Authority or private utility to provide and maintain utilities; (d) strikes, lock outs, work stoppages or labor disputes (other than those of employees of Poseidon); (e) underground or latent conditions not known prior to the date of this Agreement; (f) the presence at, on or under the Project of (i) subsurface structures, materials, or conditions having historical, geological, archaeological, religious or similar significance or (ii) any habitat of an endangered, environmentally sensitive, or protected species; (g) the presence of hazardous waste or biologically toxic substances at, on or under the Project unless caused by the Party claiming Force Majeure; (h) the inability to obtain influent water of sufficient quantity or quality; (i) a Change in Law that would materially and adversely affect the ability of either Party to perform any material obligation under this Agreement, and (j) any denial of an application for or a delay in the review, issuance or renewal of, or the suspension, termination or interruption of, any permit or other governmental consent .

17.3 Events Not Deemed Force Majeure. It is specifically understood that, Section 17.2 notwithstanding, none of the following acts, events or conditions shall constitute a Force Majeure event: (a) strikes, lock outs, work stoppages or labor disputes of employees of Poseidon; (b) the failure of any subcontractor or supplier for any reason to furnish labor, materials, services (other than utility service) or equipment unless the failure results from a Force Majeure event

affecting the subcontractor or supplier; (c) equipment failure (unless caused by a Force Majeure event); or (d) any denial of an application for or a delay in the review, issuance or renewal of, or the suspension, termination or interruption of, any permit or other governmental consent, if caused by Poseidon's failure to apply for or use commercially reasonable efforts to prosecute the application for such permit or governmental consent.

17.4 Excused Performance.

17.4.1 Occurrence of Force Majeure Event. Upon the occurrence of a Force Majeure event which affects a Party to this Agreement, such Party shall be excused from its obligations under the Agreement (except for payment obligations) for the period during which it is unable to comply with such obligations as a result of the Force Majeure event.

17.4.2 Notification and Mitigation. Any excuse of obligations of a Party under this Agreement pursuant to Section 17.4.1 is subject to the proviso that, upon obtaining knowledge of a Force Majeure event such Party: (a) promptly notifies the other Party of such Force Majeure event; (b) provides reasonable details relating to such Force Majeure event; and (c) implements mitigation measures to the extent commercially reasonable.

18. [INTENTIONALLY OMITTED]

19. DISPUTE RESOLUTION. The Parties shall establish prior to the Commercial Operation Date, or sooner in the event a dispute arises prior to such a date, a dispute coordination committee (the "Committee") consisting of two (2) management representatives each from Poseidon and Oceanside and an independent representative (the "Independent Representative"). The Independent Representative shall be mutually acceptable to both Parties and shall be a person either with (i) experience in the construction and operation of facilities such as the Project or (ii) such other qualifications as are relevant with respect to a particular dispute. The Parties may change the Independent Representative upon mutual agreement. The Parties shall provide written notice of appointment of their respective Committee representatives to the Independent Representative promptly following the date the Committee is established. If either Party's representatives change, such Party shall promptly notify the other Party and the Independent Representative of the change. The Committee shall meet as the circumstances may deem necessary to resolve any disputes under this Agreement. All disputes arising from this Agreement shall be submitted to the Committee for resolution as a condition precedent to seeking any other relief under this Agreement. The fees and expenses of the Independent Representative shall be shared equally by the Parties. If the procedures referenced in this Section do not result in resolution of the dispute within ten (10) business days after commencement of the Committee meeting: (a) the Parties, upon mutual agreement, may submit the dispute to binding or advisory arbitration for resolution in accordance with such procedures as are mutually agreed; or (b) either Party may commence legal action in a court of competent jurisdiction to enforce or interpret the terms of this Agreement.

20. INDEMNITY.

20.1 Oceanside's Indemnity. Oceanside shall save, indemnify, hold harmless and defend (with counsel reasonably acceptable to Poseidon), Poseidon, its successors, assigns and affiliates, and their respective officers, directors, controlling persons (if any), employees, attorneys, agents, consultants and shareholders (the "Poseidon Indemnitees") from, against and in respect of any and all claims (including third party claims), suits, actions, proceedings (formal and informal), investigations, judgments, deficiencies, damages, settlements and liabilities (collectively "Losses") as and when incurred by any of the Poseidon Indemnitees arising out of or based upon any breach or alleged breach of any express representation, warranty, covenant, or agreement of Oceanside contained in this Agreement or in any document, instrument, or agreement executed and delivered by the Parties in connection herewith which specifically provides for the applicability of the indemnity provisions of this Agreement. Oceanside shall not, however, be required to indemnify any of the Poseidon Indemnitees to the extent any Losses arise from or relate to the gross negligence or willful misconduct of any of the Poseidon Indemnitees.

20.2 Poseidon's Indemnity. Poseidon shall save, indemnify, hold harmless and defend (with counsel reasonably acceptable to Oceanside), Oceanside, its successors, assigns and affiliates, and their respective officers, directors, controlling persons (if any), staff members, employees, attorneys, agents and consultants (the "Oceanside Indemnitees") from, against and in respect of any and all Losses arising out of or based upon any breach or alleged breach of any express representation, warranty, covenant, or agreement of Poseidon contained in this Agreement or in any document, instrument, or agreement executed and delivered by the Parties in connection herewith which specifically provides for the applicability of the indemnity provisions of this Agreement. Poseidon shall not, however, be required to indemnify any of Oceanside Indemnitees to the extent any Losses arise from or relate to the gross negligence or willful misconduct of any of Oceanside Indemnitees.

20.3 Indemnification Procedures. Each Party's obligations with respect to this Section 20 are subject to the condition that the indemnified Party gives the indemnifying Party reasonably prompt notice of any Losses for which indemnification is sought hereunder. The indemnified Party shall cooperate in the defense of such claim (and pending assumption of defense, an indemnified Party may take such steps to defend against such claim as, in such indemnified Party's good faith judgment, are appropriate to protect its interests). The indemnifying Party shall pay such indemnified Party's reasonable out-of-pocket expenses incurred in connection with such cooperation. The indemnifying Party shall keep the indemnified Party reasonably informed as to the status of the defense of such claim. After notice from the indemnifying Party to an indemnified Party of the assumption, and the defense of a claim, the indemnifying Party shall not be liable to such indemnified Party for any legal or other expenses subsequently incurred by such indemnified Party in connection with the defense thereof other than those expenses referred to above. The indemnifying Party at the indemnifying Party's own expense and through counsel chosen by the indemnifying Party (which counsel shall be reasonably acceptable to the indemnified Party), shall defend any claim; provided, however, that if, in the indemnified Party's and the indemnifying Party's reasonable judgment at any time, either a conflict of interest arises between such indemnifying Party and the indemnified Party or

if there are defenses which are different from or in addition to those available to the indemnifying Party and/or the indemnified Party and the representation of both parties by the same counsel would be inappropriate, then such indemnified Party shall have the right to employ one law firm as counsel, together with a separate local law firm in each applicable jurisdiction (if necessary) ("Separate Counsel"), to represent such indemnified Party in any action or group of related actions (which firm or firms shall be reasonably acceptable to the indemnifying Party), and in that event: (a) the reasonable fees and expenses of such Separate Counsel shall be paid by the indemnifying Party (it being understood, however, that the indemnifying Party shall not be liable for the expenses of more than one Separate Counsel (excluding such local counsel referred to above) with respect to any claim (even if against multiple indemnified Parties)); and (b) the indemnifying Party shall have the right to conduct its own defense in respect of such claim. If the indemnifying Party does not defend against a claim, the indemnified Party may defend, compromise and settle such claim and shall be entitled to indemnification hereunder (to the extent permitted by this Agreement). Notwithstanding the foregoing, the indemnifying Party shall not, without the prior written consent of the indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), settle or compromise any claim or consent to the entry of any judgment unless: (x) there is no finding or admission of any violation of law or any violation of the rights of any person and no effect on any other claims that may be made against the indemnified Party; and (y) the sole relief provided is monetary damages that are paid in full by indemnifying Party.

21. MISCELLANEOUS.

21.1 Further Actions. At any time and from time to time after the date hereof, each Party agrees to take such actions and to execute and deliver such documents as the other Party may reasonably request to effectuate the purposes of this Agreement.

21.2 Amendment. Except as otherwise provided in this Agreement, neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the Party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such writing.

21.3 Entire Agreement. This Agreement constitutes the entire understanding among the Parties with respect to the matters set forth herein, and supersedes all prior or contemporaneous understandings or agreements among the Parties with respect to the subject matter hereof, whether oral or written.

21.4 Notices. Any notice, approval, consent, waiver or other communication required or permitted to be given or to be served upon any Party in connection with this Agreement shall be in writing. Such notice shall be personally served, sent by facsimile, sent prepaid by registered or certified mail with return receipt requested, or sent by reputable overnight delivery service, such as Federal Express, and shall be deemed given: (a) if personally served, when delivered to the Party to whom such notice is addressed; (b) if given by facsimile, when sent, provided that the confirmation sheet from the sending fax machine confirms that the total number of pages were successfully transmitted; (c) if given by prepaid or certified mail with return receipt requested, on the date of execution of the return receipt; or (d) if sent by

reputable overnight delivery service, such as Federal Express, when received. Such notices shall be addressed to the Party to whom such notice is to be given at the address specified below or as such Party shall otherwise direct in writing to the other Parties delivered or sent in accordance with this Section. The "copy to" notice to be given as set forth below is a courtesy copy only; a notice given to such person is not sufficient to effect giving a notice to the principal Party, and a failure to give such a courtesy copy of a notice does not constitute a failure to give notice to the principal Party.

If to Oceanside, to:

City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Attn. Water Utilities Director
Fax No. (760) 435-5814

If to Poseidon, to:

Poseidon Resources (Channelside) LLC
501 West Broadway, Suite 1260
San Diego, CA. 92101
Attn: President
Fax No. (619) 595-7892

21.5 Controlling Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of California, without giving effect to any choice-of-law or conflicts-of-laws rule or principle that would result in the application of any other laws.

21.6 Headings. Headings, titles and captions are for convenience only and shall not constitute a portion of this Agreement or be used for the interpretation thereof.

21.7 Cumulative Rights; Waiver. The rights created under this Agreement, or by law or equity, shall be cumulative and may be exercised at any time and from time to time. No failure by any Party to exercise, and no delay or omission on the part of any Party in exercising any rights, shall be construed or deemed to be a waiver thereof, nor shall any single or partial exercise by any Party preclude any other or future exercise thereof or the exercise of any other right. Any waiver of any provision or of any breach of any provision of this Agreement must be in writing, and any waiver by any Party of any breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this Agreement. The failure of any Party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered or construed or deemed a waiver of any provision or any breach of any provision of this Agreement or deprive that Party of the right thereafter to insist upon strict adherence to that term or provision or any other term or provision of this Agreement.

21.8 Liberal Construction. This Agreement constitutes a fully-negotiated agreement among commercially sophisticated Parties, each assisted by legal counsel, and the terms of this Agreement shall not be construed or interpreted for or against any Party hereto because that Party or its legal representative drafted or prepared such provision.

21.9 Severability. If any provision of this Agreement shall be ruled invalid, illegal or unenforceable, then the Parties shall: (a) promptly negotiate a substitute for such provision which shall, to the greatest extent legally permissible, therein effect the intent of the Parties in such invalid, illegal or unenforceable provision; and (b) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with clause (a) above to give effect to the intent of the Parties without the invalid, illegal or unenforceable provision. To the extent that the Parties are able to negotiate such changes, substitutions or additions as set forth in the preceding sentence, and the intent of the Parties with respect to the essential terms of the Agreement may be carried out without the invalid, illegal or unenforceable provision, then the balance of this Agreement shall not be affected, and this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable provision did not exist.

21.10 Good Faith and Fair Dealing. The Parties hereto acknowledge and agree that the performances required by the provisions of this Agreement shall be undertaken in good faith, and with all Parties dealing fairly with one another.

21.11 No Third Party Beneficiaries. Subject to Section 20, this Agreement does not create, and shall not be construed to create, any rights enforceable by any person, partnership, corporation, joint venture, limited liability company or other form of organization or association of any kind that is not a party to this Agreement.

21.12 Execution in Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto except for having an additional signature page executed by the other Party. Each Party agrees that the other Party may rely upon the facsimile signature of a Party on this Agreement as constituting a duly authorized, irrevocable, actual, current delivery of this Agreement as fully as if this Agreement contained the original ink signature of the Party supplying a facsimile signature.

21.13 Time of the Essence. Time is of the essence of each and every provision of this Agreement. Unless business days are expressly provided for, all references to "days" herein shall refer to consecutive calendar days. If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended to the next day which is not a Saturday, Sunday or federal, state or legal holiday.

21.14 Authority. Each Party shall deliver to the other Party copies of such resolutions, certificates or written assurances evidencing authorization to execute, deliver and perform this Agreement.

21.15 Number, Gender. Where a word or phrase is defined in this Agreement, its other grammatical forms have a corresponding meaning. As used herein, and as the circumstances require, the plural term shall include the singular, the singular shall include the plural, the neuter term shall include the masculine and feminine genders, the masculine term shall include the neuter and the feminine genders, and the feminine term shall include the neuter and the masculine genders.

21.16 Assignment.

21.16.1 Assignment by Poseidon. Poseidon shall not assign its rights under this Agreement to any third party if such third party would not be obligated to comply with Applicable Laws with respect to its ownership and operation of the Project. Poseidon shall transfer its rights and obligations under this Agreement to any transferee of Poseidon's rights with respect to the Project.

21.16.2 Financing Assignments. Poseidon may, without the consent of Oceanside make such assignments as are necessary to create security interests for the financing of any of its obligations under this Agreement with bona fide third party lenders in bona fide loan transactions. In the event of such an assignment by Poseidon Oceanside shall furnish such information, consents, certificates, opinions of counsel and other documentation or assistance related to this Agreement as is reasonable and customary and mutually agreed by the Parties. Such consents shall include an undertaking by Poseidon's lenders not to terminate this Agreement as long as Oceanside continues to perform its obligations hereunder.

21.16.3 Assignment by Oceanside. Neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by Oceanside without Poseidon's prior written consent, which consent may be withheld in Poseidon's sole discretion. As a condition to Poseidon's consent to such assignment, Poseidon shall have the right to negotiate changes to the terms of this Agreement with Oceanside's assignee, including but not limited to changes to provisions addressing: (i) differences between the Base Price and the Avoided Water Cost, (ii) termination events, (iii) testing and responsibility for water distribution systems, (iv) the Delivery Point and the Appurtenant Facilities; (v) the conditions to Oceanside's obligations to purchase Product Water and (vi) defaults and remedies.

21.16.4 General. Any assignment of this Agreement or any of the rights, interests, or obligations hereunder shall be of no force or effect until the proposed assignee agrees in writing to be bound by all of the terms and conditions of this Agreement and such signed writing is delivered to the non-assigning party.

21.16.5 Inurement. Subject to the foregoing restrictions, the provisions of this Agreement shall be binding upon and inure to the benefit of all affiliates, subsidiaries, assigns, and successors-in-interest of the Parties. Without limiting the generality of the foregoing, the voluntary or involuntary dissolution of Poseidon or any merger, reorganization or consolidation where Poseidon is not the surviving or resulting entity, or any transfer by Poseidon of all or substantially all of its assets shall be deemed to be an assignment within the meaning of this Section. In such event, provided Oceanside consents to any such voluntary or involuntary dissolution, merger, reorganization, consolidation, or transfer of assets, the surviving or resulting

district, authority, agency, corporation, partnership, joint venture, limited liability company, public entity or other form of organization or association to which such assets shall be transferred or which is carrying on the business of Poseidon shall be obligated to perform Poseidon's obligations hereunder.

21.17 Relationship. Poseidon is an independent contractor and the relationship between the Parties shall be limited to performance of this 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 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, 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 Agreement or its performance.

21.18 Agreement Not a Discretionary Approval. Upon the execution of this Agreement Oceanside shall file a Notice of Determination under CEQA for Oceanside as responsible agency under CEQA. Poseidon agrees to reimburse Oceanside for any legal fees and costs incurred by or awarded against Oceanside in connection with any third party claim or suit challenging Oceanside's actions under CEQA with respect to the Project.

21.19 Project and Site Devoted to Public Use. This Agreement grants certain contractual rights to Oceanside, including but not limited to the right to purchase Product Water from Poseidon, and the right to exercise the option described in Section 2 of this Agreement. The Parties intend by the grant of these rights and through agreements between Poseidon and other purchasers of Product Water to devote the Project and Poseidon's interest in the Site to public use by Oceanside and other purchasers of Product Water. The fact that the Project and the Site have been appropriated to public use by Oceanside and other purchasers of Product Water to the extent provided herein shall not give Oceanside any additional rights not specifically set forth in this Agreement, but instead reflects Oceanside's independent judgment that this Agreement and Poseidon's use of the Site is integral to Oceanside's public purpose of providing water to Oceanside residents. The rights Oceanside has established under this Agreement and the agreements between Poseidon and other purchasers of Product Water result in the Project, the Site and Poseidon's interest in the Site being "appropriated to public use by a local public entity [(Oceanside and other purchasers of Product Water)]" for the purposes of California Code of Civil Procedure § 1240.660.

[The balance of this page intentionally left blank]

IN WITNESS WHEREOF, this Agreement has been executed as of the date and year first above set forth.

"Oceanside"

City of Oceanside

By: _____

Its: City Manager

"Poseidon"

Poseidon Resources (Channelside) LLC, a Delaware limited liability company

By: _____

Its: VICE PRESIDENT

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY
BARBARA L. HAMILTON
Assistant City Attorney

State of California
County of San Diego

On 5th day of Dec. 2007 (DATE) before me, Daniel Raymond Martin, Notary Public (NAME, TITLE OF OFFICER - I.E., "JANE DOE, NOTARY PUBLIC")

personally appeared Peter Michael Maclaggan (NAME(S) OF SIGNER(S))

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

(SEAL)

(SIGNATURE OF NOTARY)

MGC1 DANIEL RAYMOND MARTIN COMM. #1655710 NOTARY PUBLIC - CALIFORNIA CONTRA COSTA COUNTY COMM. EXPIRES MARCH 31, 2010 MGC1

RIGHT THUMBPRINT (OPTIONAL)

TOP OF THUMB HERE

CAPACITY CLAIMED BY SIGNER(S)

☐ INDIVIDUAL(S)
☐ CORPORATE OFFICER(S) (TITLE(S))
☐ PARTNER(S)
☐ ATTORNEY IN FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

ATTENTION NOTARY: The information requested below is **OPTIONAL**. It could, however, prevent fraudulent attachment of this certificate to any unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Title or Type of Document
Number of Pages Date of Document
Signer(s) Other Than Named Above

©1992 WOLCOTT'S FORMS, INC.

Schedule 1

Site Description

See Exhibits A through J attached hereto

EXHIBIT "A"

LEGAL DESCRIPTION OF THE LEASED PREMISES

EXHIBIT 'A'

LEGAL DESCRIPTION

FOR

THE LEASED PREMISES

THAT PORTION OF LOT "H" OF RANCHO AGUA HEDIONDA IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF NO. 823 AS DESCRIBED IN CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 30, 2001, AS DOCUMENT NO. 2001-0789068, PARCEL 4, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 4, ALSO BEING A POINT ON THE WESTERLY LINE OF THE 100.00 FOOT WIDE RIGHT-OF-WAY OF THE ATCHISON TOPEKA AND SANTA FE RAILROAD, ALSO BEING THE MOST SOUTHEASTERLY CORNER OF PARCEL 4 AS SHOWN ON RECORD OF SURVEY NO. 17350; THENCE ALONG SAID WESTERLY LINE, NORTH 22°30'13" WEST, 1763.84 FEET; THENCE LEAVING SAID WESTERLY LINE AT RIGHT ANGLES, SOUTH 67°29'47" WEST, 54.68 FEET TO THE **POINT OF BEGINNING**; THENCE SOUTH 67°22'25" WEST, 427.00 FEET; THENCE NORTH 22°37'35" WEST, 320.00 FEET; THENCE NORTH 67°22'25" EAST, 427.00 FEET; THENCE SOUTH 22°37'35" EAST, 320.00' FEET TO THE **POINT OF BEGINNING**.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT 'A-1' AND BY THIS REFERENCE MADE A PART THEREOF. ALL DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO COMPUTE GROUND DISTANCES, DIVIDE GRID DISTANCES BY 0.999963440. ALL BEARINGS SHOWN HEREON ARE GRID BASED UPON CALIFORNIA COORDINATE SYSTEM ZONE 6, ADJUSTMENT, NAD-83, AND EPOCH 1991.35.

SAID PARCEL OF LAND CONTAINS 3.137 ACRES, MORE OR LESS.

LICENSED LAND SURVEYOR
GARY L. HUS
NO. 7019
Exp. date 6-30-06
STATE OF CALIFORNIA

7/3/03

GARY L. HUS DATE
L.S. 7019
EXPIRATION DATE 6/30/2006

T:\SURVEY\2398\Plats\Legals\ExibA-LeasedPremises.doc July 3, 2003 JG..

EXHIBIT "B"

MAP GENERALLY DEPICTING THE LEASED PREMISES

LEGAL DESCRIPTION:

A PORTION OF PARCEL 4 PER CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 30, 2001 AS DOCUMENT NO. 2001-0789068, AND AS SHOWN ON RECORD OF SURVEY NO. 17350, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

ASSESSORS PARCEL NO:

210-010-39

BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS DRAWING IS THE HORIZONTAL CONTROL BASED ON THE CALIFORNIA COORDINATE SYSTEM ZONE 6, NAD 83, AS DETERMINED LOCALLY BY THE LINE BETWEEN FIRST ORDER CONTROL POINTS 057 AND 141 PER RECORD OF SURVEY NO. 17271, I.E. N40°39'21"W.

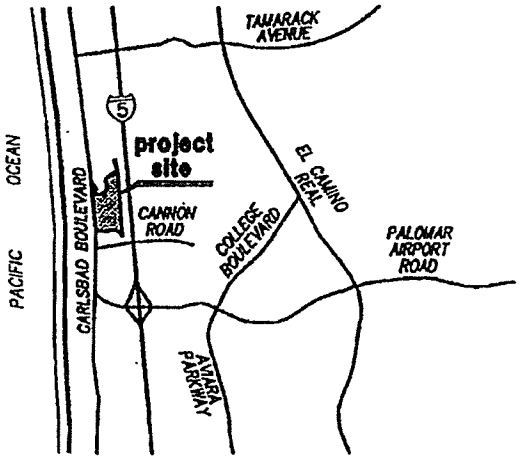
LEGEND:

——————— INDICATES EXISTING PROPERTY LINE

P.O.C. ——— INDICATES POINT OF COMMENCEMENT

P.O.B. ——— INDICATES POINT OF BEGINNING

——— INDICATES THE LEASED PREMISES AREA = 3.137 ACRES, MORE OR LESS



N

VICINITY MAP
NO SCALE

OWNER:

CABRILLO POWER I LLC
4600 CARLSBAD BOULEVARD
CARLSBAD, CALIFORNIA 92008
PHONE: (760) 268-4011

SURVEYOR OF WORK:

PROJECTDESIGN CONSULTANTS
701 B STREET SUITE 800
SAN DIEGO, CALIFORNIA 92101
PHONE: (619) 235-6471

GARY L. HUS, L.S. 7019 — DATE 7/3/03
REGISTRATION EXPIRES 6/30/2006

LICENSED LAND SURVEYOR
GARY L. HUS
NO. 7019
Exp. date 6-30-06
STATE OF CALIFORNIA

THE LEASED PREMISES

EXHIBIT "B"

SHEET 1 OF 2

A.P.N. 210-010-39

APPLICANT:	PREPARED BY:
POSEIDON RESOURCES	PROJECTDESIGN CONSULTANTS
501 WEST BROADWAY SUITE 840	701 B STREET SUITE 800
SAN DIEGO, CALIFORNIA 92101	SAN DIEGO, CALIFORNIA 92101

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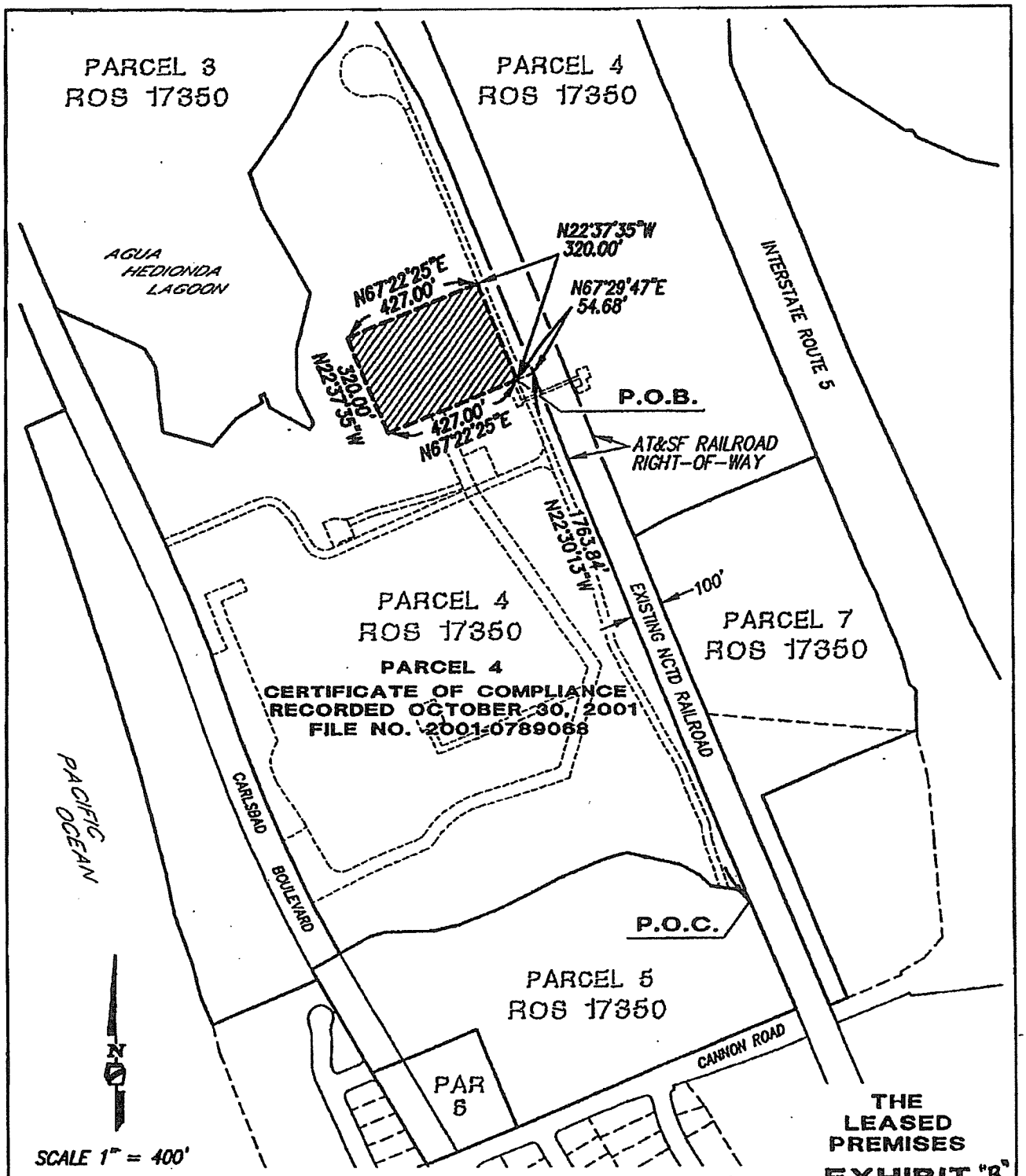

THE LEASED PREMISES

EXHIBIT "B"

APPLICANT:	PREPARED BY:
POSEIDON RESOURCES	PROJECTDESIGN CONSULTANTS
501 WEST BROADWAY SUITE 840	701 B STREET SUITE 800
SAN DIEGO, CALIFORNIA 92101	SAN DIEGO, CALIFORNIA 92101

SHEET 2 OF 2

A.P.N. 210-010-39

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EXHIBIT "C"

LEGAL DESCRIPTION OF THE INTAKE/DISCHARGE EASEMENT AREA

EXHIBIT 'C'

LEGAL DESCRIPTION

FOR

INTAKE/DISCHARGE EASEMENT AREA

THAT PORTION OF LOT "H" OF RANCHO AGUA HEDIONDA IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF NO. 823 AS DESCRIBED IN CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 30, 2001, AS DOCUMENT NO. 2001-0789068, PARCEL 4, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 4, ALSO BEING A POINT ON THE WESTERLY LINE OF THE 100.00 FOOT WIDE RIGHT-OF-WAY OF THE ATCHISON TOPEKA AND SANTA FE RAILROAD, ALSO BEING THE MOST SOUTHEASTERLY CORNER OF PARCEL 4 AS SHOWN ON RECORD OF SURVEY NO. 17350; THENCE ALONG SAID WESTERLY LINE, NORTH 22°30'13" WEST, 1763.84 FEET; THENCE LEAVING SAID WESTERLY LINE AT RIGHT ANGLES, SOUTH 67°29'47" WEST, 54.68 FEET; THENCE SOUTH 67°22'25" WEST, 248.14 FEET TO THE **POINT OF BEGINNING**; THENCE SOUTH 23°31'11" EAST, 266.03 FEET; THENCE SOUTH 35°40'18" EAST, 664.53 FEET; THENCE SOUTH 16°11'01" WEST, 361.48 FEET; THENCE SOUTH 72°52'19" WEST, 290.09 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 252.00 FEET; THENCE WESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 40°53'52", 179.88 FEET TO THE BEGINNING OF REVERSE CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 78.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 58°01'33" EAST; THENCE WESTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35°11'26", 47.91 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 67°09'52" WEST, 118.89 FEET; THENCE SOUTH 64°20'56" WEST, 256.56 FEET TO A POINT ON THE EASTERLY LINE OF CARLSBAD BOULEVARD (FORMERLY XI-SD-23), BEING 100.00 FEET WIDE AS SHOWN ON RECORD OF SURVEY NO. 17350, SAID POINT BEING A POINT ON A NON-TANGENT CURVE, CONCAVE EASTERLY AND HAVING A RADIUS OF 5216.55 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 62°54'16" WEST; THENCE NORTHERLY, ALONG SAID EASTERLY LINE AND THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 07°54'17", 719.71 FEET; THENCE TANGENT TO SAID CURVE, ALONG SAID EASTERLY LINE NORTH 19°11'27" WEST, 15.63 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 4050.00 FEET; THENCE NORTHERLY, ALONG SAID EASTERLY LINE AND THE ARC OF SAID

CURVE, THROUGH A CENTRAL ANGLE OF 01°15'55", 89.43 FEET; THENCE LEAVING SAID EASTERLY LINE NORTH 67°31'55" EAST, 52.67 FEET; THENCE NORTH 22°28'05" WEST, 181.42 FEET; THENCE NORTH 67°41'34" EAST, 128.22 FEET; THENCE SOUTH 22°18'26" EAST, 40.00 FEET; THENCE SOUTH 67°41'34" WEST, 88.11 FEET; THENCE SOUTH 22°28'05" EAST, 463.52 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE EASTERLY AND HAVING A RADIUS OF 110.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 53°39'06" WEST; THENCE SOUTHERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 71°16'26", 136.84 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 34°55'31" EAST, 152.63 FEET; THENCE SOUTH 29°45'18" EAST, 149.21 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHERLY AND HAVING A RADIUS OF 45.00 FEET; THENCE SOUTHERLY AND SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 85°53'45", 67.46 FEET; THENCE TANGENT TO SAID CURVE, NORTH 64°20'56" EAST, 117.37 FEET; THENCE NORTH 67°09'52" EAST, 119.88 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 38.00 FEET; THENCE EASTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35°11'26", 23.34 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 292.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 58°01'33" WEST; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 40°53'52", 208.43 FEET; THENCE TANGENT TO SAID CURVE, NORTH 72°52'19" EAST, 268.52 FEET; THENCE NORTH 16°11'01" EAST, 320.45 FEET; THENCE NORTH 35°40'18" WEST, 649.34 FEET; THENCE NORTH 23°31'11" WEST, 270.91 FEET; THENCE NORTH 67°22'25" EAST, 40.00 FEET TO THE **POINT OF BEGINNING.**

ATTACHED HERETO IS A PLAT LABELED EXHIBIT "C-1" AND BY THIS REFERENCE MADE A PART THEREOF. ALL DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO COMPUTE GROUND DISTANCES, DIVIDE GRID DISTANCES BY 0.999963440. ALL BEARINGS SHOWN HEREON ARE GRID BASED UPON CALIFORNIA COORDINATE SYSTEM ZONE 6, ADJUSTMENT, NAD-83, AND EPOCH 1991.35.

SAID PARCEL OF LAND CONTAINS 3.803 ACRES, MORE OR LESS.

7/3/03

GARY L. HUS DATE
L.S. 7019
EXPIRATION DATE 6/30/2006

LICENSED LAND SURVEYOR
GARY L. HUS
NO. 7019
Exp. date 6-30-06
STATE OF CALIFORNIA

T:\SURVEY\2398\Plats\Legals\ExibC-IntakeDischarge.doc July 3, 2003 JG..

EXHIBIT "D"

LEGAL DESCRIPTION OF THE PRODUCT WATER PIPELINE EASEMENT AREA

EXHIBIT 'D'

LEGAL DESCRIPTION

FOR

PRODUCT WATER PIPELINE EASEMENT AREA

THAT PORTION OF LOT "H" OF RANCHO AGUA HEDIONDA IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF NO. 823 AS DESCRIBED IN CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 30, 2001, AS DOCUMENT NO. 2001-0789068, PARCEL 4, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 4, ALSO BEING A POINT ON THE WESTERLY LINE OF THE 100.00 FOOT WIDE RIGHT-OF-WAY OF THE ATCHISON TOPEKA AND SANTA FE RAILROAD, ALSO BEING THE MOST SOUTHEASTERLY CORNER OF PARCEL 4 AS SHOWN ON RECORD OF SURVEY NO. 17350; THENCE ALONG SAID WESTERLY LINE, NORTH 22°30'13" WEST, 1763.84 FEET; THENCE LEAVING SAID WESTERLY LINE AT RIGHT ANGLES, SOUTH 67°29'47" WEST, 54.68 FEET TO THE **POINT OF BEGINNING**; THENCE NORTH 22°37'35"WEST, 320.00 FEET; THENCE NORTH 67°22'25" EAST, 20.00 FEET; THENCE SOUTH 22°37'35"EAST, 816.43 FEET; THENCE SOUTH 15°31'18" EAST, 379.90 FEET; THENCE SOUTH 29°58'25" EAST, 433.54 FEET; THENCE SOUTH 22°32'58" EAST, 191.28 FEET; THENCE SOUTH 09°39'03" EAST, 50.72 FEET; THENCE SOUTH 19°02'22" EAST, 157.35 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL 4; THENCE ALONG SAID SOUTHERLY LINE NORTH 82°40'44" WEST, 27.90 FEET; THENCE LEAVING SAID SOUTHERLY LINE NORTH 19°02'22" WEST, 147.02 FEET; THENCE NORTH 09°39'03" WEST, 49.95 FEET; THENCE NORTH 22°32'58" WEST, 186.83 FEET; THENCE NORTH 29°58'25" WEST, 434.98 FEET; THENCE NORTH 15°31'44" WEST, 381.79 FEET; THENCE NORTH 22°37'35" WEST, 174.35 FEET; THENCE NORTH 20°08'20" WEST, 115.20 FEET; THENCE NORTH 22°37'35" WEST, 205.27 FEET TO THE **POINT OF BEGINNING**.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT 'D-1' AND BY THIS REFERENCE MADE A PART THEREOF. ALL DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO COMPUTE GROUND DISTANCES, DIVIDE GRID DISTANCES BY 0.999963440. ALL BEARINGS SHOWN HEREON ARE GRID BASED UPON CALIFORNIA COORDINATE SYSTEM ZONE 6, ADJUSTMENT, NAD-83, AND EPOCH 1991.35.

SAID PARCEL OF LAND CONTAINS 1.094 ACRES, MORE OR LESS.

7/3/03

GARY L. HUS DATE
L.S. 7019
EXPIRATION DATE 6/30/2006

LICENSED LAND SURVEYOR
GARY L. HUS
NO. 7019
Exp. date 6-30-06
STATE OF CALIFORNIA

EXH D – Page 2 of 2

EXHIBIT "E"

LEGAL DESCRIPTION OF THE ELECTRICAL LINE EASEMENT AREAS

EXHIBIT 'E'

LEGAL DESCRIPTION

FOR

ELECTRICAL LINE EASEMENT AREAS

THAT PORTION OF LOT "H" OF RANCHO AGUA HEDIONDA IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF NO. 823 AS DESCRIBED IN CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 30, 2001, AS DOCUMENT NO. 2001-0789068, PARCEL 4, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 4, ALSO BEING A POINT ON THE WESTERLY LINE OF THE 100.00 FOOT WIDE RIGHT-OF-WAY OF THE ATCHISON TOPEKA AND SANTA FE RAILROAD, ALSO BEING THE MOST SOUTHEASTERLY CORNER OF PARCEL 4 AS SHOWN ON RECORD OF SURVEY NO. 17350; THENCE ALONG SAID WESTERLY LINE, NORTH 22°30'13" WEST, 1763.84 FEET; THENCE LEAVING SAID WESTERLY LINE AT RIGHT ANGLES, SOUTH 67°29'47" WEST, 54.68 FEET; THENCE SOUTH 67°22'25" WEST, 248.14 TO THE **POINT OF BEGINNING**; THENCE SOUTH 23°31'11" WEST, 266.03 FEET; THENCE SOUTH 35°40'18" EAST, 664.53 FEET; THENCE SOUTH 16°11'01" WEST, 361.48 FEET; THENCE SOUTH 72°52'19" WEST, 290.09 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 252.00 FEET; THENCE WESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 40°53'52", 179.88 FEET TO THE BEGINNING OF REVERSE CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 78.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 58°01'33" EAST; THENCE WESTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35°11'26", 47.91 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 67°09'52" WEST, 118.89 FEET; THENCE SOUTH 64°20'56" WEST, 256.56 FEET TO A POINT ON THE EASTERLY LINE OF CARLSBAD BOULEVARD (FORMERLY XI-SD-23), BEING 100.00 FEET WIDE AS SHOWN ON RECORD OF SURVEY NO. 17350, SAID POINT BEING A POINT ON A NON-TANGENT CURVE, CONCAVE EASTERLY AND HAVING A RADIUS OF 5216.55 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 62°54'16" WEST; THENCE NORTHERLY, ALONG SAID EASTERLY LINE AND THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 02°19'06", 211.09 FEET; THENCE LEAVING SAID EASTERLY LINE NORTH 60°14'42" EAST, 86.85 FEET; THENCE SOUTH 29°45'18" EAST, 135.86 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHERLY AND HAVING A RADIUS OF 45.00 FEET; THENCE SOUTHERLY AND SOUTHEASTERLY, ALONG

THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 85°53'45", 67.46 FEET; THENCE TANGENT TO SAID CURVE, NORTH 64°20'56" EAST, 117.37 FEET; THENCE NORTH 67°09'52" EAST, 119.88 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 38.00 FEET; THENCE EASTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35°11'26", 23.34 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 292.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 58°01'33" WEST; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 40°53'52", 208.43 FEET; THENCE TANGENT TO SAID CURVE, NORTH 72°52'19" EAST, 268.52 FEET; THENCE NORTH 16°11'01" EAST, 234.48 FEET; THENCE SOUTH 67°30'13" WEST, 478.88 FEET; THENCE NORTH 22°59'30" WEST, 83.39 FEET; THENCE NORTH 67°00'30" EAST, 20.00 FEET; THENCE SOUTH 22°59'30" EAST, 63.56 FEET; THENCE NORTH 67°30'13" EAST, 475.07 FEET; THENCE NORTH 16°11'01" EAST, 60.35 FEET; THENCE NORTH 35°40'18" WEST, 649.34 FEET; THENCE NORTH 23°31'11" WEST, 23.41 FEET; THENCE SOUTH 70°03'19" WEST, 97.14 FEET; THENCE SOUTH 74°50'20" WEST; 184.47 FEET; THENCE SOUTH 68°24'19" WEST, 80.60 FEET; THENCE NORTH 23°31'11" WEST, 20.01 FEET; THENCE NORTH 68°24'19" EAST, 82.40 FEET; THENCE NORTH 74°50'20" EAST, 184.75 FEET; THENCE NORTH 70°03'19" EAST, 95.06 FEET; THENCE NORTH 23°31'11" WEST, 227.46 FEET; THENCE NORTH 67°22'25" EAST, 40.00 FEET TO THE **POINT OF BEGINNING**.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT 'E-1' AND BY THIS REFERENCE MADE A PART THEREOF. ALL DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO COMPUTE GROUND DISTANCES, DIVIDE GRID DISTANCES BY 0.999963440. ALL BEARINGS SHOWN HEREON ARE GRID BASED UPON CALIFORNIA COORDINATE SYSTEM ZONE 6, ADJUSTMENT, NAD-83, AND EPOCH 1991.35.

SAID PARCEL OF LAND CONTAINS 2.778 ACRES, MORE OR LESS.

7/3/03

GARY L. HUS DATE
L.S. 7019
EXPIRATION DATE 6/30/2006

LICENSED LAND SURVEYOR
GARY L. HUS
NO. 7019
Exp. date 6-30-06
STATE OF CALIFORNIA

EXHIBIT "F"

LEGAL DESCRIPTION OF THE TRANSFORMER EASEMENT AREAS

SOUTH TRANSFORMER EASEMENT

THAT PORTION OF LOT "H" OF RANCHO AGUA HEDIONDA IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF NO. 823 AS DESCRIBED IN CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 30, 2001, AS DOCUMENT NO. 2001-0789068, PARCEL 4, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 4, ALSO BEING A POINT ON THE WESTERLY LINE OF THE 100.00 FOOT WIDE RIGHT-OF-WAY OF THE ATCHISON TOPEKA AND SANTA FE RAILROAD, ALSO BEING THE MOST SOUTHEASTERLY CORNER OF PARCEL 4 AS SHOWN ON RECORD OF SURVEY NO. 17350; THENCE ALONG SAID WESTERLY LINE, NORTH 22°30'13" WEST, 1763.84 FEET; THENCE LEAVING SAID WESTERLY LINE AT RIGHT ANGLES, SOUTH 67°29'47" WEST, 54.68 FEET; THENCE SOUTH 67°22'25" WEST, 288.14 FEET; THENCE SOUTH 23°31'11" WEST, 270.91 FEET; THENCE SOUTH 35°40'18" EAST, 649.34 FEET; THENCE SOUTH 16°11'01" WEST, 85.97 FEET; THENCE SOUTH 67°30'13" WEST, 478.88 FEET; THENCE NORTH 22°59'30" WEST, 83,39 FEET TO THE **POINT OF BEGINNING**; THENCE SOUTH 67°00'30" WEST, 18.53 FEET; THENCE NORTH 22°59'30" WEST, 75.00 FEET; THENCE NORTH 67°00'30" EAST, 75.00 FEET; THENCE SOUTH 22°59'30" EAST, 75.00 FEET; THENCE SOUTH 67°00'30" WEST, 56.47 FEET TO THE **POINT OF BEGINNING**.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT 'F-2' AND BY THIS REFERENCE MADE A PART THEREOF. ALL DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO COMPUTE GROUND DISTANCES, DIVIDE GRID DISTANCES BY 0.999963440. ALL BEARINGS SHOWN HEREON ARE GRID BASED UPON CALIFORNIA COORDINATE SYSTEM ZONE 6, ADJUSTMENT, NAD-83, AND EPOCH 1991.35.

SAID PARCEL OF LAND CONTAINS 0.129 ACRES, MORE OR LESS.

7/3/03

GARY L. HUS DATE
L.S. 7019
EXPIRATION DATE 6/30/2006

LICENSED LAND SURVEYOR
GARY L. HUS
NO. 7019
Exp. date 6-30-06
STATE OF CALIFORNIA

EXH F - Page 2 of 2

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EXHIBIT "G"

LEGAL DESCRIPTION OF THE SUBSTATION EASEMENT AREA

EXHIBIT 'G'

LEGAL DESCRIPTION

FOR

SUBSTATION EASEMENT AREA

THAT PORTION OF LOT "H" OF RANCHO AGUA HEDIONDA IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF NO. 823 AS DESCRIBED IN CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 30, 2001, AS DOCUMENT NO. 2001-0789068, PARCEL 4, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 4, ALSO BEING A POINT ON THE WESTERLY LINE OF THE 100.00 FOOT WIDE RIGHT-OF-WAY OF THE ATCHISON TOPEKA AND SANTA FE RAILROAD, ALSO BEING THE MOST SOUTHEASTERLY CORNER OF PARCEL 4 AS SHOWN ON RECORD OF SURVEY NO. 17350; THENCE ALONG SAID WESTERLY LINE, NORTH 22°30'13" WEST, 1763.84 FEET; THENCE LEAVING SAID WESTERLY LINE AT RIGHT ANGLES, SOUTH 67°29'47" WEST, 54.68 FEET; THENCE SOUTH 67°22'25" WEST, 248.14; THENCE SOUTH 23°31'11" EAST, 153.41 FEET TO THE **POINT OF BEGINNING**; THENCE NORTH 66°28'49" EAST, 75.00 FEET; THENCE SOUTH 23°31'11" EAST, 100.00 FEET; THENCE SOUTH 66°28'49" WEST, 75.00 FEET; THENCE NORTH 23°31'11" WEST, 100.00 FEET TO THE **POINT OF BEGINNING**.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT 'G-1' AND BY THIS REFERENCE MADE A PART THEREOF. ALL DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO COMPUTE GROUND DISTANCES, DIVIDE GRID DISTANCES BY 0.999963440. ALL BEARINGS SHOWN HEREON ARE GRID BASED UPON CALIFORNIA COORDINATE SYSTEM ZONE 6, ADJUSTMENT, NAD-83, AND EPOCH 1991.35.

SAID PARCEL OF LAND CONTAINS 0.172 ACRES, MORE OR LESS.

7/3/03

GARY L. HUS DATE
L.S. 7019
EXPIRATION DATE 6/30/2006

LICENSED LAND SURVEYOR
GARY L. HUS
NO. 7019
Exp. date 6-30-06
STATE OF CALIFORNIA

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EXHIBIT "H"

LEGAL DESCRIPTION OF THE SEWER/DOMESTIC WATER EASEMENT AREA

EXHIBIT 'H'

LEGAL DESCRIPTION

FOR

SEWER/DOMESTIC WATER EASEMENT AREA

THAT PORTION OF LOT "H" OF RANCHO AGUA HEDIONDA IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF NO. 823 AS DESCRIBED IN CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 30, 2001, AS DOCUMENT NO. 2001-0789068, PARCEL 4, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 4, ALSO BEING A POINT ON THE WESTERLY LINE OF THE 100.00 FOOT WIDE RIGHT-OF-WAY OF THE ATCHISON TOPEKA AND SANTA FE RAILROAD, ALSO BEING THE MOST SOUTHEASTERLY CORNER OF PARCEL 4 AS SHOWN ON RECORD OF SURVEY NO. 17350; THENCE ALONG SAID WESTERLY LINE, NORTH 22°30'13" WEST, 1763.84 FEET; THENCE LEAVING SAID WESTERLY LINE AT RIGHT ANGLES, SOUTH 67°29'47" WEST, 54.68 FEET; THENCE SOUTH 67°22'25" WEST, 11.67 FEET TO THE **POINT OF BEGINNING**; THENCE SOUTH 22°21'34" EAST, 62.54 FEET TO A POINT ON THE NORTHERLY LINE OF THAT CERTAIN "PIPE LINE LICENSE" DATED MARCH 1, 1971, BY AND BETWEEN THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND SAN DIEGO GAS AND ELECTRIC COMPANY, WHICH LICENSE GRANTS THE RIGHT TO CONSTRUCT AND MAINTAIN A TUNNEL, PIPE AND PEDESTRIAN WALKWAY AND VARIOUS SIZES OF CARRIER PIPE; THENCE ALONG SAID NORTHERLY LINE NORTH 67°38'26" EAST, 195.12 FEET; THENCE LEAVING SAID NORTHERLY LINE NORTH 22°21'34" WEST, 18.01 FEET; THENCE NORTH 67°38'26" EAST, 35.00 FEET; THENCE SOUTH 22°21'34" EAST, 37.01 FEET; THENCE SOUTH 67°38'26" WEST, 15.00 FEET; THENCE SOUTH 22°21'34" EAST, 32.16 FEET; THENCE SOUTH 67°38'26" WEST, 40.78 FEET; THENCE NORTH 22°21'34" WEST, 20.00 FEET; THENCE NORTH 67°38'26" EAST, 20.78 FEET; THENCE NORTH 22°21'34" WEST, 22.16 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID "PIPE LINE LICENSE"; THENCE ALONG SAID SOUTHERLY LINE SOUTH 67°38'26" WEST, 195.12 FEET; THENCE SOUTH 22°21'34" EAST, 6.55 FEET; THENCE SOUTH 67°38'26" WEST, 20.00 FEET; THENCE NORTH 22°21'34" WEST, 78.00 FEET; THENCE NORTH 67°22'25" EAST, 20.00 FEET TO THE **POINT OF BEGINNING**.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT 'H-1' AND BY THIS REFERENCE MADE A PART THEREOF. ALL DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO COMPUTE GROUND DISTANCES, DIVIDE GRID

DISTANCES BY 0.999963440. ALL BEARINGS SHOWN HEREON ARE GRID BASED UPON CALIFORNIA COORDINATE SYSTEM ZONE 6, ADJUSTMENT, NAD-83, AND EPOCH 1991.35.

SAID PARCEL OF LAND CONTAINS 0.130 ACRES, MORE OR LESS.

7/3/03

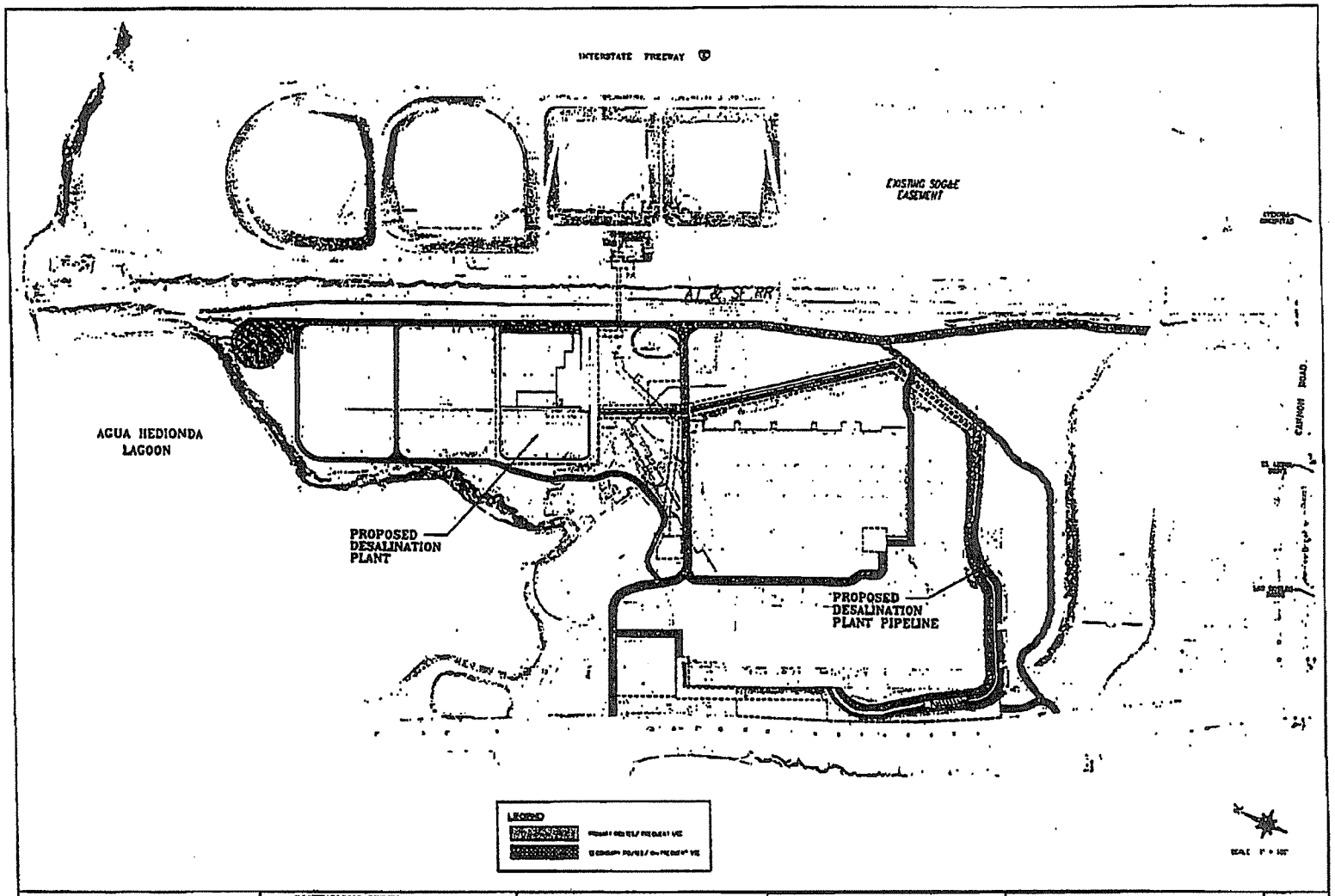
GARY L. HUS DATE
L.S. 7019
EXPIRATION DATE 6/30/2006

LICENSED LAND SURVEYOR
GARY L. HUS
NO. 7019
Exp. date 6-30-06
STATE OF CALIFORNIA

T:\SURVEY\2398\Plats\Legals\ExibH-Sewer/DomesticWater.doc July 3, 2003 JG.

EXHIBIT "I"

MAP GENERALLY DEPICTING THE INGRESS/EGRESS EASEMENT AREAS



DRAWINGS PREPARED BY

Engineering Planning Surveying Construction Services PBSJ

INGRESS/ EGRESS EASEMENT AREAS

EXHIBIT I

EXHIBIT "J"

LEGAL DESCRIPTION OF THE ACCESS AND TURN-AROUND EASEMENT AREA

EXHIBIT 'J'

LEGAL DESCRIPTION

FOR

ACCESS AND TURNAROUND EASEMENT AREA

ACCESS EASEMENT

THAT PORTION OF LOT "H" OF RANCHO AGUA HEDIONDA IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF NO. 823 AS DESCRIBED IN CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 30, 2001, AS DOCUMENT NO. 2001-0789068, PARCEL 4, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 4, ALSO BEING A POINT ON THE WESTERLY LINE OF THE 100.00 FOOT WIDE RIGHT-OF-WAY OF THE ATCHISON TOPEKA AND SANTA FE RAILROAD, ALSO BEING THE MOST SOUTHEASTERLY CORNER OF PARCEL 4 AS SHOWN ON RECORD OF SURVEY NO. 17350; THENCE ALONG SAID WESTERLY LINE, NORTH 22°30'13" WEST, 1763.84 FEET; THENCE LEAVING SAID WESTERLY LINE AT RIGHT ANGLES, SOUTH 67°29'47" WEST, 54.68 FEET TO THE **POINT OF BEGINNING**; THENCE NORTH 22°37'35" WEST, 891.02 FEET TO A POINT HEREINAFTER REFERRED TO AS **POINT 'A'**; THENCE NORTH 67°22'25" EAST, 20.00 FEET; THENCE SOUTH 22°37'35"EAST, 1387.45 FEET; THENCE SOUTH 15°31'18" EAST, 379.90 FEET; THENCE SOUTH 29°58'25" EAST, 433.54 FEET; THENCE SOUTH 22°32'58" EAST, 191.28 FEET; THENCE SOUTH 09°39'03" EAST, 50.72 FEET; THENCE SOUTH 19°02'22" EAST, 157.35 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL 4; THENCE ALONG SAID SOUTHERLY LINE NORTH 82°40'44" WEST, 27.90 FEET; THENCE LEAVING SAID SOUTHERLY LINE NORTH 19°02'22" WEST, 147.02 FEET; THENCE NORTH 09°39'03" WEST, 49.95 FEET; THENCE NORTH 22°32'58" WEST, 186.83 FEET; THENCE NORTH 29°58'25" WEST, 434.98 FEET; THENCE NORTH 15°31'44" WEST, 381.79 FEET; THENCE NORTH 22°37'35" WEST, 174.35 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 45.00 FEET; THENCE NORTHERLY, NORTHWESTERLY AND WESTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°53'36", 71.39 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 66°28'49" WEST, 675.85 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 70.00 FEET; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 81°26'17", 99.50 FEET; THENCE TANGENT TO SAID CURVE, NORTH 32°04'53" WEST, 93.96 FEET TO THE BEGINNING OF A TANGENT CURVE,

CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 45.00 FEET; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 10°50'13", 8.51 FEET; THENCE TANGENT TO SAID CURVE, NORTH 42°55'06" WEST, 37.86 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHERLY AND HAVING A RADIUS OF 52.50 FEET; THENCE ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 69°07'13", 63.33 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 67°57'41" WEST, 325.78 FEET TO A POINT ON THE EASTERLY LINE OF CARLSBAD BOULEVARD (FORMERLY XI-SD-23), BEING 100.00 FEET WIDE AS SHOWN ON RECORD OF SURVEY NO. 17350; THENCE ALONG SAID EASTERLY LINE NORTH 24°07'36" WEST, 25.02 FEET; THENCE LEAVING SAID EASTERLY LINE NORTH 67°57'41" EAST, 326.69 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHERLY AND HAVING A RADIUS OF 77.50 FEET; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 69°07'13", 93.49 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 42°55'06" EAST, 40.23 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 45.00 FEET; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°50'13", 8.51 FEET; THENCE SOUTH 32°04'53" EAST, 96.34 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 45.00 FEET; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 81°26'18", 63.96 FEET; THENCE TANGENT TO SAID CURVE, NORTH 66°28'49" EAST, 682.64 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 45.00 FEET; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 89°06'24", 69.98 FEET; THENCE TANGENT TO SAID CURVE, NORTH 22°37'35" WEST, 205.27 FEET TO THE **POINT OF BEGINNING.**

ATTACHED HERETO IS A PLAT LABELED EXHIBIT 'J-1' AND BY THIS REFERENCE MADE A PART THEREOF. ALL DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO COMPUTE GROUND DISTANCES, DIVIDE GRID DISTANCES BY 0.999963440. ALL BEARINGS SHOWN HEREON ARE GRID BASED UPON CALIFORNIA COORDINATE SYSTEM ZONE 6, ADJUSTMENT, NAD-83, AND EPOCH 1991.35.

SAID PARCEL OF LAND CONTAINS 2.153 ACRES, MORE OR LESS.

TURNAROUND EASEMENT

THAT PORTION OF LOT "H" OF RANCHO AGUA HEDIONDA IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF NO. 823 AS DESCRIBED IN CERTIFICATE OF

COMPLIANCE RECORDED OCTOBER 30, 2001, AS DOCUMENT NO. 2001-0789068, PARCEL 4, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE AFOREMENTIONED **POINT 'A'**, SAID POINT BEING THE BEGINNING OF A CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 80.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 67°22'25" EAST; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 82°49'09", 115.64 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 80.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 15°26'44" WEST; THENCE WESTERLY, NORTHERLY, EASTERLY AND SOUTHERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 262°49'09", 366.96 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 22°37'35" EAST, 158.75 FEET; THENCE SOUTH 67°22'25" WEST, 20.00 FEET TO THE **POINT OF BEGINNING.**

ATTACHED HERETO IS A PLAT LABELED EXHIBIT 'J-1' AND BY THIS REFERENCE MADE A PART THEREOF. ALL DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO COMPUTE GROUND DISTANCES, DIVIDE GRID DISTANCES BY 0.999963440. ALL BEARINGS SHOWN HEREON ARE GRID BASED UPON CALIFORNIA COORDINATE SYSTEM ZONE 6, ADJUSTMENT, NAD-83, AND EPOCH 1991.35.

SAID PARCEL OF LAND CONTAINS 0.559 ACRES, MORE OR LESS.

7/3/03

GARY L. HUS DATE
L.S. 7019
EXPIRATION DATE 6/30/2006

LICENSED LAND SURVEYOR
GARY L. HUS
NO. 7019
Exp. date 6-30-06
STATE OF CALIFORNIA

Schedule 3

Purchase Price

1. Adjustments to Base Price

(a) Adjustment. Commencing at the beginning of the first Water Year and thereafter at the end of each calendar quarter during the Term, the Base Price in effect for the upcoming calendar quarter (Base $Price_i$) shall be adjusted as follows:

$$\text{Base Price}_i = \text{Base Price}_{Initial} \times ((70\% \times (CPI_i \div CPI_{Initial})) + (30\% \times (EC_i \div EC_{Initial})))$$

Where:

Base $Price_{Initial}$ = the Base Price as determined pursuant to Section 3.1.1 of the Agreement (excluding any adjustment pursuant to this Schedule 3)

CPI_i = the most recently published value of the CPI as of the first day of calendar $quarter_i$

$CPI_{Initial}$ = the most recently published value of the CPI as of September 28, 2004

CPI = 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

EC_i = the average cost (weighted by the Project's use of electricity) of electricity used by the Project (expressed in $/MWH) for the calendar $quarter_{i-1}$, provided, however, that for the first adjustment of the Base Price pursuant to this Agreement, EC_i shall be equal to $EC_{Initial} \times (CPI_i/CPI_{Initial})$

$EC_{Initial}$ = $60/MWH

Solely for illustrative purposes, a hypothetical example of the calculation of the Base Price as of the beginning of the third Water Year is set forth as Attachment A to this Schedule 3.

(b) Change in Index. If a substantial change is made in the manner in which the CPI is calculated, then the CPI will be adjusted to the figure that would have been used had the manner of computing the CPI in effect at the date of this Agreement not been altered. If the CPI (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information used in determining the CPI will be used. No adjustments will be made due to any revision that may be made in the CPI for any month.

(c) Statements. Within thirty (30) days after the commencement of a Water Year, Poseidon shall prepare and provide to Oceanside for its review a statement of any adjustment to the Base Price made pursuant to this Schedule 3.

(d) No Decreases. In no event shall the Base Price be reduced as a result of adjustments made pursuant to this Schedule 3.

2. Avoided Water Cost

(a) Components. The Avoided Water Cost shall equal the sum of: (i) the SDCWA Price (defined in Paragraph 2(b) below), (ii) the Other Avoided Charges (defined in Paragraph 2(c) below) and (iii) the Subsidy and/or any other new or additional third party financial support for Oceanside' purchase of Product Water which Oceanside actually receives, either in cash or credit, for the applicable Water Year.

(b) SDCWA Price. As used herein, "SDCWA Price" shall mean: the sum of all of the amounts, whether now or hereafter imposed and however now or hereafter delineated, named or identified, and whether or not such amounts vary with the amount of water supplied (with any fixed amounts converted to an applicable per acre-foot amount for treated municipal and industrial ("M&I") water), that the San Diego County Water Authority (the "Authority") charges or would charge Oceanside to supply and transport treated M&I water to Oceanside; excluding, however all of the amounts, whether now or hereafter imposed and however now or hereafter delineated, named or identified, that Oceanside is required to pay the Authority, after the Commercial Operation Date, to maintain the right to receive treated M&I water from the Authority regardless of whether it purchases any water therefrom.

(c) Other Avoided Charges. As used herein, "Other Avoided Charges" shall mean: the sum of all of the amounts (without duplication of any components of the SDCWA Price), whether now or hereafter imposed or otherwise incurred and however now or hereafter delineated, named or identified, and whether or not such amounts vary with the amount of treated M&I water supplied (with any fixed amounts converted to an applicable per acre-foot amount for treated M&I water), that (i) any entity other than the Authority charges or would charge Oceanside to supply and transport treated M&I water to Oceanside or (ii) are otherwise not incurred by Oceanside from such other entity as a result of its purchase of Product Water hereunder; excluding, however (x) all of the amounts, whether now or hereafter imposed and however now or hereafter delineated, named or identified, that Oceanside is required to pay to such other entity, after the Commercial Operation Date, to maintain the right to receive treated M&I water from such other entity regardless of whether it purchases any treated M&I water therefrom; and (y) all capital expenditures not incurred by Oceanside as a result of its purchase of Product Water hereunder.

(d) Adjustment of SDCWA Price. If a change is made in the Authority's water rate structure or the methodology used by the Authority to determine its water rates (collectively, a "Rate Structure Change") which materially lowers the SDCWA Price, then the SDCWA Price will be subject to an appropriate adjustment so that the SDCWA Price as so adjusted will be substantially the same as the SDCWA Price had the Rate Structure Change not occurred. If the SDCWA ceases to exist, then the SDCWA Price shall thereafter be based on a rate of the then-largest agency, other than the State of California, delivering and selling treated M&I water at wholesale to retail agencies in San Diego County which shall reflect water cost information substantially equivalent to the SDCWA Price for treated M&I water in effect just prior to SDCWA's cessation of existence. Upon due occurrence of a Rate Structure Change or if the SDCWA ceases to exist, Poseidon shall provide Oceanside with Poseidon's proposed adjustment to the SDCWA Price or substitute rate, as applicable. The Parties shall thereafter negotiate in good faith to reach agreement on such adjustment or substitute rate. In the event

that the Parties are unable to reach agreement within sixty (60) days after Poseidon provides its proposal, either Party may submit the dispute over such adjustment on substitute rate, as applicable, for resolution pursuant to Section 19.

3. Tracking Account.

(a) Additions to Tracking Account. If during all or any portion of a Water Year the Base Price is greater than the Avoided Water Cost, then at the end of such Water Year an amount shall be added to a nominal tracking account (the "Tracking Account") based on the difference between the Base Price and such Avoided Water Cost, as follows:

> (Base Price minus Avoided Water Cost) times (the number of acre-feet of Product Water sold to Oceanside in such Water Year or during the portion of such Water Year that the Base Price exceeded the Avoided Water Cost, as applicable, including Product Water deemed to be sold pursuant to Section 9.8).

(b) Deductions from Tracking Account. If during all or any portion of a Water Year the Avoided Water Cost is greater than the Base Price and the balance of the Tracking Account is greater than zero (0), the following amount (the "Deferred Payment") (up to the total balance of the Tracking Account) shall be included in the invoice for the last month of such Water Year and shall be paid by Oceanside to Poseidon:

> (Avoided Water Cost minus Base Price) times (the number of acre-feet of Product Water sold to Oceanside in such Water Year or during the portion of such Water Year that the Avoided Water Cost exceeded the Base Price, as applicable, including Product Water deemed to be sold pursuant to Section 9.8).

(c) Other Tracking Account Provisions. If at the expiration of the Term the balance of the Tracking Account is greater than zero (0), Poseidon's rights with respect to the Tracking Account shall terminate.

4. Additional Payment. If during all or any portion of a Water Year the Avoided Water Cost is greater than the Base Price and the balance of the Tracking Account is zero (0) (taking into account any deductions from the Tracking Account for such Water Year pursuant to Paragraph 3(b) above), a payment (the "Additional Payment") equal to fifty percent (50%) of the following amount shall be included in the invoice for the last month of such Water Year and shall be paid by Oceanside to Poseidon:

> ((Avoided Water Cost minus Base Price) times (the number of acre-feet of Product Water sold to Oceanside in such Water Year or during the portion of such Water Year that the Avoided Water Cost exceeded the Base Price, as applicable, including Product Water deemed to be sold pursuant to Section 9.8)) minus (any Deferred Payment for such Water Year).

Attachment A

Assumptions:

Cumulative adjustment through the beginning of the third Water Year of 7%.

Base $Price_{Initial}$	=	\$861/acre-foot
CPI_i	=	219.7
$CPI_{Initial}$	=	205.3
EC_i	=	\$64.20/MWH
$EC_{Initial}$	=	\$60/MWH
Base $Price_i$	=	\$861/acre-foot x ((70% x (219.7 ÷ 205.3)) + (30% x (\$64.20/MWH ÷ \$60/MWH)))
	=	\$921.36/acre-foot

Schedule 8.2 - Quality Standards

Quality Parameter[10]	Analytical Method[1]	Sampling		Units	Concentration Limits	
		Sample period[2]	Sample Method		Central Tendency[3]	Extreme[4]
Total Dissolved Solids	2540 C	one year	Weekly grab	mg/L	350	400
Chloride	4110 B	one year	Weekly grab	mg/L	180	210
Bromide	4110 B	one year	Weekly grab	mg/L	0.5	0.8
Boron	3120 B	one year	Weekly grab	mg/L	0.75[5]	1[5]
Turbidity	2130 B	one month	Continuous[6]	NTU	0.3	0.5
SDS-THM[9]	5710 C	one year	Monthly Grab: 100% Desal	mg/L	> 70% of MCL[7]	< 100% of MCL[7]
SDS-THM[8, 9]	5710 D	one year	Monthly Grab: 50% desal & 50% Aqued	mg/L	> 70% of MCL[7]	< 100% of MCL[7]
SDS-HAA[9]	5710 D	one year	Monthly Grab: 100% Desal	mg/L	> 70% of MCL[7]	< 100% of MCL[7]
SDS-HAA[8, 9]	5710 D	one year	Monthly Grab: 50% desal & 50% Aqued	mg/L	> 70% of MCL[7]	< 100% of MCL[7]
Temperature	2550	one month	daily grab	°F	-	85 °F

1. All methods taken from *Standard Methods On Line*, published by APHA, AWWA, and WEF.
2. Sample period - concentration limits are calculated for this period
3. Central Tendency - can be exceeded in no more than 50% of samples taken
4. Extreme - can be exceeded in no more than 10% of samples taken
5. Permanent values determined pursuant to Section 8.3.
6. Continuous analysis, values at 15 minute intervals used in all calculations
7. Use the MCL that applies in Oceanside's Distribution system
8. Does not apply if Oceanside is using exclusively Desalinated Water
9. After the first year of testing, frequency of testing shall be per Applicable Law.
10. All samples to assess compliance with Applicable Law and Schedule 8.2 (except for samples for SDS-THM and SDS-HAA analyses) are to be collected at mutually agreed upon location at the Project site. All SDS-TMM and SDS-HAA samples are to be collected at mutually agreed upon locations in Oceanside's distribution system, as required by Applicable Law.

Examples of interpreting the central tendency and the extreme:

a. TDS - Central tendency requirement: no more than 26 samples among any 52 contiguous weekly samples may exceed 350 mg/L.

b TDS – Extreme: no more than 5 samples among any 52 contiguous weekly samples may exceed 400 mg/L.

c. Turbidity - central tendency requirement: no more than 1440 measurements among 2880 contiguous measurements recorded at 15 minute intervals may exceed 0.3 ntu.

d. Turbidity - extreme requirement: no more than 288 measurements among 2880 contiguous measurements recorded at 15 minute intervals may exceed 0.5 ntu.

e. SDS-THM - Central tendency requirement: no more than 6 samples among any 12 contiguous samples may exceed the MCL for THMs which is applicable to the water in Oceanside's distribution system at the time the samples are taken.

Schedule 12

Insurance

1. A combination of general and excess liability insurance with a limit of no less than $50,000,000.00 per occurrence).

2. Automobile liability insurance at least as broad as Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability Code 1 (any auto) with a limit of no less than $5,000,000.00 per accident.

3. Workers' compensation insurance as required by the State of California and Employer's Liability Insurance with an employer's liability limit of $1,000,000.00 per accident for bodily injury and disease.

4. Builder's risk insurance on an all risk basis with a limit of liability no less than the price of Poseidon's engineering, procurement and construction contract.

5. Property insurance equal to the replacement value of the Project.

POSEIDON RESOURCES (CHANNELSIDER) LLC

Officer's Certificate

I, Walter Winrow, do hereby certify that I am the duly elected and qualified President of Poseidon Resources (Channelside) LLC, a Delaware limited liability company (the "Company"), and that as such I am authorized to execute this certificate on behalf of the Company. I further certify that the following person is now and at all times since June 1, 2003 has been a duly elected, qualified and acting officer of the Company, as specified below, and the signature of such person appearing opposite his name below is his genuine signature or a true facsimile thereof.

Title	Name of Officer	Signature
Vice President	Peter MacLaggan	

IN WITNESS WHEREOF, I have hereunto signed my name this 19 day of December, 2007.

Walter Winrow
President

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
Subscribed and sworn to before me
on DEC. 19, 2007
NOTARY PUBLIC

OFFICIAL SEAL
ELLEN ANN GONZALES
NOTARY PUBLIC-CALIFORNIA
COMM. NO. 1663579
SAN DIEGO COUNTY
MY COMM. EXP. MAY 29, 2010

RBG-1